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Hot Legal Topics for Credit Counseling Agencies: A Legal and Regulatory Update

**Association of Independent Consumer Credit
Counseling Agencies (AICCCA) 16th Annual
Conference**

**July 15, 2009, 10:30 am – 11:30 am
J.W. Marriott Hotel, Washington, D.C.**

**Jeffrey S. Tenenbaum, *Esq.*
Jonathan L. Pompan, *Esq.*
Venable LLP, Washington, D.C.**



IMPORTANT INFORMATION ABOUT THIS PRESENTATION

This presentation is for general informational purposes only and does not represent and is not intended to provide legal advice or opinion and should not be relied on as such. Legal advice can only be provided in response to specific fact situations.

This presentation does not represent any undertaking to keep recipients advised as to all or any relevant legal developments.



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Introduction

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- Quick Review of State Debt Adjusting Law Developments
- Investigations, Law Enforcement Actions and Private Lawsuits
- The future of “Debt Settlement” and Alternative Repayment Plans
- Questions and Answers



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Administration, FTC and Congress Focus on Financial Products and Services

How we got here...



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Administration and Congressional Move to Enhance Oversight and Enforcement of Consumer Financial Products and Services

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Credit Counseling and Debt Settlement Alert
 May 11, 2009

Congressional Move to Enhance FTC Oversight and Enforcement of Consumer Credit and Debt; Debt Settlement Services Targeted

AUTHORS
 Jonathan L. Pompan
 Jeffrey S. Tenenbaum

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On May 7, 2009, the Consumer Credit and Debt Protection Act (H.R. 2200) was introduced in the U.S. House of Representatives to provide authority to the Federal Trade Commission ("FTC") or the "Commission" to conduct rulemaking on an expedited basis concerning consumer credit or debt, specifically directing the Commission to promulgate rules with regard to debt settlement (broadly defined). The bill also would expand the FTC's enforcement powers by allowing it to seek civil penalties in connection with unfair and deceptive acts or practices relating to consumer credit or debt.

A hearing on the bill by the House Energy and Commerce Subcommittee on Commerce, Trade and Consumer Protection is scheduled for May 12, 2009. The bill is authored by Subcommittee Chairman Rep. Bobby Rush (D-IL), who previously held a hearing on this topic in March 2009. (1)

Over the last several months, the FTC and others have requested that Congress provide the Commission with expanded rulemaking authority and enforcement powers related to consumer credit and debt, as provided for in this bill. The bill does not, however, specifically direct the Commission to consider regulations for any specific consumer credit and debt-related products or services – other than debt settlement services and automobile sales.

In its present form, the bill would have a significant impact on the debt settlement industry and providers of other forms of consumer financial services, including credit counseling agencies that offer less-than-full balance repayment plans.

Moreover, the bill would enable the Commission to play a greater role in the oversight of consumer financial services related to consumer credit or debt. The Commission would be permitted to use this expedited rulemaking authority to issue rules covering the entire range of consumer financial products and services within its jurisdiction, either directed at consumer financial products/services in general or specific industry subsets (e.g., payday lending, mortgage servicing, credit counseling agencies, credit card issuers and advisers, and credit repair companies). In addition, the bill would enhance the Commission's ability to prosecute cases against such companies.

The Consumer Credit and Debt Protection Act contains several specific provisions of interest to providers of consumer financial products and services, including:

- Permitting the FTC to employ notice and comment procedures to establish rules pursuant to the Federal Trade Commission Act that set forth unfair or deceptive acts and practices relating to consumer credit or debt, rather than rulemaking processes that are more burdensome on the Commission;
- Directing the FTC to examine the practices of "debt settlement services" providers and to establish such rules as the Commission determines necessary to prevent unfair and deceptive acts or practices of such providers. The bill also requires the Commission to consider adopting rules that specifically:
 - "inhibit the charging of fees to consumers prior to any debt settlement service being fully rendered and listing fees that may be charged after a settlement with a creditor is reached;" and
 - "require disclosures before a contract is signed regarding the fee structure, expected time frames for a successful settlement, success rate of settlers in settling their debts, information about creditor participation in settlement plans, and the potential impact on a consumer's credit score;"
- Defining the term "debt settlement services" (broadly) as "a commercial service provided to assist consumers in managing and repaying consumer debt, including the offering of services or acting as an intermediary between a debtor and one or more of the debtor's creditors, where the primary purpose of the advice or action is to obtain a settlement for less than the full amount of debt owed;"
- Requiring that the specified required disclosures be commenced within six months of the date of enactment of this bill.

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Credit Counseling and Debt Settlement Alert
 April 6, 2009

FTC Commissioner Rush Calls for More Responsibility and Reforms in the Debt Settlement Industry

AUTHORS
 Jonathan L. Pompan
 Jeffrey S. Tenenbaum

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Acknowledges "Debt Settlement Can Provide Some Real Benefits for Consumers"

Addressing a credit and collection industry conference in Carlsbad, California, on April 2, 2009, FTC Commissioner J. Thomas Rosch shared his views about debt settlement and discussed his thoughts on options available to the FTC and to the debt settlement industry to improve practices.

On the heels of FTC congressional testimony on consumer protection issues and the debt relief industry, Commissioner Rosch acknowledged that, in his view, debt settlement can provide some real benefits for consumers, but added that certain practices should be prohibited in the debt settlement industry.

In an address that was striking for its specificity, Commissioner Rosch directly addressed one of the most significant topics confronting debt relief providers and often asked by consumer advocacy groups – whether debt settlement was of any benefit to consumers. Commissioner Rosch noted that in his view, "debt settlement can provide some real benefits for consumers."

"For example, a debt settlement firm can advocate on the consumer's behalf, especially in cases where consumers are insolvent, embarrassed, or even afraid to contact their creditors directly," Commissioner Rosch said at the conference attendees. "A debt settlement firm also may be able to provide individualized attention to consumers, taking a holistic approach to all of the consumer's unsecured debt owed to several creditors, rather than just the amount owed to a particular creditor."

Commissioner Rosch, one of four sitting commissioners on the FTC, laid out his views in brief terms that echo, in many ways, but also expand upon, recent FTC testimony to congressional committees responsible for overseeing the consumer protection agency. Commissioner Rosch said that he was "boggled about certain practices we've witnessed among some industry players." To illustrate his concerns, Rosch described a number of the law enforcement actions brought by the FTC in recent years.

Though his specific themes have been sounded by consumer advocates and the FTC elsewhere, Commissioner Rosch offered views on "several" industry practices that can be improved – as well as some that "believe should be prohibited."

Recommendations for the Debt Settlement Industry

Among his recommendations, putting suggestions from prior enforcement actions, Commissioner Rosch called on debt settlement firms to:

- "not make performance claims to those they can administratively substantiate,"
- not "misrepresent the benefits of debt settlement,"
- "disclose, clearly and conspicuously, the required input that participation in a program may have on a consumer's credit score, and how long that input may linger. This disclosure should not be made only in the smaller contract, but in a clear and plain."
- "A debt settlement firm promises to refund debt settlement service fees to consumers if their debt settlement agreements are unsuccessful, the firm must honor that promise."

Options for Regulating the Debt Settlement Industry

Commissioner Rosch also discussed some other debt settlement industry practices he believed should be prohibited. "Debt settlement firms should be allowed to charge any payment in advance of an intermediary between a debtor and one or more of the debtor's creditors, where the primary purpose of the advice or action is to obtain a settlement for less than the full amount of debt owed,"

"Requiring that the specified required disclosures be commenced within six months of the date of enactment of this bill."

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Credit Counseling and Debt Settlement Alert
 March 16, 2009

FTC Emphasizes Increased Enforcement against Debt Relief Companies at Congressional Consumer Protection Hearing

AUTHORS
 Jeffrey S. Tenenbaum
 Jonathan L. Pompan

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Section of the Federal Trade Commission Act prohibits unfair or deceptive acts or practices. The FTC also has the authority to promulgate rules to prohibit deceptive or unfair practices and enforce a number of other consumer protection statutes. In light of the economic crisis, the FTC has focused on law enforcement, consumer and business education to protect consumers of financial services. Despite the many regulations, identify operating companies that assist consumers in debt, the FTC continues to focus its efforts on protecting the marketplace.

On March 24, 2009, the U.S. House Committee on Energy and Commerce Subcommittee on Commerce, Trade, and Consumer Protection held a hearing on the status of the Federal Trade Commission ("FTC") in protecting the public, specifically in the area of consumer credit and debt. This hearing came in wake of the FTC's testimony to the Senate Commerce Committee in February 2009.

Recently appointed FTC Chairman Jon Leibowitz testified before the Subcommittee, reiterating virtually all of the new points that Commissioner Rosch made during her testimony for the FTC before the Senate Commerce Committee several weeks ago. Chairman Leibowitz highlighted the FTC's intent to do three things: (1) bring order and discipline practices in the debt relief mortgage, title, noteclearing and foreclosure rescue industries, debt negotiation, payday loan lenders, credit repair companies, and debt collection – pointing to several recent enforcement actions targeting these industries. (2)

Chairman Leibowitz also stated that the FTC is in the process of reviewing the Executive Working Group, a task force consisting of the FTC, State Attorney General, and the U.S. Justice Department. The Working Group would allow for increased coordination and cooperation between these federal and state agencies.

The Chairman's testimony also highlighted the FTC's enforcement "wish list" – a list of expanded enforcement priorities that the FTC believes will help to make the Commission more effective in its response to the ongoing existing unfair and deceptive practices in the area of consumer credit and debt. The list includes expanded rulemaking authority, the authority to obtain civil penalties, and increased resources.

In particular, the Chairman highlighted that the FTC has been given expanded rulemaking authority to initiate a rulemaking proceeding with respect to the entire scope of a mortgage loan. This authority was granted under the Credit Access, Approval, and Chairman Leibowitz indicated that the FTC's testimony of the type of rulemaking authority that the FTC would use generally.

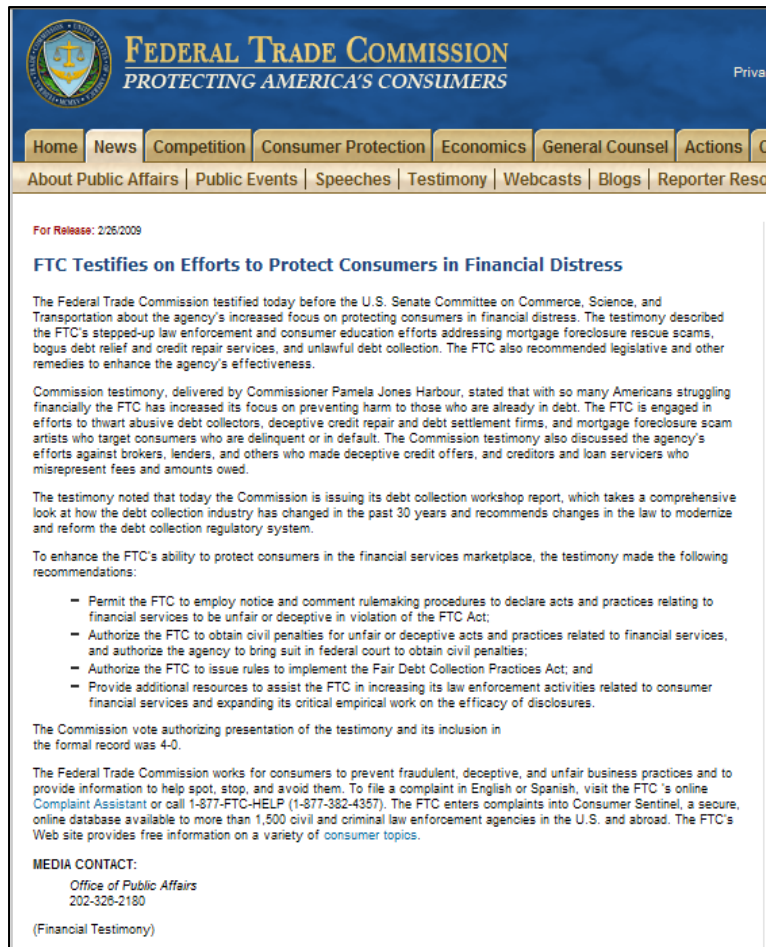
Other witnesses that testified at the hearing include a representative from the National Debt Attorney General Program, a law professor, a consumer protection, and a representative from the American Financial Services Association ("AFSA"). The AFSA representative said she still thinks debt relief is what the FTC had done an effective job in the past few years' enforcement. The other witnesses called for more aggressive, coordinated approach to the problem of unfair and deceptive consumer credit and debt practices.

The testimony makes clear that the FTC is committed to and focused on the goal of stopping or preventing in-kind of loan modification, foreclosure rescue, debt negotiation, and other consumer credit and debt practices. The Subcommittee's chairman, Congressman Bobby Rush, also stated that he is currently working on legislation to address abusive debt practices.



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U.S. Senate Committee on Commerce, Science, and Transportation Hearing (Feb. 26, 2009)



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For Release: 2/26/2009

FTC Testifies on Efforts to Protect Consumers in Financial Distress

The Federal Trade Commission testified today before the U.S. Senate Committee on Commerce, Science, and Transportation about the agency's increased focus on protecting consumers in financial distress. The testimony described the FTC's stepped-up law enforcement and consumer education efforts addressing mortgage foreclosure rescue scams, bogus debt relief and credit repair services, and unlawful debt collection. The FTC also recommended legislative and other remedies to enhance the agency's effectiveness.

Commission testimony, delivered by Commissioner Pamela Jones Harbour, stated that with so many Americans struggling financially the FTC has increased its focus on preventing harm to those who are already in debt. The FTC is engaged in efforts to thwart abusive debt collectors, deceptive credit repair and debt settlement firms, and mortgage foreclosure scam artists who target consumers who are delinquent or in default. The Commission testimony also discussed the agency's efforts against brokers, lenders, and others who made deceptive credit offers, and creditors and loan servicers who misrepresent fees and amounts owed.

The testimony noted that today the Commission is issuing its debt collection workshop report, which takes a comprehensive look at how the debt collection industry has changed in the past 30 years and recommends changes in the law to modernize and reform the debt collection regulatory system.

To enhance the FTC's ability to protect consumers in the financial services marketplace, the testimony made the following recommendations:

- Permit the FTC to employ notice and comment rulemaking procedures to declare acts and practices relating to financial services to be unfair or deceptive in violation of the FTC Act;
- Authorize the FTC to obtain civil penalties for unfair or deceptive acts and practices related to financial services, and authorize the agency to bring suit in federal court to obtain civil penalties;
- Authorize the FTC to issue rules to implement the Fair Debt Collection Practices Act; and
- Provide additional resources to assist the FTC in increasing its law enforcement activities related to consumer financial services and expanding its critical empirical work on the efficacy of disclosures.

The Commission vote authorizing presentation of the testimony and its inclusion in the formal record was 4-0.

The Federal Trade Commission works for consumers to prevent fraudulent, deceptive, and unfair business practices and to provide information to help spot, stop, and avoid them. To file a complaint in English or Spanish, visit the FTC's online Complaint Assistant or call 1-877-FTC-HELP (1-877-382-4357). The FTC enters complaints into Consumer Sentinel, a secure, online database available to more than 1,500 civil and criminal law enforcement agencies in the U.S. and abroad. The FTC's Web site provides free information on a variety of consumer topics.

MEDIA CONTACT:
Office of Public Affairs
202-328-2180
(Financial Testimony)

- To enhance the FTC's ability to protect consumers in the financial services marketplace, the testimony made the following recommendations:
 - Permit the FTC to employ notice and comment rulemaking procedures to declare acts and practices relating to financial services to be unfair or deceptive in violation of the FTC Act;
 - Authorize the FTC to obtain civil penalties for unfair or deceptive acts and practices related to financial services, and authorize the agency to bring suit in federal court to obtain civil penalties;
 - Authorize the FTC to issue rules to implement the Fair Debt Collection Practices Act; and
 - Provide additional resources to assist the FTC in increasing its law enforcement activities related to consumer financial services and expanding its critical empirical work on the efficacy of disclosures.

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U.S. House Subcommittee on Commerce, Trade and Consumer Protection of the Committee on Energy and Commerce (March 24, 2009)

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For Release: 03/24/2009

FTC Testifies on Efforts to Protect Consumers of Financial Services; Urges New Tools for Stronger Enforcement Authority

The Federal Trade Commission today told the U.S. House Subcommittee on Commerce, Trade and Consumer Protection of the Committee on Energy and Commerce that the FTC will continue protecting consumers from predatory lending and other illegal practices through all stages of the credit life-cycle, from advertising of credit through collection of debt. The FTC also recommended legislative and other remedies to enhance the agency's effectiveness.

FTC Chairman Jon Leibowitz testified about the Commission's stepped-up law enforcement efforts to protect consumers of financial services – especially consumers in financial distress. The agency has targeted unfair, deceptive, or otherwise unlawful mortgage lending and credit offers. The FTC also has taken action against creditors and loan servicers who misrepresent fees and amounts owed when they collect payments from consumers who are current on their debts. For consumers who are delinquent or in default on their debts, the Commission provides protection from mortgage foreclosure "rescue" scams, bogus credit repair and debt settlement operations, and abusive and deceptive debt collection practices.

The testimony described the FTC's consumer protection work in consumer and business outreach, and its broad-based research and policy development efforts. To allow the agency to perform a greater and more effective role in protecting consumers, the Commission's testimony recommended that Congress:

- Permit the FTC to use "notice and comment" rulemaking procedures to declare acts and practices relating to financial services to be unfair or deceptive in violation of the FTC Act;
- Authorize the FTC to obtain civil penalties for unfair or deceptive acts and practices related to financial services and authorize the agency to bring suit in federal court to obtain civil penalties;
- Provide additional resources to assist the FTC in increasing its law enforcement activities related to financial services and expanding its critical research on the efficacy of disclosures and other topics; and
- Ensure that, because of the Commission's unequalled and comprehensive focus on consumer protection, its independence from providers of financial services, and its emphasis on vigorous law enforcement, the FTC is considered as Congress moves forward in determining how to modify federal oversight of consumer financial services.

The Commission vote authorizing presentation of the testimony and its inclusion in the formal record was 4-0.

The Federal Trade Commission works for consumers to prevent fraudulent, deceptive, and unfair business practices and to provide information to help spot, stop, and avoid them. To file a complaint in English or Spanish, visit the FTC's online Complaint Assistant or call 1-877-FTC-HELP (1-877-382-4357). The FTC enters complaints into Consumer Sentinel, a secure, online database available to more than 1,500 civil and criminal law enforcement agencies in the U.S. and abroad. The FTC's Web site provides free information on a variety of consumer topics.

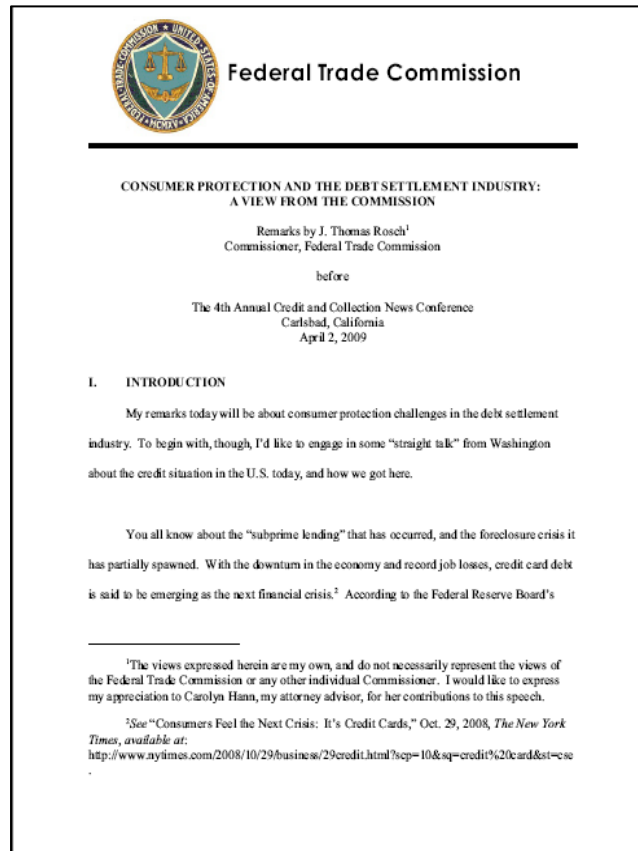
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202-326-2180
(Financial Testimony)

- FTC says: "The historic levels of consumer debt necessarily have affected the services CCAs can provide. The increased demand for debt relief options resulted in the recent growth of *for profit* debt settlement companies."
- Approx. 15 Enforcement Actions (About half against settlement companies and half against CCAs)
- FTC Requests expanded and expedited rulemaking authority and civil penalties.
 - Change from Magnuson-Moss Warranty Act
 - Consumer redress when the Commission is able to demonstrate that the respondent had engaged in dishonest or fraudulent conduct.
 - Civil penalties in the event that
 - Violation of rules from special rulemaking procedures described in the Act or
 - if the respondent committed a knowing violation of an outstanding decree against a third party (by engaging in the conduct proscribed in the decree.)

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FTC Commissioner Rosch Speech on Consumer Protection and the Debt Settlement Industry (April 2, 2009)



- *FTC Commissioner J. Thomas Rosch Recommendations for the Debt Settlement Industry*
 - “limit their performance claims to those they can adequately substantiate”;
 - not “misrepresent the benefits of debt settlement”;
 - “disclose, clearly and conspicuously, the negative impact that participation in a program may have on a consumer’s credit score, and how long that impact may linger. This disclosure should not be made only in the written contract, but in the ad itself”; and
 - “if a debt settlement firm promises to refund debt settlement service fees to consumers if their debt settlement negotiations are unsuccessful, the firm must honor that promise.”
- Concerns about advance fees
- Prior Written Consent for Disbursements
- Supports Self-Regulation

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Proposed Consumer Credit and Debt Protection Act, H.R. 2309

111TH CONGRESS
1ST SESSION **H. R. 2309**

To provide authority to the Federal Trade Commission to expedite rulemakings concerning consumer credit or debt and to direct the Commission to examine and promulgate rules with regard to debt settlement and automobile sales, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 7, 2009

Mr. RUSH (for himself, Ms. SCHAKOWSKY, and Ms. MATSUI) introduced the following bill, which was referred to the Committee on Energy and Commerce

A BILL

To provide authority to the Federal Trade Commission to expedite rulemakings concerning consumer credit or debt and to direct the Commission to examine and promulgate rules with regard to debt settlement and automobile sales, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the "Consumer Credit and
5 Debt Protection Act".

- Introduced - May 7, 2009
(Rep. Bobby Rush (D-IL))
- Referred to Subcommittee
on Commerce, Trade and
Consumer Protection
- Subcommittee Hearing -
May 12, 2009
- Markup - June 3, 2009
- Next – Full Commerce
Committee

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Proposed Consumer Credit and Debt Protection Act, H.R. 2309

111TH CONGRESS
1ST SESSION **H. R. 2309**

To provide authority to the Federal Trade Commission to expedite rulemakings concerning consumer credit or debt and to direct the Commission to examine and promulgate rules with regard to debt settlement and automobile sales, and for other purposes.

(B) **DEFINITION.**—For purposes of subparagraph (A), the term “debt settlement service” means any product or service represented directly or indirectly, to renegotiate, settle, or in any way alter the terms of payment or other terms of the unsecured debt between a consumer and one or more unsecured creditors or other entities, including a reduction in the balance, interest rate, or fees owed by a consumer to a creditor or other entity.

- Introduced - May 7, 2009
(Rep. Bobby Rush (D-IL))
- Referred to Subcommittee
on Commerce, Trade and
Consumer Protection
- Subcommittee Hearing -
May 12, 2009
- Markup - June 3, 2009
- Next – Full Commerce
Committee

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Proposed Consumer Financial Protection Agency Act (H.R. 3126)

(Original Signature of Member)

111TH CONGRESS
1st Session

H. R. _____

To establish the Consumer Financial Protection Agency, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. FRANK of Massachusetts (for himself and [see ATTACHED LIST of cosponsors]) introduced the following bill, which was referred to the Committee on _____

A BILL

To establish the Consumer Financial Protection Agency, and for other purposes.

1 *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

2 **SECTION 1. SHORT TITLE.**

3 This Act may be cited as the “Consumer Financial Protection Agency Act of 2009”.

4 **SEC. 2. TABLE OF CONTENTS.**

5 The table of contents for this Act is as follows:

6 Sec. 1. Short title.

7 Sec. 2. Table of contents.

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July 9, 2009 (6:14 p.m.)

- The CFPA Act would expressly regulate a number of financial activities. Among a number of products and services that may be offered or touched on by credit counseling agencies, activities expressly included are:
 - “collecting, analyzing, maintaining, and providing consumer report information or other account information by covered persons, including information relating to the credit history of consumers and providing the information to a credit grantor who is considering a consumer application for credit or who has extended credit to the borrower”;
 - “acting as financial adviser to any person, including – (i) providing financial and other related advisory services; (ii) providing education courses, and instructional materials to consumer on individual financial management matters; (iii) providing credit counseling, tax planning or tax preparation services to any person”;
 - “money services business”; and
 - “money transmission”.

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Proposed Consumer Financial Protection Agency Act (H.R. 3126) (cont'd)

(Original Signature of Member)

111TH CONGRESS
1ST SESSION

H. R. _____

To establish the Consumer Financial Protection Agency, and for other purposes.

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A BILL

To establish the Consumer Financial Protection Agency, and for other purposes.

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2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Consumer Financial
5 Protection Agency Act of 2009".

6 **SEC. 2. TABLE OF CONTENTS.**

7 The table of contents for this Act is as follows:

Sec. 1. Short title.
Sec. 2. Table of contents.

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July 8, 2009 (6:14 p.m.)

- The CFPA will strip away the Federal Reserve's responsibility for implementing the recently passed Credit CARD Act and place it within the CFPA.
- The CFPA would be allowed to exempt by rule or order, conditionally or unconditionally any covered person or any consumer financial product or service, from provisions of the CFPA Act, specific consumer laws under the CFPA, or CFPA rules and regulations, as the CFPA deems necessary and appropriate taking into consideration the factors of (1) total assets of the covered person; (2) the volume of the transactions involving consumer financial products or services in which the covered person engages; (3) the extent to which the covered person engages in one or more financial activities; and (4) existing laws and regulations which are applicable to the consumer financial product or service and the extent to which such laws or regulations provide consumers with adequate protections.

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Proposed Consumer Financial Protection Agency Act (H.R. 3126) (cont'd)

(Original Signature of Member)

111TH CONGRESS
1st Session

H. R. _____

To establish the Consumer Financial Protection Agency, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. FRANK of Massachusetts (for himself and [see ATTACHED LIST of cosponsors]) introduced the following bill, which was referred to the Committee on _____

A BILL

To establish the Consumer Financial Protection Agency, and for other purposes.

1 *Be it enacted by the Senate and House of Representatives*
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Sec. 1. Short title.
Sec. 2. Table of contents.

I:\VHLC\070809\070809.407.xml (4432143)
July 8, 2009 (6:14 p.m.)

- The CFPA and the FTC would both have the ability to enforce CFPA rules and regulations concerning consumer financial products or services, but the CFPA would have the primary authority. In addition, the CFPA Act would make a violation of a requirement imposed under the CFPA Act a violation of a requirement imposed under the Federal Trade Commission Act irrespective of commercial or other jurisdictional test in the Federal Trade Commission Act.
- Companion proposed legislation would make it unlawful as an unfair and deceptive act or practice to provide "substantial assistance" to another in violating the Federal Trade Commission Act, the CFPA Act (if enacted), or any other law related to unfair or deceptive acts or practices.
- No exemption for bona fide nonprofit organizations exempt under IRC 501(c)(3)

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Other Congressional Proposals and Activity of Note

- Financial Products Safety Commission (H.R. 1705 and S. 566)
- Hearings on the “Role of Neighborworks” and Mortgage Foreclosure Protection Topics
- Reverse Mortgages and Related Topics
- Regulatory Restructuring (Various)
- Bankruptcy Reform (Over?)
- FTC and Consumer Protection Issues



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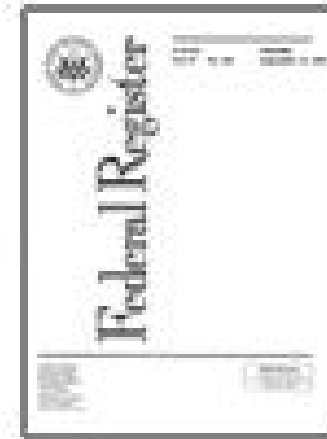
What to Expect if the FTC/CFPA is Granted Rulemaking Authority

- In order to ensure success, the industry must have ready answers to key questions early in the process.

- Based on the FTC's Current Rulemaking for Foreclosure Consultants Topics to Expect:
 - Empirical Data
 - Need for an FTC Rule
 - Scope of Covered Practices
 - Scope of Covered Entities



CFPA



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1. Empirical Data – Questions to Expect

- What empirical data are available concerning the nature, extent, and impact of the industry?
- What business models are used to provide relief services services? Please identify and describe any such business models and their impact on consumers and competition.
- What are the distinctions between different models of providing debt relief services (e.g., free versus fee-for-service, full balance vs. less-than-full balance, etc.)?
- What are the costs and benefits of various debt relief services and related services?



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1. Empirical Data cont'd. - Questions to Expect

- What roles do creditors and debt collectors play in the debt relief services industry? What are the costs and benefits of their conduct in the context of debt settlement services and debt management services? Do the practices of creditors and debt collectors present consumer protection concerns? If so, how are these concerns the same as or different from those raised by third-party relief services entities?
- What empirical data are available concerning the performance of debt settlement services entities in obtaining promised results? Please identify any such data (broken down by business model, if possible) used to provide debt relief services, including but not limited to data addressing the following:
 1. The percentage or proportion of consumers enrolled in various debt relief services who successfully complete the program.
 2. For the consumers who graduate, what is the percentage who, after successfully completing the program, remain current on their unsecured credit payments for a substantial period of time (e.g., six months, one year, or two years).



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2. Need for a Rule - Questions to Expect

- Should a rule be promulgated to address these services? Why or why not?
 - State Law Enforcement Actions and State Debt Adjusting Laws
 - FTC Law Enforcement Actions
- What should be in a Rule?
 - Disclosures
 - Right to Rescind



This presentation is not intended to provide legal advice or opinion and should not be relied on as such. Legal advice can only be provided in response to specific fact situations.



2. *Need for a Rule - Fees for Services - Questions to Expect:*

- Should a rule address any fee or refunds practices of providers of debt relief services? If so, what practices should be addressed, how they should be addressed, and why?
- Should a Rule ban the payment of advance fees for debt relief services? If so, why or why not? What effect, if any, would an advance fee ban have on the willingness or ability of debt relief services providers to do business?
- Should a rule impose fee restrictions other than a ban on the advance fees that providers of debt relief services receive? If so, what restrictions should be imposed and why? Would these restrictions prevent or mitigate the potential harm caused by payment of these fees?
 - To what extent might the possible harm from advance fees be prevented or mitigated by requiring providers to make specific disclosures regarding the timing, amount, or allocation of fees?
 - To what extent might such harm be prevented or mitigated by requiring providers to make more general disclosures regarding the nature and material restrictions of their services (e.g., the disclosures regarding the likelihood of success, timing of services or negotiations with creditors and debt collectors, refund restrictions, or any potentially negative ramifications of using the service)?



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3. Scope of Covered Practices - Questions to Expect:

Should conduct by debt relief services providers or advertisers that the FTC has challenged as unfair or deceptive in violation of Section 5 of the FTC Act in its law enforcement actions be incorporated into a proposed rule? If so, what conduct should be included, how should it be addressed, and why?



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Scope of Covered Practices cont'd. -Questions to Expect

- Some states have debt adjusting laws which, in whole or in part, only apply to monthly repayment plans where a company receives funds and distributes those funds to creditors. For what type of services should a proposed rule protect consumers? Should it apply only to debt settlement services that don't touch or control consumer funds destined for creditors, for all debt relief services? Why?
- Are there other state restrictions or challenged conduct which should (or should not) be addressed in a proposed rule, and explain why.



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4. *Scope of Covered Entities - Questions to Expect*

Generally, any proposed rule would not cover banks, thrifts, federal credit unions, and non-profits (under current jurisdictional limitations). To what extent do these types of entities provide or advertise debt relief services? To what extent do these entities compete with entities that a proposed rule would cover and what effect would a proposed rule have on such competition?



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Covered Entities cont'd. - Questions to Expect

Many states have exempted attorneys from laws (e.g., state debt adjusting laws) which regulate the conduct of providers and advertisers of debt relief services. What are the costs and benefits of exempting attorneys from these laws?

- What has been the effect of such exemptions on competition between attorneys and non-attorneys in providing or advertising debt relief services?
- Should a proposed rule include an exemption for attorneys or any other class of persons or entities? Why or why not?



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Developments, Risks and Opportunities



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Federal Trade Commission Developments



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MAY 2009

For questions and comments, please contact:

JONATHAN L. POMFAN
202.344.4393
JLPOMFAN@VENABLE.COM

JEFFREY S. TENENBAUM
202.344.8138
JSTENENBAUM@VENABLE.COM

In this issue

From the U.S. Congress

- New Legislation Would Authorize the FTC to Regulate Debt Settlement; Hearing Held
- House Subcommittee on Housing Holds Hearing on Foreclosure Rescue Fraud
- Mortgage Reform and Anti-Predatory Lending Act Moves through Congress

From the Federal Agencies

- Federal Trade Commission
 - Coordinated Federal and State Law Enforcement Efforts
 - Using New Rulemaking Authority to Address Loan Modification Scams
 - Updates to the Red Flags Rule
 - Release of New Debt Calculator
 - New Advertising Guidance
- Housing and Urban Development (“HUD”)
 - HUD on Outsourcing by Counseling Agencies
- Internal Revenue Service
 - Closing Agreements Highlighted

From the State Legislatures

- Iowa Amends its Debt Management Statute
- Maryland Tackles Misleading Location Information in Telephone Directories
- Montana’s First Debt Settlement Regulation
- New Jersey Works to Exempt Counseling Agencies from Debt Adjusters Act
- Uniform Debt-Management Services Act on the March
- Utah Makes Changes to its Version of the Uniform Debt-Management Services Act

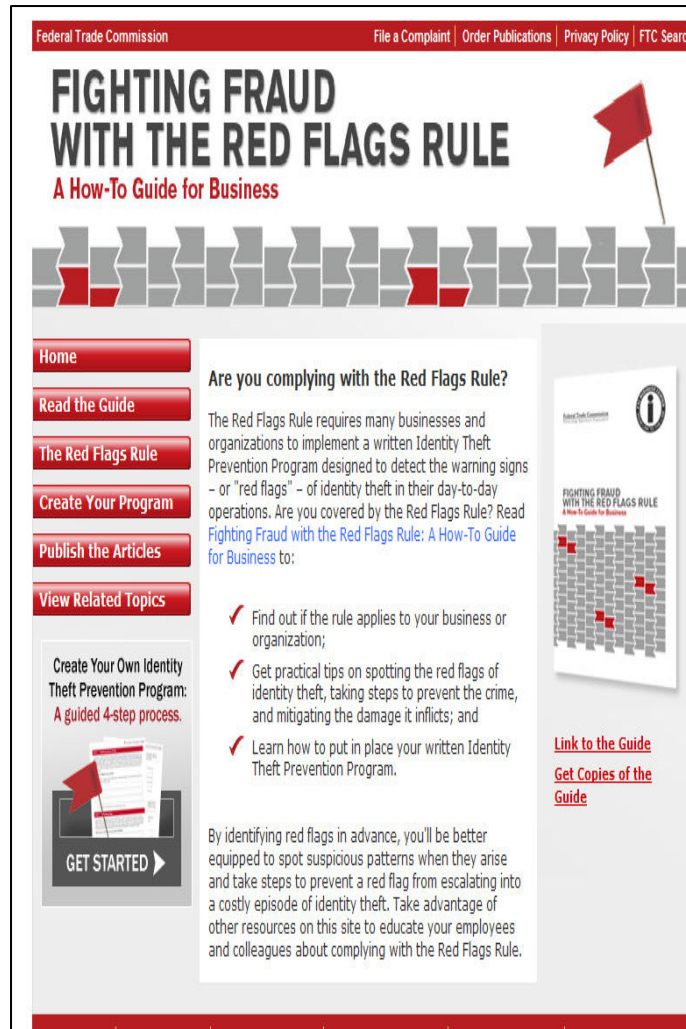
State Investigations and Enforcement Actions

- Mortgage Rulemakings
- Updates on the FTC Red Flags Rule
- Release of New FTC Debt Calculator
- New Advertising Guidance – Testimonials
- Push for Greater Rulemaking Authority

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FTC Red Flags Rule



- Guidance Available at: <http://www.ftc.gov/bcp/edu/microsites/redflagsrule/index.shtml>
- The FTC Red Flags Rule requires many businesses and organizations to implement a written Identity Theft Prevention Program designed to detect the warning signs – or "red flags" – of identity theft in their day-to-day operations.
- Are you covered by the Red Flags Rule?
- New Deadline for FTC regulated cover entities: August 1, 2009.

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http://www.ftc.gov/creditcardcalculator

FEDERAL TRADE COMMISSION
PROTECTING AMERICA'S CONSUMERS

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NOTICE TO CONSUMERS
Federal law and regulations require us to make certain assumptions in calculating the information below. In this process, some figures are also rounded. You might get more precise information about paying off your account from your credit card company.

Credit Card Repayment Calculator

Welcome to the Federal Trade Commission's Credit Card Repayment Calculator. Based on the information you provide, the calculator will give you an estimate of how long it will take you to pay off your credit card balance. The calculator assumes:

- you make no more charges; and
- you make only the minimum payment each month.

A second calculation can help you develop a plan for paying off your balance sooner.

Please use your most recent credit card bill. You may get a more accurate estimate from your credit card issuer's website.

How long will it take me to pay off my credit card balance if I make only the minimum payment?

My total balance: \$

My highest annual percentage rate (APR) with a balance: %

CALCULATE NOW

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Proposed Revisions to the FTC Guides Concerning the Use of Endorsements and Testimonials in Advertising

FTC GUIDES CONCERNING USE OF ENDORSEMENTS AND TESTIMONIALS IN ADVERTISING

Sec. 255.0 Definitions.

- 255.1 General considerations.
- 255.2 Consumer endorsements.
- 255.3 Expert endorsements.
- 255.4 Endorsements by organizations.
- 255.5 Disclosure of material connections.

Authority: 38 Stat. 717, as amended; 15 U.S.C. 41 - 58.

§255.0 Definitions.

(a) The Commission intends to treat endorsements and testimonials identically in the context of its enforcement of the Federal Trade Commission Act and for purposes of this part. The term endorsements is therefore generally used hereinafter to cover both terms and situations.

(b) For purposes of this part, an endorsement means any advertising message (including verbal statements, demonstrations, or depictions of the name, signature, likeness or other identifying personal characteristics of an individual or the name or seal of an organization) which message consumers are likely to believe reflects the opinions, beliefs, findings, or experience of a party other than the sponsoring advertiser. The party whose opinions, beliefs, findings, or experience the message appears to reflect will be called the endorser and may be an individual, group or institution.

(c) For purposes of this part, the term product includes any product, service, company or industry.

(d) For purposes of this part, an expert is an individual, group or institution possessing, as a result of experience, study or training, knowledge of a particular subject, which knowledge is superior to that generally acquired by ordinary individuals.



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Background on FTC Guides for Endorsements and Testimonials

- November 28, 2008: Notice and Request for Comment on Proposed Changes to the Guides Concerning the Use of Endorsements and Testimonials in Advertising (“Guides”).
- *Informal but very important statements of policy by the FTC in the field of advertising.*
- Significant proposed changes affect:
 - (1) The use of consumer and expert endorsements; and
 - (2) The ability of advertisers to use “new media” endorsements such as bloggers and online message boards.

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The Existing FTC Guides

- Major “rules of the road” governing how and where testimonials/endorsements can be employed by advertisers.
- Must reflect the honest opinions, findings, beliefs or experience of the endorser.
- May *not* contain any representations that would be deceptive or could not be substantiated if made directly by the advertiser.



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Special Rules for Consumer Endorsements

- Consumer Endorsements are interpreted as representing that the endorser's experience is representative of what consumers will generally achieve.
- If the advertiser cannot substantiate that the endorser's experience is typical, the advertisement must clearly and conspicuously either:
 - (a) disclose what the generally expected performance would be in the depicted circumstances; or
 - (b) clarify the limited applicability of the endorser's experience.



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Summary of Key Proposed Changes to FTC Testimonial Guides

- **Expanded Definition of Endorsements**
- **Expanded Liability**
 - Under the Commission’s proposed changes, endorsers, as well as marketers, may be liable for statements made in the course of their endorsement.
- **The Death of the Disclaimer**
 - A statement by a consumer about his or her experience with the product is deemed to be a representation that other users of the product can expect the same experience.
 - Many marketers do not have the facts necessary to support such a claim so they merely state that the experience of the testimonial is unique and that “Your Experience Will Vary.”
- **Disclosure of Connections: The New Frontier**



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Internal Revenue Service

Internal Revenue Service
United States Department of the Treasury

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- e-file
- Forms and Publications
- Frequently Asked Questions
- Newsroom
- Taxpayer Advocate Service
- Where To File

Credit Counseling - Joint Federal Agency Resources

Three federal agencies are working together to promote integrity within the credit counseling industry and help individuals obtain reliable high quality services. In doing so, each agency pursues its individual enforcement responsibilities.

- IRS ensures that credit counseling organizations holding themselves out to the public as tax-exempt charitable and educational organizations comply with the requirements for tax-exempt status. The IRS website provides resources for persons needing to verify the tax-exempt status of a credit counseling organization, and information about its initiative to ensure that credit counseling organizations comply with federal tax laws. It also highlights provisions of a new law that establishes standards an organization must satisfy to qualify for exemption under Internal Revenue Code section 501(c)(3) or 501(c)(4).
- The Federal Trade Commission (FTC) brings law enforcement actions against credit counseling agencies for violations of federal consumer protection laws. To get tips on selecting a credit counseling organization or to file a complaint, visit the FTC website or call toll-free, 1-877-FTC-HELP (1-877-382-4357) (TTY 1-866-653-4261).
- The U.S. Trustee Program (USTP) at the Department of Justice approves credit counseling organizations to provide pre-bankruptcy counseling and pre-discharge debtor education as required under the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. The USTP's website provides information for consumers about the role of credit counseling organizations in personal bankruptcy proceedings, and offers links to assist consumers in selecting a credit counseling agency from the list of approved providers that fits the consumer's needs.

These agencies provide educational resources about credit counseling that are helpful to both the public and credit counseling organizations. General reference materials about credit counseling are also available.

Page Last Reviewed or Updated: November 19, 2008

Accessibility | Freedom of Information Act | Important Links | IRS Privacy Policy | USA.gov | U.S. Treasury

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Department of Treasury / FinCEN

Federal Register / Vol. 74, No. 90 / Tuesday, May 12, 2009 / Proposed Rules 22129

inspecting the fuselage front posts, repairing any corrosion found and replacing pads made of foam rubber by pads made of Neoprene to prevent water intrusion.

Actions and Compliance

(f) Unless already done, do the following actions:

(1) Within 12 years from date of manufacture or within the next 2 months after May 19, 2009 (the effective date of AD 2009-09-04), whichever occurs later, inspect the fuselage front posts for signs of corrosion following paragraph 6.A. of EADS PZL "Warszawa-Olecie" S.A. Mandatory Bulletin No. 10409036, dated March 19, 2009.

(2) If corrosion or any corrosion damage is found during the inspection required in paragraph (f)(1) of this AD, before further flight, repair or replace any parts where corrosion or corrosion damage was found in accordance with an FAA-approved repair solution obtained from EADS-PZL "Warszawa-Olecie" S.A., Aljo Enkowska 110/114, 00-071 Warszawa, Poland; telephone: +48 22 577 22 11; fax: +48 22 577 22 05; e-mail: eadspzl@p.zosda.net.

(3) Within 12 years from date of manufacture or within the next 2 months after May 19, 2009 (the effective date of AD 2009-09-04), whichever occurs later, replace the rear glass paneling following paragraph 6.C. of EADS PZL "Warszawa-Olecie" S.A. Mandatory Bulletin No. 10409036, dated March 19, 2009.

(4) Within 2 months after the effective date of this AD, amend the approved operator's airplane maintenance program to incorporate the applicable tasks as described in PZL-104 Wilga 80 Maintenance Manual, pages 5-4 and 25-10, dated April 7, 2009.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) **Alternative Methods of Compliance (AMOCs):** The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested, using the procedures found in 14 CFR 39.19. Send information to: *Attn:* Doug Rudekph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4056; fax: (816) 329-4000. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or holding a PI, your local FSDO.

(2) **Airworthy Product:** For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) **Reporting Requirements:** For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120-0056.

Related Information

(b) MCAI European Aviation Safety Agency (EASA) AD No. 2009-0072, dated March 31, 2009, EADS PZL "Warszawa-Olecie" S.A. Mandatory Bulletin No. 10409036, dated March 19, 2009, and PZL-104 Wilga 80 Maintenance Manual, pages 5-4 and 25-10, dated April 7, 2009, for related information.

Issued in Kansas City, Missouri, on May 6, 2009.

Scott A. Horn,
Acting Manager, Small Airplane Directorate,
Aircraft Certification Service.
DOT Docket No. 2120-0072 Filed 5-11-09; 8:45 am
BILLING CODE 4910-13-P

DEPARTMENT OF THE TREASURY

31 CFR Part 103
RIN 1506-AA97

Financial Crimes Enforcement Network; Amendment to the Bank Secrecy Act Regulations—Definitions and Other Regulations Relating to Money Services Businesses

AGENCY: Financial Crimes Enforcement Network (FinCEN), Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Financial Crimes Enforcement Network ("FinCEN"), a bureau of the Department of the Treasury ("Treasury"), is proposing to revise the regulations implementing the Bank Secrecy Act ("BSA") regarding money services businesses ("MSBs") to clarify which entities are covered by the definitions. Specifically, we are reviewing the MSB regulatory framework with a focus on providing efficient and effective regulation for the industry, as well as improving the ability of regulators, law enforcement, and FinCEN to safeguard the U.S. financial system from the abuses of terrorist financing, money laundering, and other financial crime.

The proposed changes are intended to more clearly delineate the scope of entities regulated as MSBs, so that determining which entities are obligated to comply will be more straightforward and predictable. This rulemaking proposes to amend the current MSB regulations in the following ways: By ensuring that certain foreign-located MSBs with a U.S. presence are subject to the BSA rules; by updating the MSB definitions to reflect past guidance and rulings, current business operations, evolving technologies, and merging lines of business; and by combining all of stored value into one category, without substantively changing the existing definition, so that issuers of stored value and sellers or redemptions of stored value are in the same category. In addition, this rulemaking solicits comments on stored value to assist FinCEN with a future rulemaking proposing a revised definition of stored value and revising related regulations.

DATES: Written comments on the notice of proposed rulemaking must be submitted on or before September 9, 2009.

ADDRESSES: You may submit comments, identified by RIN 1506-AA97, by any of the following methods:

- **Federal e-rulemaking portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments. Refer to Docket number TREAS-FinCen-2009-0002.
- **Mail:** FinCEN, P.O. Box 39, Vienna, VA 22183. Include RIN 1506-AA97 in the body of the text.

Inspection of comments: Comments may be inspected, between 10 a.m. and 4 p.m., in the FinCEN reading room in Vienna, VA. Persons wishing to inspect the comments submitted must request an appointment with the Disclosure Officer by telephoning (703) 905-5034 (Not a free call).

FOR FURTHER INFORMATION CONTACT: Regulatory Policy and Programs Division, FinCEN (800) 949-2732 and select option 1.

SUPPLEMENTARY INFORMATION:

I. Introduction

The term MSB, as currently defined in the BSA regulations, refers to each of the following distinct categories of financial services providers: (1) Currency dealer or exchanger, (2) check casher, (3) issuer of traveler's checks, money orders, or stored value, (4) seller or redeemer of traveler's checks, money orders, or stored value, (5) money transmitter, and (6) the United States Postal Service.¹

MSBs play a critical role in providing financial services to, among others, a segment of the population that generally does not maintain bank accounts. Law enforcement, FinCEN, and other federal regulators have repeatedly stressed the need to prevent transactions that typically flow through these businesses from going underground, which would diminish transparency with respect to those transactions. Because MSBs

¹ 31 CFR 103.110(a)(1)-(4).

- Tuesday, May 12, 2009, the FinCEN a bureau of the Department of the Treasury issued a NPRM proposing to revise the regulations implementing the Bank Secrecy Act regarding money services businesses to clarify which entities are covered by the definitions.
- FinCEN proposes to incorporate, by including prior interpretive rulings such as one regarding "debt management companies" and a separate ruling on payment processors.
- In addition to raising potential areas for comment, the proposed rule provides a good overview of the current thinking of FinCEN on certain activities and whether they trigger the definition of MSB.
- Comments on the proposed rule are due on or before September 9, 2009.

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Housing Counseling

- Mortgage Foreclosure Consultant Protection Acts
- Federal, State, and Private Plaintiff Enforcement
- Debt Adjusting Law Considerations
- HUD Developments



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Credit CARD Act of 2009

VENABLE[®] LLP

AUTHORS
 Jeffrey S. Tenenbaum
 Jonathan L. Pompan

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 June 19, 2009
Credit CARD Act of 2009 Favors Credit Counseling Agencies Approved for Bankruptcy Counseling

On May 22, 2009, President Obama signed into law the Credit Card Accountability Responsibility and Disclosure Act of 2009 (the "Credit CARD Act of 2009" or the "Act"), Public Law No. 111-24. The Act is intended to crackdown on certain credit card practices perceived as abusive – such as retroactive interest rate increases, "double cycle" billing and the offering of "fee harvester" cards. For credit counseling agencies and those that advertise and market debt management plan services to consumers, the Act is notable in three primary ways:

First, the Act requires that, not later than six months following enactment, the Federal Reserve Board, in consultation with the Secretary of Treasury, must issue guidelines for the establishment and maintenance by creditors of a 1-800 telephone number for purposes of providing information about "credit counseling" and "debt management services," which terms are not defined in the Act. Creditors must place the toll-free number on credit card statements. The Act provides that only those counseling agencies that are approved by a United States bankruptcy trustee pursuant to Section 111 (a) of Title 11 of the United States Code are eligible to participate in the 1-800 number.

Importantly for the credit counseling community, the Act leaves a number of specifics regarding the rules for the toll-free number to the upcoming rulemaking. For example, unanswered questions include:

- What additional criteria will be required to be included as an agency accessible through the toll-free number, if any?
- What is the intended relationship between the creditor sponsored toll-free number and the U.S. Trustee Program and Bankruptcy Administrators?
- In which other ways will the toll-free number be promoted?
- How many different telephone numbers are permitted?
- Will creditors be allowed to continue to make direct referrals outside of the toll-free number that will be established under the Act?
- What will be the call routing structure of the toll-free number? For example, will the toll-free number provide warm transfers of telephone callers to approved agencies?

At present no rulemaking has been announced, but one should be expected shortly.

Under the bankruptcy law, for required pre-filing counseling, tax-exempt status under Section 501(c)(3) of the Internal Revenue Code is not required for approval as a budget or credit counseling agency. However, nonprofit status (typically incorporation as a nonprofit corporation) is a prerequisite, among other requirements. In addition, no particular accreditation or trade association membership is necessary for approval as a budget or credit counseling agency; the disclosure of such accreditation or membership is required.

The Department of Justice's U.S. Trustee Program approves organizations which provide the mandatory credit counseling under the bankruptcy law. By law, the U.S. Trustee Program does not operate in Alabama and North Carolina; in these states, court officials called Bankruptcy Administrators approve pre-bankruptcy credit counseling organizations and pre-discharge debtor education course providers.

The application forms and related materials can be found online at <http://www.usdoj.gov/ustice/olbapcpa/code/index.htm>.

Second, as part of the increased protections for young consumers, the Act includes an expression of

- Six months following enactment, the Federal Reserve Board, in consultation with the Secretary of Treasury, must issue guidelines for the establishment and maintenance by creditors of a 1-800 telephone number for purposes of providing information about "credit counseling" and "debt management services".
- Creditors must place the toll-free number on credit card statements. The Act provides that only those counseling agencies that are approved by a United States bankruptcy trustee pursuant to Section 111(a) of Title 11 of the United States Code are eligible to participate in the 1-800 number
- Expression of the Sense of Congress for debt education and counseling at College Orientation.
- Studies on Financial Literacy

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Quick Update on State Debt Adjusting Law and other Developments

- Texas (Bill Died, Study Committee)
- Maine (Bill Passed)
- Missouri (Bill Vetoed)
- California (Bill Pending)
- Nevada (UDMSA passed)
- Montana (Bill Passed)
- Minnesota (Bill Passed)
- Connecticut (Bill Passed)
- Oregon (Bill Passed)
- Utah (Amendments to UDMSA)
- Colorado (UDMSA enforcement)
- Iowa (Amendments / New Law Passed)
- Tennessee (UDMSA Passed)
- New York (Bill Pending)
- New Jersey (Bill Pending)
- And More...



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State Debt Adjusting Law Trends

(Note: Approx. Numbers Provided. Based on generic analysis as of July 14, 2009)

	December 2005	February 2007	July 2008	July 2009
States w/o Debt Adjusting Laws	3	3	2	2
States with Debt Adjusting Prohibitions w/limited or no Exceptions	2	2	1	1
States that Allow For-Profit and Non-Profit Entities to Engage in Debt Adjusting Activities	28	30	36	39
States with Licensing/Registration Requirements	29	31	34	37 (including effective dates of 2010)
States that Require Nonprofit Corporate Status (including (c)(3) status)	18	16	12	9
States that require 501(c)(3) Status	9	7	2	1

* For purposes of this chart, the term debt adjusting generally is defined to mean the entering into or making of a contract with a particular debtor where the debtor agrees to pay a certain amount of money periodically to the organization, and the organization, for consideration, agree to distribute, or distribute the same among specified creditors pursuant to an agreement or plan. It is further defined to mean the business or practice of any organization that holds itself out as acting or offering or attempting to act, for consideration as an intermediary between the debtor and his or her creditors for the purpose of settling, compounding or in anyway altering the terms of payment of any debt. All numbers are approximate numbers and based on certain assumptions.

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Investigations, Law Enforcement Actions and Private Lawsuits



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Investigations, Law Enforcement Actions and Private Lawsuits (and Class Actions)

- FTC Act and Related Statutes (e.g., CROA)
- State Consumer Protection Laws
- State Credit Services Organization Acts
- State Debt Adjusting Laws
- State Mortgage Foreclosure Consultant Laws
- Other State Marketing and Security Breach Laws (e.g., email)
- Contract Actions (Arbitration Provisions)
- Private Lawsuits May Include CROA and RICO claims, among other federal statutes.



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Private Lawsuits and Class Actions

Where are they coming from from?

- Federal Credit Repair Organization Act
- State Credit Services Organization Acts
- State Debt Adjusting Laws (*e.g.*, GA, SC, UDMSA states, and others).
- State Mortgage Foreclosure Consultant Laws
- Other State Marketing and Security Breach Laws (*e.g.*, email)
- Contract Actions (Arbitration Provisions)
- Tort Law (Creditor Lawsuits)
- Racketeer Influenced and Corrupt Organizations Act (RICO) (treble damages)



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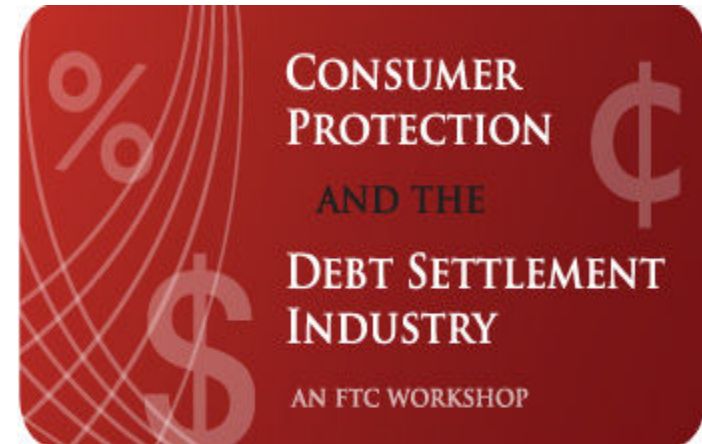
The Future of “Debt Settlement” and Alternative Repeat Plans



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Challenges Facing the Debt Settlement Industry

- **FTC and State Attorneys General Investigations and Enforcement**
- **State Debt Adjusting Law Enforcement**
- **Private Lawsuits**
- **Evolving Legal and Regulatory Landscape**
- **Creditor and Debt Collector Participation**
- **Economic Pressures**
- **Public Scrutiny**



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11 U.S.C. 502(k) – Bankruptcy Law (June 2005)

(k)

- (1) The court, on the motion of the debtor and after a hearing, may reduce a claim filed under this section based in whole on an unsecured consumer debt by not more than 20 percent of the claim, if--
 - (A) the claim was filed by a creditor who unreasonably refused to negotiate a reasonable alternative repayment schedule proposed on behalf of the debtor by an approved nonprofit budget and credit counseling agency described in section 111;
 - (B) the offer of the debtor under subparagraph (A)--
 - (i) was made at least 60 days before the date of the filing of the petition; and
 - (ii) provided for payment of at least 60 percent of the amount of the debt over a period not to exceed the repayment period of the loan, or a reasonable extension thereof; and
 - (C) no part of the debt under the alternative repayment schedule is nondischargeable.
- (2) The debtor shall have the burden of proving, by clear and convincing evidence, that--
 - (A) the creditor unreasonably refused to consider the debtor's proposal; and
 - (B) the proposed alternative repayment schedule was made prior to expiration of the 60-day period specified in paragraph (1)(B)(i).

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Legal advice can only be provided in response to specific fact situations.*



11 U.S.C. 502(k) – Bankruptcy Law (June 2005)

- The basics -
 - The court, at the request of a debtor and after a hearing may reduce a claim filed by a debtor up to 20%, if –
 - Unsecured
 - Creditor unreasonably refused to negotiate a reasonable alternative payment schedule.
 - Approved nonprofit credit counseling agency.
 - Offer was made 60 days before the filing of the petition.
 - For at least 60% of the debt over a reasonable period, not to exceed original loan.
 - No part is dischargeable.
- Debtor must carry the burden of proof.



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Request to allow new pilot repayment program concessions.

- Oct. 29, 2008 request made to the Office of the federal Comptroller of the Currency by the Financial Services Roundtable and Consumer Federation of America.
 - Notable credit card banks have agreed to a temporary pilot program with credit counseling agencies in which lenders would forgive as much as 40% of the amount consumers owe, allowing them to pay back the remainder over time.
 - The amount of debt to be forgiven would be determined case by case, depending on the borrower's financial condition.
- Lenders argue they are not able to offer repayment plans that reduce the amount of principal owed and borrowers to repay the balance over a period of several years.
- “From a public policy perspective, the test could lead to the creation of a sound alternative for consumers to costly for-profit third-party debt settlement firms, some of which have been under scrutiny by the Federal Trade Commission and state Attorneys General for deceptive and unfair practices. “

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OCC Response to Request...

Nov. 12, 2008 – “The Office of the Comptroller of the Currency responded today to a request that it approve a new workout program for troubled credit card borrowers. In its response, the agency **noted that while the OCC strongly encourages national banks to work with distressed borrowers, the agency cannot approve a plan that defers the timely recognition of losses, since that would compromise the transparency and integrity of a bank’s financial reports and could lead to a loss of public confidence in the banking system.**” (emphasis added).

Source: <http://www.occ.gov/ftp/release/2008-132a.pdf>.



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Where Credit Counseling Agencies Are Today with Debt Settlement Plans and Alternative Repeat Plans

- Pilot Programs Suggested by Creditors / Internal Studies
- “Call to Action”
- State Regulatory Environment
 - Review of Legal, Regulatory and Consumer Protection Safeguards for New Programs
- Bankruptcy Counseling Considerations
- And More....

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Key Issues with Less than Full Balance Payments

- IRS Emphasis on Counseling and Education
- Federal Bankruptcy Law
 - EOUST Rules (Interim Final Rule vs. Proposed Final Rule)
- Federal Banking Law / Creditor Issues
- Consumer Protection Issues
- State Debt Adjusting Laws (Evolving to Encompass more “Debt Settlement Services”)
- Possible Federal Regulation
- and more.....



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**Join us on Friday, July 17, 2009 as the
AICCCA Conference continues for...**

***Legal and Regulatory
Outlook: Challenges and Opportunities
Facing Credit Counseling Agencies in
2009 and Beyond***



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QUESTIONS AND DISCUSSION

Jeffrey S. Tenenbaum, Esq.

jstenenbaum@Venable.com

(202) 344-8138

Jonathan L. Pompan, Esq.

jlpompan@Venable.com

(202) 344-4383

Venable LLP

575 7th Street, N.W.

Washington, DC 20004

www.Venable.com

1-888-Venable

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