

ALERT

FTC Seeks Comment on Proposed Changes to the Telemarketing Sales Rule Clarifying Opt-In Consent Requirements and Prohibiting Certain Payment Methods

May 28, 2013

On May 21, 2013, the Federal Trade Commission (Commission) released a Notice of Proposed Rulemaking (Notice) that seeks public comment on a number of proposed amendments to the Telemarketing Sales Rule (TSR), including amendments to clarify consumer opt-in consent requirements—including express prior authorization requirements and the established business relationship exception—and to end certain payment practices.

The Commission proposes amendments to clarify the language of certain, existing TSR requirements. Specifically, these amendments would:

- Specify that the recording of a consumer's express verifiable authorization must include a description of the goods or services being purchased;
- State expressly that a seller or telemarketer calling a number on the Do Not Call Registry bears the burden of demonstrating that the seller has an existing business relationship with, or has obtained an express written agreement from, the called party;
- Clarify that the business-to-business exemption extends only to calls to induce a sale to or contribution from a business entity, and not to calls to induce sales to or contributions from individuals employed by the business;
- Emphasize that the prohibition against sellers sharing the cost of Do Not Call Registry fees, which are non-transferrable, is

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absolute;

- Illustrate the types of impermissible burdens that deny or interfere with a consumer's right to be placed on a seller's or telemarketer's entity-specific do-not-call list. Examples of such impermissible conduct would include: harassing consumers who make a request to be placed on a do-not-call list, hanging up on such consumers, requiring a person to call a different number to submit the request and refusing to accept the request unless the consumer can identify the seller responsible for the call; and
- A related amendment would specify that a seller's or telemarketer's failure to obtain the information necessary to honor a consumer's request to be placed on a seller's entity-specific do-not-call list will disqualify the seller from relying on the safe harbor liability protection.

With respect to payments, the proposed amendments would bar sellers and telemarketers from accepting remotely created checks, remotely created payment orders, cash-to-cash money transfers and cash reload mechanisms as payment in inbound or outbound telemarketing transactions. The Commission also proposes to expand the scope of the advance fee ban on "recovery" services, now limited to recovery of losses in prior telemarketing transactions, to include recovery of losses in any previous transaction.

Public comments on the proposed amendments to the TSR are due on July 29, 2013. A copy of the Notice is available [here](#).