

Thus, for a variety of reasons, a consumer's credit report may not be changed, even though the original furnisher has documentation requesting such a change to occur. The Commission, therefore, has revised the initially proposed Rule to require the examination of a consumer's credit report, to determine if the services have been provided, before the seller or telemarketer may request or receive payment from the customer.

A number of commenters suggested amending this Section to clarify that it does not apply to credit monitoring services.<sup>91</sup> The Commission did not intend to limit the actions of such legitimate services, and does not believe this Section would prohibit such services.

Other commenters stated that this provision may inadvertently prohibit the telemarketing of secured credit cards, harming consumers who use such cards to develop a satisfactory credit record.<sup>92</sup> In fact, these commenters suggested an exemption to this provision for the telemarketing of secured credit cards by depository institutions. The Commission does not believe such an exemption is necessary, because banks, savings and loans, and Federal credit unions are outside of the jurisdiction of the FTC, and are therefore not covered by the Rule.<sup>93</sup>

(d) *Recovery room services.* The next abusive practice prohibited by the initially proposed Rule involved recovery room scams.<sup>94</sup> In these operations, a fraudulent telemarketer will call a consumer who has lost money in a previous scam and make false promises that the telemarketer can recover that money, in exchange for a fee paid in advance. After the fee is paid, the promised services are never provided. As law enforcement commenters noted, the recovery scheme is especially abusive, targeting particularly vulnerable victims, including the elderly.<sup>95</sup>

A number of financial institutions requested clarification that this Section does not apply to legitimate debt collection activities.<sup>96</sup> In addition, another commenter opined that this Section, as proposed, could impair the ability of newspapers to accept

classified ads for lost and found items.<sup>97</sup> The Commission believes that changing the phrase "induce payment" to "induce purchase" in the definition of "telemarketing" clarifies that debt collection practices are not the types of telemarketing practices at issue in this Rule. Furthermore, the Commission is revising this Section to make it applicable only to recovery services that promise the return of money or other items of value paid for or promised to the consumer in a previous telemarketing transaction. Thus, this Section will not apply to attempts to recover money or items lost outside of telemarketing.

The initially proposed Rule prohibited sellers or telemarketers from requesting or receiving payment of any fee for recovery services until three days after the recovered money or other item is delivered to the consumer. AARP noted that the three-day period may be insufficient to protect consumers, and asked that the Rule allow the minimum time necessary for out-of-state checks to clear.<sup>98</sup> The Commission agrees, and has lengthened the time period that must elapse before providers of such services can request payment from consumers to seven business days after delivery of the recovered money or other item of value.

Finally, the initially proposed Rule provided an exemption from this Section for licensed attorneys or licensed private investigators pursuant to a written agreement with the consumer. Some commenters believed that private investigators should not be exempt, because such an exemption would only lead to fraudulent recovery services signing up with unscrupulous private investigators as a method of evading this prohibition.<sup>99</sup> The Commission agrees, and has removed the exemption for private investigators.

(e) *Advance fee loans.* Section 310.4(a)(5) of the initially proposed Rule prohibited any seller or telemarketer from requesting or receiving payment of any fee or consideration in advance of obtaining a loan or any credit service when the seller or telemarketer has guaranteed or represented a high likelihood of success in obtaining or

arranging a loan or credit service for a person.<sup>100</sup> DMA urged that the Commission clarify that this Section does not apply to services, such as monitoring or counseling, that are not represented to improve a person's credit history.<sup>101</sup> The Commission did not intend for such services to be covered, and is changing the phrase "credit service," used in the initially proposed Rule, to "extension of credit." In this manner, the application of this prohibition only to loans or other extensions of credit will be clearer.<sup>102</sup>

(f) *Prize distribution.* The next prohibited abusive practice included in the initially proposed Rule concerned the distribution of prizes during a prize promotion. Section 310.4(a)(6) of the initially proposed Rule required any seller or telemarketer conducting such promotions to distribute all prizes or purported prizes offered within 18 months of the initial offer to any person. The Commission believes that this practice is adequately covered by the prohibition against misrepresenting any material aspect of a prize promotion in Section 310.3(a)(2)(v) of the revised proposed Rule. Because the practices included in this Section of the initially proposed Rule are addressed by other prohibitions, it has been deleted from the revised proposed Rule.

(g) *Reloading.* Section 310.4(a)(7) of the initially proposed Rule prohibited any seller or telemarketer from offering or selling goods or services through a telephone solicitation to a person who previously has paid the same seller for goods or services, until all terms and conditions of the initial transaction have been fulfilled, including but not limited to the distribution of all prizes or premiums offered in conjunction with the initial transaction.

This provision of the initially proposed Rule elicited nearly unanimous negative comments from industry representatives. The Commission learned from these comments that many legitimate businesses call their customers before full satisfaction has been made on a prior transaction. Indeed, cultivating established customers in this way is regarded as one of the most effective selling techniques by legitimate sellers. Commenters noted that the Section as proposed would preclude a seller or

<sup>91</sup> ATA at 7; CUCI at 7; DMA at 25; Spiegel at 4.

<sup>92</sup> ABA at 8; Citicorp at 8-9; MasterCard at 11.

<sup>93</sup> See 15 U.S.C. 45(a)(2); revised proposed Rule Section 310.1.

<sup>94</sup> Initially proposed Rule Section 310.4(a)(4); revised proposed Rule Section 310.4(a)(3).

<sup>95</sup> See, e.g., IA DOJ at 13-15; USPS at 13; NAAG at 24. In fact, NACAA believes there should be an outright prohibition against contacting any consumer to offer these services. NACAA at 4.

<sup>96</sup> Chase at 4; Chemical at 6; MasterCard at 11.

<sup>97</sup> Washington at 17.

<sup>98</sup> AARP at 15-16. Fraudulent recovery rooms may use checks, not backed by sufficient funds for them to be paid by the out-of-town banks on which they are drawn, to show consumer victims that the money has been "recovered."

<sup>99</sup> NAAG at 24; DSA-Nev., Tab B at 8; NCL at 39-40. Both DSA-Nev. and NCL also believed that licensed attorneys should not be exempt from this Section of the Rule. The Commission does not wish to hinder legitimate activities by licensed attorneys to recover funds lost by consumers through fraudulent telemarketing, and thus does not believe this prohibition should be applied to their services.

<sup>100</sup> Revised proposed Rule Section 310.4(a)(4).

<sup>101</sup> DMA at 25.

<sup>102</sup> Prudential noted that this Section could cover a bank's offer to a consumer of pre-approved loans. The Commission believes that revised Section 310.1 will address Prudential's concerns by clarifying that banks are excluded from coverage of the Rule because they are outside of the Commission's jurisdiction under the FTC Act, 15 U.S.C. 45(a)(2).