



August 8, 2013

Federal Trade Commission
Telemarketing Sales Rule
16 CFR Part 310
Project No. R411001

<https://ftcpublic.commentworks.com/FTC/tsrantifraudnprm>

AARP¹ is pleased to provide the following comment in strong support of the Proposed Telemarketing Sales Rule Changes.² Telemarketers pose a serious threat to the financial security of older people. Even those who are informed about telemarketing fraud and take efforts to protect themselves are at risk because telemarketers are increasingly sophisticated and it has become too easy to access bank accounts. AARP has consistently advocated for stronger protection against practices that endanger the financial security of older Americans, including strengthening the Telemarketing Sales Rule.

In particular, AARP strongly supports the FTC proposals to:

- prohibit telemarketers and sellers in both inbound and outbound telemarketing calls from accepting or requesting remotely created checks, remotely created payment orders, money transfers, and cash reload mechanisms as payment;
- expand the scope of the advance fee ban on recovery services (now limited to recovery of losses sustained in prior telemarketing transactions) to include recovery of losses in *any* previous transaction;
- require more extensive disclosure regarding a consumer's express verifiable authorization.

AARP further urges the FTC to strengthen protections against deceptive sales practices regarding express verifiable authorization. In particular, the FTC proposes to require that the disclosure portion of a telemarketing call that is recorded include a description of the goods or services

¹ AARP is a nonprofit, nonpartisan organization with a membership that helps people turn their goals and dreams into real possibilities, strengthens communities and fights for the issues that matter most to families such as healthcare, employment and income security, retirement planning, affordable utilities and protection from financial abuse.

² <http://www.ftc.gov/os/2013/05/130521telemarketingsalesrulefrn.pdf>.

purchased. This is an improvement over current disclosures, but it is insufficient. AARP urges the FTC to require that the entire call be recorded because people who are susceptible to telemarketing fraud are more likely to be interested in persuasion statements used by conmen and sales people.³ For this reason, they will have been susceptible to statements made earlier in the phone call, which may neutralize statements made in the formal disclosures, or the sales person may downplay the importance of the formal disclosures prior to recording. It is necessary to record the full call in order to discern whether such tactics are being used to commit telemarketing fraud.

Older People Are Often Targets of Telemarketing Fraud

Diminished capacity, dependency on others, and social isolation combined with the fact that people age 50 and older have a lifetime of savings to lose make older people targets for financial exploitation. While they are not the only ones susceptible to telemarketing fraud, older people are likely to have many of the characteristics that make a person particularly susceptible to it:⁴

- Mild cognitive impairment;
- Social isolation, boredom, loneliness;
- Enjoyment of the attention and perceived companionship of telemarketers;
- Socialization to be trusting, polite, not to lie, and to expect the same from others;
- Respect for authority;
- Distrust of the government;
- Desire to keep financial activities hidden from scrutiny by family members or government agencies;
- Resentment of anyone questioning their behavior;
- Need not to appear foolish or unintelligent;
- Need for financial security.

AARP studies have confirmed that education alone will not protect older people from telemarketing fraud.⁵ Indeed, “there is always a hard core of victims whose behavior cannot be changed by messages.”⁶

It is not so much that victims are stupid nor have a particular “victim profile.” In fact, con artists prefer intelligent people because they are more likely to have money and because they think they are too smart to get scammed. It may be more that the good fraudulent telemarketer is effective in weaving a plausible pitch designed to match the idiosyncrasies revealed by the particular victim. Good con artists invest a lot of time figuring out which kinds of people are most vulnerable to which kinds of scams. They learn their trade by

³ Karla Pak and Doug Shadel, *AARP Foundation National Fraud Victim Study*, AARP Research and Strategic Analysis, 30 (2011), available at <http://assets.aarp.org/rgcenter/econ/fraud-victims-11.pdf>.

⁴ See *Off The Hook: Reducing Participation in Telemarketing Fraud*, AARP Foundation, A-18 (2003), available at http://assets.aarp.org/rgcenter/consume/d17812_fraud.pdf.

⁵ See Robert N. Mayer, *Defending Your Financial Privacy: The Benefits and Limits of Self-Help*, AARP Pub. Pol. Inst. (2006), available at http://assets.aarp.org/rgcenter/consume/2006_06_privacy.pdf.

⁶ Off the Hook at A-21.

seeing how much information they can get out of any individual and maneuvering their pitches in response.

Id.

In light of this reality, AARP strongly supports the proposed Telemarketing Rule Proposed Changes, which prohibit the use of novel payment methods against which it is hard for older people to protect themselves.

The Proposed Rule Addresses Payment Methods That Do Not Include Adequate Consumer Protections

AARP agrees with the FTC that “novel payment methods,” such as remotely created checks, remotely created payment orders, cash-to-cash money transfers, and cash reload mechanisms pose a significant threat to potential victims of telemarketing fraud. In particular, these payment methods are not subject to the consumer protections that apply to more conventional payment methods such as checks, credit cards, and debit cards.

Because banks have limited liability for fraud committed using novel payment methods, they have not established controls to detect fraud, such as those employed to combat credit card and debit card fraud. Telemarketing fraud is therefore enabled by the use of such payment methods.

Because consumers are not well protected when novel payment methods are used, and legitimate businesses have access to a variety of other payment methods that do provide consumers with more robust protections, the benefit to consumers of the proposed rule outweighs the burden to businesses in complying with this rule.

Conclusion:

The Telemarketing Sales Rule Proposed Changes are vitally needed to help combat fraud targeted disproportionately at older people. AARP strongly supports adoption of the rule, and urges the FTC to require that telemarketing calls be recorded in their entirety.

For further information, please feel free to contact Cristina Martin-Firvida at 202-434-6194.

Sincerely,

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