

# FTC Petition

This petition is being made under Executive Order 13563.

This petition is also made under the FTC's Regulatory Reform Program.

Petitioners are requesting a review of The Telephone Sales Rule 16 CFR 310.4 (a) (2)

Petitioners seek to petition the FTC to review and strike the following text:

*§ 310.4 Abusive telemarketing acts or practices.*

*(2) Requesting or receiving payment of any fee or consideration for goods or services represented to remove derogatory information from, or improve, a person's credit history, credit record, or credit rating until:*

*(i) The time frame in which the seller has represented all of the goods or services will be provided to that person has expired; and*

*(ii) The seller has provided the person with documentation in the form of a consumer report from a consumer reporting agency demonstrating that the promised results have been achieved, such report having been issued more than six months after the results were achieved. Nothing in this Rule should be construed to affect the requirement in the Fair Credit Reporting Act, 15 U.S.C. 1681, that a consumer report may only be obtained for a specified permissible purpose;*

Although TSR 16 CFR 310 last came for review in 2014 and therefore is not due for review until 2024, there is precedent to accelerate reviews according to former FTC Chairman Jon Leibowitz and Former FTC Commissioner William Kovacic prepared statement "The FTC's Regulatory Reform Program" July 7, 2011.

The FTC Regulatory Reform Program Seeks to answer 4 questions during review:

- What is the economic impact of the rule or guide?
- Is there a continuing need for the rule or guide?
- Are there possible conflicts between the rule or guide and state, local, or other federal laws or regulations?
- Has the rule or guide been affected by any technological, economic, or other industry changes?

The Petitions would like to comment on the four questions posed for rules.

**First: What is the economic impact of the rule or guide?**

The Telephone Sales Rule 16 CFR 310.4 (a) (2) proceeded the Credit Repair Organizations Act (CROA) LAW by one year. CROA has been widely believed to have "replaced" the TSR regulation. Since the TSR was for the most part not enforced for the first 20 years, the credit repair industry assumed it was "replaced" by CROA and virtually all business models and state laws were modeled around CROA. Only in the most recent few years has this antiquated law begun to be enforced causing confusion in the marketplace. As the regulation limits the contact between consumers and businesses, the result is that consumers are less informed about services they wish to purchase as they are prevented from speaking with Credit Service Organizations (CSO) accept in person. Additionally forcing compliance to this rule after 20 years would effectively end an entire industry. Forcing a business to wait until the end of its 6 month contract and then wait an additional 6 months, thereby waiting 1 full year for payment of services causes a massive undue burden on a business and is not a sustainable business model. Further, Credit Bureaus rarely grant CSO's the ability to directly obtain consumer credit reports, so when the rule advises that the business must obtain a consumer credit report 6 months later, it is imposing an impossible burden on the CSO.

**Second: Is there a continuing need for the rule or guidance?**

No, the industry for over 2 decades has adopted and complied with the Credit Repair Organizations Act LAW which has provided sufficient regulation and compliance. In 2018 the FTC gave a compliance speech at a credit repair trade conference. In that speech the FTC advised the credit repair industry to be compliant with the FTC Act and the Credit Repair Organizations Act, but at no point advocated compliance with the TSR 16 CFR 310.4 (a) (2). In point of fact the FTC did mention TSR twice in the presentation, but both times referred to the TSR as a regulation that governs the debt settlement industry.

**Third: Are there possible conflicts between the rule or guide and state, local, and other federal laws or regulations?**

Absolutely! The industry and most states have adopted compliance with CROA Law. Not a single state has codified TSR Rule 16 CFR 310.4 (a) (2) into law. In fact, the recent enforcement of this ancient regulation has caused great confusion within the marketplace. Even the regulators charged with enforcement are unsure how it applies to the marketplace as there have been significant enhancements to communication modalities.

**Fourth: Has the rule or guide been affected by any technological, economic, or other industry changes?**

When the rule was written, the credit bureau dispute process consisted of the credit bureaus United States Postal Service mailing out dispute verification forms to furnishers and waiting for the USPS return of those forms. The delay in mail investigations caused some items to be re-inserted after the investigation had closed and the item was removed then subsequently the forms arrived in the mail. Since the evolution of technology and the internet, re-insertions are extremely rare. This could be easily verified by reaching out to a major credit bureau and asking them to provide the yearly number of re-insertions verses the number of processed disputes in that same time. The number will be infinitesimally small. Since the regulation was aimed at protecting consumers from these later re-insertions, the purpose of the law is no longer applicable.

The below main petitioner and the attached subsequent petitioners hereby formerly request an accelerated retrospective review of The Telephone Sales Rule 16 CFR 310.4 (a) (2).

Sincerely,



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