

statement that no such policies exist, if that is the case.

Section 310.3(a)(2) sets forth 24 different misrepresentations prohibited in connection with telemarketing. The first five subsections go to the heart of any telemarketing sales transaction, prohibiting misrepresentations of the total costs, terms or material restrictions, limitations, or conditions²¹ of receiving any goods or services. These subsections also prohibit misrepresentations of the quantity of any goods or services, or any material aspect of the performance, efficacy, or central characteristics of any goods or services. In addition, sellers and telemarketers are prohibited from misrepresenting the duration of any offer made, as well as the nature or terms of the seller's refund, cancellation, exchange, or repurchase policies.

Sections 310.3(a)(2) (vi) through (viii) of the proposed rule prohibit misrepresentations about prizes. It is a violation of the proposed rule to misrepresent that any person has been selected to receive a prize, i.e. an item offered, or purportedly offered, at no cost and with no other obligation to make a purchase and given, or purportedly given, by chance. Therefore, a telemarketer could not claim that a consumer has won a prize, when in fact the consumer must pay shipping and handling charges to receive the prize. In addition, a seller or telemarketer is prohibited from misrepresenting that a premium is a prize. Thus, for example, a telemarketer could not claim that a consumer has "won" an item, when in fact many consumers will be given that item as an incentive to purchase goods or services, without any element of chance involved in selecting the "winners." Finally, a seller or telemarketer is prohibited from misrepresenting the odds of winning any prize.

The next three prohibited practices, in §§ 310.3(a)(2) (ix) through (xi) of the proposed rule, deal with misrepresentations about compliance with various laws or about an affiliation with law enforcement authorities. Any seller or telemarketer is prohibited from misrepresenting its compliance with any Federal, State, or local law, statute, regulation, or ordinance, or from falsely claiming that such compliance constitutes an endorsement or approval,

²¹ Given the definition of the term "material," in Section 310.2(l) of the proposed rule, any seller or telemarketer would be prohibited from misrepresenting any restriction, limitation, or condition that would be likely to affect a consumer's choice of, or conduct regarding, goods or services.

by the government agency, of the seller's or telemarketer's business or conduct. Thus, a telemarketer cannot falsely claim that it is registered with a State, or, even if registered, that such registration indicates that the State had approved the telemarketer's method of operation. In addition, it is also a violation of the proposed rule to misrepresent any affiliation, association, connection, or relationship with law enforcement, a public safety organization, or other Federal, State, or local government agency.

Under § 310.3(a)(2)(xii) of the proposed rule, any seller or telemarketer is prohibited from misrepresenting the purpose for which the seller or telemarketer will use information relating to a person's checking, savings, share, or similar account number, credit card account number, or social security number. This prohibits, for example, a telemarketer from asking for a consumer's credit card number "to verify" the consumer's identity, when in fact the telemarketer plans to charge a fee to that account.

Sections 310.3(a)(2)(xiii) and (xiv) of the proposed rule prohibit misrepresentations particularly common to certain charitable solicitations.²² Any seller or telemarketer is prohibited from misrepresenting the seller's or telemarketer's non-profit, tax-exempt, or charitable status, purpose, affiliation, or identity. Also prohibited are misrepresentations that a person is eligible or likely to receive a tax deduction, loan, or other benefit if the person pays money to the seller or telemarketer.

It is a prohibited deceptive telemarketing act or practice, under § 310.3(a)(2)(xv) of the proposed rule, for any seller or telemarketer to misrepresent the nature, terms, or existence of any prior affiliation, association, connection, or relationship with any person. Under § 310.3(a)(2)(xvi), neither a seller nor a telemarketer may misrepresent the nature, terms, or existence of any prior purchase or agreement to purchase by any person. These sections prohibit, for example, claims that a telemarketer is calling to confirm a prior order, when no such order exists, or claims that a telemarketer is calling all of its customers to ask if they would like to purchase additional products, when in fact the person called was not a prior customer of that telemarketer.

²² Based on the definition of "goods or services," in § 310.2(j) of the proposed rule, only charitable services promoted in conjunction with an offer of a prize, chance to win a prize, or opportunity to purchase any goods or services would be covered by these provisions.

Sections 310.3(a)(2)(xvii) through (xx) of the proposed rule prohibit misrepresentations concerning investment opportunities. Any seller or telemarketer is prohibited from misrepresenting key attributes of any investment opportunity, such as the level of risk, liquidity, markup over acquisition costs, past performance, earnings potential, or market value. Any seller or telemarketer is also prohibited from misrepresenting the likelihood that the market value for an investment opportunity will either increase or decrease. In addition, a seller or telemarketer cannot misrepresent the seller's success in assisting persons to liquidate goods or services they purchased from the seller, or the profit derived from such liquidation. Thus, for example, false claims about an ability to resell an investment opportunity for a profit are prohibited.

Sections 310.3(a)(2)(xxi) and (xxii) of the proposed rule address the problem of deceptive credit repair or credit opportunity telemarketing claims. Section 310.3(a)(2)(xxi) prohibits misrepresentations that certain goods or services can or are likely to improve a person's credit history, credit record, or credit rating, or that certain goods or services can result in a person obtaining credit. Section 310.3(a)(2)(xxii) prohibits misrepresentations about the eligibility or likelihood that a person, regardless of that person's credit history, will obtain a loan or other credit-related service.

Section 310.3(a)(2)(xxiii) of the proposed rule prohibits misrepresentations that a seller or telemarketer can recover or otherwise effect or assist in the return of money or any other item of value to a person. This would prohibit, for example, telemarketers from falsely claiming that for a fee, paid in advance, they can obtain a refund for a consumer who has been victimized in the past by a telemarketing scam.

Finally, § 310.3(a)(2)(xxiv) of the proposed rule prohibits the misrepresentation of any other information required to be disclosed under this rule. For example, a telemarketer cannot misrepresent the verifiable retail sales price of a prize or premium, or misrepresent that the sales price of a prize or premium is less than \$20.00, when that information is required to be disclosed under §§ 310.4(d)(3) and (4) of the proposed rule.

The next section of the proposed rule, § 310.3(a)(3), prohibits any seller or telemarketer from misrepresenting important information in connection with the offer, offer for sale, or sale of any business venture. This information