



&DVH 1R &9 0-3  
)LQDO -XGJPHQW  
DQG 3HUPDQHQQW ,QMXQFWLRQ

&DVH 1R &9 0-3  
)LQDO -XGJPHQW  
DQG 3HUPDQHQQW ,QMXQFWLRQ

)(('5\$/ 75\$'( &200,66,21  
6HFRQG \$YH 6XLWH  
6HDWWOH :\$

) 30DWHULDO' PHDQV OLNHO\ WR DIIHFW D SHUVRQTV  
VHUYLEFHV

\* 33D\PHQW 3URFHVVVLQJ' PHDQV WKH SHUIRUPDQFH  
IRUPDWWLQJ FKDUJLQJ WUDQVPLWWLQJ DUUDQJLQJ IRU  
IRU JRRGV RU VHUYLEFHV WKURXJK WKH XVH RI DQ\ SD\PHQ  
LQFOXGLQJ EXW QRW OLPLWHG WR SURFHVVVLQJ FUHGLW F  
FUHDWHG FKHFNV DQG UHPRWHO\ FUHDWHG SD\PHQW RU  
RWKHU DFWLYLWLHV SURYLGLQJ D 6HOOHU )LQDQFLDO  
DFFHVV RU PHDQV WR DFFHVV DQ\ FRQVXPHTV EDQN DFF  
PRQLWRULQJ WUDFNLQJ DQG UHFRQFLOLQJ SD\PHQW U  
VHUYLEFHV WR 6HOOHUV DQG GLVEXUVLQJ IXQGV UHFHLSV

+ 33HUVRQ' PHDQV D QDWXUDO SHUVRQ DQ RU"qUV D

+

&DVH 1R &9 0-3  
)LQDO -XGJPHQW  
DQG 3HUPDQHQQW ,QMXQFWLRQ

7KDW 'HIHQGDQWV ZLOO UHIXQG VRPH RU DOO  
 LI WKH FRQVXPHU SXUFKDVHV D UHIXQG LQVXU  
 YHKLFOH UHPDLQV XQVROG DIWHU VRPH SHULR  
 % ,Q FRQQHFWLRQ ZLWK WKH DGYHUWLVLQJ SURPRV  
 DQ\ SURGXFW RU VHUYLFH PLVUHSUHVHQWLQJ RU  
 H[SUHVVO\ RU E\ LPSOLFDWLRQ DQ\ PDWHULDO IDF  
 7KH WRWDO FRVW WR SXUFKDVH UHFHLYH RU  
 \$Q\ PDWHULDO UHVWULFWLRQ OLPLWDWLRQ R  
 WKH JRRG RU VHUYLFH  
 \$Q\ PDWHULDO DVSHFW RI WKH SHUIRUPDQFH  
 FKDUDFWHULVWLFV RI WKH JRRG RU VHUYLFH  
 \$Q\ PDWHULDO DVSHFW RI WKH QDWXUH RU WH  
 RU UHSXUFKDVH SROLF\ IRU WKH JRRG RU VHUY  
 ,9 352+,% ,7,216 \$\*\$,167 9,2/\$7,216 2)  
 7+( 7/(0\$5.(7,1\* 6\$/(6 58/( DG



&DVH 1R &9 0-3  
)LQDO -XGJPHQW  
DQG 3HUPDQHQQW ,QMXQFWLRQ

)(('5\$/ 75\$'( &200,66,21



ZKLFK UHSUHVHQWV WKH WRWDO DPRXQW RI FRQVX  
DFWLYLWLHV DOOHJHG LQ WKH )7&†V &RPSODLQW  
% 7KLV DPRXQW VKDOO EH SDLG WR WKH &RPPLVVLRQ  
ZLWKLQ ILYH GD\ V RI WKH GDWH RI HQWU\ RI WK  
LQVWUXFWLRQV WR EH SURYLGHG E\ FRXQVHO IRU  
GRPLQLRQ DQG DOO OHJDO DQG QWHLWDEOH DOKW  
SXUVXDQW WR WKLV 2UGHU DQG PD\ QRW VHHN WK  
& 7LPH LV RI WKH HVVHQFH IRU WKH SD\PHQW VSHFL  
'HIHQGDQWV RQ DQ\ REOLJDWLRQ LPSRVHG XQGHU  
WR 8 6 & † D VKDOO LPPHGLDWHO\ EHJLQ WR  
'HIHQGDQWV DUH MRLQWO\ DQG VHYHUDOO\ OLDEOH  
DQG DQ\ LQWHUHVW RQ VXFK SD\PHQWV  
' \$OO IXQGV SDLG SXUVXDQW WR WKLV 2UGHU VKDOO  
WKH &RPPLVVLRQ RU LWV DJHQW WR EH XVHG IRU H  
WR FRQVXPHU UHGUHV V DQG DQ\ DWWHQGDQW H[S  
HTXLWDEOH UHOLHI 'HIHQGDQWV VKDOO FRRSHUD  
LGHQWLI\LQJ FRQVXPHUV ZKR PD\ EH HQWLWOHG W  
&RPPLVVLRQ GHWHUPLQHV LQ LWV VROH GLVFUHW  
ZKROO\ RU SDUWLDOO\ LPSUDFWLFDLDEOH RU IXQGV  
&RPPLVVLRQ PD\ DSSO\ DQ\ UHPDLQLQJ IXQGV IRU V  
FRQVXPHU LQIRUPDWLRQ UHPHGLHV DV LW GHWHU  
'HIHQGDQWV † SUDFWLFHV DOOHJHG LQ WKH &RPSOD  
HTXLWDEOH UHOLHI VKDOO EH GHSRVLWHG LQWR W



9,, &203/,\$1&( 5(3257,1\*  
,7 ,6 )857+(5 25'(5('

&DVH 1R &9 0-3  
)LQDO -XGJPHQW  
DQG 3HUPDQHQQW ,QMXQFWLRQ

)(('5\$/ 75\$'( &200,66,21  
6HFRQG \$YH 6XLWH  
6HDWWOH :\$

LQFOXGLQJ WLWOH UROH UHVSQVLELOLWLHV  
RZQHUVKLS

% )RU WZHQW\ \HDEV IROORZLQJ HQWU\ RI WKLV  
FRPSOLDQFH QRWLFH VZRUQ XQGHU SHQDOW\ RI S  
FKDQJH LQ WKH IROORZLQJ

(DFK 'HIHQGDQW PXVW UHSRUW DQ\ FKDQJH LQ  
FRQWDFW RU >E@ WKH VWUXFWXUH RI DQ\ &RU  
'HIHQGDQW KDV DQ\ RZQHUVKLS LQWHUHVW LQ  
PD\ DIIHFW FRPSOLDQFH REOLJDWLRQV DULVLQ  
FUHDWLRQ PHUJHU VDOH RU GLVVROXWLRQ R  
DIILOLDWH WKDW HQJDJHV LQ DQ\ DFWV RU SUD  
\$GGLWLRQDOO\ 'HIHQGDQW ODWWKHZ - /RHZH  
>D@ QDPH LQFOXGLQJ DOLDVHV RU ILFWLWLRX  
U\ WUD ð€3 U E`€ 'P GLP0ÐHUHSR U E`€ 'EH Y”ppP

\$PHULFD WKDW WKH IRUHJRLQJ LV WUXH DQG FRUU  
WKH GDWH VLJQDWRU\TV IXOO QDPH WLWOH LI DS  
( 8QOHVV RWKHUZZLVH GLUHFWHG E\ D &RPPLVVLRQ U  
WR WKH &RPPLVVLRQ SXUVXDQWDEBRef@tk.gov R2W G/H/Q W  
E\ RYHUQLJKW FRXULHU QRW YLD 8 6 3RVWDO 6HU

\$VVRFLDWH 'LUHFWRU IRU (QIRUFHPHQW  
%XUHDX RI &RQVXPHU 3URWHFWLRQ  
)HGHUDO 7UDGH &RPPLVVLRQ  
3HQQV\OYDQLD \$YHQXH 1:  
:DVKLQJWRQ '&  
8QLWHG 6WDWHV RI \$PHULFD

5( FTC v. Loewen 1 R ;

,; 5(&25'.((3,1\*

,7 ,6 )857+(5 25'(5WKDW 'HIHQGDQWV PXVW FUHDWH FH  
\HUV DIWHU HQWU\ RI WKH 2UGHU DQG UHWDLQ HDF  
HDFK &RUSRUDWH 'HIHQGDQW DQG 'HIHQGDQW ODWWKHZ -  
@À 0 °€R €•0@KP•QQQQK @)%`,7 QQXXXP0À| - €P8ÁK 0K€WOIU

&DVH 1R &9 0-3  
)LQDO -XGJPHQW  
DQG 3HUPDQHQQW ,QMXQFWLRQ



\$ 7 7 \$ & + 0 ( 1 7 \$



Pt. 310

16 CFR Ch. I (1...1...13 Edition)

**PART 310, TELEMARKETING SALES  
RULE 16 CFR PART 310**

Sec.

310.1 Scope of regulations in this part.

310.2 Definitions.

310.3 Deceptive telemarketing acts or practices.

310.4 Abusive telemarketing acts or practices.

310.5 Recordkeeping requirements.

310.6 Exemptions.

310.7 Actions by states and private persons.

310.8 Fee for access to the National Do Not Call Registry.

310.9 Severability.

AUTHORITY : 15 U.S.C. 6101...6108.

SOURCE : 75 FR 48516, Aug. 10, 2010, unless otherwise noted.

§310.1 Scope of regulations in this part.

This part implements the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. 6101-6108, as amended.

§ 310.2 Definitions.

(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.

(b) Attorney General means the chief legal officer of a state.

(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.

(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.

(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.

(f) Charitable contribution means any donation or gift of money or any other thing of value.

(g) Commission means the Federal Trade Commission.

(h) Credit means the right granted by a creditor to a debtor to defer payment



Federal Trade Commission

§ 310.3

---

<sup>659</sup> When a seller or telemarketer uses, or directs a customer to use, a courier to trans-

§ 310.3

16 CFR Ch. I (1...1...13 Edition)

---

<sup>661</sup> Truth in Lending Act, 15 U.S.C. 1601 et seq., and Regulation Z, 12 CFR part 226.  
<sup>662</sup>

Federal Trade Commission

§ 310.3

(ii) Express oral authorization which is audio-recorded and made available upon request to the customer or donor, and the customer's or donor's bank or other billing entity, and which evidences clearly both the customer's or donor's authorization of payment for the goods or services or charitable contribution that are the subject of the telemarketing sales, and

§ 310.4

16 CFR Ch. I (1...1...13 Edition)

a charitable organization or to any particular charitable program;

(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

(6) A charitable organization's or telemarketer's affiliation with, or en-

Federal Trade Commission

§ 310.4

(B) The customer owns the funds held in the account and is paid accrued interest on the account, if any;

(C) The entity administering the account is not owned or controlled by, or in any way affiliated with, the debt relief service;

(D) The entity administering the account does not give or accept any money or other compensation in exchange for referrals of business involving the debt relief service; and

(E) The customer may withdraw from the debt relief service at any time without penalty, and must receive all funds in the account, other than funds earned by the debt relief service in compliance with § 310.4(a)(5)(i)(A) through (C), within seven (7) business days of the customer's request.

(6) Disclosing or receiving, for consideration, unencrypted consumer account numbers for use in tele-





Federal Trade Commission

§ 310.4

(1) Automatically adds the number called to the seller's entity-specific Do Not Call list;

(2) Immediately thereafter disconnects the call; and

(3) Is accessible at any time throughout the duration of the telemarketing campaign; and

(iii) Complies with all other requirements of this part and other applicable federal and state laws.

(C) Any call that complies with all applicable requirements of this para-

---

<sup>666</sup> 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.

## § 310.5

## 16 CFR Ch. I (1...1...13 Edition)

an outbound telephone call or internal or external upsell to induce the purchase of goods or services to fail to disclose truthfully, promptly, and in a clear and conspicuous manner to the person receiving the call, the following information:

- (1) The identity of the seller;
- (2) That the purpose of the call is to sell goods or services;
- (3) The nature of the goods or services; and
- (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 and that any purchase or payment will not increase the person's chances of winning. 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; 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.

(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:

- (1) The identity of the charitable organization on behalf of which the request is being made; and
- (2) That the purpose of the call is to solicit a charitable contribution.

[75 FR 48516, Aug. 10, 2010, as amended at 76 FR 58716, Sept. 22, 2011]

## § 310.5 Recordkeeping requirements.

(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:

- (1) All substantially different advertising, brochures, telemarketing scripts, and promotional materials;

(2) The name and last known address of each prize recipient and the prize awarded for prizes that are represented, directly or by implication, to have a value of \$25.00 or more;

(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;<sup>667</sup>

(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 or solicitations; 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

(5) All verifiable authorizations or records of express informed consent or express agreement required to be provided or received under this Rule.

(b) A seller or telemarketer may keep the records required by § 310.5(a) in any form, and in the same 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.

(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).

<sup>667</sup> 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 recordkeeping requirements under the Truth in Lending Act, and Regulation Z, shall constitute compliance with § 310.5(a)(3) of this Rule.

## Federal Trade Commission

## § 310.6

(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.

## § 310.6 Exemptions.

(a) Solicitations to induce charitable contributions via outbound telephone calls are not covered by § 310.4(b)(1)(iii)(B) of this Rule.

(b) The following acts or practices are exempt from this Rule:

(1) 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);

(2) The sale of franchises subject to the Commission's Rule entitled "Disclosure Requirements and Prohibitions Concerning Franchising," (Franchise Rule) 16 CFR part 436, and the sale of business opportunities subject to the Commission's Rule entitled "Disclosure Requirements and Prohibitions Concerning Business Opportunities," (Business Opportunity Rule) 16 CFR part 437, provided, however, that this exemption does not apply to the requirements of §§ 310.4(a)(1), (a)(7), (b), and (c);

(3) 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);

(4) 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;

(5) 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, debt relief services, business opportunities other than business arrangements covered by the Franchise Rule or Business Opportunity 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;

(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; 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, debt relief services, business opportunities other than business arrangements covered by the Franchise Rule or Business Opportunity Rule, or 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; and

(7) Telephone calls between a telemarketer and any business, except calls to induce the retail sale of non-durable 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 non-durable office or cleaning supplies.

## § 310.7

16 CFR Ch. I (1...1...13 Edition)

§ 310.7 Actions by states and private persons.

(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.

(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.

§ 310.8 Fee for access to the National Do Not Call Registry.

(a) It is a violation of this Rule for any seller to initiate, or cause any telemarketer to initiate, an outbound telephone call to any person whose telephone number is within a given area code unless such seller, either directly or through another person, first has paid the annual fee, required by § 310.8(c), for access to telephone numbers within that area code that are included in the National Do Not Call Registry maintained by the Commission under § 310.4(b)(1)(iii)(B); provided, however, that such payment is not necessary if the seller initiates, or causes a telemarketer to initiate, calls solely to persons pursuant to §§ 310.4(b)(1)(iii)(B)(i) or (ii), and the seller does not access the National Do Not Call Registry.

not initially selected. To obtain access to additional area codes of data during the second six months of the annual period, each person required to pay the fee under § 310.8(c) must first pay \$29 for each additional area code of data not initially selected. The payment of the additional fee will permit the person to access the additional area codes of data for the remainder of the annual period.

(e) Access to the National Do Not Call Registry is limited to telemarketers, sellers, others engaged in or causing others to engage in telephone calls to consumers, service providers acting on behalf of such persons, and any government agency that has law enforcement authority. Prior to accessing the National Do Not Call Registry, a person must provide the identifying information required by the operator of the registry to collect the fee, and must certify, under penalty of law, that the person is accessing the registry solely to comply with the provisions of this Rule or to otherwise prevent telephone calls to telephone numbers on the registry. If the person is accessing the registry on behalf of sellers, that person also must identify each of the sellers on whose behalf it is accessing the registry, must provide each seller's unique account number for access to the national registry, and must certify, under penalty of law, that the sellers will be using the information gathered from the registry solely to comply with the provisions of this Rule or otherwise to prevent telephone calls to telephone numbers on the registry.

[75 FR 48516, Aug. 10, 2010; 75 FR 51934, Aug. 24, 2010, as amended at 77 FR 51697, Aug. 27, 2012]

#### § 310.9 Severability.

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.