



July 24, 2013

## FTC: Telemarketing Sales Rule

### Executive Summary

- The Federal Trade Commission (FTC) has issued a notice of proposed rulemaking to amend its Telemarketing Sales rule (TSR), which defines “telemarketing” as “a plan, program, or campaign which is conducted to induce the purchase of goods or services or a charitable contribution, by use of one or more telephones and which involves more than one interstate telephone call.” The TSR applies to covered entities, including state chartered credit unions and third-party telemarketers, whether hired by a federal or state chartered credit union; the TSR does not specifically apply to federal credit unions.
- Specifically, this proposal would prohibit sellers and telemarketers, when they are engaged in “telemarketing” activities on the phone, from accepting or requesting four types of “novel payment methods”: 1) remotely created checks (RCCs), 2) remotely created payment orders, 3) cash-to-cash money transfers, and 4) cash reload mechanisms (e.g., on certain types of prepaid cards).
- The FTC reasoned these novel payments are used by unscrupulous telemarketers and do not offer anti-fraud and liability protections similar to unauthorized credit, debit, or ACH transactions.
- While the proposal does not target depository institutions, including credit unions, CUNA is interested in your comments on how your credit union may be affected, as well as potential effects on the payments system, such as RCCs, which are covered under the Federal Reserve Board (Fed)’s 2011 Regulation CC proposal that has not been finalized, as well as other related rules.
- For further details, please visit the FTC’s [proposal](#) in the [Federal Register](#).
- Comments for the proposal are due to the FTC by August 8, 2013; **please submit your comments to CUNA by August 2, 2013**. Please e-mail your comments to CUNA Assistant General Counsel [Dennis Tsang](#).
- In addition to the ban on novel payments above, the proposal would make these TSR clarifications: 1) specify the recording of a consumer’s express verifiable authorization must include a description of the purchased goods or services; 2) state that a seller or telemarketer bears the burden of demonstrating the seller has an existing business relationship with or an express written agreement from a person with a number listed on the Do Not Call Registry; 3) clarify the business-to-business exemption extends only to calls to induce a sale to or contribution from a business

entity, and not to induce sales to or contributions from individuals employed by the business; 4) emphasize the prohibition against sellers sharing the cost of Do Not Call Registry fees (which are nontransferable) is absolute; and 5) illustrate 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, and related amendments.

- CUNA has prepared some draft discussion points that may be helpful to you as you consider this proposal:
  - The TSR proposal would ban four “novel payment methods” in telemarketing activities over the phone, and make a number of clarifications.
  - We generally support the intent of the proposed TSR amendments that would limit the activities of unscrupulous telemarketers that defraud consumers.
  - The proposed rule does not target depository institutions, including credit unions. We are not aware that credit unions use these payment methods in telemarketing.
  - However, we have some concerns about potential effects and unintended consequences from this rule on the broader payments system. These proposed prohibitions could impact or reduce legitimate uses of emerging payment methods.
  - We urge the FTC to coordinate closely with the Fed, CFPB, depository institutions, and other stakeholders to minimize the effects on the payments system.
  - For example, there is great uncertainty on the regulation of RCCs that are covered under the Fed's 2011 Regulation CC proposed rule that has not been finalized, as well as other related rules.
  - Also, the FTC could take targeted enforcement actions on unscrupulous telemarketers that use these payment methods.

### Questions to Consider Regarding the Proposal

1. Does your credit union support this proposed rule? Will your credit union be impacted in any way by this rule?  

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2. Do you have any comments on the potential impact on the payments system or other payments regulations, such as the Fed's 2011 Regulation CC proposed rule that has not been finalized, as well as other related rules?  

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3. Any other comments or feedback?  

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Thank you for your comments.