improve, a person's credit history, credit maintained and recorded lists of 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 part 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

(3) Requesting or receiving payment of any fee or consideration from a person, for goods or services represented to recover or otherwise assist in the return of money or any other item of value paid for by, or promised to, that person in a previous telemarketing transaction, until seven (7) business days after such money or other item is delivered to that person. This provision shall not apply to goods or services provided to a person by a licensed attorney; or

(4) Requesting or receiving payment of any fee or consideration in advance of obtaining a loan or other extension of credit when the seller or telemarketer has guaranteed or represented a high likelihood of success in obtaining or arranging a loan or other extension of credit for a person.

(b) Pattern of calls. (1) It is an abusive telemarketing act or practice and a violation of this part for a telemarketer to engage in, or for a seller to cause a telemarketer to engage in, the following

(i) Causing any telephone to ring, or engaging any person in telephone conversation, repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number: or

(ii) Initiating an outbound telephone call to a person when that person previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the seller whose goods or services are being offered.

(2) A seller or telemarketer will not be liable for violating § 310.4(b)(1)(ii) if:

- (i) It has established and implemented written procedures to comply with § 310.4(b)(1)(ii);
- (ii) It has trained its personnel in the procedures established pursuant to § 310.4(b)(2)(i);
- (iii) The seller, or the telemarketer acting on behalf of the seller, has

persons who may not be contacted, in compliance with § 310.4(b)(1)(ii); and

(iv) Any subsequent call is the result of error.

- (c) Calling time restrictions. Without the prior consent of a person, it is an abusive telemarketing act or practice and a violation of this part for a telemarketer to engage in outbound telephone calls to a person's residence at any time other than between 8:00 a.m. and 9:00 p.m. local time at the called person's location.
- (d) Required oral disclosures. It is an abusive telemarketing act or practice and a violation of this part for a telemarketer in an outbound telephone call to fail to disclose promptly and in a clear and conspicuous manner to the person receiving the call, the following information:
  - The identity of the seller;
- (2) That the purpose of the call is to sell goods or services;
- (3) The nature of the goods or services; and
- (4) That no purchase is necessary to win if a prize promotion is offered in conjunction with a sales offer of goods or services. This disclosure must be made before the prize is described to the person called. If requested by that person, the telemarketer must disclose the no-purchase entry method for the prize promotion.

## § 310.5 Recordkeeping requirements.

(a) Any seller or telemarketer shall keep, in any form, for a period of 24 months from the date the record is produced, the following records relating to its telemarketing activities:

(1) All substantially different advertising, brochures, telemarketing scripts, and promotional materials;

- (2) The name and last known address of each prize recipient and the prize awarded for prizes that have a value of \$25.00 or more:
- (3) The name and last known address of each customer, the goods or services purchased, the date such goods or services were shipped or provided, and the amount paid by the customer for the goods or services; and
- (4) The name, any fictitious name used, the last known home address and telephone number, and the job title(s) for all current and former employees directly involved in telephone sales.
- (b) Failure to keep all records required by § 310.5(a) shall be a violation of this part.
- (c) The seller and the telemarketer calling on behalf of the seller may, by written agreement, allocate responsibility between themselves for the recordkeeping required by this

section. When a seller and telemarketer have entered into such an agreement, the terms of that agreement shall govern, and the seller or telemarketer, as the case may be, need not keep records that duplicate those of the other. If the agreement is unclear as to who must maintain any required record(s), the seller shall be responsible for keeping such records.

(d) Absent a written agreement described in section 310.5(c) between the seller and the telemarketer, the seller shall be responsible for complying with § 310.5(a) (1), (2) and (3); the telemarketer shall be responsible for complying with § 310.5(a)(4). The seller and telemarketer may keep any required records in the manner, format, or place as they keep such records in the ordinary course of business.

(e) In the event of any dissolution or termination of the seller's or telemarketer's business, the principal of that seller or telemarketer shall maintain all records as required under this section. In the event of any sale, assignment, succession, or other change in ownership of the seller's or telemarketer's business, the successor business shall maintain all records required under this section.

## § 310.6 Exemptions.

The following telemarketing acts or practices are exempt under this part:

- (a) Pay-per-call services subject to the Commission's "Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992," 16 CFR part 308.
- (b) Telephone calls in which the sale of goods or services is not completed, and payment or authorization of payment is not required, until after a face-to-face sales presentation by the seller during which the customer has the opportunity to examine the goods or services offered.
- (c) Telephone calls initiated by a customer that are not the result of any solicitation by a seller or telemarketer.
- (d) Telephone calls initiated by a customer in response to an advertisement through any media, other than direct mail solicitations; provided, however, that this exemption does not apply to calls initiated by a customer in response to an advertisement relating to investment opportunities, goods or services described in § 310.4(a)(2) or (3), or advertisements that guarantee or represent a high likelihood of success in obtaining or arranging for extensions of credit, if payment of a fee is required in advance of obtaining the extension of credit.
- (e) Telephone calls initiated by a customer in response to a direct mail