



June 28, 2002

Office of the Secretary
Room 159
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington D.C. 20580

Re: Telemarketing Sales Rule User Fees
67 FR 37362 (May 29, 2002) 16 CFR Part 310

Dear Madam or Sir:

America's Community Bankers ("ACB")¹ welcomes the opportunity to comment on the Federal Trade Commission's ("FTC" or the "Commission") proposed amendments to the Telemarketing Sales Rule.² The Commission is seeking comment on proposed user fees on telemarketers and their clients for access to a proposed national "do-not-call" registry under consideration.

ACB Position

ACB opposes the imposition of user fees on telemarketers to access a list of consumers who have indicated a preference not to receive telemarketing calls from organizations subject to FTC jurisdiction. Such fees represent an unjustifiable business tax on organizations that choose to utilize telemarketers to contact their customers. Moreover, many issues remain unresolved from an earlier released proposed telemarketing rule to credibly establish a fee structure to fund the development and operation of the proposed registry system. ACB urges the Commission to resolve the myriad of issues stemming from the January proposal³ prior to considering telemarketing registry user fees.

¹ ACB represents the nation's community banks of all charter types and sizes. ACB members, whose aggregate assets exceed \$1 trillion, pursue progressive, entrepreneurial and service-oriented strategies in providing financial services to benefit their customers and communities.

² 67 Fed. Reg. 37362 (May 29, 2002).

³ 67 Fed. Reg. 44926 (Jan. 30, 2002).

Background

The current Telemarketing Sales Rule (“TSR”) became effective in 1995 pursuant to the Telemarketing Act⁴. The Telemarketing Act required the Commission to develop regulations that would prohibit telemarketers from undertaking “a pattern of unsolicited telephone calls which the reasonable consumer would consider abusive of the consumer’s right to privacy.” The TSR rule imposes a variety of disclosures and requires companies that engage in telemarketing to maintain their own “do-not-call lists.” Under this approach, telemarketers are prohibited from calling consumers who demand not to be called by or on behalf of a particular seller. Other companies, however, may lawfully call that same consumer until he or she requests each of them not to call.

On January 30, 2002, the Commission issued proposed amendments to the TSR⁵ that anticipated the establishment of a national “do-not-call” registry. The proposed rule would expand the current company-specific “do-not-call” requirement by allowing consumers to join a central “do-not-call” registry maintained by the FTC. Unlike the current regulation, the proposal is not company specific. All companies under FTC jurisdiction would be required to “scrub” their lists and remove all consumers who have placed themselves on the FTC’s registry. Therefore, all telemarketers would be barred from calling a consumer on the national registry unless the consumer has expressly requested to be called by or on behalf of a specific seller or charitable organization. Additionally, the January proposed amendments to the TSR prohibited other telemarketing practices such as blocking caller identification services.

Community Banks and Telemarketing

In today’s increasingly competitive financial marketplace, some community banks have begun to utilize limited telemarketing to offer services such as reduced mortgage rates, higher CD returns, and other products to keep customers. These same community banks often outsource their telemarketing operations to reduce costs. Community banks and other federally regulated financial institutions are exempt from the Telemarketing Act, and therefore would not be subject to implementing telemarketing regulations. The FTC, however, has taken the position that telemarketing regulations do apply to third parties that act on behalf of financial institutions. As a result, the proposed amendments to the Telemarketing Sales Rule will negatively impact community banks that contract with third parties for the performance of telemarketing services. These institutions will be forced to develop an in house telemarketing system to be able to place a marketing call to an existing customer who is on the national registry.

Issues From Original Telemarketing Sales Rule Proposal Must Be Addressed

The Commission will endeavor to recover the full cost of creating and implementing the registry. Based on a request for information, — which is not part of the public record,

⁴ 15 USC 6102(a)(3)(A).

⁵ 67 Fed. Reg. 4492 (Jan. 30, 2002).

nor subject to public disclosure — the Commission estimates the cost to develop and implement a national registry will be approximately \$5 million in the first year. No estimate is provided for ongoing operation of the national registry. Based on this information, the Commission has proposed an annual fee structure that would range from no-charge to access one to five area codes, up to a maximum of \$3,000 for 250 area codes of data or more. ACB believes that these estimates may grossly underestimate the cost to develop and operate a national registry system in light of several outstanding issues that remain from the TSR proposal issued in January.

Listed below is a detailed summary of ACB's issues and concerns stemming from the January TSR. ACB opposes the TSR issued in January that would prohibit a financial institution's agent from contacting its current customers who have joined the "do-not-call" registry. Therefore, ACB strongly opposes requiring the agent of a financial institution to pay a fee to contact the institution's current customers whose costs would eventually be passed on to the client financial institution. Additionally, ACB strongly urges the Commission to develop a TSR that will preempt state law in order to eliminate the enormous compliance burdens and consumer confusion a state-by-state "do-not-call" process would create.

I. Contacting Existing Customers

ACB strongly urges the Commission not to prohibit a financial institution's agent, subsidiary, or affiliate from contacting the institution's customers who join the national do-not-call registry. Because the proposed amendments will apply to a third party that acts on behalf of a financial institution, banks will be unable to contact their own customers via outside telemarketing firms. As a result, telemarketing costs will increase and consumers will be negatively affected. Specifically, community banks that currently outsource their telemarketing operations to reduce costs will be forced to develop an in house telemarketing capabilities to place a marketing call to an existing customer who is on the national registry.

Furthermore, consumers who indicate a preference for not receiving telemarketing calls may welcome special offers from companies with whom they currently do business. For example, under the proposed rule, a customer who is placed on the centralized "do-not-call" list will be unable to receive a call from an agent of his or her bank offering reduced mortgage rates, higher CD returns, or more efficient, enhanced products.

Accordingly, the FTC should revise the TSR proposed amendments to allow banks, which Congress specifically exempted from the Telemarketing Act, to use third parties to contact customers who have joined the national "do-not-call" registry. Furthermore, in order to preserve the Gramm-Leach-Bliley Act's financial modernization provisions, all members of a corporate family should be permitted to call individuals on the "do-not-call" list that have an established customer relationship with any subsidiary or affiliate.

II. Centralized "Do-Not-Call" List Should Preempt State Law

The proposed rule's attempt to establish a national "do-not-call" list would complicate, rather than centralize, the "do-not-call" process. Currently, telemarketers are subject to the existing Telemarketing Sales Rule and a patchwork of state telemarketing laws. As of January 2002, twenty states had passed "do-not-call" statutes and seven others considering "do-not-call" legislation. As a result, telemarketers must examine multiple databases just to determine whether a marketing call may be placed to an individual. The proposed rule will merely add to this complex process. Therefore, the FTC should not establish another "do-not-call" list without addressing this problem. If the FTC decides to adopt the "do-not-call" list approach, ACB strongly urges the Commission to preempt state "do-not-call" requirements.

Conclusion

ACB appreciates the opportunity to comment on this important matter and supports the efforts of the FTC to develop a telemarketing rule that protects consumers' interests, while minimizing the impact on business and community banks. We stand ready to work with the FTC as it develops its final rule. Should you have any questions on this subject, please contact the undersigned at 202-857-3121 or via email at cbahin@acbankers.org; or Rob Drozdowski at 202-857-3148 or via email at rdrozdowski@acbankers.org.

Sincerely,



Charlotte M. Bahin
Director of Regulatory Affairs
Senior Regulatory Counsel