August 8, 2013

Federal Trade Commission
Office of the Secretary
Room H-113 (Annex B)
600 Pennsylvania Avenue NW
Washington, DC 20580

Re: Telemarketing Sales Rule, 16 CFR Part 310, Project No. R411001 (Remotely Created Checks and other items), RIN 3084-AA98, 78 Fed. Reg. 41200 (July 9, 2013)

Dear Mr. Secretary:

The undersigned consumer, civil rights and community organizations thank you for the opportunity to comment on the Federal Trade Commission's (FTC) proposed amendments to the Telemarketing Sales Rule (TSR). We support the proposals to strengthen protections against fraud perpetrated through telephone calls, and we also urge the FTC to go farther to prevent unfair, deceptive and fraudulent practices.

We support the proposal to ban telemarketers from using remotely created checks (RCCs), remotely created payment orders (RCPOs), money transfers and cash reload mechanisms. RCCs and RCPOs should be banned in all consumer transactions. The FTC should work with the Consumer Financial Protection Bureau and the Federal Reserve Board to put a complete stop to RCCs and RCPOs, which have few legitimate uses for which other payment systems could not substitute. RCCs and RCPOs are heavily used by scammers and others who wish to avoid the consumer protections and fraud prevention mechanisms associated with modern electronic payment devices. Fraudulent schemes that take place solely on the internet and do not involve a telephone call also rely on RCCs and RCPOs to perpetrate that fraud. Internet payday lenders use those devices when consumers exercise their right to revoke authorization for electronic payments or to dispute unauthorized charges. Money transfer systems and prepaid card cash reload packs have legitimate uses but have been heavily used by nefarious telemarketers and sellers to obtain payment from defrauded consumers in an anonymous fashion that leaves the consumers with no recourse.

The payment system ban should apply to sales initiated by email or other methods that do not use a telephone. As the FTC described in connection with recovery services scams, modern scams may take place entirely over the internet or through email without using a telephone. Though the TSR rule itself may have a limited scope, the FTC should send a strong statement that it is unfair and deceptive to use the four payment systems described in any sales context.

The FTC should strengthen the rules against assisting or facilitating use of the banned payment methods. A ban that applies only to the sellers and telemarketers themselves is insufficient. Payment processors and the banks that originate RCCs and RCPOs should be strictly liable for processing unlawful payments. The FTC should also ensure that wire transfer and cash reload providers have an incentive to monitor and stop fraudulent payments when there are patterns of misuse. Studies show a strong correlation between those payment methods and fraud. At a minimum, money transfer businesses should have a duty to inquire about the purpose of the transfer and to stop any transfers banned by the TSR rule.

We support the proposal to ban advance fees charged for purported help in recovering losses in connection with prior internet scams. The existing recovery services rule addresses only scams under which a consumer is promised help in recovering lost money, prizes or merchandise in connection with prior telemarketing sales. But as these scams increasingly take place over the internet, the advance fee ban should apply to all offers of recovery services regardless how the original loss occurred.

Changes are needed to prevent evasions of the TSR and Do Not Call Registry. We support the proposed amendments that would (1) require that the goods or services being purchased be verified in the recording of the consumer's consent; (2) put the burden on the telemarketer to prove that the call is exempt from the Do Not Call (DNC) ban; (3) exclude calls to individual employees from the business-to-business exemption from DNC; (4) prohibit all sharing of DNC registry fees; (5) provide examples of impermissible interference on consumers who seek to be on a company's specific do-not-call list.

The FTC should open a broader rulemaking to address other unscrupulous sales practices. We thank the FTC for the improvements that it has already proposed for the TSR. But the rule is antiquated and in drastic need of improvement in other areas. Among other areas that need addressed:

- <u>Negative option billing</u>. Consumers are routinely defrauded when they do not realize that they have purportedly agreed to have goods or services (that they may not even want) sent to them automatically, placing the burden on them to either pay for the items or return them.
- <u>Selling personal financial information to third parties</u>. Businesses should be banned from selling personal financial account information to third parties.
- <u>Upselling</u>. The FTC should also address a number of other unscrupulous upselling practices that induce consumers into purchasing items they do not want.
- <u>Mandatory arbitration and class action bans</u>. The FTC should ban mandatory arbitration clauses and class action bans in transactions under the TSR. Scammers routinely violate the law, consumers cannot get adequate relief through arbitration, and the FTC cannot protect every consumer.

The growth of the internet has spawned a wide variety of frauds that are not adequately addressed by older reforms against telemarketing frauds.

The FTC should strengthen the regulation of debt relief services to address abuses and evasions that have become problematic since the rules were last issued. In particular, the FTC should eliminate the exemption for agreements consummated in face-to-face meetings and should require payment for installment settlements to be made in proportion to each installment made as the creditor is paid. Consumers who enter these contracts are under financial duress and may feel that they have no alternative but to accept such limitations on their rights.

Thank you for proposing important improvements in the protections under the Telemarketing Sales Rule. We support the proposal and urge the FTC to consider the additional measures we have described. We would appreciate the opportunity to meet with you discuss other problems that need attention.

Yours very truly,

Americans for Financial Reform
Arkansans against Abusive Payday Lending
Chicago Consumer Coalition
Consumer Action
Consumer Federation of America
Consumers Union, the Advocacy and Policy Arm of Consumer Reports
Maryland Consumer Rights Coalition
National Consumer Law Center (on behalf of its low income clients)
National Association of Consumer Advocates
Public Citizen
Public Justice Center
Florida Consumer Action Network
US PIRG
Utah Coalition of Religious Communities