



American Teleservices Association

Telemarketing Sales Rule Compliance Tool

Side-By-Side Comparison of Changes

February 27, 2003

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<p>§ 310.2 Definitions.</p> <p>(a) Acquirer means a business organization, financial institution, or an agent of a business organization or financial institution that has authority from an organization that operates or licenses a credit card system to authorize merchants to accept, transmit, or process payment by credit card through the credit card system for money, goods or services, or anything else of value.</p> <p>(b) Attorney General means the chief legal officer of a State.</p> <p>(c) Cardholder means a person to whom a credit card is issued or who is authorized to use a credit card on behalf of or in addition to the person to whom the credit card is issued.</p> <p>(d) Commission means the Federal Trade Commission.</p> <p>(e) Credit means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.</p> <p>(f) Credit card means any card, plate, coupon book, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.</p> <p>(g) Credit card sales draft means any record or evidence of a credit card transaction.</p> <p>(h) Credit card system means any method or procedure used to process credit card transactions involving credit cards issued or licensed by the operator of that system.</p> <p>(i) Customer means any person who is or may be required to pay for goods or services offered through telemarketing.</p> <p>(j) Investment opportunity means anything, tangible or intangible, that is offered, offered for sale, sold, or traded based wholly or in part on representations, either express or implied, about past, present, or future income, profit, or appreciation.</p> <p>(k) Material means likely to affect a person's choice of, or conduct regarding, goods or services.</p> <p>(l) Merchant means a person who is authorized under a written contract with an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services.</p> <p>(m) Merchant agreement means a written contract between a merchant and an acquirer to honor or accept credit cards, or to transmit</p>	<p>§ 310.2 Definitions.</p> <p>(a) Acquirer means a business organization, financial institution, or an agent of a business organization or financial institution that has authority from an organization that operates or licenses a credit card system to authorize merchants to accept, transmit, or process payment by credit card through the credit card system for money, goods or services, or anything else of value.</p> <p>(b) Attorney General means the chief legal officer of a state.</p> <p><u>(c) Billing information means any data that enables any person to access a customer's or donor's account, such as a credit card, checking, savings, share or similar account, utility bill, mortgage loan account, or debit card.</u></p> <p><u>(d) Caller identification service means a service that allows a telephone subscriber to have the telephone number, and, where available, name of the calling party transmitted contemporaneously with the telephone call, and displayed on a device in or connected to the subscriber's telephone.</u></p> <p>(e) Cardholder means a person to whom a credit card is issued or who is authorized to use a credit card on behalf of or in addition to the person to whom the credit card is issued.</p> <p><u>(f) Charitable contribution means any donation or gift of money or any other thing of value.</u></p> <p>(g) Commission means the Federal Trade Commission.</p> <p>(h) Credit means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.</p> <p>(i) Credit card means any card, plate, coupon book, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.</p> <p>(j) Credit card sales draft means any record or evidence of a credit card transaction.</p> <p>(k) Credit card system means any method or procedure used to process credit card transactions involving credit cards issued or licensed by the operator of that system.</p> <p>(l) Customer means any person who is or may be required to pay for goods or services offered through telemarketing.</p> <p><u>(m) Donor means any person solicited to make a charitable contribution.</u></p> <p><u>(n) Established business relationship means a relationship between a seller and a consumer based</u></p>

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<p>or process for payment credit card payments, for the purchase of goods or services.</p> <p>(n) Outbound telephone call means a telephone call initiated by a telemarketer to induce the purchase of goods or services.</p> <p>(o) Person means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.</p> <p>(p) Prize means anything offered, or purportedly offered, and given, or purportedly given, to a person by chance. For purposes of this definition, chance exists if a person is guaranteed to receive an item and, at the time of the offer or purported offer, the telemarketer does not identify the specific item that the person will receive.</p> <p>(q) Prize promotion means:</p> <p>(1) A sweepstakes or other game of chance; or</p> <p>(2) An oral or written express or implied representation that a person has won, has been selected to receive, or may be eligible to receive a prize or purported prize.</p> <p>(r) Seller means any person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration.</p> <p>(s) State means any State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, and any territory or possession of the United States.</p> <p>(t) Telemarketer means any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer.</p> <p>(u) Telemarketing means a plan, program, or campaign which is conducted to induce the purchase of goods or services by use of one or more telephones and which involves more than one interstate telephone call. The term does not include the solicitation of sales through the mailing of a catalog which: Contains a written description or illustration of the goods or services offered for sale; includes the business address of the seller; includes multiple pages of written material or illustrations; and has been issued not less frequently than once a year, when the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the catalog and during those calls takes orders only without further solicitation. For purposes of the previous sentence, the term further</p>	<p><u>on: (1) the consumer's purchase, rental, or lease of the seller's goods or services or a financial transaction between the consumer and seller, within the eighteen (18) months immediately preceding the date of a telemarketing call; or (2) the consumer's inquiry or application regarding a product or service offered by the seller, within the three (3) months immediately preceding the date of a telemarketing call.</u></p> <p><u>(o) Free-to-pay conversion means, in an offer or agreement to sell or provide any goods or services, a provision under which a customer receives a product or service for free for an initial period and will incur an obligation to pay for the product or service if he or she does not take affirmative action to cancel before the end of that period.</u></p> <p>(p) Investment opportunity means anything, tangible or intangible, that is offered, offered for sale, sold, or traded based wholly or in part on representations, either express or implied, about past, present, or future income, profit, or appreciation.</p> <p><u>(q) Material means likely to affect a person's choice of, or conduct regarding, goods or services or a charitable contribution.</u></p> <p>(r) Merchant means a person who is authorized under a written contract with an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services <u>or a charitable contribution.</u></p> <p>(s) Merchant agreement means a written contract between a merchant and an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services <u>or a charitable contribution.</u></p> <p><u>(t) Negative option feature means, in an offer or agreement to sell or provide any goods or services, a provision under which the customer's silence or failure to take an affirmative action to reject goods or services or to cancel the agreement is interpreted by the seller as acceptance of the offer.</u></p> <p>(u) Outbound telephone call means a telephone call initiated by a telemarketer to induce the purchase of goods or services <u>or to solicit a charitable contribution.</u></p> <p>(v) Person means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.</p> <p><u>(w) Preacquired account information means any information that enables a seller or telemarketer to cause a charge to be placed against a customer's or donor's account without obtaining the account number directly from the customer or donor during the telemarketing transaction pursuant to which the account will be charged.</u></p>

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<p>solicitation does not include providing the customer with information about, or attempting to sell, any other item included in the same catalog which prompted the customer's call or in a substantially similar catalog.</p>	<p>(x) Prize means anything offered, or purportedly offered, and given, or purportedly given, to a person by chance. For purposes of this definition, chance exists if a person is guaranteed to receive an item and, at the time of the offer or purported offer, the telemarketer does not identify the specific item that the person will receive.</p> <p>(y) Prize promotion means:</p> <ol style="list-style-type: none"> (1) A sweepstakes or other game of chance; or (2) An oral or written express or implied representation that a person has won, has been selected to receive, or may be eligible to receive a prize or purported prize. <p>(z) Seller means any person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration.</p> <p>(aa) State means any state of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, and any territory or possession of the United States.</p> <p>(bb) Telemarketer means any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer <u>or donor</u>.</p> <p>(cc) Telemarketing means a plan, program, or campaign which is conducted to induce the purchase of goods or services <u>or a charitable contribution</u>, by use of one or more telephones and which involves more than one interstate telephone call. The term does not include the solicitation of sales through the mailing of a catalog which: contains a written description or illustration of the goods or services offered for sale; includes the business address of the seller; includes multiple pages of written material or illustrations; and has been issued not less frequently than once a year, when the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the catalog and during those calls takes orders only without further solicitation. For purposes of the previous sentence, the term "further solicitation" does not include providing the customer with information about, or attempting to sell, any other item included in the same catalog which prompted the customer's call or in a substantially similar catalog.</p> <p><u>(dd) Upselling means soliciting the purchase of goods or services following an initial transaction during a single telephone call. The upsell is a separate telemarketing transaction, not a continuation of the initial transaction. An "external upsell" is a solicitation made by or on behalf of a seller different from the seller in the initial transaction, regardless of whether the initial</u></p>

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	<p>transaction and the subsequent solicitation are made by the same telemarketer. An “internal upsell” is a solicitation made by or on behalf of the same seller as in the initial transaction, regardless of whether the initial transaction and subsequent solicitation are made by the same telemarketer.</p>
<p>§ 310.3 Deceptive telemarketing acts or practices.</p> <p>(a) Prohibited deceptive telemarketing acts or practices. It is a deceptive telemarketing act or practice and a violation of this Rule for any seller or telemarketer to engage in the following conduct:</p> <p>(1) Before a customer pays¹ for goods or services offered, failing to disclose, in a clear and conspicuous manner, the following material information:</p> <p>(i) The total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of the sales offer;²</p> <p>(ii) All material restrictions, limitations, or conditions to purchase, receive, or use the goods or services that are the subject of the sales offer;</p> <p>(iii) If the seller has a policy of not making refunds, cancellations, exchanges, or repurchases, a statement informing the customer that this is the seller’s policy; or, if the seller or telemarketer makes a representation about a refund, cancellation, exchange, or repurchase policy, a statement of all material terms and conditions of such policy;</p> <p>(iv) In any prize promotion, the odds of being able to receive the prize, and if the odds are not calculable in advance, the factors used in calculating the odds; that no purchase or payment is required to win a prize or to participate in a prize promotion; and the no purchase/no payment method of participating in the prize promotion with either instructions on how to participate or an address or local or toll-free telephone number to which customers may write or call for information on how to participate; and</p> <p>(v) All material costs or conditions to receive or redeem a prize that is the subject of the prize promotion;</p> <p>(2) Misrepresenting, directly or by implication, any of the following material information:</p>	<p>§ 310.3 Deceptive telemarketing acts or practices.</p> <p>(a) Prohibited deceptive telemarketing acts or practices. It is a deceptive telemarketing act or practice and a violation of this Rule for any seller or telemarketer to engage in the following conduct:</p> <p>(1) Before a customer pays¹ for goods or services offered, failing to disclose truthfully, in a clear and conspicuous manner, the following material information:</p> <p>(i) The total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of the sales offer;²</p> <p>(ii) All material restrictions, limitations, or conditions to purchase, receive, or use the goods or services that are the subject of the sales offer;</p> <p>(iii) If the seller has a policy of not making refunds, cancellations, exchanges, or repurchases, a statement informing the customer that this is the seller’s policy; or, if the seller or telemarketer makes a representation about a refund, cancellation, exchange, or repurchase policy, a statement of all material terms and conditions of such policy;</p> <p>(iv) In any prize promotion, the odds of being able to receive the prize, and, if the odds are not calculable in advance, the factors used in calculating the odds; that no purchase or payment is required to win a prize or to participate in a prize promotion and that any purchase or payment will not increase the person’s chances of winning; and the no-purchase/no-payment method of participating in the prize promotion with either instructions on how to participate or an address or local or toll-free telephone number to which customers may write or call for information on how to participate;</p> <p>(v) All material costs or conditions to receive or redeem a prize that is the subject of the prize promotion;</p> <p>(vi) In the sale of any goods or services represented to protect, insure, or otherwise limit a customer’s liability in the event of unauthorized use of the customer’s credit card, the limits on a cardholder’s liability for unauthorized use of a credit card pursuant to 15 U.S.C. 1643; and</p>

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<p>(i) The total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of a sales offer;</p> <p>(ii) Any material restriction, limitation, or condition to purchase, receive, or use goods or services that are the subject of a sales offer;</p> <p>(iii) Any material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of a sales offer;</p> <p>(iv) Any material aspect of the nature or terms of the seller's refund, cancellation, exchange, or repurchase policies;</p> <p>(v) Any material aspect of a prize promotion including, but not limited to, the odds of being able to receive a prize, the nature or value of a prize, or that a purchase or payment is required to win a prize or to participate in a prize promotion;</p> <p>(vi) Any material aspect of an investment opportunity including, but not limited to, risk, liquidity, earnings potential, or profitability; or</p> <p>(vii) A seller's or telemarketer's affiliation with, or endorsement by, any government or third-party organization;</p> <p>(3) Obtaining or submitting for payment a check, draft, or other form of negotiable paper drawn on a person's checking, savings, share, or similar account, without that person's express verifiable authorization. Such authorization shall be deemed verifiable if any of the following means are employed:</p> <p>(i) Express written authorization by the customer, which may include the customer's signature on the negotiable instrument; or</p> <p>(ii) Express oral authorization which is tape recorded and made available upon request to the customer's bank and which evidences clearly both the customer's authorization of payment for the goods and services that are the subject of the sales offer and the customer's receipt of all of the following information:</p> <p>(A) The date of the draft(s);</p> <p>(B) The amount of the draft(s);</p> <p>(C) The payor's name;</p> <p>(D) The number of draft payments (if more</p>	<p><u>(vii) If the offer includes a negative option feature, all material terms and conditions of the negative option feature, including, but not limited to, the fact that the customer's account will be charged unless the customer takes an affirmative action to avoid the charge(s), the date(s) the charge(s) will be submitted for payment, and the specific steps the customer must take to avoid the charge(s).</u></p> <p>(2) Misrepresenting, directly or by implication, in the sale of goods or services any of the following material information:</p> <p>(i) The total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of a sales offer;</p> <p>(ii) Any material restriction, limitation, or condition to purchase, receive, or use goods or services that are the subject of a sales offer;</p> <p>(iii) Any material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of a sales offer;</p> <p>(iv) Any material aspect of the nature or terms of the seller's refund, cancellation, exchange, or repurchase policies;</p> <p>(v) Any material aspect of a prize promotion including, but not limited to, the odds of being able to receive a prize, the nature or value of a prize, or that a purchase or payment is required to win a prize or to participate in a prize promotion;</p> <p>(vi) Any material aspect of an investment opportunity including, but not limited to, risk, liquidity, earnings potential, or profitability;</p> <p>(vii) A seller's or telemarketer's affiliation with, or endorsement <u>or sponsorship by, any person or government entity;</u></p> <p><u>(viii) That any customer needs offered goods or services to provide protections a customer already has pursuant to 15 U.S.C. 1643; or</u></p> <p><u>(ix) Any material aspect of a negative option feature including, but not limited to, the fact that the customer's account will be charged unless the customer takes an affirmative action to avoid the charge(s), the date(s) the charge(s) will be submitted for payment, and the specific steps the customer must take to avoid the charge(s).</u></p> <p><u>(3) Causing billing information to be submitted for payment, or collecting or attempting to collect payment for goods or services or a charitable contribution, directly or indirectly, without the</u></p>

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<p>than one);</p> <p>(E) A telephone number for customer inquiry that is answered during normal business hours; and</p> <p>(F) The date of the customer's oral authorization; or</p> <p>(iii) Written confirmation of the transaction, sent to the customer prior to submission for payment of the customer's check, draft, or other form of negotiable paper, that includes:</p> <p>(A) All of the information contained in §§ 310.3(a)(3)(ii)(A)–(F); and</p> <p>(B) The procedures by which the customer can obtain a refund from the seller or telemarketer in the event the confirmation is inaccurate; and</p> <p>(4) Making a false or misleading statement to induce any person to pay for goods or services.</p> <p>(b) <i>Assisting and facilitating.</i> It is a deceptive telemarketing act or practice and a violation of this Rule for a person to provide substantial assistance or support to any seller or telemarketer when that person knows or consciously avoids knowing that the seller or telemarketer is engaged in any act or practice that violates §§ 310.3 (a) or (c), or § 310.4 of this Rule.</p> <p>(c) <i>Credit card laundering.</i> Except as expressly permitted by the applicable credit card system, it is a deceptive telemarketing act or practice and a violation of this Rule for:</p> <p>(1) A merchant to present to or deposit into, or cause another to present to or deposit into, the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant;</p> <p>(2) Any person to employ, solicit, or otherwise cause a merchant or an employee, representative, or agent of the merchant, to present to or deposit into the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant; or</p> <p>(3) Any person to obtain access to the credit card system through the use of a business</p>	<p><u>customer's or donor's</u> express verifiable authorization, <u>except when the method of payment used is a credit card subject to protections of the Truth in Lending Act and Regulation Z,³ or a debit card subject to the protections of the Electronic Fund Transfer Act and Regulation E.⁴</u> Such authorization shall be deemed verifiable if any of the following means <u>is</u> employed:</p> <p>(i) Express written authorization by the customer <u>or donor</u>, which <u>includes</u> the customer's <u>or donor's signature</u>;⁵</p> <p>(ii) Express oral authorization which is <u>audio</u> recorded and made available upon request to the customer <u>or donor, and the customer's or donor's bank or other billing entity</u>, and which evidences clearly both the customer's <u>or donor's</u> authorization of payment for the goods <u>or services or charitable contribution</u> that are the subject of the <u>telemarketing transaction</u> and the customer's <u>or donor's</u> receipt of all of the following information:</p> <p><u>(A) The number of debits, charges, or payments (if more than one);</u></p> <p><u>(B) The date(s) the debit(s), charge(s), or payment(s) will be submitted for payment;</u></p> <p><u>(C) The amount(s) of the debit(s), charge(s), or payment(s);</u></p> <p><u>(D) The customer's or donor's name;</u></p> <p><u>(E) The customer's or donor's billing information, identified with sufficient specificity such that the customer or donor understands what account will be used to collect payment for the goods or services or charitable contribution that are the subject of the telemarketing transaction;</u></p> <p><u>(F) A telephone number for customer or donor inquiry that is answered during normal business hours; and</u></p> <p><u>(G) The date of the customer's or donor's oral authorization; or</u></p> <p>(iii) Written confirmation of the transaction, <u>identified in a clear and conspicuous manner as such on the outside of the envelope</u>, sent to the customer <u>or donor via first class mail</u> prior to <u>the</u> submission for payment of the customer's <u>or donor's billing information, and that includes all of the information contained in §§ 310.3(a)(3)(ii)(A) (G) and a clear and conspicuous statement of the procedures by which the customer or donor can obtain a refund from the seller or telemarketer or charitable organization in the event the confirmation is inaccurate; provided, however, that this means of authorization shall not be deemed</u></p>

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<p>relationship or an affiliation with a merchant, when such access is not authorized by the merchant agreement or the applicable credit card system.</p> <p>_____</p> <p>¹ When a seller or telemarketer uses, or directs a customer to use, a courier to transport payment, the seller or telemarketer must make the disclosures required by 310.3(a)(1) before sending a courier to pick up payment or authorization for payment, or directing a customer to have a courier pick up payment or authorization for payment.</p> <p>² For offers of consumer credit products subject to the Truth in Lending Act, 15 U.S.C. 1601 <i>et seq.</i>, and Regulation Z, 12 CFR part 226, compliance with the disclosure requirements under the Truth in Lending Act, and Regulation Z, shall constitute compliance with § 310.3(a)(1)(i) of this Rule.</p>	<p><u>verifiable in instances in which goods or services are offered in a transaction involving a free-to-pay conversion and preacquired account information.</u></p> <p>(4) Making a false or misleading statement to induce any person to pay for goods or services <u>or to induce a charitable contribution.</u></p> <p>(b) Assisting and facilitating. It is a deceptive telemarketing act or practice and a violation of this Rule for a person to provide substantial assistance or support to any seller or telemarketer when that person knows or consciously avoids knowing that the seller or telemarketer is engaged in any act or practice that violates §§ 310.3(a), (c) <u>or (d)</u>, or § 310.4 of this Rule.</p> <p>(c) Credit card laundering. Except as expressly permitted by the applicable credit card system, it is a deceptive telemarketing act or practice and a violation of this Rule for:</p> <p>(1) A merchant to present to or deposit into, or cause another to present to or deposit into, the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant;</p> <p>(2) Any person to employ, solicit, or otherwise cause a merchant, or an employee, representative, or agent of the merchant, to present to or deposit into the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant; or</p> <p><u>(d) Prohibited deceptive acts or practices in the solicitation of charitable contributions. It is a fraudulent charitable solicitation, a deceptive telemarketing act or practice, and a violation of this Rule for any telemarketer soliciting charitable contributions to misrepresent, directly or by implication, any of the following material information:</u></p> <p><u>(1) The nature, purpose, or mission of any entity on behalf of which a charitable contribution is being requested;</u></p> <p><u>(2) That any charitable contribution is tax deductible in whole or in part;</u></p> <p><u>(3) The purpose for which any charitable contribution will be used;</u></p> <p><u>(4) The percentage or amount of any charitable contribution that will go to a charitable organization or to any particular charitable</u></p>

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	<p><u>program;</u></p> <p><u>(5) Any material aspect of a prize promotion including, but not limited to: the odds of being able to receive a prize; the nature or value of a prize; or that a charitable contribution is required to win a prize or to participate in a prize promotion; or</u></p> <p><u>(6) A charitable organization's or telemarketer's affiliation with, or endorsement or sponsorship by, any person or government entity.</u></p> <hr/> <p>¹ When a seller or telemarketer uses, or directs a customer to use, a courier to transport payment, the seller or telemarketer must make the disclosures required by § 310.3(a)(1) before sending a courier to pick up payment or authorization for payment, or directing a customer to have a courier pick up payment or authorization for payment.</p> <p>² For offers of consumer credit products subject to the Truth in Lending Act, 15 U.S.C. 1601 et seq., and Regulation Z, 12 CFR 226, compliance with the disclosure requirements under the Truth in Lending Act and Regulation Z shall constitute compliance with § 310.3(a)(1)(i) of this Rule.</p> <p>³ Truth in Lending Act, 15 U.S.C. 1601 et seq., and Regulation Z, 12 CFR part 226.</p> <p>⁴ Electronic Fund Transfer Act, 15 U.S.C. 1693 et seq., and Regulation E, 12 CFR part 205.</p> <p>⁵ For purposes of this Rule, the term "signature" shall include an electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law.</p>
<p>§ 310.4 Abusive telemarketing acts or practices.</p> <p>(a) Abusive conduct generally. It is an abusive telemarketing act or practice and a violation of this Rule for any seller or telemarketer to engage in the following conduct:</p> <p>(1) Threats, intimidation, or the use of profane or obscene language;</p> <p>(2) Requesting or receiving payment of any fee or consideration for goods or services represented to remove derogatory information from, or improve, a person's credit history, credit record, or credit rating until:</p> <p>(i) The time frame in which the seller has represented all of the goods or services will be provided to that person has expired; and</p>	<p>§ 310.4 Abusive telemarketing acts or practices.</p> <p>(a) Abusive conduct generally. It is an abusive telemarketing act or practice and a violation of this Rule for any seller or telemarketer to engage in the following conduct:</p> <p>(1) Threats, intimidation, or the use of profane or obscene language;</p> <p>(2) Requesting or receiving payment of any fee or consideration for goods or services represented to remove derogatory information from, or improve, a person's credit history, credit record, or credit rating until:</p> <p>(i) The time frame in which the seller has represented all of the goods or services will be provided to that person has expired; and</p> <p>(ii) The seller has provided the person with</p>

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<p>(ii) The seller has provided the person with documentation in the form of a consumer report from a consumer reporting agency demonstrating that the promised results have been achieved, such report having been issued more than six months after the results were achieved. Nothing in this Rule should be construed to affect 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;</p> <p>(3) Requesting or receiving payment of any fee or consideration from a person, for goods or services represented to recover or otherwise assist in the return of money or any other item of value paid for by, or promised to, that person in a previous telemarketing transaction, until seven (7) business days after such money or other item is delivered to that person. This provision shall not apply to goods or services provided to a person by a licensed attorney; or</p> <p>(4) Requesting or receiving payment of any fee or consideration in advance of obtaining a loan or other extension of credit when the seller or telemarketer has guaranteed or represented a high likelihood of success in obtaining or arranging a loan or other extension of credit for a person.</p> <p>(b) Pattern of calls. (1) It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer to engage in, or for a seller to cause a telemarketer to engage in, the following conduct:</p> <p>(i) Causing any telephone to ring, or engaging any person in telephone conversation, repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number; or</p> <p>(ii) Initiating an outbound telephone call to a person when that person previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the seller whose goods or services are being offered.</p> <p>(2) A seller or telemarketer will not be liable for violating § 310.4(b)(1)(ii) if:</p> <p>(i) It has established and implemented written procedures to comply with § 310.4(b)(1)(ii);</p> <p>(ii) It has trained its personnel in the procedures established pursuant to §</p>	<p>documentation in the form of a consumer report from a consumer reporting agency demonstrating that the promised results have been achieved, such report having been issued more than six months after the results were achieved. Nothing in this Rule should be construed to affect 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;</p> <p>(3) Requesting or receiving payment of any fee or consideration from a person for goods or services represented to recover or otherwise assist in the return of money or any other item of value paid for by, or promised to, that person in a previous telemarketing transaction, until seven (7) business days after such money or other item is delivered to that person. This provision shall not apply to goods or services provided to a person by a licensed attorney;</p> <p>(4) Requesting or receiving payment of any fee or consideration in advance of obtaining a loan or other extension of credit when the seller or telemarketer has guaranteed or represented a high likelihood of success in obtaining or arranging a loan or other extension of credit for a person;</p> <p><u>(5) Disclosing or receiving, for consideration, unencrypted consumer account numbers for use in telemarketing; provided, however, that this paragraph shall not apply to the disclosure or receipt of a customer's or donor's billing information to process a payment for goods or services or a charitable contribution pursuant to a transaction;</u></p> <p><u>(6) Causing billing information to be submitted for payment, directly or indirectly, without the express informed consent of the customer or donor. In any telemarketing transaction, the seller or telemarketer must obtain the express informed consent of the customer or donor to be charged for the goods or services or charitable contribution and to be charged using the identified account. In any telemarketing transaction involving preacquired account information, the requirements immediately below must be met to evidence express informed consent.</u></p> <p><u>(i) In any telemarketing transaction involving preacquired account information and a free-to-pay conversion feature, the seller or telemarketer must:</u></p> <p><u>(A) obtain from the customer, at a minimum, the last four (4) digits of the account number to be charged;</u></p> <p><u>(B) obtain from the customer his or her express agreement to be charged for the goods or services and to be charged using the account number</u></p>

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<p>310.4(b)(2)(i);</p> <p>(iii) The seller, or the telemarketer acting on behalf of the seller, has maintained and recorded lists of persons who may not be contacted, in compliance with § 310.4(b)(1)(ii); and</p> <p>(iv) Any subsequent call is the result of error.</p> <p>(c) Calling time restrictions. Without the prior consent of a person, it is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer to engage in outbound telephone calls to a person's residence at any time other than between 8 a.m. and 9 p.m. local time at the called person's location.</p> <p>(d) <i>Required oral disclosures.</i> It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer in an outbound telephone call to fail to disclose promptly and in a clear and conspicuous manner to the person receiving the call, the following information:</p> <p>(1) The identity of the seller;</p> <p>(2) That the purpose of the call is to sell goods or services;</p> <p>(3) The nature of the goods or services; and</p> <p>(4) That no purchase or payment is necessary to be able to win a prize or participate in a prize promotion if a prize promotion is offered. This disclosure must be made before or in conjunction with the description of the prize to the person called. If requested by that person, the telemarketer must disclose the no-purchase/no-payment entry method for the prize promotion.</p>	<p><u>pursuant to subsection (A) of this section; and,</u></p> <p><u>(C) make and maintain an audio recording of the entire telemarketing transaction.</u></p> <p><u>(ii) In any other telemarketing transaction involving preacquired account information not described in section (i) above, the seller or telemarketer must:</u></p> <p><u>(A) at a minimum, identify the account to be charged with sufficient specificity for the customer or donor to understand what account will be charged; and</u></p> <p><u>(B) obtain from the customer or donor his or her express agreement to be charged for the goods or services and to be charged using the account number identified pursuant to subsection (A) of this section; or</u></p> <p><u>(7) Failing to transmit or cause to be transmitted the telephone number, and, when made available by the telemarketer's carrier, the name of the telemarketer, to any caller identification service in use by a recipient of a telemarketing call; provided that it shall not be a violation to substitute (for the name and phone number used in, or billed for, making the call) the name of the seller or charitable organization on behalf of which a telemarketing call is placed, and the seller's or charitable organization's customer or donor service telephone number, which is answered during regular business hours.</u></p> <p>(b) Pattern of calls.</p> <p>(1) It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer to engage in, or for a seller to cause a telemarketer to engage in, the following conduct:</p> <p>(i) Causing any telephone to ring, or engaging any person in telephone conversation, repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number;</p> <p>(ii) <u>Denying or interfering in any way, directly or indirectly, with a person's right to be placed on any registry of names and/or telephone numbers of persons who do not wish to receive outbound telephone calls established to comply with § 310.4(b)(1)(iii);</u></p> <p>(iii) Initiating any outbound telephone call to a person when:</p> <p><u>(A) that person previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the seller whose goods or services are being offered or made on behalf of</u></p>

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	<p><u>the charitable organization for which a charitable contribution is being solicited; or</u></p> <p><u>(B) that person’s telephone number is on the “do-not-call” registry, maintained by the Commission, of persons who do not wish to receive outbound telephone calls to induce the purchase of goods or services unless the seller (i) has obtained the express agreement, in writing, of such person to place calls to that person. Such written agreement shall clearly evidence such person’s authorization that calls made by or on behalf of a specific party may be placed to that person, and shall include the telephone number to which the calls may be placed and the signature⁶ of that person; or (ii) has an established business relationship with such person, and that person has not stated that he or she does not wish to receive outbound telephone calls under subsection (A) immediately above; or</u></p> <p><u>(iv) Abandoning any outbound telephone call. An outbound telephone call is “abandoned” under this section if a person answers it and the telemarketer does not connect the call to a sales representative within two (2) seconds of the person’s completed greeting.</u></p> <p><u>(2) It is an abusive telemarketing act or practice and a violation of this Rule for any person to sell, rent, lease, purchase, or use any list established to comply with § 310.4(b)(1)(iii)(A), or maintained by the Commission pursuant to § 310.4(b)(1)(iii)(B), for any purpose except compliance with the provisions of this Rule or otherwise to prevent telephone calls to telephone numbers on such lists.</u></p> <p><u>(3) A seller or telemarketer will not be liable for violating § 310.4(b)(1)(ii) and (iii) if it can demonstrate that, as part of the seller’s or telemarketer’s routine business practice:</u></p> <p><u>(i) It has established and implemented written procedures to comply with § 310.4(b)(1)(ii) and (iii);</u></p> <p><u>(ii) It has trained its personnel, and any entity assisting in its compliance, in the procedures established pursuant to § 310.4(b)(3)(i);</u></p> <p><u>(iii) The seller, or a telemarketer or another person acting on behalf of the seller or charitable organization, has maintained and recorded a list of telephone numbers the seller or charitable organization may not contact, in compliance with § 310.4(b)(1)(iii)(A);</u></p> <p><u>(iv) The seller or a telemarketer uses a process to prevent telemarketing to any telephone number on any list established pursuant to §§ 310.4(b)(3)(iii) or 310.4(b)(1)(iii)(B), employing a version of the</u></p>

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	<p><u>“do-not-call” registry obtained from the Commission no more than three (3) months prior to the date any call is made, and maintains records documenting this process;</u></p> <p><u>(v) The seller or a telemarketer or another person acting on behalf of the seller or charitable organization, monitors and enforces compliance with the procedures established pursuant to § 310.4(b)(3)(i); and</u></p> <p><u>(vi) Any subsequent call otherwise violating § 310.4(b)(1)(ii) or (iii) is the result of error.</u></p> <p><u>(4) A seller or telemarketer will not be liable for violating 310.4(b)(1)(iv) if:</u></p> <p><u>(i) the seller or telemarketer employs technology that ensures abandonment of no more than three (3) percent of all calls answered by a person, measured per day per calling campaign;</u></p> <p><u>(ii) the seller or telemarketer, for each telemarketing call placed, allows the telephone to ring for at least fifteen (15) seconds or four (4) rings before disconnecting an unanswered call;</u></p> <p><u>(iii) whenever a sales representative is not available to speak with the person answering the call within two (2) seconds after the person’s completed greeting, the seller or telemarketer promptly plays a recorded message that states the name and telephone number of the seller on whose behalf the call was placed⁷; and</u></p> <p><u>(iv) the seller or telemarketer, in accordance with 310.5(b)-(d), retains records establishing compliance with 310.4(b)(4)(i)-(iii).</u></p> <p>(c) Calling time restrictions. Without the prior consent of a person, it is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer to engage in outbound telephone calls to a person’s residence at any time other than between 8:00 a.m. and 9:00 p.m. local time at the called person’s location.</p> <p>(d) Required oral disclosures <u>in the sale of goods or services</u>. It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer in an outbound telephone call <u>or internal or external upsell to induce the purchase of goods or services</u> to fail to disclose <u>truthfully, promptly</u>, and in a clear and conspicuous manner to the person receiving the call, the following information:</p> <p>(1) The identity of the seller;</p> <p>(2) That the purpose of the call is to sell goods or services;</p>

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	<p>(3) The nature of the goods or services; and</p> <p>(4) That no purchase or payment is necessary to be able to win a prize or participate in a prize promotion if a prize promotion is offered <u>and that any purchase or payment will not increase the person's chances of winning</u>. This disclosure must be made before or in conjunction with the description of the prize to the person called. If requested by that person, the telemarketer must disclose the no-purchase/no-payment entry method for the prize promotion; <u>provided, however, that, in any internal upsell for the sale of goods or services, the seller or telemarketer must provide the disclosures listed in this section only to the extent that the information in the upsell differs from the disclosures provided in the initial telemarketing transaction.</u></p> <p><u>(e) Required oral disclosures in charitable solicitations. It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer, in an outbound telephone call to induce a charitable contribution, to fail to disclose truthfully, promptly, and in a clear and conspicuous manner to the person receiving the call, the following information:</u></p> <p><u>(1) The identity of the charitable organization on behalf of which the request is being made; and</u></p> <p><u>(2) That the purpose of the call is to solicit a charitable contribution.</u></p> <hr/> <p><u>⁶ For purposes of this Rule, the term "signature" shall include an electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law.</u></p> <p><u>⁷ This provision does not affect any seller's or telemarketer's obligation to comply with relevant state and federal laws, including but not limited to the TCPA, 47 U.S.C. 227, and 47 CFR part 64.1200.</u></p>
<p>§ 310.5 Recordkeeping requirements.</p> <p>(a) Any seller or telemarketer shall keep, for a period of 24 months from the date the record is produced, the following records relating to its telemarketing activities:</p> <p>(1) All substantially different advertising, brochures, telemarketing scripts, and promotional materials;</p> <p>(2) The name and last known address of each prize recipient and the prize awarded for</p>	<p>§ 310.5 Recordkeeping requirements.</p> <p>(a) Any seller or telemarketer shall keep, for a period of 24 months from the date the record is produced, the following records relating to its telemarketing activities:</p> <p>(1) All substantially different advertising, brochures, telemarketing scripts, and promotional materials;</p> <p>(2) The name and last known address of each prize recipient and the prize awarded for prizes that</p>

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<p>prizes that are represented, directly or by implication, to have a value of \$25.00 or more;</p> <p>(3) The name and last known address of each customer, the goods or services purchased, the date such goods or services were shipped or provided, and the amount paid by the customer for the goods or services;³</p> <p>(4) The name, any fictitious name used, the last known home address and telephone number, and the job title(s) for all current and former employees directly involved in telephone sales; provided, however, that if the seller or telemarketer permits fictitious names to be used by employees, each fictitious name must be traceable to only one specific employee; and</p> <p>(5) All verifiable authorizations required to be provided or received under this Rule.</p> <p>(b) A seller or telemarketer may keep the records required by § 310.5(a) in any form, and in the manner, format, or place as they keep such records in the ordinary course of business. Failure to keep all records required by § 310.5(a) shall be a violation of this Rule.</p> <p>(c) The seller and the telemarketer calling on behalf of the seller may, by written agreement, allocate responsibility between themselves for the recordkeeping required by this section. When a seller and telemarketer have entered into such an agreement, the terms of that agreement shall govern, and the seller or telemarketer, as the case may be, need not keep records that duplicate those of the other. If the agreement is unclear as to who must maintain any required record(s), or if no such agreement exists, the seller shall be responsible for complying with §§ 310.5(a)(1)–(3) and (5); the telemarketer shall be responsible for complying with § 310.5(a)(4).</p> <p>(d) In the event of any dissolution or termination of the seller’s or telemarketer’s business, the principal of that seller or telemarketer shall maintain all records as required under this section. In the event of any sale, assignment, or other change in ownership of the seller’s or telemarketer’s business, the successor business shall maintain all records required under this section.</p> <hr/> <p>³ For offers of consumer credit products</p>	<p>are represented, directly or by implication, to have a value of \$25.00 or more;</p> <p>(3) The name and last known address of each customer, the goods or services purchased, the date such goods or services were shipped or provided, and the amount paid by the customer for the goods or services;⁸</p> <p>(4) The name, any fictitious name used, the last known home address and telephone number, and the job title(s) for all current and former employees directly involved in telephone sales <u>or solicitations</u>; provided, however, that if the seller or telemarketer permits fictitious names to be used by employees, each fictitious name must be traceable to only one specific employee; and</p> <p>(5) All verifiable authorizations <u>or records of express informed consent or express agreement</u> required to be provided or received under this Rule.</p> <p>(b) A seller or telemarketer may keep the records required by § 310.5(a) in any form, and in the <u>same</u> manner, format, or place as they keep such records in the ordinary course of business. Failure to keep all records required by § 310.5(a) shall be a violation of this Rule.</p> <p>(c) The seller and the telemarketer calling on behalf of the seller may, by written agreement, allocate responsibility between themselves for the recordkeeping required by this <u>Section</u>. When a seller and telemarketer have entered into such an agreement, the terms of that agreement shall govern, and the seller or telemarketer, as the case may be, need not keep records that duplicate those of the other. If the agreement is unclear as to who must maintain any required record(s), or if no such agreement exists, the seller shall be responsible for complying with §§ 310.5(a)(1)–(3) and (5); the telemarketer shall be responsible for complying with § 310.5(a)(4).</p> <p>(d) In the event of any dissolution or termination of the seller’s or telemarketer’s business, the principal of that seller or telemarketer shall maintain all records as required under this <u>Section</u>.</p> <hr/> <p>⁸ For offers of consumer credit products subject to the Truth in Lending Act, 15 U.S.C. 1601 et seq., and Regulation Z, 12 <u>CFR 226</u>, compliance with the recordkeeping requirements under the Truth in Lending Act, and Regulation Z, shall constitute compliance with § 310.5(a)(3) of this Rule.</p>

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<p>subject to the Truth in Lending Act, 15 U.S.C. 1601 <i>et seq.</i>, and Regulation Z, 12 CFR part 226, compliance with the recordkeeping requirements under the Truth in Lending Act, and Regulation Z, shall constitute compliance with § 310.5(a)(3) of this Rule.</p>	
<p>§ 310.6 Exemptions.</p> <p>The following acts or practices are exempt from this Rule:</p> <p>(a) The sale of pay-per-call services subject to the Commission’s “Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992,” 16 CFR part 308;</p> <p>(b) The sale of franchises subject to the Commission’s Rule entitled “Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures,” 16 CFR part 436;</p> <p>(c) Telephone calls in which the sale of goods or services is not completed, and payment or authorization of payment is not required, until after a face-to-face sales presentation by the seller;</p> <p>(d) Telephone calls initiated by a customer that are not the result of any solicitation by a seller or telemarketer;</p> <p>(e) Telephone calls initiated by a customer in response to an advertisement through any media, other than direct mail solicitations; provided, however, that this exemption does not apply to calls initiated by a customer in response to an advertisement relating to investment opportunities, goods or services described in §§ 310.4(a) (2) or (3), or advertisements that guarantee or represent a high likelihood of success in obtaining or arranging for extensions of credit, if payment of a fee is required in advance of obtaining the extension of credit;</p> <p>(f) Telephone calls initiated by a customer in response to a direct mail solicitation that clearly, conspicuously, and truthfully discloses all material information listed in § 310.3(a)(1) of this Rule for any item offered in the direct mail solicitation; provided, however, that this exemption does not apply to calls initiated by a customer in response to a direct mail solicitation relating to prize promotions, investment opportunities, goods or services described in §§ 310.4(a) (2) or (3), or direct mail solicitations that guarantee or represent a high likelihood of success in</p>	<p>§ 310.6 Exemptions.</p> <p>(a) <u>Solicitations to induce charitable contributions via outbound telephone calls are not covered by § 310.4(b)(1)(iii)(B) of this Rule.</u></p> <p>(b) <u>The following acts or practices are exempt from this Rule:</u></p> <p>(1) <u>The sale of pay-per-call services subject to the Commission’s Rule entitled “Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992,” 16 CFR Part 308, provided, however, that this exemption does not apply to the requirements of §§ 310.4(a)(1), (a)(7), (b), and (c);</u></p> <p>(2) <u>The sale of franchises subject to the Commission’s Rule entitled “Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures,” (“Franchise Rule”) 16 CFR Part 436, provided, however, that this exemption does not apply to the requirements of §§ 310.4(a)(1), (a)(7), (b), and (c);</u></p> <p>(3) <u>Telephone calls in which the sale of goods or services or charitable solicitation is not completed, and payment or authorization of payment is not required, until after a face-to-face sales or donation presentation by the seller or charitable organization, provided, however, that this exemption does not apply to the requirements of §§ 310.4(a)(1), (a)(7), (b), and (c);</u></p> <p>(4) <u>Telephone calls initiated by a customer or donor that are not the result of any solicitation by a seller, charitable organization, or telemarketer, provided, however, that this exemption does not apply to any instances of upselling included in such telephone calls;</u></p> <p>(5) <u>Telephone calls initiated by a customer or donor in response to an advertisement through any medium, other than direct mail solicitation, provided, however, that this exemption does not apply to calls initiated by a customer or donor in response to an advertisement relating to investment opportunities, business opportunities other than business arrangements covered by the Franchise Rule, or advertisements involving goods or services described in §§ 310.3(a)(1)(vi) or 310.4(a)(2)-(4); or to any instances of upselling included in such telephone calls;</u></p>

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<p>obtaining or arranging for extensions of credit, if payment of a fee is required in advance of obtaining the extension of credit; and</p> <p>(g) Telephone calls between a telemarketer and any business, except calls involving the retail sale of nondurable office or cleaning supplies; provided, however, that § 310.5 of this Rule shall not apply to sellers or telemarketers of nondurable office or cleaning supplies.</p>	<p><u>(6) Telephone calls initiated by a customer or donor in response to a direct mail solicitation, including solicitations via the U.S. Postal Service, facsimile transmission, electronic mail, and other similar methods of delivery in which a solicitation is directed to specific address(es) or person(s), that clearly, conspicuously, and truthfully discloses all material information listed in § 310.3(a)(1) of this Rule, for any goods or services offered in the direct mail solicitation, and that contains no material misrepresentation regarding any item contained in § 310.3(d) of this Rule for any requested charitable contribution;</u> provided, however, that this exemption does not apply to calls initiated by a customer in response to a direct mail solicitation relating to prize promotions, investment opportunities, <u>business opportunities other than business arrangements covered by the Franchise Rule, or goods or services described in §§ 310.4(a)(2)-(4); or to any instances of upselling included in such telephone calls;</u> and</p> <p><u>(7) Telephone calls between a telemarketer and any business, except calls to induce the retail sale of nondurable office or cleaning supplies; provided, however, that § 310.4(b)(1)(iii)(B) and § 310.5 of this Rule shall not apply to sellers or telemarketers of nondurable office or cleaning supplies.</u></p>
<p>§ 310.7 Actions by States and private persons.</p> <p>(a) Any attorney general or other officer of a State authorized by the State to bring an action under the Telemarketing and Consumer Fraud and Abuse Prevention Act, and any private person who brings an action under that Act, shall serve written notice of its action on the Commission, if feasible, prior to its initiating an action under this Rule. The notice shall be sent to the Office of the Director, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, and shall include a copy of the State's or private person's complaint and any other pleadings to be filed with the court. If prior notice is not feasible, the State or private person shall serve the Commission with the required notice immediately upon instituting its action.</p> <p>(b) Nothing contained in this section shall prohibit any attorney general or other authorized State official from proceeding in State court on the basis of an alleged violation of any civil or criminal statute of such State.</p>	<p>§ 310.7 Actions by states and private persons.</p> <p>(a) Any attorney general or other officer of a state authorized by the state to bring an action under the Telemarketing and Consumer Fraud and Abuse Prevention Act, and any private person who brings an action under that Act, shall serve written notice of its action on the Commission, if feasible, prior to its initiating an action under this Rule. The notice shall be sent to the Office of the Director, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580, and shall include a copy of the state's or private person's complaint and any other pleadings to be filed with the court. If prior notice is not feasible, the state or private person shall serve the Commission with the required notice immediately upon instituting its action.</p> <p>(b) Nothing contained in this Section shall prohibit any attorney general or other authorized state official from proceeding in state court on the basis of an alleged violation of any civil or criminal statute of such state.</p>
<p>§ 310.8 Severability.</p> <p>The provisions of this Rule are separate and</p>	<p>§ 310.8 <u>Reserved for draft fee provision.</u></p>

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<p>severable from one another. If any provision is stayed or determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.</p>	
	<p><u>§ 310.9</u> Severability.</p> <p>The provisions of this Rule are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.</p>