

restrictions on the times when telemarketers may make calls, and includes oral and written disclosures that must be made. This Section of the proposed rule ends with a prohibition on the sale or distribution of lists of customer contacts by persons found to have violated certain provisions of this rule.

1. Abusive Conduct Generally

Section 310.4(a) of the proposed rule sets forth eight different abusive telemarketing acts or practices that are violations of the rule. The first such practice is the use of threats or intimidation in connection with telemarketing. The second prohibited practice is providing for or directing a courier to pick up a payment from a customer. This prohibition is intended to address a prevalent practice used by fraudulent telemarketers of sending an overnight courier to a consumer's home to pick up cash or a check shortly after a successful sales pitch. In this manner, the telemarketer obtains payment from the consumer before the consumer has adequate time to think about the transaction or obtain information about the telemarketer. The proposed rule would prohibit this practice.

Section 310.4(a)(3) of the proposed rule restricts the telemarketing of credit repair services. This section prohibits any seller or telemarketer from requesting or receiving payment of any fee or consideration for goods or services represented to improve a person's credit history, credit record, or credit rating until the contract for the services has expired and the promised results have been achieved. Specifically, two events must occur before payment can be requested or received for these services: first, either the term of the contract or the time frame in which the seller has represented the goods or services will be provided has expired; and second, the seller has provided the purchaser with documentation showing that the promised results have been achieved. This documentation may be either (1) from the original furnisher or provider of the information to the consumer reporting agency, confirming that the promised results have been achieved; or (2) in the form of a consumer report from the consumer reporting agency demonstrating that the promised results have been achieved. Such a report must have been issued more than six months after the results were achieved.²⁵

²⁵The proposed rule makes clear that nothing in the rule alters the requirement in the Fair Credit Reporting Act, 15 U.S.C. 1681, that a consumer report may only be obtained for a specified permissible purpose.

Recovery room scams are the focus of § 310.4(a)(4). In these operations, a telemarketer typically calls a consumer who has lost money in a previous scam, promising that, for a fee paid up front, the telemarketer can recover the money the consumer previously lost. After the consumer pays the requested fee, the promised services are not delivered. In fact, the consumer may never hear from the telemarketer again. This Section of the proposed rule prohibits any seller or telemarketer from requesting or receiving payment of any fee or consideration for goods or services represented to recover or otherwise effect or assist in the return of money or any other item of value to a person until three days after such money or other item is delivered to that person. The proposed rule states that this provision does not apply to goods or services provided to a person by a licensed attorney or licensed private investigator pursuant to a written agreement with that person.

Section 310.4(a)(5) of the proposed rule is intended to limit advance fee loan scams and similar practices, in which telemarketers guarantee that they will obtain a loan or other credit-related service for a consumer, if the consumer pays them a fee in advance. As with recovery room scams, after the consumer pays the fee, the promised services typically are not provided. Under this section of the proposed rule, any seller or telemarketer is prohibited from requesting or receiving payment of any fee or consideration in advance of obtaining a loan or any credit service when the seller or telemarketer has guaranteed or represented a high likelihood of success in obtaining or arranging a loan or credit service for a person.

Prize promotions conducted through telemarketing are the subject of § 310.4(a)(6). Any seller or telemarketer conducting such promotions must distribute all prizes or purported prizes offered within 18 months of the initial offer to any person.

Section 310.4(a)(7) of the proposed rule addresses the problem of reloading, the practice of offering to sell additional goods or services to a person who previously has made a purchase from that seller. In deceptive telemarketing scams, consumers may be victimized numerous times by reloading that occurs prior to delivery of the first items sold, before realizing they have been deceived. This serial deception often occurs because consumers have not seen the goods or services already purchased, and therefore do not know that they were deceived in the previous transaction. The proposed rule prohibits

any seller or telemarketer from offering or selling goods or services through a telephone solicitation to a person who previously has paid the same seller for goods or services, until all terms and conditions of the initial sales transaction have been fulfilled.²⁶ The proposed rule makes clear that all prizes or premiums offered in conjunction with the initial transaction must also be distributed before a second offer or sale can be made.

The final abusive telemarketing act or practice prohibited by the proposed rule concerns the use of shills. Section 310.4(a)(8) of the proposed rule prohibits any seller or telemarketer from identifying a person as a reference for a business venture unless the following three criteria are satisfied: (1) Such person has actually purchased the business venture; (2) such person has operated the business venture for at least six months or the seller or telemarketer has disclosed the length of time the reference has operated the business venture; and (3) such person does not receive consideration for any statements made to prospective purchasers.

2. Pattern of Calls

Section 310.4(b) of the proposed rule deals with repeated telemarketing calls, and calls to persons who have indicated an unwillingness to receive such calls. This section prohibits a telemarketer from engaging in such calls, or a seller from causing a telemarketer to engage in such calls.²⁷ Specifically, this Section states that it is an abusive act or practice and a violation of the rule to call a person's residence to offer, offer for sale, or sell, on behalf of the same seller, the same or similar goods or services more than once within any three-month period. This prohibition does not apply if the person gives prior consent to more frequent calls,²⁸ or if the person is not reached during an earlier attempted call. It also does not apply to verification calls—those calls made solely to verify a previous telephone sale.

The proposed rule also prohibits calls to a person's residence when that person previously has stated that he or she does not wish to receive telephone solicitations made by or on behalf of the

²⁶By limiting this prohibition to offering or selling goods or services through telephone solicitations, this Section does not prevent consumers from calling telemarketers to make an additional purchase before the first transaction is complete.

²⁷A seller may cause a telemarketer to engage in such calls by providing the telemarketer with a customer contact list that includes customers that should not be called.

²⁸The person may give prior consent either orally or in writing.