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March 29, 2002

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

Re: Telemarketing Sales Rule
67 FR 4492 (January 30, 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 proposed changes are issued pursuant to the Telemarketing Consumer Fraud and Abuse Prevention Act's³ ("Telemarketing Act" or the "Act") rule review requirement. The Commission seeks comment as to whether the proposed modifications to the Telemarketing Sales Rule address consumer protection issues without imposing unnecessary compliance burdens on the legitimate telemarketing industry.

ACB opposes the provisions that will preclude a bank's agent, affiliate, or subsidiary from contacting consumers with whom an institution has an established customer relationship. Additionally, ACB strongly urges the FTC to preempt the myriad of existing state telemarketing laws.

Background

The current Telemarketing Sales Rule became effective in 1995 pursuant to the Telemarketing Act. The 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."⁴

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. 4492 (Jan. 30, 2002).

³ 15 USC 6101-6108.

⁴ 15 USC 6102(a)(3)(A).

Because banks and other federally regulated financial institutions are exempt from the Telemarketing Act, they are not subject to the implementing Telemarketing Sales Rule. The FTC, however, has taken the position that the Telemarketing Sales Rule does 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 banks that contract with third parties for the performance of telemarketing services.

The current Telemarketing Sales Rule imposes a variety of disclosure requirements 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.

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.⁵ 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 will 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.

ACB Positions

1. Banks Should Be Permitted To Employ Telemarketers To Contact 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 system to be able to place a marketing call to an existing customer who is on the national registry.

Furthermore, consumers generally claiming that they would like to stop 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.

⁵ 16CFR 310.4(b)(1)(B).

Accordingly, the FTC should revise the amendment 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.

2. Any 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.

Thank you for your attention on this important matter. Should you have any questions on this subject, please contact the undersigned at 202-857-3121 or via email at cbahin@acbankers.org; Krista Shonk at 202-857-3187 or via email at kshonk@acbankers.org.

Sincerely,



Charlotte M. Bahin
Director of Regulatory Affairs and
Senior Regulatory Counsel