cfpb Consumer Financial Protection Bureau

1700 G Street, N.W., Washington, DC 20552

February 3, 2014

Donald S. Clark
Secretary of the Commission
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: Telemarketing Sales Rule, 16 C.F.R. Part 310, Project No. R411001

Dear Mr. Secretary:

The Consumer Financial Protection Bureau (the Bureau) is pleased to comment on the notice of proposed rulemaking by the Federal Trade Commission (the Commission) that was published in the *Federal Register* on July 9, 2013.[1] The Bureau shares the Commission's interest in protecting consumers from being harmed through the use of certain payment methods in telemarketing sales, while preserving appropriate access to payment devices for consumers who purchase items from legitimate telemarketers. This letter offers additional perspective on the portion of the Commission's proposal regarding remotely created checks (RCCs) and remotely created payment orders (RCPOs).

Once a telemarketer has obtained a consumer's checking account number, it can draw funds from the account in three ways: 1) by initiating an automated clearing house (ACH) transaction; 2) by creating an RCC; or 3) by creating an RCPO. To the extent that the Commission's proposal to prohibit telemarketers from using RCCs and RCPOs shifts telemarketing payments from the check-collection system into the ACH network, different rules and monitoring mechanisms will apply to the payments, as described accurately and in detail in the Commission's proposal. The Bureau agrees with the Commission that RCCs and RCPOs pose greater risk to consumers in telemarketing sales than ACH transactions, and therefore believes that the Commission's proposal to prohibit these methods of debiting a consumer's account in telemarketing sales will better protect consumers from potential harms.

[1] 78 FR 41200, July 9, 2013.

The Commission's proposal specifically requested comment on whether its proposed RCC and RCPO definitions adequately, precisely, and correctly describe the payment mechanisms and requested suggestions on how the Commission could improve the definitions.[2] The Commission's proposal defined an RCPO as follows—

> A payment instruction or order drawn on a person's account that is initiated or created by the payee and that does not bear a signature applied, or purported to be applied, by the person on whose account the order is drawn, and which is deposited into or cleared through the check clearing system. The term does not include payment orders cleared through the Automated Clearinghouse Network or subject to the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR part 1026.[3]

The Bureau believes that the RCC and RCPO definitions ultimately adopted by the Commission should not hinge on the presence or absence of the consumer's signature, because limiting the definition in such a way could raise evasion concerns. Specifically, unscrupulous telemarketers could conceivably avoid the scope of the Commission's proposed prohibition by creating and submitting into the check-clearing system items that purport to bear a signature, electronic or otherwise, applied by the consumer. The Bureau recommends that the definition be revised accordingly. The first sentence of the RCPO definition, for example, could be revised to refer simply to a payment instruction or order that is initiated or created by the payee and that is deposited into or cleared through the check-clearing system. If this recommendation were accepted, then the revised text would read as follows—

> A payment instruction or order that is initiated or created by the payee and which is deposited into or cleared through the check clearing system.

The Bureau thanks the Commission for the opportunity to comment.

Sincerely,

David Silberman
Associate Director
Division of Research, Markets and Regulations

---

[2] 78 FR 41200, 41222.
[3] 78 FR 41200, 41224.