ROBERTA MEYER
SENIOR COUNSEL, RISK CLASSIFICATION
robbiemeyer@acli.com

February 26, 2004

Via Electronic Mail

Federal Trade Commission
Office of the Secretary
Room 159-H (Annex D)
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: Monthly Registry Access, Project No. R411001

Ladies and Gentlemen:

These comments are submitted on behalf of the American Council of Life Insurers ("ACLI") in connection with the notice of proposed rulemaking regarding Monthly Registry Access, Project No. R411001. The ACLI is the principal trade association of life insurance companies whose 368 member companies account for 69 percent of life insurance premiums and 76 percent of annuity considerations in the United States among legal reserve life insurance companies. ACLI members are also major participants in the pension, long term care insurance, disability income insurance and reinsurance markets.

As you are aware, as insurers, ACLI member companies are not subject to the Telemarketing Sales Rule ("TSR"). However, a number of our member companies use telemarketing firms that may be subject to the TSR and that may be subject to the proposed amendment to the TSR set forth in the above-mentioned notice. As a result, a number of ACLI member companies may be indirectly impacted by the proposed amendment to the TSR.

The notice seeks comment on two issues: (1) whether the TSR's Do Not Call safe harbor provision, 16 CFR § 310.4(b)(3)(iv), should be amended by using the phrase "thirty (30) days" rather than the term "monthly" which is used in the Consolidated Appropriations Act of 2004 ("Act"); and (2) the appropriate effective date of the proposed amendment. 69 *Fed. Reg.* 7330 (February 13, 2004).

USE OF THE TERM "30 DAYS" WILL COMPLICATE COMPLIANCE

In connection with the first issue, amendment of 16 CFR § 310.4(b)(3)(iv) to require use of a registry obtained from the administrator " ... no more than thirty (30) days prior to the date any call is made" will not provide clarity and precision as to telemarketers' compliance obligations, as suggested in the notice, but instead will have the opposite effect. Compliance with a thirty day rule will be confusing and extremely difficult to effectuate both because of the short time frame and the fact that the thirty day periods will not be in sync with calendar months. Requiring such a timeframe without flexibility is likely to prove complex and will be counterproductive to the smooth implementation of the TSR.

For example, if the 30 day requirement were to have been effective 1/1/04, it would have required do not call downloads on the following days in 2004: Thursday, 1/1; Saturday 1/31; Monday 3/1; Wednesday 3/31; Friday 4/30; Sunday, 5/30; Tuesday 6/29, etc. The use of the term "30 days" is inconsistent with the need for businesses to be able to routinize the procedure for obtaining downloads and implementing the necessary changes. For example, businesses may have established procedures for downloading the do not call registry on the first day of the month. The use of "30 days" will require businesses to revise the procedures they just recently established and implement a new procedure.

Moreover, the language of the Act only requires that the Federal Trade Commission ("Commission") to " … amend the Telemarketing Sales Rule to require telemarketers subject to the Telemarketing Rule *to obtain* from the Federal Trade Commission the list of telephone numbers on the "do-not-call" registry *once a month." (Italics added.)* The Act does not mandate that the safe harbor provision be amended to require that telephone solicitations themselves be based on a registry that is no more than a month or 30 days old. Moreover, your notice does not cite any specific legislative history that suggests that Congress intended that the Commission amend the TSR to require that permissible telephone solicitations must be made within a month or 30 days of receipt of a telemarketer's receipt of the registry from the administrator.

Because our reading of the legislation is that the Commission has flexibility to take into account operational considerations of those who must implement the TSR, in order to facilitate compliance, the ACLI urges that the safe harbor language of 16 CFR § 310.4(b)(3)(iv) be amended to read in pertinent part as follows:

> " … employing a version of the "do-not-call" registry obtained from the Commission during the current calendar month or the calendar month immediately preceding the month in which the call is made, …"

This will still result in substantial decrease in the interval between the time a consumer's telephone number is entered onto the registry and when telephone solicitations must cease. Consumers will reap considerable benefits by virtue of the shortened timeframe from the present requirement and the increased operational flexibility businesses will have to determine what telephone numbers to purge from calling lists.

At a minimum, the ACLI urges that some flexibility be allowed and that 16 CFR 310.4(b)(3)(iv) be amended to read in pertinent part as follows:

> " … employing a version of the "do-not-call" registry obtained from the Commission either during the calendar month in which the call is made or no more than thirty (30) days prior to the date any call is made, …

IMPLEMENTATION DATE

The second issue on which the Commission's notice seeks comment is the appropriate effective date for the amendment. The ACLI believes that telemarketers may need an extended period to make the necessary modifications to their systems to come into compliance with the amended provision. However, given the shortness of the comment period, we have been unable to ascertain the precise time period that may be required for companies to comply with the requirement. Accordingly, in the interests of assuring that ample time is provided to implement operational changes, the ACLI recommends that the amendment be effective no earlier than one year after promulgation of the Amended Rule.

The ACLI thanks the Commission for its consideration of our concerns.

Sincerely,

70/6 TSR