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7
8 **UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

9
10 **FEDERAL TRADE COMMISSION**

11 **Plaintiff,**

12 **v.**

13 **SUPERIOR SERVICING LLC, a limited liability
company;**

14 **SUNRISE SOLUTIONS USA LLC, a limited
15 liability company;**

16 **ALUMNI ADVANTAGE LLC, a limited liability
company;**

17 **STUDENT PROCESSING CENTER GROUP LLC,
18 a limited liability company;**

19 **SPCTWO LLC, a limited liability company;**

20 **ACCREDIT LLC, a limited liability company;**

21 **DENNISE MERDJANIAN, aka Dennise Correa,
individually and as managing member of
22 SUPERIOR SERVICING LLC,**

23 **ERIC CALDWELL, individually and as owner,
officer, or manager of SUPERIOR SERVICING
24 LLC, SUNRISE SOLUTIONS USA LLC,**

Case No. 24-cv-2163-GMN-MDC

**STIPULATED ORDER FOR
PERMANENT INJUNCTION,
MONETARY JUDGMENT, AND
OTHER RELIEF AS TO
DEFENDANT DAVID HERNANDEZ**

1 ALUMNI ADVANTAGE LLC, STUDENT
2 PROCESSING CENTER GROUP LLC, SPCTWO
3 LLC, and ACCREDIT LLC; and

4 DAVID HERNANDEZ, individually and as owner,
5 officer, or manager of SUPERIOR SERVICING
6 LLC, SUNRISE SOLUTIONS USA LLC,
7 ALUMNI ADVANTAGE LLC, STUDENT
8 PROCESSING CENTER GROUP LLC, SPCTWO
9 LLC, and ACCREDIT LLC,

10 Defendants.

11 Plaintiff, the Federal Trade Commission (“Commission”), filed its Complaint for
12 Permanent Injunction, Monetary Judgment, and Other Relief, subsequently amended as First
13 Amended Complaint for Permanent Injunction, Monetary Judgment, and Other Relief, as
14 amended (“Complaint”), for a permanent injunction, monetary relief, and other relief pursuant to
15 Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) &
16 57b, Section 6(b) of the Telemarketing and Consumer Fraud and Abuse Prevention Act
17 (“Telemarketing Act”), 15 U.S.C. § 6105(b), and Section 522(a) of the Gramm-Leach-Bliley Act
18 (“GLB Act”), 15 U.S.C. § 6822(a). The Commission and Settling Defendant David Hernandez
19 stipulate to the entry of this Stipulated Order for Permanent Injunction, Monetary Judgment, and
20 Other Relief as to Defendant David Hernandez (“Order”) to resolve all matters in dispute in this
21 action between them.

22 THEREFORE, IT IS ORDERED as follows:

23 FINDINGS

- 24 1. This Court has jurisdiction over this matter.
2. The Complaint charges that Defendants participated in deceptive acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, the Telemarketing Sales Rule (“TSR”), 16 C.F.R. Part 310, Section 521 of the GLB Act, 15 U.S.C. § 6821, and the FTC’s Trade

1 Regulation Rule on Impersonation of Government and Businesses (“Impersonation Rule”), 16
2 C.F.R. Part 461, in connection with Defendants’ marketing and sale of student loan debt relief
3 services.

4 3. Settling Defendant neither admits nor denies any of the allegations in the
5 Complaint, except as specifically stated in this Order. Only for purposes of this action, Settling
6 Defendant admits the facts necessary to establish jurisdiction.

7 4. Settling Defendant and his wife, Vanessa Marie Fredricksen (“Fredricksen”),
8 waive any claim they may have under the Equal Access to Justice Act, 28 U.S.C. § 2412,
9 concerning the prosecution of this action through the date of this Order, and agree to bear their
10 own costs and attorney fees.

11 5. Settling Defendant, Fredricksen, and the Commission waive all rights to appeal or
12 otherwise challenge or contest the validity of this Order.

13 **DEFINITIONS**

14 For purposes of this Order, the following definitions shall apply:

15 A. “**Asset**” means any legal or equitable interest in, right to, or claim to, any
16 property, wherever located and by whomever held, whether tangible, intangible, digital,
17 intellectual property, or otherwise.

18 B. “**Assisting Others**” includes:

19 1. Performing customer service functions, including receiving or responding
20 to consumer complaints;

21 2. Formulating or providing, or arranging for the formulation or provision of,
22 any advertising or marketing material, including any telephone sales script, direct mail
23 solicitation, or the design, text, or use of images of any Internet website, email, or other
24 electronic communication;

1 3. Formulating or providing, or arranging for the formulation or provision of,
2 any marketing support material or service, including web or Internet Protocol addresses
3 or domain name registration for any Internet websites, affiliate marketing services, or
4 media placement services;

5 4. Providing names of, or assisting in the generation of, potential customers;

6 5. Performing marketing, billing, payment processing, or payment services
7 of any kind; or

8 6. Acting or serving as an owner, officer, director, manager, or principal of
9 any entity.

10 C. **“Clearly and Conspicuously”** means that a required disclosure is easily
11 noticeable (*i.e.*, difficult to miss) and easily understandable by reasonable consumers, including
12 in all of the following ways:

13 1. In any communication that is solely visual or solely audible, the disclosure
14 must be made through the same means through which the communication is presented.
15 In any communication made through both visual and audible means, such as a television
16 advertisement, the disclosure must be presented simultaneously in both the visual and
17 audible portions of the communication even if the representation requiring the disclosure
18 is made in only one means.

19 2. A visual disclosure, by its size, contrast, location, the length of time it
20 appears, and other characteristics, must stand out from any accompanying text or other
21 visual elements so that it is easily noticed, read, and understood.

22 3. An audible disclosure, including by telephone or streaming video, must be
23 delivered in a volume, speed, and cadence sufficient for reasonable consumers to easily
24 hear and understand it.

1 4. In any communication using an interactive electronic medium, such as the
2 Internet or software, the disclosure must be unavoidable.

3 5. The disclosure must use diction and syntax understandable to reasonable
4 consumers and must appear in each language in which the representation that requires the
5 disclosure appears.

6 6. The disclosure must comply with these requirements in each medium
7 through which it is received, including all electronic devices and face-to-face
8 communications.

9 7. The disclosure must not be contradicted or mitigated by, or inconsistent
10 with, anything else in the communication.

11 8. When the representation or sales practice targets a specific audience, such
12 as children, the elderly, or the terminally ill, “reasonable consumers” includes members
13 of that group.

14 D. **“Consumer”** means any Person.

15 E. **“Defendants”** means all of the Individual Defendants and the Corporate
16 Defendants, individually, collectively, or in any combination.

17 1. **“Corporate Defendants”** means Superior Servicing LLC, Sunrise
18 Solutions USA, LLC, Alumni Advantage LLC, Student Processing Center Group LLC,
19 SPCTWO LLC, Accredited LLC and their successors and assigns.

20 2. **“Individual Defendants”** means Dennise Merdjanian, Eric Caldwell, and
21 David Hernandez.

22 F. **“Person”** means a natural person, an organization, or other legal entity, including
23 a corporation, partnership, sole proprietorship, limited liability company, association,
24 cooperative, or any other group or combination acting as an entity.

1 G. **“Receiver”** means Krista Freitag, the Court-appointed Receiver in this case.

2 H. **“Receivership Entities”** means Corporate Defendants, as well as any other entity
 3 that has conducted any business related to Defendants’ student loan debt relief services business,
 4 including receipt of assets derived from any activity that is the subject of the Complaint in this
 5 matter, and which the Receiver has reason to believe is owned or controlled in whole or in part
 6 by any Defendant, including, but not limited to, Superior Servicing LLC, Accredited, LLC, Sunrise
 7 Solutions USA, LLC, Alumni Advantage, LLC, Student Processing Center Group, LLC,
 8 SPCTWO, LLC, Gold West Financial, LLC, DM Financial, LLC, LJC Music National LLC,
 9 South Coast Services, LLC, Business Done Right Inc., ET&C Holdings, LLC, Capital Servicing,
 10 LLC, Cornerstone Doc Prep, Inc., Amerifed Doc Prep, LLC, Amerifed Servicing, Inc.,
 11 Scholastic Solutions LLC, and First Clover Capital, Inc.

12 I. **“Settling Defendant”** means David Hernandez.

13 J. **“Secured or Unsecured Debt Relief Product or Service”** means:

14 1. With respect to any mortgage, loan, debt, or obligation between a Person
 15 and one or more secured or unsecured creditors or debt collectors, any product, service,
 16 plan, or program represented, expressly or by implication, to:

17 a. stop, prevent, or postpone any mortgage or deed of foreclosure sale
 18 for a Person’s dwelling, any other sale of collateral, any repossession of a
 19 Person’s dwelling or other collateral, or otherwise save a Person’s dwelling or
 20 other collateral from foreclosure or repossession;

21 b. negotiate, obtain, or arrange a modification, or renegotiate, settle,
 22 reduce, or in any way alter any terms of the mortgage, loan, debt, or obligation,
 23 including a reduction in the amount of interest, principal balance, monthly
 24

1 payments, or fees owed by a Person to a secured or unsecured creditor or debt
2 collector;

3 c. obtain any forbearance or modification in the timing of payments
4 from any secured or unsecured holder or servicer of any mortgage, loan, debt, or
5 obligation;

6 d. negotiate, obtain, or arrange any extension of the period of time
7 within which a Person may (i) cure his or her default on the mortgage, loan, debt,
8 or obligation, (ii) reinstate his or her mortgage, loan, debt, or obligation,
9 (iii) redeem a dwelling or other collateral, or (iv) exercise any right to reinstate
10 the mortgage, loan, debt, or obligation or redeem a dwelling or other collateral;

11 e. obtain any waiver of an acceleration clause or balloon payment
12 contained in any promissory note or contract secured by any dwelling or other
13 collateral; or

14 f. negotiate, obtain, or arrange (i) a short sale of a dwelling or other
15 collateral, (ii) a deed-in-lieu of foreclosure, or (iii) any other disposition of a
16 mortgage, loan, debt, or obligation other than a sale to a third party that is not the
17 secured or unsecured loan holder;

18 The foregoing shall include any manner of claimed assistance, including auditing or examining a
19 Person's application for the mortgage, loan, debt, or obligation.

20 2. With respect to any loan, debt, or obligation between a Person and one or
21 more unsecured creditors or debt collectors, any product, service, plan, or program
22 represented, expressly or by implication, to:

23 a. repay one or more unsecured loans, debts, or obligations; or
24

III. PROHIBITED BUSINESS ACTIVITIES

IT IS FURTHER ORDERED that Settling Defendant, Settling Defendant's officers, agents, employees, and attorneys, and all other Persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with advertising, marketing, promoting, distributing, servicing, offering, or selling any product or service are permanently restrained and enjoined from engaging in, or assisting others engaged in, the following:

A. Misrepresenting, expressly or by implication:

1. Any material aspect of the nature or terms of any refund, cancellation, exchange, or repurchase policy, including the likelihood of a Consumer obtaining a full or partial refund, or the circumstances in which a full or partial refund will be granted to the Consumer;
2. The nature, expertise, position, or job title of any Person who provides any product, service, plan, or program;
3. The ability to improve or otherwise affect a Consumer's credit record, credit history, credit rating, or ability to obtain credit, including that a Consumer's credit record, credit history, credit rating, or ability to obtain credit can be improved by permanently removing negative information from the Consumer's credit record or history even where such information is accurate and not obsolete;
4. That a Consumer will save money;
5. Any benefit of such product or service;
6. Any requirements for obtaining such product or service;
7. The existence, amount, or timing of any fees or charges, or the total cost to purchase, receive, or use such product or service; or

1 8. Any other fact material to Consumers concerning any product or service,
2 such as: the total costs; any material restrictions, limitations, or conditions to
3 purchase, receive, or use such product or service; or any material aspect of the
4 performance, efficacy, nature, or central characteristics of such product or service.

5 B. Failing to disclose Clearly and Conspicuously the fact, if true, that a Consumer
6 must activate, request, initiate, or otherwise take some affirmative action in order to receive or
7 use such product or service; or

8 C. Making any representation, expressly or by implication, about the benefits,
9 performance, or efficacy of any product or service, unless the representation is non-misleading,
10 including that, at the time such representation is made, Settling Defendant possesses and relies
11 upon competent and reliable evidence that is sufficient in quality and quantity based on standards
12 generally accepted in the relevant fields, when considered in light of the entire body of relevant
13 and reliable evidence, to substantiate that the representation is true.

14 **IV. INJUNCTION RELATING TO IMPERSONATING ANY GOVERNMENT**
15 **ENTITY OR PERSON**

16 IT IS FURTHER ORDERED that Settling Defendant, Settling Defendant's officers,
17 agents, employees, and attorneys, and all other Persons in active concert or participation with
18 any of them, who receive actual notice of this Order, whether acting directly or indirectly, in
19 connection with the marketing, promoting, distributing, servicing, offering, or selling any
20 product or service, are hereby permanently restrained and enjoined from:

21 A. Misrepresenting or assisting others in misrepresenting, expressly or by
22 implication, that any Person is affiliated with, endorsed, sponsored by, or approved by, or
23 otherwise connected to any other Person; government entity; public, non-profit, or other non-
24 commercial program; or any other program; and

1 B. Violating the FTC's Impersonation Rule, 16 C.F.R. Part 461, a copy of which is
2 attached as Attachment B.

3 **V. INJUNCTION RELATING TO CONSUMER FINANCIAL INFORMATION**

4 IT IS FURTHER ORDERED that Settling Defendant, Settling Defendant's officers,
5 agents, employees, and attorneys, and all other Persons in active concert or participation with
6 any of them, who receive actual notice of this Order, whether acting directly or indirectly, are
7 hereby permanently restrained and enjoined from:

8 A. Making any false, fictitious, or fraudulent statement or representation to any
9 Person to obtain or attempt to obtain information of a Consumer, including, but not limited to,
10 credit or debit card numbers, bank account numbers and routing numbers, and consumer credit
11 reports; or

12 B. Violating the Gramm-Leach-Bliley Act, 15 U.S.C. §§ 6801-6809, §§ 6821-6827,
13 a copy of which is attached as Attachment C.

14 **VI. CONTINUATION OF RECEIVERSHIP**

15 IT IS FURTHER ORDERED that Krista Freitag shall continue as a permanent receiver over
16 the Receivership Entities with full powers of a permanent receiver, including those powers set
17 forth in the Preliminary Injunctions entered on December 6th and 19th, 2024 (ECF Nos. 30 and
18 42), and including full liquidation powers. Upon termination of the receivership and final
19 payment to the Receiver of all approved fees, costs, and expenses, the Receiver shall turn over to
20 the Commission or its designated agent all remaining Assets in the receivership estate.

21 **VII. MONETARY JUDGMENT AND PARTIAL SUSPENSION**

22 IT IS FURTHER ORDERED that:

23 A. Judgment in the amount of **FOURTY-FIVE MILLION NINE HUNDRED**
24 **FIFTY NINE THOUSAND AND TWELVE AND 69/100 Dollars, (\$45,959,012.69)** is

1 entered in favor of the Commission against Settling Defendant, jointly and severally with any
2 other Defendant to the extent subsequently ordered, as monetary relief.

3 B. Settling Defendant is ordered to pay to the Commission **ONE HUNDRED AND**
4 **EIGHT THOUSAND NINE HUNDRED AND THIRTEEN Dollars \$108,913.00**, which, as
5 Settling Defendant stipulates, the Receiver holds in escrow for no purpose other than payment to
6 the Commission. Such payment must be made within 7 days of entry of this Order by electronic
7 fund transfer in accordance with instructions provided by a representative of the Commission.

8 C. Settling Defendant, immediately upon entry of this Order, to the extent he has not
9 already done so, is ordered to take all necessary steps to surrender to the Receiver all his control,
10 title, dominion, and interest, whether held directly or indirectly, in the following Assets:

11 1. On behalf of Business Done Right LLC:

- 12 a. Monies held in or obtained from Business Done Right,
13 LLC's Banner bank account ending 8416;
14 b. Monies held in or obtained from Business Done Right,
15 LLC's Charles Schwab account ending 1450;
16 c. Monies held in or obtained from Business Done Right,
17 LLC's Charles Schwab account ending 9210;
18 d. Monies held in or obtained from Business Done Right,
19 LLC's Pacific Life Insurance account ending 9270;
20 e. The debt owed by Elhamy Yousseff to Business Done Right;
21 and
22 f. The real property located at 10591 Bent Tree Road, Santa
23 Ana, California 92705 [APN 104-290-16] titled in the name
24 of Business Done Right LLC;

- 1 2. On behalf of Goldwest Financial LLC, monies held in or obtained from the
- 2 Banner bank account ending 3020;
- 3 3. Any Asset of the Receivership Entities or purchased with Receivership Entity
- 4 funds, including but not limited to investments or loans paid or made using
- 5 funds from Receivership Entities in which Settling Defendant has or had any
- 6 ownership interest, whether such Asset was documented in writing or not.
- 7 Settling Defendant shall fully and in good faith cooperate and assist the
- 8 Receiver in recovering any Asset transferred to third parties if the Receiver
- 9 notifies Settling Defendant in writing she has determined that such Asset is
- 10 recoverable or such Asset was transferred without reasonably equivalent value
- 11 being received in exchange;

12 D. Settling Defendant and Fredricksen:

- 13 1. upon written notice to do so from the Receiver, to the extent they have not
- 14 already done so, are ordered to take all steps necessary to transfer to the Receiver
- 15 all control, rights, title, dominion, and interest, whether held directly or indirectly,
- 16 in the real property located at 5814 E. Bryce Avenue, Orange, California 92867
- 17 [APN 370-183-06] (“Bryce Property”) for liquidation. Settling Defendant and
- 18 Fredricksen represent and warrant that they are the sole owners of the Bryce
- 19 Property. Settling Defendant and Fredricksen represent and warrant that they
- 20 have not encumbered the property with any lien, mortgage, deed of trust,
- 21 assignment, pledge, security interest, obligation, or other interest, except for those
- 22 disclosed in the sworn financial statements submitted to the Commission
- 23 identified below in Subsection F of this Section. Settling Defendant and
- 24 Fredricksen are ordered to cooperate fully and in good faith with the Receiver in

1 connection with the Receiver's efforts to liquidate the Bryce Property including,
2 but not limited to: making themselves available to the Receiver; delivering all
3 documents, records, and files relating to the Bryce Property requested by the
4 Receiver; executing consents to authorize the Receiver to communicate with and
5 transact with any banks or financial institutions holding or asserting
6 encumbrances and liens against the Bryce Property; procuring the signatures of
7 any person or entity under their control as requested by the Receiver; and signing
8 any documents necessary to transfer ownership, release encumbrances or liens, or
9 otherwise requested by the Receiver. If requested to execute documents, Settling
10 Defendant and Fredricksen each shall execute and return such documents within
11 three days of a request by the Receiver.

- 12 2. If the Receiver provides written notice to Settling Defendant and Fredricksen that
13 she will not take title to and liquidate the Bryce Property, Settling Defendant and
14 Fredricksen are ordered to take all necessary steps to liquidate the Bryce Property,
15 whether through an arm's length sale at their own expense or by allowing a
16 foreclosure action to proceed. Settling Defendant and Fredricksen are ordered to
17 initiate such steps with 7 days of receiving such notice. Time is of the essence for
18 such liquidation. Settling Defendant and Fredricksen are ordered to pay to the
19 Commission all proceeds due to them from such liquidation by electronic fund
20 transfer in accordance with instructions to be provided by a representative of the
21 Commission. Settling Defendant and Fredricksen are ordered to forward to the
22 Commission all documentation of such liquidation in accordance with instructions
23 to be provided by a representative of the Commission.

1 3. The Receiver shall determine whether to proceed under Subsection VII.D.1 or
2 VII.D.2 above and shall provide written notice to Settling Defendant and
3 Fredricksen accordingly within 60 days of entry of the Order.

4 4. The Receiver may, at any point after having provided the notice required under
5 Subsection (D)(3) of this Section, turn the property over to the mortgagor for a
6 foreclosure action to proceed if she determines that she is unable to sell the Bryce
7 Property for a sufficient amount to cover the amount owed on the loan and the
8 expenses associated with the sale of the Bryce Property. Settling Defendant and
9 Fredricksen are ordered to pay to the Commission all proceeds due to them from
10 such foreclosure action by electronic fund transfer in accordance with instructions
11 to be provided by a representative of the Commission. Settling Defendant and
12 Fredricksen are ordered to forward to the Commission all documentation of such
13 foreclosure action in accordance with instructions to be provided by a
14 representative of the Commission.

15 E. Upon such payments, releases, and surrenders, specified in Subsections B, C, and
16 D of this Section, the remainder of the judgment is suspended, subject to the Subsections below.

17 F. The Commission's agreement to the suspension of part of the judgment is
18 expressly premised upon the truthfulness, accuracy, and completeness of Settling Defendant's
19 sworn financial statements and related documents (collectively, "financial representations")
20 submitted to the Commission, namely:

21 1. the Financial Statements of Individual Defendant David Hernandez signed
22 or submitted on January 24, 2025, March 11, 2025, April 15, 2025, and June 26, 2025,
23 including attachments and supplemental materials;
24

2. the Financial Statement of Business Done Right Inc. signed on March 10, 2025, including any attachments and supplemental materials;

3. the Financial Statement of Gold West Financial LLC signed on March 10, 2025, including any attachments;

4. the Financial Statement of SPCTWO LLC signed on March 10, 2025, including any attachments;

5. the Financial Statement of Accredited LLC signed on March 10, 2025, including any attachments;

6. the Financial Statement of Student Processing Center LLC signed on March 10, 2025, including any attachments; and

7. the Financial Statement of Family Comes First LLC signed on April 7, 2025, including any attachments;

G. The suspension of the judgment will be lifted as to Settling Defendant if, upon motion by the Commission, the Court finds that Settling Defendant failed to disclose any material asset, materially misstated the value of any asset, or made any other material misstatement or omission in the financial representations identified above.

H. If the suspension of the judgment is lifted, the judgment becomes immediately due as to Settling Defendant in the amount specified in Subsection VII.A above (which the parties stipulate only for purposes of this Section represents the consumer injury alleged in the Complaint), less any payment previously made pursuant to this Section, plus interest computed from the date of entry of this Order.

I. Settling Defendant and Fredricksen relinquish dominion and all legal and equitable right, title, and interest in all assets transferred pursuant to this Order and may not seek the return of any assets.

1 J. The Receiver shall liquidate all Assets identified in Subsections C and D and
2 transferred to the Receiver pursuant to this Order. After payment to the Receiver of any expenses
3 related to the sale of the Asset identified in Subsection D, all proceeds from the liquidation of
4 that Asset shall be paid to the Commission. Except as specified below, all monies collected
5 pursuant to the sale of the Assets identified in Subsection C shall be deposited into the
6 receivership estate and disbursed in accordance with Section VI of this Order. The Receiver is
7 excused from the requirements of 28 U.S.C. §§ 2001 and 2004 in connection with any pending
8 or contemplated sale by the Receiver. With respect to the Assets identified in Subsections
9 C(1)(b) and (c) of this Section, the Receiver shall withhold \$83,810 for the sole purpose of
10 paying any applicable federal and state income taxes owed by Settling Defendant as a result of
11 the early withdrawal of funds from those accounts. By March 1, 2026, Settling Defendant must
12 provide the Receiver with documents prepared by a certified public accountant which reflect the
13 amount of applicable federal and state income taxes owed by Settling Defendant as a result of the
14 early withdrawal of the monies from the accounts identified in Subsections C(1)(b) and (c) of
15 this Section. Any remaining funds not used to pay applicable federal and state income taxes
16 owed by Settling Defendant from the withheld \$83,810 shall be deposited into the receivership
17 estate and disbursed in accordance with Section VI of this Order.

18 K. Any entity or person, including Settling Defendant or any financial institution
19 holding Settling Defendant's Assets and the Assets identified in Subsections C and D of this
20 Section, are ordered to transfer those Assets to the Commission or Receiver, in accordance with
21 instructions provided by a representative of the Commission or Receiver, within seven days of
22 receiving notice of this Order.

23 L. The facts alleged in the Complaint will be taken as true, without further proof, in
24 any subsequent civil litigation by or on behalf of the Commission, including in a proceeding to

1 enforce its rights to any payment or monetary judgment pursuant to this Order, such as a
2 nondischargeability complaint in any bankruptcy case.

3 M. The facts alleged in the Complaint establish all elements necessary to sustain an
4 action by the Commission pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C.
5 § 523(a)(2)(A), and this Order will have collateral estoppel effect for such purposes.

6 N. Settling Defendant acknowledges that Settling Defendant's Employer
7 Identification Number, Social Security number, or Taxpayer Identification Number ("TIN"),
8 including all TINs that Settling Defendant previously provided, may be used by the Commission
9 for reporting and lawful purposes, including collecting on any delinquent amount arising out of
10 this Order in accordance with 31 U.S.C. § 7701.

11 O. All money received by the Commission pursuant to this Order may be deposited
12 into a fund administered by the Commission or its designee to be used for consumer relief, such
13 as redress and any attendant expenses for the administration of any redress fund. If a
14 representative of the Commission decides that direct redress to consumers is wholly or partially
15 impracticable or money remains after such redress is completed, the Commission may apply any
16 remaining money for such related relief (including consumer information remedies) as it
17 determines to be reasonably related to Defendants' practices alleged in the Complaint. Any
18 money not used for such relief is to be deposited to the U.S. Treasury. Settling Defendant has no
19 right to challenge any actions the Commission or its representatives may take pursuant to this
20 Subsection.

21 P. The asset freeze is modified to permit the transfers and liquidations identified in
22 this Section. Upon completion of those transfers and liquidations, the asset freeze as to Settling
23 Defendant is dissolved.
24

1 **VIII. CUSTOMER INFORMATION**

2 IT IS FURTHER ORDERED that Settling Defendant, Settling Defendant's officers,
3 agents, employees, and attorneys, and all other Persons in active concert or participation with
4 any of them, who receive actual notice of this Order are permanently restrained and enjoined
5 from directly or indirectly:

6 A. failing to provide sufficient customer information to enable the Commission to
7 efficiently administer consumer redress. If a representative of the Commission requests in
8 writing any information related to redress, Settling Defendant must provide it, in the form
9 prescribed by the Commission, within 14 days;

10 B. disclosing, using, or benefitting from customer information, including the name,
11 address, telephone number, email address, Social Security number, FSA ID, other identifying
12 information, or any data that enables access to a customer's account (including a credit card,
13 bank account, or other financial account), that Settling Defendant obtained prior to entry of this
14 Order in connection with the marketing and sale of Secured or Unsecured Debt Relief Product or
15 Service; and

16 C. failing to destroy such customer information in all forms in their possession,
17 custody, or control within 30 days after receipt of written direction to do so from a representative
18 of the Commission.

19 Provided, however, that customer information need not be disposed of, and may be disclosed, to
20 the extent requested by a government agency or required by law, regulation, or court order.

21 **IX. COOPERATION**

22 IT IS FURTHER ORDERED that Settling Defendant must fully cooperate with
23 representatives of the Commission in this case and in any investigation related to or associated
24 with the transactions or the occurrences that are the subject of the Complaint. Settling Defendant

1 must provide truthful and complete information, evidence, and testimony. Settling Defendant
2 must appear, and Settling Defendant must cause their officers, employees, representatives, or
3 agents to appear for interviews, discovery, hearings, trials, and any other proceedings that a
4 Commission representative may reasonably request upon 14 days written notice, or other
5 reasonable notice, at such places and times as a Commission representative may designate,
6 without the service of a subpoena.

7 **X. ORDER ACKNOWLEDGMENTS**

8 **IT IS FURTHER ORDERED** that Settling Defendant obtain acknowledgments of
9 receipt of this Order:

10 A. Settling Defendant, within 7 days of entry of this Order, must submit to the
11 Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.

12 B. For 5 years after entry of this Order, Settling Defendant for any business that such
13 Settling Defendant, individually or collectively with any other Defendant, is the majority owner
14 or controls directly or indirectly, must deliver a copy of this Order to: (1) all principals, officers,
15 directors, and LLC managers and members; (2) all employees having managerial responsibilities
16 for conduct related to the subject matter of the Order and all agents and representatives who
17 participate in conduct related to the subject matter of the Order; and (3) any business entity
18 resulting from any change in structure as set forth in the Section titled Compliance Reporting.
19 Delivery must occur within 7 days of entry of this Order for current personnel. For all others,
20 delivery must occur before they assume their responsibilities.

21 C. From each individual or entity to which Settling Defendant delivered a copy of
22 this Order, Settling Defendant must obtain, within 30 days, a signed and dated acknowledgment
23 of receipt of this Order.
24

XI. COMPLIANCE REPORTING

IT IS FURTHER ORDERED that Settling Defendant make timely submissions to the Commission:

A. One year after entry of this Order, Settling Defendant must submit a compliance report, sworn under penalty of perjury:

1. Settling Defendant must: (a) identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission may use to communicate with such Settling Defendant; (b) identify all of Settling Defendant's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the goods and services offered, the means of advertising, marketing, and sales, and the involvement of any other Defendant (which Settling Defendant must describe if they know or should know due to their own involvement); (d) describe in detail whether and how Settling Defendant is in compliance with each Section of this Order; and (e) provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission.

2. Additionally, Settling Defendant must: (a) identify all telephone numbers and all physical, postal, email and Internet addresses, including all residences; (b) identify all business activities, including any business for which Settling Defendant performs services whether as an employee or otherwise and any entity in which Settling Defendant has any ownership interest; and (c) describe in detail Settling Defendant's involvement in each such business, including title, role, responsibilities, participation, authority, control, and any ownership.

1 B. For 20 years after entry of this Order, Settling Defendant must submit a
2 compliance notice, sworn under penalty of perjury, within 14 days of any change in the
3 following:

4 1. Settling Defendant must report any change in: (a) any designated point of
5 contact; or (b) the structure of any entity that Settling Defendant has any ownership
6 interest in or controls directly or indirectly that may affect compliance obligations
7 arising under this Order, including: creation, merger, sale, or dissolution of the entity
8 or any subsidiary, parent, or affiliate that engages in any acts or practices subject to
9 this Order.

10 2. Additionally, Settling Defendant must report any change in: (a) name,
11 including aliases or fictitious name, or residence address; or (b) title or role in any
12 business activity, including any business for which Settling Defendant performs
13 services whether as an employee or otherwise and any entity in which Settling
14 Defendant has any ownership interest, and identify the name, physical address, and
15 any Internet address of the business or entity.

16 C. Settling Defendant must submit to the Commission notice of the filing of any
17 bankruptcy petition, insolvency proceeding, or similar proceeding by or against Settling
18 Defendant within 14 days of its filing.

19 D. Any submission to the Commission required by this Order to be sworn under
20 penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by
21 concluding: “I declare under penalty of perjury under the laws of the United States of America
22 that the foregoing is true and correct. Executed on: _____” and supplying the date, signatory’s
23 full name, title (if applicable), and signature.
24

1 E. Unless otherwise directed by a Commission representative in writing, all
2 submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or
3 sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement,
4 Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW,
5 Washington, DC 20580. The subject line must begin: FTC v. Superior Servicing, et al., Matter
6 No. X250009.

7 XII. RECORDKEEPING

8 IT IS FURTHER ORDERED that Settling Defendant must create certain records for 20
9 years after entry of the Order, and retain each such record for 5 years. Specifically, Settling
10 Defendant, for any business that Settling Defendant, individually or collectively with any other
11 Defendants, is a majority owner or controls directly or indirectly, must create and retain the
12 following records:

- 13 A. accounting records showing the revenues from all goods or services sold;
- 14 B. personnel records showing, for each Person providing services, whether as an
15 employee or otherwise, that Person's: name; addresses; telephone numbers; job title or position;
16 dates of service; and (if applicable) the reason for termination;
- 17 C. records of all consumer complaints and refund requests, whether received directly
18 or indirectly, such as through a third party, and any response;
- 19 D. all records necessary to demonstrate full compliance with each provision of this
20 Order, including all submissions to the Commission;
- 21 E. a copy of each unique advertisement or other marketing material.
- 22 F. copies of all contracts and communications with vendors providing print or mail
23 services;

1 G. copies of all contracts and communications with vendors providing payment
2 processing services; and

3 H. copies of all contracts with vendors providing lead generation services.

4 **XIII. COMPLIANCE MONITORING**

5 IT IS FURTHER ORDERED that, for the purpose of monitoring Settling Defendant's
6 compliance with this Order, including the financial representations upon which part of the
7 judgment was suspended and any failure to transfer any assets as required by this Order:

8 A. Within 14 days of receipt of a written request from a representative of the
9 Commission, Settling Defendant must: submit additional compliance reports or other requested
10 information, which must be sworn under penalty of perjury; appear for depositions; and produce
11 documents for inspection and copying. The Commission is also authorized to obtain discovery,
12 without further leave of court, using any of the procedures prescribed by Federal Rules of Civil
13 Procedure 29, 30 (including depositions by remote means), 31, 33, 34, 36, 45, and 69.

14 B. For matters concerning this Order, the Commission is authorized to communicate
15 directly with Settling Defendant. Settling Defendant must permit representatives of the
16 Commission to interview any employee or other Person affiliated with Settling Defendant who
17 has agreed to such an interview. The Person interviewed may have counsel present.

18 C. The Commission may use all other lawful means, including posing, through its
19 representatives as consumers, suppliers, or other individuals or entities, to Settling Defendant or
20 any individual or entity affiliated with Settling Defendant, without the necessity of identification
21 or prior notice. Nothing in this Order limits the Commission's lawful use of compulsory
22 process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.
23
24

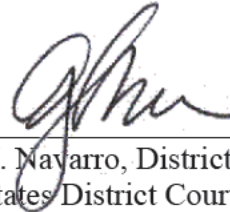
1 D. Upon written request from a representative of the Commission, any consumer
2 reporting agency must furnish consumer reports concerning Settling Defendant, pursuant to
3 Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. §1681b(a)(1).

4 **XIV. RETENTION OF JURISDICTION**

5 IT IS FURTHER ORDERED that this Court retains jurisdiction of this matter for
6 purposes of construction, modification, and enforcement of this Order.

7
8 **IT IS FURTHER ORDERED** that the Joint Motion for Permanent Injunction (ECF No. 77) is
9 **GRANTED.**

10
11 Dated this 9 day of September, 2025.

12 
13 _____
14 Gloria M. Navarro, District Judge
15 United States District Court
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24

1 **SO STIPULATED AND AGREED:**
2 **FOR PLAINTIFF:**

3 **FEDERAL TRADE COMMISSION**

4 
5 Luis H. Gallegos,

Oklahoma Bar No. 19098

6 Reid A. Tepfer,

Texas Bar No. 24079444

7 Federal Trade Commission

1999 Bryan St., Suite 2150

8 Dallas, TX 75201

(214) 979-9383; lgallegos@ftc.gov

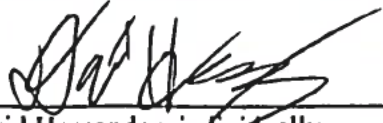
9 (214) 979-9395; rtepfer@ftc.gov

10 Fax: (214) 953-3079

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Date: 9-8-25

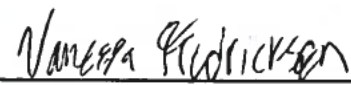
1 **SETTLING DEFENDANT:**

2 **DAVID HERNANDEZ**

3 
4 _____
5 David Hernandez, individually

6 Date: 8/14/2025

7 **VANESSA FREDRICKSEN**

8 
9 _____
10 Vanessa Fredricksen
11 As to Findings 4 and 5, and Sections VII.D and VII.I only

12 Date: 8/14/2025

ATTACHMENT A

COPY OF

THE TELEMARKETING SALES RULE

16 C.F.R. Part 310

APPENDIX A TO PART 309—FIGURES FOR PART 309



Figure 1

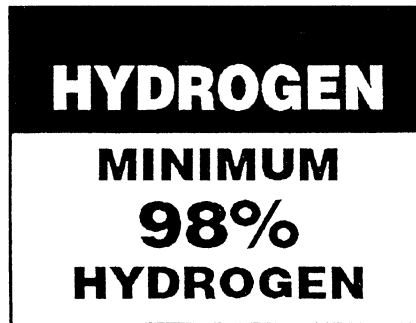


Figure 2

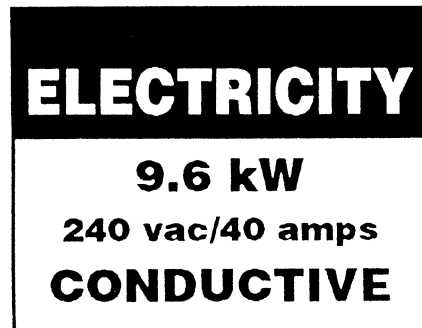


Figure 3

[60 FR 26955, May 19, 1995, as amended at 69 FR 55339, Sept. 14, 2004; 78 FR 23835, Apr. 23, 2013]

SOURCE: 75 FR 48516, Aug. 10, 2010, unless otherwise noted.

PART 310—TELEMARKETING SALES RULE

Sec.

310.1 Scope of regulations in this part.

310.2 Definitions.

310.3 Deceptive telemarketing acts or practices.

310.4 Abusive telemarketing acts or practices.

310.5 Recordkeeping requirements.

310.6 Exemptions.

310.7 Actions by states and private persons.

310.8 Fee for access to the National Do Not Call Registry.

310.9 Severability.

AUTHORITY: 15 U.S.C. 6101–6108.

§310.1 Scope of regulations in this part.

This part implements the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. 6101–6108, as amended.

§310.2 Definitions.

(a) *Acquirer* means a business organization, financial institution, or an agent of a business organization or financial institution that has authority from an organization that operates or licenses a credit card system to authorize merchants to accept, transmit, or process payment by credit card

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through the credit card system for money, goods or services, or anything else of value.

(b) *Attorney General* means the chief legal officer of a state.

(c) *Billing information* means any data that enables any person to access a customer's or donor's account, such as a credit card, checking, savings, share or similar account, utility bill, mortgage loan account, or debit card.

(d) *Caller identification service* means a service that allows a telephone subscriber to have the telephone number, and, where available, name of the calling party transmitted contemporaneously with the telephone call, and displayed on a device in or connected to the subscriber's telephone.

(e) *Cardholder* means a person to whom a credit card is issued or who is authorized to use a credit card on behalf of or in addition to the person to whom the credit card is issued.

(f) *Cash-to-cash money transfer* means the electronic (as defined in section 106(2) of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7006(2))) transfer of the value of cash received from one person to another person in a different location that is sent by a money transfer provider and received in the form of cash. For purposes of this definition, *money transfer provider* means any person or financial institution that provides cash-to-cash money transfers for a person in the normal course of its business, whether or not the person holds an account with such person or financial institution. The term *cash-to-cash money transfer* includes a remittance transfer, as defined in section 919(g)(2) of the Electronic Fund Transfer Act ("EFTA"), 15 U.S.C. 1693a, that is a cash-to-cash transaction; however it does not include any transaction that is:

(1) An electronic fund transfer as defined in section 903 of the EFTA;

(2) Covered by Regulation E, 12 CFR 1005.20, pertaining to gift cards; or

(3) Subject to the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*

(g) *Cash reload mechanism* is a device, authorization code, personal identification number, or other security measure that makes it possible for a person to convert cash into an electronic (as de-

fined in section 106(2) of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7006(2))) form that can be used to add funds to a general-use prepaid card, as defined in Regulation E, 12 CFR 1005.2, or an account with a payment intermediary. For purposes of this definition, a cash reload mechanism is not itself a general-use prepaid debit card or a swipe reload process or similar method in which funds are added directly onto a person's own general-use prepaid card or account with a payment intermediary.

(h) *Charitable contribution* means any donation or gift of money or any other thing of value.

(i) *Commission* means the Federal Trade Commission.

(j) *Credit* means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(k) *Credit card* means any card, plate, coupon book, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.

(l) *Credit card sales draft* means any record or evidence of a credit card transaction.

(m) *Credit card system* means any method or procedure used to process credit card transactions involving credit cards issued or licensed by the operator of that system.

(n) *Customer* means any person who is or may be required to pay for goods or services offered through telemarketing.

(o) *Debt relief service* means any program or service represented, directly or by implication, to renegotiate, settle, or in any way alter the terms of payment or other terms of the debt between a person and one or more unsecured creditors or debt collectors, including, but not limited to, a reduction in the balance, interest rate, or fees owed by a person to an unsecured creditor or debt collector.

(p) *Donor* means any person solicited to make a charitable contribution.

(q) *Established business relationship* means a relationship between a seller and a person based on:

(1) The person's purchase, rental, or lease of the seller's goods or services or

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a financial transaction between the person and seller, within the 540 days immediately preceding the date of a telemarketing call; or

(2) The person's inquiry or application regarding a good or service offered by the seller, within the 90 days immediately preceding the date of a telemarketing call.

(r) *Free-to-pay conversion* means, in an offer or agreement to sell or provide any goods or services, a provision under which a customer receives a product or service for free for an initial period and will incur an obligation to pay for the product or service if he or she does not take affirmative action to cancel before the end of that period.

(s) *Investment opportunity* means anything, tangible or intangible, that is offered, offered for sale, sold, or traded based wholly or in part on representations, either express or implied, about past, present, or future income, profit, or appreciation.

(t) *Material* means likely to affect a person's choice of, or conduct regarding, goods or services or a charitable contribution.

(u) *Merchant* means a person who is authorized under a written contract with an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or a charitable contribution.

(v) *Merchant agreement* means a written contract between a merchant and an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or a charitable contribution.

(w) *Negative option feature* means, in an offer or agreement to sell or provide any goods or services, a provision under which the customer's silence or failure to take an affirmative action to reject goods or services or to cancel the agreement is interpreted by the seller as acceptance of the offer.

(x) *Outbound telephone call* means a telephone call initiated by a telemarketer to induce the purchase of goods or services or to solicit a charitable contribution.

(y) *Person* means any individual, group, unincorporated association, lim-

ited or general partnership, corporation, or other business entity.

(z) *Preacquired account information* means any information that enables a seller or telemarketer to cause a charge to be placed against a customer's or donor's account without obtaining the account number directly from the customer or donor during the telemarketing transaction pursuant to which the account will be charged.

(aa) *Previous donor* means any person who has made a charitable contribution to a particular charitable organization within the 2-year period immediately preceding the date of the telemarketing call soliciting on behalf of that charitable organization.

(bb) *Prize* means anything offered, or purportedly offered, and given, or purportedly given, to a person by chance. For purposes of this definition, chance exists if a person is guaranteed to receive an item and, at the time of the offer or purported offer, the telemarketer does not identify the specific item that the person will receive.

(cc) *Prize promotion* means:

(1) A sweepstakes or other game of chance; or

(2) An oral or written express or implied representation that a person has won, has been selected to receive, or may be eligible to receive a prize or purported prize.

(dd) *Remotely created payment order* means any payment instruction or order drawn on a person's account that is created by the payee or the payee's agent and deposited into or cleared through the check clearing system. The term includes, without limitation, a "remotely created check," as defined in Regulation CC, Availability of Funds and Collection of Checks, 12 CFR 229.2(fff), but does not include a payment order cleared through an Automated Clearinghouse (ACH) Network or subject to the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR part 1026.

(ee) *Seller* means any person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration.

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(ff) *State* means any state of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, and any territory or possession of the United States.

(gg) *Telemarketer* means any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer or donor.

(hh) *Telemarketing* means a plan, program, or campaign which is conducted to induce the purchase of goods or services or a charitable contribution, by use of one or more telephones and which involves more than one interstate telephone call. The term does not include the solicitation of sales through the mailing of a catalog which: contains a written description or illustration of the goods or services offered for sale; includes the business address of the seller; includes multiple pages of written material or illustrations; and has been issued not less frequently than once a year, when the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the catalog and during those calls takes orders only without further solicitation. For purposes of the previous sentence, the term “further solicitation” does not include providing the customer with information about, or attempting to sell, any other item included in the same catalog which prompted the customer’s call or in a substantially similar catalog.

(ii) *Upselling* means soliciting the purchase of goods or services following an initial transaction during a single telephone call. The upsell is a separate telemarketing transaction, not a continuation of the initial transaction. An “external upsell” is a solicitation made by or on behalf of a seller different from the seller in the initial transaction, regardless of whether the initial transaction and the subsequent solicitation are made by the same telemarketer. An “internal upsell” is a solicitation made by or on behalf of the same seller as in the initial transaction, regardless of whether the initial transaction and subsequent solicitation

are made by the same telemarketer.

[75 FR 48516, Aug. 10, 2010, as amended at 80 FR 77557, Dec. 14, 2015; 89 FR 26783, Apr. 16, 2024]

EFFECTIVE DATE NOTE: At 89 FR 99075, Dec. 10, 2024, §310.2 was amended by redesignating paragraphs (gg) through (ii) as paragraphs (hh) through (jj), and adding new paragraph (gg), effective Jan. 9, 2025. For the convenience of the user, the added text is set forth as follows:

§ 310.2 Definitions.

* * * * *

(gg) *Technical support service* means any plan, program, software, or service that is marketed to repair, maintain, or improve the performance or security of any device on which code can be downloaded, installed, run, or otherwise used, such as a computer, smartphone, tablet, or smart home product, including any software or application run on such device. Technical support service does not include any plan, program, software, or service in which the person providing the repair, maintenance, or improvement obtains physical possession of the device being repaired.

* * * * *

§ 310.3 Deceptive telemarketing acts or practices.

(a) *Prohibited deceptive telemarketing acts or practices.* It is a deceptive telemarketing act or practice and a violation of this part for any seller or telemarketer to engage in the following conduct:

(1) Before a customer consents to pay¹ for goods or services offered, failing to disclose truthfully, in a clear and conspicuous manner, the following material information:

(i) The total costs to purchase, receive, or use, and the quantity of, any

¹ When a seller or telemarketer uses, or directs a customer to use, a courier to transport payment, the seller or telemarketer must make the disclosures required by §310.3(a)(1) before sending a courier to pick up payment or authorization for payment, or directing a customer to have a courier pick up payment or authorization for payment. In the case of debt relief services, the seller or telemarketer must make the disclosures required by §310.3(a)(1) before the consumer enrolls in an offered program.

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goods or services that are the subject of the sales offer;²

(ii) All material restrictions, limitations, or conditions to purchase, receive, or use the goods or services that are the subject of the sales offer;

(iii) If the seller has a policy of not making refunds, cancellations, exchanges, or repurchases, a statement informing the customer that this is the seller's policy; or, if the seller or telemarketer makes a representation about a refund, cancellation, exchange, or repurchase policy, a statement of all material terms and conditions of such policy;

(iv) In any prize promotion, the odds of being able to receive the prize, and, if the odds are not calculable in advance, the factors used in calculating the odds; that no purchase or payment is required to win a prize or to participate in a prize promotion and that any purchase or payment will not increase the person's chances of winning; and the no-purchase/no-payment method of participating in the prize promotion with either instructions on how to participate or an address or local or toll-free telephone number to which customers may write or call for information on how to participate;

(v) All material costs or conditions to receive or redeem a prize that is the subject of the prize promotion;

(vi) In the sale of any goods or services represented to protect, insure, or otherwise limit a customer's liability in the event of unauthorized use of the customer's credit card, the limits on a cardholder's liability for unauthorized use of a credit card pursuant to 15 U.S.C. 1643;

(vii) If the offer includes a negative option feature, all material terms and conditions of the negative option feature, including, but not limited to, the fact that the customer's account will be charged unless the customer takes an affirmative action to avoid the charge(s), the date(s) the charge(s) will be submitted for payment, and the spe-

cific steps the customer must take to avoid the charge(s); and

(viii) In the sale of any debt relief service:

(A) the amount of time necessary to achieve the represented results, and to the extent that the service may include a settlement offer to any of the customer's creditors or debt collectors, the time by which the debt relief service provider will make a bona fide settlement offer to each of them;

(B) to the extent that the service may include a settlement offer to any of the customer's creditors or debt collectors, the amount of money or the percentage of each outstanding debt that the customer must accumulate before the debt relief service provider will make a bona fide settlement offer to each of them;

(C) to the extent that any aspect of the debt relief service relies upon or results in the customer's failure to make timely payments to creditors or debt collectors, that the use of the debt relief service will likely adversely affect the customer's creditworthiness, may result in the customer being subject to collections or sued by creditors or debt collectors, and may increase the amount of money the customer owes due to the accrual of fees and interest; and

(D) to the extent that the debt relief service requests or requires the customer to place funds in an account at an insured financial institution, that the customer owns the funds held in the account, the customer may withdraw from the debt relief service at any time without penalty, and, if the customer withdraws, the customer must receive all funds in the account, other than funds earned by the debt relief service in compliance with § 310.4(a)(5)(i)(A) through (C).

(2) Misrepresenting, directly or by implication, in the sale of goods or services any of the following material information:

(i) The total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of a sales offer;

(ii) Any material restriction, limitation, or condition to purchase, receive, or use goods or services that are the subject of a sales offer;

² For offers of consumer credit products subject to the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR 226, compliance with the disclosure requirements under the Truth in Lending Act and Regulation Z shall constitute compliance with § 310.3(a)(1)(i) of this part.

(iii) Any material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of a sales offer;

(iv) Any material aspect of the nature or terms of the seller's refund, cancellation, exchange, or repurchase policies;

(v) Any material aspect of a prize promotion including, but not limited to, the odds of being able to receive a prize, the nature or value of a prize, or that a purchase or payment is required to win a prize or to participate in a prize promotion;

(vi) Any material aspect of an investment opportunity including, but not limited to, risk, liquidity, earnings potential, or profitability;

(vii) A seller's or telemarketer's affiliation with, or endorsement or sponsorship by, any person or government entity;

(viii) That any customer needs offered goods or services to provide protections a customer already has pursuant to 15 U.S.C. 1643;

(ix) Any material aspect of a negative option feature including, but not limited to, the fact that the customer's account will be charged unless the customer takes an affirmative action to avoid the charge(s), the date(s) the charge(s) will be submitted for payment, and the specific steps the customer must take to avoid the charge(s); or

(x) Any material aspect of any debt relief service, including, but not limited to, the amount of money or the percentage of the debt amount that a customer may save by using such service; the amount of time necessary to achieve the represented results; the amount of money or the percentage of each outstanding debt that the customer must accumulate before the provider of the debt relief service will initiate attempts with the customer's creditors or debt collectors or make a bona fide offer to negotiate, settle, or modify the terms of the customer's debt; the effect of the service on a customer's creditworthiness; the effect of the service on collection efforts of the customer's creditors or debt collectors; the percentage or number of customers who attain the represented results; and

whether a debt relief service is offered or provided by a non-profit entity.

(3) Causing billing information to be submitted for payment, or collecting or attempting to collect payment for goods or services or a charitable contribution, directly or indirectly, without the customer's or donor's express verifiable authorization, except when the method of payment used is a credit card subject to protections of the Truth in Lending Act and Regulation Z,³ or a debit card subject to the protections of the Electronic Fund Transfer Act and Regulation E.⁴ Such authorization shall be deemed verifiable if any of the following means is employed:

(i) Express written authorization by the customer or donor, which includes the customer's or donor's signature;⁵

(ii) Express oral authorization which is audio-recorded and made available upon request to the customer or donor, and the customer's or donor's bank or other billing entity, and which evidences clearly both the customer's or donor's authorization of payment for the goods or services or charitable contribution that are the subject of the telemarketing transaction and the customer's or donor's receipt of all of the following information:

(A) An accurate description, clearly and conspicuously stated, of the goods or services or charitable contribution for which payment authorization is sought;

(B) The number of debits, charges, or payments (if more than one);

(C) The date(s) the debit(s), charge(s), or payment(s) will be submitted for payment;

(D) The amount(s) of the debit(s), charge(s), or payment(s);

(E) The customer's or donor's name;

(F) The customer's or donor's billing information, identified with sufficient

³ Truth in Lending Act, 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR part 226.

⁴ Electronic Fund Transfer Act, 15 U.S.C. 1693 *et seq.*, and Regulation E, 12 CFR part 205.

⁵ For purposes of this part, the term "signature" shall include an electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law.

specificity such that the customer or donor understands what account will be used to collect payment for the goods or services or charitable contribution that are the subject of the telemarketing transaction;

(G) A telephone number for customer or donor inquiry that is answered during normal business hours; and

(H) The date of the customer's or donor's oral authorization; or

(iii) Written confirmation of the transaction, identified in a clear and conspicuous manner as such on the outside of the envelope, sent to the customer or donor via first class mail prior to the submission for payment of the customer's or donor's billing information, and that includes all of the information contained in §§310.3(a)(3)(ii)(A)-(G) and a clear and conspicuous statement of the procedures by which the customer or donor can obtain a refund from the seller or telemarketer or charitable organization in the event the confirmation is inaccurate; provided, however, that this means of authorization shall not be deemed verifiable in instances in which goods or services are offered in a transaction involving a free-to-pay conversion and preacquired account information.

(4) Making a false or misleading statement to induce any person to pay for goods or services or to induce a charitable contribution.

(b) *Assisting and facilitating.* It is a deceptive telemarketing act or practice and a violation of this part for a person to provide substantial assistance or support to any seller or telemarketer when that person knows or consciously avoids knowing that the seller or telemarketer is engaged in any act or practice that violates §§310.3(a), (c) or (d), or §310.4 of this part.

(c) *Credit card laundering.* Except as expressly permitted by the applicable credit card system, it is a deceptive telemarketing act or practice and a violation of this part for:

(1) A merchant to present to or deposit into, or cause another to present to or deposit into, the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction

between the cardholder and the merchant;

(2) Any person to employ, solicit, or otherwise cause a merchant, or an employee, representative, or agent of the merchant, to present to or deposit into the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant; or

(3) Any person to obtain access to the credit card system through the use of a business relationship or an affiliation with a merchant, when such access is not authorized by the merchant agreement or the applicable credit card system.

(d) *Prohibited deceptive acts or practices in the solicitation of charitable contributions.* It is a fraudulent charitable solicitation, a deceptive telemarketing act or practice, and a violation of this part for any telemarketer soliciting charitable contributions to misrepresent, directly or by implication, any of the following material information:

(1) The nature, purpose, or mission of any entity on behalf of which a charitable contribution is being requested;

(2) That any charitable contribution is tax deductible in whole or in part;

(3) The purpose for which any charitable contribution will be used;

(4) The percentage or amount of any charitable contribution that will go to a charitable organization or to any particular charitable program;

(5) Any material aspect of a prize promotion including, but not limited to: the odds of being able to receive a prize; the nature or value of a prize; or that a charitable contribution is required to win a prize or to participate in a prize promotion; or

(6) A charitable organization's or telemarketer's affiliation with, or endorsement or sponsorship by, any person or government entity.

[75 FR 48516, Aug. 10, 2010, as amended at 80 FR 77558, Dec. 14, 2015; 89 FR 26784, 26785, Apr. 16, 2024]

§ 310.4 Abusive telemarketing acts or practices.

(a) *Abusive conduct generally.* It is an abusive telemarketing act or practice

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and a violation of this part for any seller or telemarketer to engage in the following conduct:

(1) Threats, intimidation, or the use of profane or obscene language;

(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 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 purpose;

(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 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;

(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;

(5)(i) Requesting or receiving payment of any fee or consideration for any debt relief service until and unless:

(A) The seller or telemarketer has renegotiated, settled, reduced, or otherwise altered the terms of at least one debt pursuant to a settlement agreement, debt management plan, or other such valid contractual agreement executed by the customer;

(B) The customer has made at least one payment pursuant to that settlement agreement, debt management plan, or other valid contractual agreement between the customer and the creditor or debt collector; and

(C) To the extent that debts enrolled in a service are renegotiated, settled, reduced, or otherwise altered individually, the fee or consideration either:

(1) Bears the same proportional relationship to the total fee for renegotiating, settling, reducing, or altering the terms of the entire debt balance as the individual debt amount bears to the entire debt amount. The individual debt amount and the entire debt amount are those owed at the time the debt was enrolled in the service; or

(2) Is a percentage of the amount saved as a result of the renegotiation, settlement, reduction, or alteration. The percentage charged cannot change from one individual debt to another. The amount saved is the difference between the amount owed at the time the debt was enrolled in the service and the amount actually paid to satisfy the debt.

(ii) Nothing in § 310.4(a)(5)(i) prohibits requesting or requiring the customer to place funds in an account to be used for the debt relief provider's fees and for payments to creditors or debt collectors in connection with the renegotiation, settlement, reduction, or other alteration of the terms of payment or other terms of a debt, provided that:

(A) The funds are held in an account at an insured financial institution;

(B) The customer owns the funds held in the account and is paid accrued interest on the account, if any;

(C) The entity administering the account is not owned or controlled by, or in any way affiliated with, the debt relief service;

(D) The entity administering the account does not give or accept any money or other compensation in exchange for referrals of business involving the debt relief service; and

(E) The customer may withdraw from the debt relief service at any time without penalty, and must receive all funds in the account, other than funds earned by the debt relief service in compliance with § 310.4(a)(5)(i)(A)

through (C), within seven (7) business days of the customer's request.

(6) Disclosing or receiving, for consideration, unencrypted consumer account numbers for use in telemarketing; provided, however, that this paragraph shall not apply to the disclosure or receipt of a customer's or donor's billing information to process a payment for goods or services or a charitable contribution pursuant to a transaction;

(7) Causing billing information to be submitted for payment, directly or indirectly, without the express informed consent of the customer or donor. In any telemarketing transaction, the seller or telemarketer must obtain the express informed consent of the customer or donor to be charged for the goods or services or charitable contribution and to be charged using the identified account. In any telemarketing transaction involving preacquired account information, the requirements in paragraphs (a)(7)(i) through (ii) of this section must be met to evidence express informed consent.

(i) In any telemarketing transaction involving preacquired account information and a free-to-pay conversion feature, the seller or telemarketer must:

(A) Obtain from the customer, at a minimum, the last four (4) digits of the account number to be charged;

(B) Obtain from the customer his or her express agreement to be charged for the goods or services and to be charged using the account number pursuant to paragraph (a)(7)(i)(A) of this section; and,

(C) Make and maintain an audio recording of the entire telemarketing transaction.

(ii) In any other telemarketing transaction involving preacquired account information not described in paragraph (a)(7)(i) of this section, the seller or telemarketer must:

(A) At a minimum, identify the account to be charged with sufficient specificity for the customer or donor to understand what account will be charged; and

(B) Obtain from the customer or donor his or her express agreement to be charged for the goods or services and to be charged using the account

number identified pursuant to paragraph (a)(7)(ii)(A) of this section;

(8) Failing to transmit or cause to be transmitted the telephone number, and, when made available by the telemarketer's carrier, the name of the telemarketer, to any caller identification service in use by a recipient of a telemarketing call; provided that it shall not be a violation to substitute (for the name and phone number used in, or billed for, making the call) the name of the seller or charitable organization on behalf of which a telemarketing call is placed, and the seller's or charitable organization's customer or donor service telephone number, which is answered during regular business hours;

(9) Creating or causing to be created, directly or indirectly, a remotely created payment order as payment for goods or services offered or sold through telemarketing or as a charitable contribution solicited or sought through telemarketing; or

(10) Accepting from a customer or donor, directly or indirectly, a cash-to-cash money transfer or cash reload mechanism as payment for goods or services offered or sold through telemarketing or as a charitable contribution solicited or sought through telemarketing.

(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 conduct:

(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;

(ii) Denying or interfering in any way, directly or indirectly, with a person's right to be placed on any registry of names and/or telephone numbers of persons who do not wish to receive outbound telephone calls established to comply with paragraph (b)(1)(iii)(A) of this section, including, but not limited to, harassing any person who makes such a request; hanging up on that person; failing to honor the request; requiring the person to listen to a sales pitch before accepting the request; assessing a charge or fee for honoring the

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request; requiring a person to call a different number to submit the request; and requiring the person to identify the seller making the call or on whose behalf the call is made;

(iii) Initiating any outbound telephone call to a person when:

(A) 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 or made on behalf of the charitable organization for which a charitable contribution is being solicited; or

(B) That person's telephone number is on the "do-not-call" registry, maintained by the Commission, of persons who do not wish to receive outbound telephone calls to induce the purchase of goods or services unless the seller or telemarketer:

(1) Can demonstrate that the seller has obtained the express agreement, in writing, of such person to place calls to that person. Such written agreement shall clearly evidence such person's authorization that calls made by or on behalf of a specific party may be placed to that person, and shall include the telephone number to which the calls may be placed and the signature¹ of that person; or

(2) Can demonstrate that the seller has an established business relationship with such person, and that person has not stated that he or she does not wish to receive outbound telephone calls under paragraph (b)(1)(iii)(A) of this section; or

(iv) Abandoning any outbound telephone call. An outbound telephone call is "abandoned" under this section if a person answers it and the telemarketer does not connect the call to a sales representative within two (2) seconds of the person's completed greeting.

(v) Initiating any outbound telephone call that delivers a prerecorded message, other than a prerecorded message permitted for compliance with the call abandonment safe harbor in § 310.4(b)(4)(iii), unless:

(A) In any such call to induce the purchase of any good or service, the seller has obtained from the recipient of the call an express agreement, in writing, that:

(i) The seller obtained only after a clear and conspicuous disclosure that the purpose of the agreement is to authorize the seller to place prerecorded calls to such person;

(ii) The seller obtained without requiring, directly or indirectly, that the agreement be executed as a condition of purchasing any good or service;

(iii) Evidences the willingness of the recipient of the call to receive calls that deliver prerecorded messages by or on behalf of a specific seller; and

(iv) Includes such person's telephone number and signature;² and

(B) In any such call to induce the purchase of any good or service, or to induce a charitable contribution from a member of, or previous donor to, a non-profit charitable organization on whose behalf the call is made, the seller or telemarketer:

(i) Allows the telephone to ring for at least fifteen (15) seconds or four (4) rings before disconnecting an unanswered call; and

(ii) Within two (2) seconds after the completed greeting of the person called, plays a prerecorded message that promptly provides the disclosures required by § 310.4(d) or (e), followed immediately by a disclosure of one or both of the following:

(A) In the case of a call that could be answered in person by a consumer, that the person called can use an automated interactive voice and/or keypress-activated opt-out mechanism to assert a Do Not Call request pursuant to § 310.4(b)(1)(iii)(A) at any time during the message. The mechanism must:

(1) Automatically add the number called to the seller's entity-specific Do Not Call list;

(2) Once invoked, immediately disconnect the call; and

(3) Be available for use at any time during the message; and

¹ For purposes of this part, the term "signature" shall include an electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law.

² For purposes of this part, the term "signature" shall include an electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law.

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(B) In the case of a call that could be answered by an answering machine or voicemail service, that the person called can use a toll-free telephone number to assert a Do Not Call request pursuant to § 310.4(b)(1)(iii)(A). The number provided must connect directly to an automated interactive voice or keypress-activated opt-out mechanism that:

(1) Automatically adds the number called to the seller's entity-specific Do Not Call list;

(2) Immediately thereafter disconnects the call; and

(3) Is accessible at any time throughout the duration of the telemarketing campaign; and

(iii) Complies with all other requirements of this part and other applicable federal and state laws.

(C) Any call that complies with all applicable requirements of this paragraph (v) shall not be deemed to violate § 310.4(b)(1)(iv) of this part.

(D) This paragraph (v) shall not apply to any outbound telephone call that delivers a prerecorded healthcare message made by, or on behalf of, a covered entity or its business associate, as those terms are defined in the HIPAA Privacy Rule, 45 CFR 160.103.P≤(2) It is an abusive telemarketing act or practice and a violation of this part for any person to sell, rent, lease, purchase, or use any list established to comply with § 310.4(b)(1)(iii)(A) or § 310.5, or maintained by the Commission pursuant to § 310.4(b)(1)(iii)(B), for any purpose except compliance with the provisions of this part or otherwise to prevent telephone calls to telephone numbers on such lists.

(3) A seller or telemarketer will not be liable for violating § 310.4(b)(1)(ii) and (iii) if it can demonstrate that, as part of the seller's or telemarketer's routine business practice:

(i) It has established and implemented written procedures to comply with § 310.4(b)(1)(ii) and (iii);

(ii) It has trained its personnel, and any entity assisting in its compliance, in the procedures established pursuant to § 310.4(b)(3)(i);

(iii) The seller, or a telemarketer or another person acting on behalf of the seller or charitable organization, has maintained and recorded a list of tele-

phone numbers the seller or charitable organization may not contact, in compliance with § 310.4(b)(1)(iii)(A);

(iv) The seller or a telemarketer uses a process to prevent telemarketing to any telephone number on any list established pursuant to § 310.4(b)(3)(iii) or 310.4(b)(1)(iii)(B), employing a version of the "do-not-call" registry obtained from the Commission no more than thirty-one (31) days prior to the date any call is made, and maintains records documenting this process;

(v) The seller or a telemarketer or another person acting on behalf of the seller or charitable organization, monitors and enforces compliance with the procedures established pursuant to § 310.4(b)(3)(i); and

(vi) Any subsequent call otherwise violating paragraph (b)(1)(ii) or (iii) of this section is the result of error and not of failure to obtain any information necessary to comply with a request pursuant to paragraph (b)(1)(iii)(A) of this section not to receive further calls by or on behalf of a seller or charitable organization.

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

(i) The seller or telemarketer employs technology that ensures abandonment of no more than three (3) percent of all calls answered by a person, measured over the duration of a single calling campaign, if less than 30 days, or separately over each successive 30-day period or portion thereof that the campaign continues.

(ii) The seller or telemarketer, for each telemarketing call placed, allows the telephone to ring for at least fifteen (15) seconds or four (4) rings before disconnecting an unanswered call;

(iii) Whenever a sales representative is not available to speak with the person answering the call within two (2) seconds after the person's completed greeting, the seller or telemarketer promptly plays a recorded message that states the name and telephone number of the seller on whose behalf the call was placed³; and

³ This provision does not affect any seller's or telemarketer's obligation to comply with relevant state and federal laws, including but not limited to the TCPA, 47 U.S.C. 227, and 47 CFR part 64.1200.

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(iv) The seller or telemarketer, in accordance with § 310.5(b)-(d), retains records establishing compliance with § 310.4(b)(4)(i)-(iii).

(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 in the sale of goods or services.* It is an abusive telemarketing act or practice and a violation of this part for a telemarketer in an outbound telephone call or internal or external upsell to induce the purchase of goods or services to fail to disclose truthfully, promptly, and in a clear and conspicuous manner to the person receiving the call, the following information:

- (1) 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 or payment is necessary to be able to win a prize or participate in a prize promotion if a prize promotion is offered and that any purchase or payment will not increase the person's chances of winning. This disclosure must be made before or in conjunction with the description of the prize to the person called. If requested by that person, the telemarketer must disclose the no-purchase/no-payment entry method for the prize promotion; provided, however, that, in any internal upsell for the sale of goods or services, the seller or telemarketer must provide the disclosures listed in this section only to the extent that the information in the upsell differs from the disclosures provided in the initial telemarketing transaction.

(e) *Required oral disclosures in charitable solicitations.* It is an abusive telemarketing act or practice and a violation of this part for a telemarketer, in an outbound telephone call to induce a charitable contribution, to fail to disclose truthfully, promptly, and in a clear and conspicuous manner to the person receiving the call, the following information:

(1) The identity of the charitable organization on behalf of which the request is being made; and

(2) That the purpose of the call is to solicit a charitable contribution.

[75 FR 48516, Aug. 10, 2010, as amended at 76 FR 58716, Sept. 22, 2011; 80 FR 77559, Dec. 14, 2015; 89 FR 26784, 26785, Apr. 16, 2024]

§ 310.5 Recordkeeping requirements.

(a) Any seller or telemarketer must keep, for a period of 5 years from the date the record is produced unless specified otherwise, the following records relating to its telemarketing activities:

(1) A copy of each substantially different advertising, brochure, telemarketing script, and promotional material, and a copy of each unique prerecorded message. Such records must be kept for a period of 5 years from the date that they are no longer used in telemarketing;

(2) A record of each telemarketing call, which must include:

(i) The telemarketer that placed or received the call;

(ii) The seller or person for which the telemarketing call is placed or received;

(iii) The good, service, or charitable purpose that is the subject of the telemarketing call;

(iv) Whether the telemarketing call is to an individual consumer or a business consumer;

(v) Whether the telemarketing call is an outbound telephone call;

(vi) Whether the telemarketing call utilizes a prerecorded message;

(vii) The calling number, called number, date, time, and duration of the telemarketing call;

(viii) The telemarketing script(s) and prerecorded message, if any, used during the call;

(ix) The caller identification telephone number, and if it is transmitted, the caller identification name that is transmitted in an outbound telephone call to the recipient of the call, and any contracts or other proof of authorization for the telemarketer to use that telephone number and name, and the time period for which such authorization or contract applies; and

(x) The disposition of the call, including but not limited to, whether the call

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was answered, connected, dropped, or transferred. If the call was transferred, the record must also include the telephone number or IP address that the call was transferred to as well as the company name, if the call was transferred to a company different from the seller or telemarketer that placed the call; provided, however, that for calls that an individual telemarketer makes by manually entering a single telephone number to initiate the call to that number, a seller or telemarketer need not retain the records specified in paragraphs (a)(2)(vii) and (a)(2)(x) of this section.

(3) For each prize recipient, a record of the name, last known telephone number, and last known physical or email address of that prize recipient, and the prize awarded for prizes that are represented, directly or by implication, to have a value of \$25.00 or more;

(4) For each customer, a record of the name, last known telephone number, and last known physical or email address of that customer, the goods or services purchased, the date such goods or services were purchased, the date such goods or services were shipped or provided, and the amount paid by the customer for the goods or services;¹

(5) For each person with whom a seller intends to assert it has an established business relationship under § 310.2(q)(2), a record of the name and last known telephone number of that person, the date that person submitted an inquiry or application regarding the seller's goods or services, and the goods or services inquired about;

(6) For each person that a telemarketer intends to assert is a previous donor to a particular charitable organization under § 310.2(aa), a record of the name and last known telephone number of that person, and the last date that person donated to that particular charitable organization;

(7) For each current or former employee directly involved in telephone sales or solicitations, a record of the

name, any fictitious name used, the last known home address and telephone number, and the job title(s) of that employee; provided, however, that if the seller or telemarketer permits fictitious names to be used by employees, each fictitious name must be traceable to only one specific employee;

(8) All verifiable authorizations or records of express informed consent or express agreement (collectively, "Consent") required to be provided or received under this part. A complete record of Consent includes the following:

(i) The name and telephone number of the person providing Consent;

(ii) A copy of the request for Consent in the same manner and format in which it was presented to the person providing Consent;

(iii) The purpose for which Consent is requested and given;

(iv) A copy of the Consent provided;

(v) The date Consent was given; and

(vi) For the copy of Consent provided under § 310.3(a)(3), § 310.4(a)(7), § 310.4(b)(1)(iii)(B)(I), or § 310.4(b)(1)(v)(A), a complete record must also include all information specified in those respective sections of this part;

(9) A record of each service provider a telemarketer used to deliver an outbound telephone call to a person on behalf of a seller for each good or service the seller offers for sale through telemarketing. For each such service provider, a complete record includes the contract for the service provided, the date the contract was signed, and the time period the contract is in effect. Such contracts must be kept for 5 years from the date the contract expires;

(10) A record of each person who has stated she does not wish to receive any outbound telephone calls made on behalf of a seller or charitable organization pursuant to § 310.4(b)(1)(iii)(A) including: the name of the person, the telephone number(s) associated with the request, the seller or charitable organization from which the person does not wish to receive calls, the telemarketer that called the person, the date the person requested that she cease receiving such calls, and the goods or services the seller was offering

¹For offers of consumer credit products subject to the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR pt. 226, compliance with the recordkeeping requirements under the Truth in Lending Act, and Regulation Z, will constitute compliance with § 310.5(a)(4) of this part.

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for sale or the charitable purpose for which a charitable contribution was being solicited; and

(11) A record of which version of the Commission's "do-not-call" registry was used to ensure compliance with § 310.4(b)(1)(iii)(B). Such record must include:

(i) The name of the entity which accessed the registry;

(ii) The date the "do-not-call" registry was accessed;

(iii) The subscription account number that was used to access the registry; and

(iv) The telemarketing campaign for which it was accessed.

(b) A seller or telemarketer may keep the records required by paragraph (a) of this section in the same manner, format, or place as they keep such records in the ordinary course of business. The format for records required by paragraph (a)(2)(vii) of this section, and any other records that include a time or telephone number, must also comply with the following:

(1) The format for domestic telephone numbers must comport with the North American Numbering plan;

(2) The format for international telephone numbers must comport with the standard established in the International Telecommunications Union's Recommendation ITU-T E.164: Series E: Overall Network Operation, Telephone Service, Service Operation and Human Factors, published 11/2010 (incorporated by reference, see paragraph (g)(1) of this section);

(3) The time and duration of a call must be kept to the closest second; and

(4) Time must be recorded in Coordinated Universal Time (UTC).

(c) Failure to keep each record required by paragraph (a) of this section in a complete and accurate manner, and in compliance with paragraph (b) of this section, as applicable, is a violation of this part.

(d) For records kept pursuant to paragraph (a)(2) of this section, the seller or telemarketer will not be liable for failure to keep complete and accurate records pursuant to this part if it can demonstrate, with documentation, that as part of its routine business practice:

(1) It has established and implemented procedures to ensure completeness and accuracy of its records;

(2) It has trained its personnel, and any entity assisting it in its compliance, in such procedures;

(3) It monitors compliance with and enforces such procedures, and maintains records documenting such monitoring and enforcement; and

(4) Any failure to keep complete and accurate records was temporary, due to inadvertent error, and corrected within 30 days of discovery.

(e) 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 will govern, and the seller or telemarketer, as the case may be, need not keep records that duplicate those of the other. If by written agreement the telemarketer bears the responsibility for the recordkeeping requirements of this section, the seller must establish and implement practices and procedures to ensure the telemarketer is complying with the requirements of this section. These practices and procedures include retaining access to any record the telemarketer creates under this section on the seller's behalf. If the agreement is unclear as to who must maintain any required record(s), or if no such agreement exists, both the telemarketer and the seller are responsible for complying with this section.

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

(g) The material required in this section is incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All

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approved material is available for inspection at the Federal Trade Commission (FTC) and at the National Archives and Records Administration (NARA). Contact FTC at: FTC Library, (202) 326–2395, Federal Trade Commission, Room H–630, 600 Pennsylvania Avenue NW, Washington, DC 20580, or by email at Library@ftc.gov. For information on the availability of this material at NARA, email fr.inspection@nara.gov or go to www.archives.gov/federal-register/cfr/ibr-locations.html. It is available from: The International Telecommunications Union, Telecommunications Standardization Bureau, Place des Nations, CH–1211 Geneva 20; (+41 22 730 5852); <https://www.itu.int/en/pages/default.aspx>.

(1) Recommendation ITU–T E.164: Series E: Overall Network Operation, Telephone Service, Service Operation and Human Factors, published 11/2010.

(2) [Reserved]

[89 FR 26784, Apr. 16, 2024]

§ 310.6 Exemptions.

(a) Solicitations to induce charitable contributions via outbound telephone calls are not covered by § 310.4(b)(1)(iii)(B) of this part.

(b) The following acts or practices are exempt from this part:

(1) The sale of pay-per-call services subject to the Commission's Rule entitled "Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992," 16 CFR part 308, *provided*, however, that this exemption does not apply to the requirements of § 310.4(a)(1), (a)(8), (b), and (c);

(2) The sale of franchises subject to the Commission's Rule entitled "Disclosure Requirements and Prohibitions Concerning Franchising," ("Franchise Rule") 16 CFR part 436, and the sale of business opportunities subject to the Commission's Rule entitled "Disclosure Requirements and Prohibitions Concerning Business Opportunities," ("Business Opportunity Rule") 16 CFR part 437, *provided*, however, that this exemption does not apply to the requirements of § 310.4(a)(1), (a)(8), (b), and (c);

(3) Telephone calls in which the sale of goods or services or charitable solicitation is not completed, and payment

or authorization of payment is not required, until after a face-to-face sales or donation presentation by the seller or charitable organization, *provided*, however, that this exemption does not apply to the requirements of § 310.4(a)(1), (a)(8), (b), and (c);

(4) Telephone calls initiated by a customer or donor that are not the result of any solicitation by a seller, charitable organization, or telemarketer, *provided*, however, that this exemption does not apply to any instances of upselling included in such telephone calls;

(5) Telephone calls initiated by a customer or donor in response to an advertisement through any medium, other than direct mail solicitation, *provided*, however, that this exemption does not apply to:

(i) Calls initiated by a customer or donor in response to an advertisement relating to investment opportunities, debt relief services, business opportunities other than business arrangements covered by the Franchise Rule or Business Opportunity Rule, or advertisements involving offers for goods or services described in § 310.3(a)(1)(vi) or § 310.4(a)(2) through (4);

(ii) The requirements of § 310.4(a)(9) or (10); or

(iii) Any instances of upselling included in such telephone calls;

(6) Telephone calls initiated by a customer or donor in response to a direct mail solicitation, including solicitations via the U.S. Postal Service, facsimile transmission, electronic mail, and other similar methods of delivery in which a solicitation is directed to specific address(es) or person(s), that clearly, conspicuously, and truthfully discloses all material information listed in § 310.3(a)(1), for any goods or services offered in the direct mail solicitation, and that contains no material misrepresentation regarding any item contained in § 310.3(d) for any requested charitable contribution; *provided*, however, that this exemption does not apply to:

(i) Calls initiated by a customer in response to a direct mail solicitation relating to prize promotions, investment opportunities, debt relief services, business opportunities other than business arrangements covered by the

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Franchise Rule or Business Opportunity Rule, or goods or services described in § 310.3(a)(1)(vi) or § 310.4(a)(2) through (4);

(ii) The requirements of § 310.4(a)(9) or (10); or

(iii) Any instances of upselling included in such telephone calls; and

(7) Telephone calls between a telemarketer and any business to induce the purchase of goods or services or a charitable contribution by the business, *provided*, however that this exemption does not apply to:

(i) The requirements of § 310.3(a)(2) and (4); or

(ii) Calls to induce the retail sale of nondurable office or cleaning supplies; *provided*, however, that §§ 310.4(b)(1)(iii)(B) and 310.5 shall not apply to sellers or telemarketers of nondurable office or cleaning supplies.

[75 FR 48516, Aug. 10, 2010, as amended at 80 FR 77559, Dec. 14, 2015; 89 FR 26785, Apr. 16, 2024]

EFFECTIVE DATE NOTE: At 89 FR 99075, Dec. 10, 2024, § 310.6 was amended by revising paragraphs (b)(5)(i) and (b)(6)(i), effective Jan. 9, 2025. For the convenience of the user, the revised text is set forth as follows:

§ 310.6 Exemptions.

* * * * *

(b) * * *

(5) * * *

(i) Calls initiated by a customer or donor in response to an advertisement relating to investment opportunities, debt relief services, technical support services, business opportunities other than business arrangements covered by the Franchise Rule or Business Opportunity Rule, or advertisements involving offers for goods or services described in § 310.3(a)(1)(vi) or § 310.4(a)(2) through (4);

* * * * *

(6) * * *

(i) Calls initiated by a customer in response to a direct mail solicitation relating to prize promotions, investment opportunities, debt relief services, technical support services, business opportunities other than business arrangements covered by the Franchise Rule or Business Opportunity Rule, or goods or services described in § 310.3(a)(1)(vi) or § 310.4(a)(2) through (4);

* * * * *

§ 310.7 Actions by states and private persons.

(a) Any attorney general or other officer of a State authorized by the State to bring an action under the Telemarketing and Consumer Fraud and Abuse Prevention Act, and any private person who brings an action under that Act, must serve written notice of its action on the Commission, if feasible, prior to its initiating an action under this part. The notice must be sent to the Office of the Director, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, at *tsrnotice@ftc.gov* and must include a copy of the State's or private person's complaint and any other pleadings to be filed with the court. If prior notice is not feasible, the State or private person must serve the Commission with the required notice immediately upon instituting its action.

(b) Nothing contained in this Section shall prohibit any attorney general or other authorized state official from proceeding in state court on the basis of an alleged violation of any civil or criminal statute of such state.

[75 FR 48516, Aug. 10, 2010, as amended at 89 FR 26785, Apr. 16, 2024]

§ 310.8 Fee for access to the National Do Not Call Registry.

(a) It is a violation of this part for any seller to initiate, or cause any telemarketer to initiate, an outbound telephone call to any person whose telephone number is within a given area code unless such seller, either directly or through another person, first has paid the annual fee, required by § 310.8(c), for access to telephone numbers within that area code that are included in the National Do Not Call Registry maintained by the Commission under § 310.4(b)(1)(iii)(B); *provided*, however, that such payment is not necessary if the seller initiates, or causes a telemarketer to initiate, calls solely to persons pursuant to §§ 310.4(b)(1)(iii)(B)(i) or (ii), and the seller does not access the National Do Not Call Registry for any other purpose.

(b) It is a violation of this part for any telemarketer, on behalf of any seller, to initiate an outbound telephone call to any person whose telephone

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number is within a given area code unless that seller, either directly or through another person, first has paid the annual fee, required by § 310.8(c), for access to the telephone numbers within that area code that are included in the National Do Not Call Registry; provided, however, that such payment is not necessary if the seller initiates, or causes a telemarketer to initiate, calls solely to persons pursuant to §§ 310.4(b)(1)(iii)(B)(i) or (ii), and the seller does not access the National Do Not Call Registry for any other purpose.

(c) The annual fee, which must be paid by any person prior to obtaining access to the National Do Not Call Registry, is \$80 for each area code of data accessed, up to a maximum of \$22,038; *provided*, however, that there shall be no charge to any person for accessing the first five area codes of data, and *provided further*, that there shall be no charge to any person engaging in or causing others to engage in outbound telephone calls to consumers and who is accessing area codes of data in the National Do Not Call Registry if the person is permitted to access, but is not required to access, the National Do Not Call Registry under 47 CFR 64.1200, or any other Federal regulation or law. No person may participate in any arrangement to share the cost of accessing the National Do Not Call Registry, including any arrangement with any telemarketer or service provider to divide the costs to access the registry among various clients of that telemarketer or service provider.

(d) Each person who pays, either directly or through another person, the annual fee set forth in paragraph (c) of this section, each person excepted under paragraph (c) from paying the annual fee, and each person excepted from paying an annual fee under § 310.4(b)(1)(iii)(B), will be provided a unique account number that will allow that person to access the registry data for the selected area codes at any time for the twelve month period beginning on the first day of the month in which the person paid the fee (“the annual period”). To obtain access to additional area codes of data during the first six months of the annual period, each person required to pay the fee under para-

graph (c) of this section must first pay \$80 for each additional area code of data not initially selected. To obtain access to additional area codes of data during the second six months of the annual period, each person required to pay the fee under paragraph (c) of this section must first pay \$40 for each additional area code of data not initially selected. The payment of the additional fee will permit the person to access the additional area codes of data for the remainder of the annual period.

(e) Access to the National Do Not Call Registry is limited to telemarketers, sellers, others engaged in or causing others to engage in telephone calls to consumers, service providers acting on behalf of such persons, and any government agency that has law enforcement authority. Prior to accessing the National Do Not Call Registry, a person must provide the identifying information required by the operator of the registry to collect the fee, and must certify, under penalty of law, that the person is accessing the registry solely to comply with the provisions of this part or to otherwise prevent telephone calls to telephone numbers on the registry. If the person is accessing the registry on behalf of sellers, that person also must identify each of the sellers on whose behalf it is accessing the registry, must provide each seller’s unique account number for access to the national registry, and must certify, under penalty of law, that the sellers will be using the information gathered from the registry solely to comply with the provisions of this part or otherwise to prevent telephone calls to telephone numbers on the registry.

[75 FR 48516, Aug. 10, 2010; 75 FR 51934, Aug. 24, 2010, as amended at 77 FR 51697, Aug. 27, 2012; 78 FR 53643, Aug. 30, 2013; 79 FR 51478, Aug. 29, 2014; 80 FR 77560, Dec. 14, 2016; 81 FR 59845, Aug. 31, 2016; 82 FR 39534, Aug. 21, 2017; 83 FR 46640, Sept. 14, 2018; 84 FR 44687, Aug. 27, 2019; 85 FR 62597, Oct. 5, 2020; 86 FR 48301, Aug. 30, 2021; 87 FR 53373, Aug. 31, 2022; 88 FR 57334, Aug. 23, 2023; 89 FR 26785, Apr. 16, 2024; 89 FR 70095, Aug. 29, 2024]

§ 310.9 Severability.

The provisions of this part are separate and severable from one another. If any provision is stayed or determined

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to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

[75 FR 48516, Aug. 10, 2010, as amended at 89 FR 26785, Apr. 16, 2024]

PART 311—TEST PROCEDURES AND LABELING STANDARDS FOR RECYCLED OIL

Sec.

- 311.1 Definitions.
- 311.2 Stayed or invalid parts.
- 311.3 Preemption.
- 311.4 Testing.
- 311.5 Labeling.
- 311.6 Prohibited acts.

AUTHORITY: 42 U.S.C. 6363(d).

SOURCE: 60 FR 55421, Oct. 31, 1995, unless otherwise noted.

§ 311.1 Definitions.

As used in this part:

(a) *Manufacturer* means any person who re-refines or otherwise processes used oil to remove physical or chemical impurities acquired through use or who blends such re-refined or otherwise processed used oil with new oil or additives.

(b) *New oil* means any synthetic oil or oil that has been refined from crude oil and which has not been used and may or may not contain additives. Such term does not include used oil or recycled oil.

(c) *Processed used oil* means re-refined or otherwise processed used oil or blend of oil, consisting of such re-refined or otherwise processed used oil and new oil or additives.

(d) *Recycled oil* means processed used oil that the manufacturer has determined, pursuant to section 311.4 of this part, is substantially equivalent to new oil for use as engine oil.

(e) *Used oil* means any synthetic oil or oil that has been refined from crude oil, which has been used and, as a result of such use, has been contaminated by physical or chemical impurities.

(f) *Re-refined oil* means used oil from which physical and chemical contaminants acquired through use have been removed.

§ 311.2 Stayed or invalid parts.

If any part of this rule is stayed or held invalid, the rest of it will remain in force.

§ 311.3 Preemption.

No law, regulation, or order of any State or political subdivision thereof may apply, or remain applicable, to any container of recycled oil, if such law, regulation, or order requires any container of recycled oil, which container bears a label in accordance with the terms of § 311.5 of this part, to bear any label with respect to the comparative characteristics of such recycled oil with new oil that is not identical to that permitted by § 311.5 of this part.

§ 311.4 Testing.

To determine the substantial equivalency of processed used oil with new oil for use as engine oil, manufacturers or their designees must use the test procedures in API 1509, Engine Oil Licensing and Certification System, Seventeenth Edition, September 2012 (Addendum 1, October 2014, Errata, March 2015). The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from API, 1220 L Street NW, Washington, DC 20005; telephone: 202-682-8000; internet address: <https://www.api.org>. You may inspect a copy at the FTC Library, 202-326-2395, Federal Trade Commission, Room H-630, 600 Pennsylvania Avenue NW, Washington, DC 20580. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030 or go to http://www.archives.gov/federal-register/code_of_federal_regulations/ibr_locations.html.

[83 FR 48216, Sept. 24, 2018]

§ 311.5 Labeling.

A manufacturer or other seller may represent, on a label on a container of processed used oil, that such oil is substantially equivalent to new oil for use as engine oil only if the manufacturer has determined that the oil is substantially equivalent to new oil for use as engine oil in accordance with the NIST

ATTACHMENT B

**COPY OF
THE TRADE REGULATION RULE ON
IMPERSONATION OF GOVERNMENT
AND
BUSINESSES
16 C.F.R. Part 461**

This content is from the eCFR and is authoritative but unofficial.

Title 16 — Commercial Practices

Chapter I — Federal Trade Commission

Subchapter D — Trade Regulation Rules

Part 461 Rule on Impersonation of Government and Businesses

§ 461.1 Definitions.

§ 461.2 Impersonation of government prohibited.

§ 461.3 Impersonation of businesses prohibited.

PART 461—RULE ON IMPERSONATION OF GOVERNMENT AND BUSINESSES

Authority: Authority: 15 U.S.C. 41 through 58.

Source: 89 FR 15030, Mar. 1, 2024, unless otherwise noted.

§ 461.1 Definitions.

As used in this part:

Business means a corporation, partnership, association, or any other entity that provides goods or services, including not-for-profit entities.

Government includes federal, state, local, and tribal governments as well as agencies and departments thereof.

Materially means likely to affect a person's choice of, or conduct regarding, goods or services.

Officer includes executives, officials, employees, and agents.

§ 461.2 Impersonation of government prohibited.

It is a violation of this part, and an unfair or deceptive act or practice to:

- (a) materially and falsely pose as, directly or by implication, a government entity or officer thereof, in or affecting commerce as *commerce* is defined in the Federal Trade Commission Act (15 U.S.C. 44); or
- (b) materially misrepresent, directly or by implication, affiliation with, including endorsement or sponsorship by, a government entity or officer thereof, in or affecting commerce as *commerce* is defined in the Federal Trade Commission Act (15 U.S.C. 44).

§ 461.3 Impersonation of businesses prohibited.

It is a violation of this part, and an unfair or deceptive act or practice to:

- (a) materially and falsely pose as, directly or by implication, a business or officer thereof, in or affecting commerce as commerce is defined in the Federal Trade Commission Act (15 U.S.C. 44); or
- (b) materially misrepresent, directly or by implication, affiliation with, including endorsement or sponsorship by, a business or officer thereof, in or affecting commerce as commerce is defined in the Federal Trade Commission Act (15 U.S.C. 44).

ATTACHMENT C

**COPY OF
THE GRAMM-LEACH-BLILEY ACT
15 U.S.C. §§ 6801-6809, 6821-6827**

15 USC Ch. 94: PRIVACY**From Title 15—COMMERCE AND TRADE****CHAPTER 94—PRIVACY****SUBCHAPTER I—DISCLOSURE OF NONPUBLIC PERSONAL INFORMATION**

Sec

- 6801. Protection of nonpublic personal information.
- 6802. Obligations with respect to disclosures of personal information.
- 6803. Disclosure of institution privacy policy.
- 6804. Rulemaking.
- 6805. Enforcement.
- 6806. Relation to other provisions.
- 6807. Relation to State laws.
- 6808. Study of information sharing among financial affiliates.
- 6809. Definitions.

SUBCHAPTER II—FRAUDULENT ACCESS TO FINANCIAL INFORMATION

- 6821. Privacy protection for customer information of financial institutions.
- 6822. Administrative enforcement.
- 6823. Criminal penalty.
- 6824. Relation to State laws.
- 6825. Agency guidance.
- 6826. Reports.
- 6827. Definitions.

SUBCHAPTER I—DISCLOSURE OF NONPUBLIC PERSONAL INFORMATION**§6801. Protection of nonpublic personal information****(a) Privacy obligation policy**

It is the policy of the Congress that each financial institution has an affirmative and continuing obligation to respect the privacy of its customers and to protect the security and confidentiality of those customers' nonpublic personal information.

(b) Financial institutions safeguards

In furtherance of the policy in subsection (a), each agency or authority described in section 6805(a) of this title, other than the Bureau of Consumer Financial Protection, shall establish appropriate standards for the financial institutions subject to their jurisdiction relating to administrative, technical, and physical safeguards—

- (1) to insure the security and confidentiality of customer records and information;
- (2) to protect against any anticipated threats or hazards to the security or integrity of such records; and
- (3) to protect against unauthorized access to or use of such records or information which could result in substantial harm or inconvenience to any customer.

(Pub. L. 106–102, [title V, §501](#), [Nov. 12, 1999](#), 113 Stat. 1436; Pub. L. 111–203, [title X, §1093\(1\)](#), [July 21, 2010](#), 124 Stat. 2095.)

EDITORIAL NOTES**AMENDMENTS**

2010—Subsec. (b). Pub. L. 111–203 inserted ", other than the Bureau of Consumer Financial Protection," after "section 6805(a) of this title" in introductory provisions.

STATUTORY NOTES AND RELATED SUBSIDIARIES**EFFECTIVE DATE OF 2010 AMENDMENT**

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE

Pub. L. 106–102, [title V, §510, Nov. 12, 1999](#), 113 Stat. 1445, provided that: "This subtitle [subtitle A (§§501–510) of title V of Pub. L. 106–102, enacting this subchapter and amending section 1681s of this title] shall take effect 6 months after the date on which rules are required to be prescribed under section 504(a)(3) [15 U.S.C. 6804(a)(3)], except—

"(1) to the extent that a later date is specified in the rules prescribed under section 504; and

"(2) that sections 504 [15 U.S.C. 6804] and 506 [enacting section 6806 of this title and amending section 1681s of this title] shall be effective upon enactment [Nov. 12, 1999]."

§6802. Obligations with respect to disclosures of personal information**(a) Notice requirements**

Except as otherwise provided in this subchapter, a financial institution may not, directly or through any affiliate, disclose to a nonaffiliated third party any nonpublic personal information, unless such financial institution provides or has provided to the consumer a notice that complies with section 6803 of this title.

(b) Opt out**(1) In general**

A financial institution may not disclose nonpublic personal information to a nonaffiliated third party unless—

(A) such financial institution clearly and conspicuously discloses to the consumer, in writing or in electronic form or other form permitted by the regulations prescribed under section 6804 of this title, that such information may be disclosed to such third party;

(B) the consumer is given the opportunity, before the time that such information is initially disclosed, to direct that such information not be disclosed to such third party; and

(C) the consumer is given an explanation of how the consumer can exercise that nondisclosure option.

(2) Exception

This subsection shall not prevent a financial institution from providing nonpublic personal information to a nonaffiliated third party to perform services for or functions on behalf of the financial institution, including marketing of the financial institution's own products or services, or financial products or services offered pursuant to joint agreements between two or more financial institutions that comply with the requirements imposed by the regulations prescribed under section 6804 of this title, if the financial institution fully discloses the providing of such information and enters into a contractual agreement with the third party that requires the third party to maintain the confidentiality of such information.

(c) Limits on reuse of information

Except as otherwise provided in this subchapter, a nonaffiliated third party that receives from a financial institution nonpublic personal information under this section shall not, directly or through an affiliate of such receiving third party, disclose such information to any other person that is a nonaffiliated third party of both the financial institution and such receiving third party, unless such disclosure would be lawful if made directly to such other person by the financial institution.

(d) Limitations on the sharing of account number information for marketing purposes

A financial institution shall not disclose, other than to a consumer reporting agency, an account number or similar form of access number or access code for a credit card account, deposit account, or transaction account of a consumer to any nonaffiliated third party for use in telemarketing, direct mail marketing, or other marketing through electronic mail to the consumer.

(e) General exceptions

Subsections (a) and (b) shall not prohibit the disclosure of nonpublic personal information—

(1) as necessary to effect, administer, or enforce a transaction requested or authorized by the consumer, or in connection with—

(A) servicing or processing a financial product or service requested or authorized by the consumer;

(B) maintaining or servicing the consumer's account with the financial institution, or with another entity as part of a private label credit card program or other extension of credit on behalf of such entity; or

(C) a proposed or actual securitization, secondary market sale (including sales of servicing rights), or similar transaction related to a transaction of the consumer;

(2) with the consent or at the direction of the consumer;

(3)(A) to protect the confidentiality or security of the financial institution's records pertaining to the consumer, the service or product, or the transaction therein; (B) to protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability; (C) for required institutional risk control, or for resolving customer disputes or inquiries; (D) to persons holding a legal or beneficial interest relating to the consumer; or (E) to persons acting in a fiduciary or representative capacity on behalf of the consumer;

(4) to provide information to insurance rate advisory organizations, guaranty funds or agencies, applicable rating agencies of the financial institution, persons assessing the institution's compliance with industry standards, and the institution's attorneys, accountants, and auditors;

(5) to the extent specifically permitted or required under other provisions of law and in accordance with the Right to Financial Privacy Act of 1978 [12 U.S.C. 3401 et seq.], to law enforcement agencies (including the Bureau of

Consumer Financial Protection ¹ a Federal functional regulator, the Secretary of the Treasury with respect to subchapter II of chapter 53 of title 31, and chapter 2 of title I of Public Law 91–508 (12 U.S.C. 1951–1959), a State insurance authority, or the Federal Trade Commission), self-regulatory organizations, or for an investigation on a matter related to public safety;

(6)(A) to a consumer reporting agency in accordance with the Fair Credit Reporting Act [15 U.S.C. 1681 et seq.], or (B) from a consumer report reported by a consumer reporting agency;

(7) in connection with a proposed or actual sale, merger, transfer, or exchange of all or a portion of a business or operating unit if the disclosure of nonpublic personal information concerns solely consumers of such business or unit; or

(8) to comply with Federal, State, or local laws, rules, and other applicable legal requirements; to comply with a properly authorized civil, criminal, or regulatory investigation or subpoena or summons by Federal, State, or local authorities; or to respond to judicial process or government regulatory authorities having jurisdiction over the financial institution for examination, compliance, or other purposes as authorized by law.

(Pub. L. 106–102, title V, §502, Nov. 12, 1999, 113 Stat. 1437; Pub. L. 111–203, title X, §1093(2), July 21, 2010, 124 Stat. 2095.)

EDITORIAL NOTES

REFERENCES IN TEXT

This subchapter, referred to in subsecs. (a) and (c), was in the original "this subtitle", meaning subtitle A (§§501–510) of title V of Pub. L. 106–102, Nov. 12, 1999, 113 Stat. 1436, which is classified principally to this subchapter. For complete classification of subtitle A to the Code, see Tables.

The Right to Financial Privacy Act of 1978, referred to in subsec. (e)(5), is title XI of Pub. L. 95–630, Nov. 10, 1978, 92 Stat. 3697, which is classified generally to chapter 35 (§3401 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 3401 of Title 12 and Tables.

Chapter 2 of title I of Public Law 91–508, referred to in subsec. (e)(5), is chapter 2 (§§121–129) of title I of Pub. L. 91–508, Oct. 26, 1970, 84 Stat. 1116, which is classified generally to chapter 21 (§1951 et seq.) of Title 12, Banks and Banking. For complete classification of chapter 2 to the Code, see Tables.

The Fair Credit Reporting Act, referred to in subsec. (e)(6)(A), is title VI of Pub. L. 90–321, as added by Pub. L. 91–508, title VI, §601, Oct. 26, 1970, 84 Stat. 1127, which is classified generally to subchapter III (§1681 et seq.) of chapter 41 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of this title and Tables.

AMENDMENTS

2010—Subsec. (e)(5). Pub. L. 111–203 inserted "the Bureau of Consumer Financial Protection" after " (including".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

¹ *So in original. Probably should be followed by a comma.*

§6803. Disclosure of institution privacy policy

(a) Disclosure required

At the time of establishing a customer relationship with a consumer and not less than annually during the continuation of such relationship, a financial institution shall provide a clear and conspicuous disclosure to such consumer, in writing or in electronic form or other form permitted by the regulations prescribed under section 6804 of this title, of such financial institution's policies and practices with respect to—

- (1) disclosing nonpublic personal information to affiliates and nonaffiliated third parties, consistent with section 6802 of this title, including the categories of information that may be disclosed;
- (2) disclosing nonpublic personal information of persons who have ceased to be customers of the financial institution; and
- (3) protecting the nonpublic personal information of consumers.

(b) Regulations

Disclosures required by subsection (a) shall be made in accordance with the regulations prescribed under section 6804 of this title.

(c) Information to be included

The disclosure required by subsection (a) shall include—

- (1) the policies and practices of the institution with respect to disclosing nonpublic personal information to nonaffiliated third parties, other than agents of the institution, consistent with section 6802 of this title, and including —

- (A) the categories of persons to whom the information is or may be disclosed, other than the persons to whom the information may be provided pursuant to section 6802(e) of this title; and
- (B) the policies and practices of the institution with respect to disclosing of nonpublic personal information of persons who have ceased to be customers of the financial institution;

- (2) the categories of nonpublic personal information that are collected by the financial institution;
- (3) the policies that the institution maintains to protect the confidentiality and security of nonpublic personal information in accordance with section 6801 of this title; and
- (4) the disclosures required, if any, under section 1681a(d)(2)(A)(iii) of this title.

(d) Exemption for certified public accountants

(1) In general

The disclosure requirements of subsection (a) do not apply to any person, to the extent that the person is—

- (A) a certified public accountant;
- (B) certified or licensed for such purpose by a State; and
- (C) subject to any provision of law, rule, or regulation issued by a legislative or regulatory body of the State, including rules of professional conduct or ethics, that prohibits disclosure of nonpublic personal information without the knowing and expressed consent of the consumer.

(2) Limitation

Nothing in this subsection shall be construed to exempt or otherwise exclude any financial institution that is affiliated or becomes affiliated with a certified public accountant described in paragraph (1) from any provision of this section.

(3) Definitions

For purposes of this subsection, the term "State" means any State or territory of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, or the Northern Mariana Islands.

(e) Model forms

(1) In general

The agencies referred to in section 6804(a)(1) of this title shall jointly develop a model form which may be used, at the option of the financial institution, for the provision of disclosures under this section.

(2) Format

A model form developed under paragraph (1) shall—

- (A) be comprehensible to consumers, with a clear format and design;
- (B) provide for clear and conspicuous disclosures;
- (C) enable consumers easily to identify the sharing practices of a financial institution and to compare privacy practices among financial institutions; and
- (D) be succinct, and use an easily readable type font.

(3) Timing

A model form required to be developed by this subsection shall be issued in proposed form for public comment not later than 180 days after October 13, 2006.

(4) Safe harbor

Any financial institution that elects to provide the model form developed by the agencies under this subsection shall be deemed to be in compliance with the disclosures required under this section.

(f) Exception to annual notice requirement

A financial institution that—

(1) provides nonpublic personal information only in accordance with the provisions of subsection (b)(2) or (e) of section 6802 of this title or regulations prescribed under section 6804(b) of this title, and

(2) has not changed its policies and practices with regard to disclosing nonpublic personal information from the policies and practices that were disclosed in the most recent disclosure sent to consumers in accordance with this section,

shall not be required to provide an annual disclosure under this section until such time as the financial institution fails to comply with any criteria described in paragraph (1) or (2).

(Pub. L. 106–102, [title V, §503, Nov. 12, 1999](#), 113 Stat. 1439; Pub. L. 109–351, [title VI, §609, title VII, §728, Oct. 13, 2006](#), 120 Stat. 1983, 2003; Pub. L. 114–94, [div. G, title LXXV, §75001, Dec. 4, 2015](#), 129 Stat. 1787.)

EDITORIAL NOTES

AMENDMENTS

2015—Subsec. (f). Pub. L. 114–94 added subsec. (f).

2006—Pub. L. 109–351 designated concluding provisions of subsec. (a) as (b), inserted heading, substituted "Disclosures required by subsection (a)" for "Such disclosures", redesignated former subsec. (b) as (c), and added subsecs. (d) and (e).

EXECUTIVE DOCUMENTS

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§6804. Rulemaking

(a) Regulatory authority

(1) Rulemaking

(A) In general

Except as provided in subparagraph (C), the Bureau of Consumer Financial Protection and the Securities and Exchange Commission shall have authority to prescribe such regulations as may be necessary to carry out the purposes of this subchapter with respect to financial institutions and other persons subject to their respective jurisdiction under section 6805 of this title (and notwithstanding subtitle B of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5511 et seq.]), except that the Bureau of Consumer Financial Protection shall not have authority to prescribe regulations with respect to the standards under section 6801 of this title.

(B) CFTC

The Commodity Futures Trading Commission shall have authority to prescribe such regulations as may be necessary to carry out the purposes of this subchapter with respect to financial institutions and other persons subject to the jurisdiction of the Commodity Futures Trading Commission under section 7b–2 of title 7.

(C) Federal Trade Commission authority

Notwithstanding the authority of the Bureau of Consumer Financial Protection under subparagraph (A), the Federal Trade Commission shall have authority to prescribe such regulations as may be necessary to carry out the purposes of this subchapter with respect to any financial institution that is a person described in section 1029(a) of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5519(a)].

(D) Rule of construction

Nothing in this paragraph shall be construed to alter, affect, or otherwise limit the authority of a State insurance authority to adopt regulations to carry out this subchapter.

(2) Coordination, consistency, and comparability

Each of the agencies authorized under paragraph (1) to prescribe regulations shall consult and coordinate with the other such agencies and, as appropriate, and with ¹ representatives of State insurance authorities designated by the National Association of Insurance Commissioners, for the purpose of assuring, to the extent possible, that the regulations prescribed by each such agency are consistent and comparable with the regulations prescribed by the other such agencies.

(3) Procedures and deadline

Such regulations shall be prescribed in accordance with applicable requirements of title 5.

(b) Authority to grant exceptions

The regulations prescribed under subsection (a) may include such additional exceptions to subsections (a) through (d) of section 6802 of this title as are deemed consistent with the purposes of this subchapter.

(Pub. L. 106–102, [title V, §504](#), Nov. 12, 1999, 113 Stat. 1439; Pub. L. 111–203, [title X, §1093\(3\)](#), July 21, 2010, 124 Stat. 2095.)

EDITORIAL NOTES**REFERENCES IN TEXT**

This subchapter, referred to in subsecs. (a)(1) and (b), was in the original "this subtitle", meaning subtitle A (§§501–510) of title V of Pub. L. 106–102, [Nov. 12, 1999](#), 113 Stat. 1436, which is classified principally to this subchapter. For complete classification of subtitle A to the Code, see Tables.

The Consumer Financial Protection Act of 2010, referred to in subsec. (a)(1)(A), is title X of Pub. L. 111–203, [July 21, 2010](#), 124 Stat. 1955. Subtitle B (§§1021–1029A) of the Act is classified generally to part B (§5511 et seq.) of subchapter V of chapter 53 of Title 12, Banks and Banking. For complete classification of subtitle B to the Code, see Tables.

AMENDMENTS

2010—Subsec. (a)(1), (2). Pub. L. 111–203, §1093(3)(A), added pars. (1) and (2) and struck out former pars. (1) and (2) which related, respectively, to rulemaking by the Federal banking agencies, the National Credit Union Administration, the Secretary of the Treasury, the Securities and Exchange Commission, and the Federal Trade Commission, and consultation and coordination among these agencies and authorities to assure consistency and comparability of regulations.

Subsec. (a)(3). Pub. L. 111–203, §1093(3)(B), struck out "and shall be issued in final form not later than 6 months after November 12, 1999" after "title 5".

STATUTORY NOTES AND RELATED SUBSIDIARIES**EFFECTIVE DATE OF 2010 AMENDMENT**

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

¹ So in original. Probably should be "and, as appropriate, with".

§6805. Enforcement**(a) In general**

Subject to subtitle B of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5511 et seq.], this subchapter and the regulations prescribed thereunder shall be enforced by the Bureau of Consumer Financial Protection, the Federal functional regulators, the State insurance authorities, and the Federal Trade Commission with respect to financial institutions and other persons subject to their jurisdiction under applicable law, as follows:

(1) Under section 1818 of title 12, by the appropriate Federal banking agency, as defined in section 1813(q) of title 12, in the case of—

(A) national banks, Federal branches and Federal agencies of foreign banks, and any subsidiaries of such entities (except brokers, dealers, persons providing insurance, investment companies, and investment advisers);

(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, organizations operating under section 25 or 25A of the Federal Reserve Act [12 U.S.C. 601 et seq., 611 et seq.], and bank holding companies and their

nonbank subsidiaries or affiliates (except brokers, dealers, persons providing insurance, investment companies, and investment advisers);

(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), insured State branches of foreign banks, and any subsidiaries of such entities (except brokers, dealers, persons providing insurance, investment companies, and investment advisers); and

(D) savings associations the deposits of which are insured by the Federal Deposit Insurance Corporation, and any subsidiaries of such savings associations (except brokers, dealers, persons providing insurance, investment companies, and investment advisers).

(2) Under the Federal Credit Union Act [12 U.S.C. 1751 et seq.], by the Board of the National Credit Union Administration with respect to any federally insured credit union, and any subsidiaries of such an entity.

(3) Under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], by the Securities and Exchange Commission with respect to any broker or dealer.

(4) Under the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.], by the Securities and Exchange Commission with respect to investment companies.

(5) Under the Investment Advisers Act of 1940 [15 U.S.C. 80b–1 et seq.], by the Securities and Exchange Commission with respect to investment advisers registered with the Commission under such Act.

(6) Under State insurance law, in the case of any person engaged in providing insurance, by the applicable State insurance authority of the State in which the person is domiciled, subject to section 6701 of this title.

(7) Under the Federal Trade Commission Act [15 U.S.C. 41 et seq.], by the Federal Trade Commission for any other financial institution or other person that is not subject to the jurisdiction of any agency or authority under paragraphs (1) through (6) of this subsection.

(8) Under subtitle E of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5561 et seq.], by the Bureau of Consumer Financial Protection, in the case of any financial institution and other covered person or service provider that is subject to the jurisdiction of the Bureau and any person subject to this subchapter, but not with respect to the standards under section 6801 of this title.

(b) Enforcement of section 6801

(1) In general

Except as provided in paragraph (2), the agencies and authorities described in subsection (a), other than the Bureau of Consumer Financial Protection, shall implement the standards prescribed under section 6801(b) of this title in the same manner, to the extent practicable, as standards prescribed pursuant to section 1831p–1(a) of title 12 are implemented pursuant to such section.

(2) Exception

The agencies and authorities described in paragraphs (3), (4), (5), (6), and (7) of subsection (a) shall implement the standards prescribed under section 6801(b) of this title by rule with respect to the financial institutions and other persons subject to their respective jurisdictions under subsection (a).

(c) Absence of State action

If a State insurance authority fails to adopt regulations to carry out this subchapter, such State shall not be eligible to override, pursuant to section 1831x(g)(2)(B)(iii) of title 12, the insurance customer protection regulations prescribed by a Federal banking agency under section 1831x(a) of title 12.

(d) Definitions

The terms used in subsection (a)(1) that are not defined in this subchapter or otherwise defined in section 1813(s) of title 12 shall have the same meaning as given in section 3101 of title 12.

(Pub. L. 106–102, [title V, §505](#), Nov. 12, 1999, 113 Stat. 1440; Pub. L. 111–203, [title X, §1093\(4\), \(5\)](#), July 21, 2010, 124 Stat. 2096, [2097](#).)

EDITORIAL NOTES

REFERENCES IN TEXT

The Consumer Financial Protection Act of 2010, referred to in subsec. (a), is title X of Pub. L. 111–203, [July 21, 2010](#), 124 Stat. 1955. Subtitles B (§§1021–1029A) and E (§§1051–1058) of the Act are classified generally to parts B (§5511 et seq.) and E (§5561 et seq.), respectively, of subchapter V of chapter 53 of Title 12, Banks and Banking. For complete classification of subtitles B and E to the Code, see Tables.

This subchapter, referred to in subsecs. (a), (c), and (d), was in the original "this subtitle", meaning subtitle A (§§501–510) of title V of Pub. L. 106–102, [Nov. 12, 1999](#), 113 Stat. 1436, which is classified principally to this subchapter. For complete classification of subtitle A to the Code, see Tables.

Section 25 of the Federal Reserve Act, referred to in subsec. (a)(1)(B), is classified to subchapter I (§601 et seq.) of chapter 6 of Title 12, Banks and Banking. Section 25A of the Federal Reserve Act is classified to subchapter II (§611 et seq.) of chapter 6 of Title 12.

The Federal Credit Union Act, referred to in subsec. (a)(2), is act [June 26, 1934, ch. 750](#), 48 Stat. 1216, which is classified generally to chapter 14 (§1751 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1751 of Title 12 and Tables.

The Securities Exchange Act of 1934, referred to in subsec. (a)(3), is act [June 6, 1934, ch. 404](#), 48 Stat. 881, which is classified principally to chapter 2B (§78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables.

The Investment Company Act of 1940, referred to in subsec. (a)(4), is title I of act [Aug. 22, 1940, ch. 686](#), 54 Stat. 789, which is classified generally to subchapter I (§80a–1 et seq.) of chapter 2D of this title. For complete classification of this Act to the Code, see section 80a–51 of this title and Tables.

The Investment Advisers Act of 1940, referred to in subsec. (a)(5), is title II of act [Aug. 22, 1940, ch. 686](#), 54 Stat. 847, which is classified generally to subchapter II (§80b–1 et seq.) of chapter 2D of this title. For complete classification of this Act to the Code, see section 80b–20 of this title and Tables.

The Federal Trade Commission Act, referred to in subsec. (a)(7), is act [Sept. 26, 1914, ch. 311](#), 38 Stat. 717, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–203, §1093(4)(A), substituted "Subject to subtitle B of the Consumer Financial Protection Act of 2010, this subchapter and the regulations prescribed thereunder shall be enforced by the Bureau of Consumer Financial Protection, the Federal functional regulators, the State insurance authorities, and the Federal Trade Commission with respect to financial institutions and other persons subject to their jurisdiction under applicable law, as follows:" for "This subchapter and the regulations prescribed thereunder shall be enforced by the Federal functional regulators, the State insurance authorities, and the Federal Trade Commission with respect to financial institutions and other persons subject to their jurisdiction under applicable law, as follows:".

Subsec. (a)(1). Pub. L. 111–203, §1093(4)(B)(i), inserted "by the appropriate Federal banking agency, as defined in section 1813(q) of title 12," before "in the case of—".

Subsec. (a)(1)(A). Pub. L. 111–203, §1093(4)(B)(ii), struck out ", by the Office of the Comptroller of the Currency" before semicolon at end.

Subsec. (a)(1)(B). Pub. L. 111–203, §1093(4)(B)(iii), struck out ", by the Board of Governors of the Federal Reserve System" before semicolon at end.

Subsec. (a)(1)(C). Pub. L. 111–203, §1093(4)(B)(iv), struck out ", by the Board of Directors of the Federal Deposit Insurance Corporation" before "; and".

Subsec. (a)(1)(D). Pub. L. 111–203, §1093(4)(B)(v), struck out ", by the Director of the Office of Thrift Supervision" before period at end.

Subsec. (a)(8). Pub. L. 111–203, §1093(4)(C), added par. (8).

Subsec. (b)(1). Pub. L. 111–203, §1093(5), inserted ", other than the Bureau of Consumer Financial Protection," before "shall implement the standards".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

§6806. Relation to other provisions

Except for the amendments made by subsections (a) and (b), nothing in this chapter shall be construed to modify, limit, or supersede the operation of the Fair Credit Reporting Act [15 U.S.C. 1681 et seq.], and no inference shall be drawn on the basis of the provisions of this chapter regarding whether information is transaction or experience information under section 603 of such Act [15 U.S.C. 1681a].

(Pub. L. 106–102, title V, §506(c), Nov. 12, 1999, 113 Stat. 1442.)

EDITORIAL NOTES

REFERENCES IN TEXT

Amendments made by subsections (a) and (b), referred to in text, means amendments made by section 506(a) and (b) of Pub. L. 106–102, which amended section 1681s of this title.

This chapter, referred to in text, was in the original "this title", meaning title V of Pub. L. 106–102, [Nov. 12, 1999](#), 113 Stat. 1436, which enacted this chapter and amended section 1681s of this title. For complete classification of title V to the Code, see Tables.

The Fair Credit Reporting Act, referred to in text, is title VI of Pub. L. 90–321, as added by Pub. L. 91–508, [title VI, §601, Oct. 26, 1970](#), 84 Stat. 1127, which is classified generally to subchapter III (§1681 et seq.) of chapter 41 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of this title and Tables.

§6807. Relation to State laws

(a) In general

This subchapter and the amendments made by this subchapter shall not be construed as superseding, altering, or affecting any statute, regulation, order, or interpretation in effect in any State, except to the extent that such statute, regulation, order, or interpretation is inconsistent with the provisions of this subchapter, and then only to the extent of the inconsistency.

(b) Greater protection under State law

For purposes of this section, a State statute, regulation, order, or interpretation is not inconsistent with the provisions of this subchapter if the protection such statute, regulation, order, or interpretation affords any person is greater than the protection provided under this subchapter and the amendments made by this subchapter, as determined by the Bureau of Consumer Financial Protection, after consultation with the agency or authority with jurisdiction under section 6805(a) of this title of either the person that initiated the complaint or that is the subject of the complaint, on its own motion or upon the petition of any interested party.

(Pub. L. 106–102, [title V, §507, Nov. 12, 1999](#), 113 Stat. 1442; Pub. L. 111–203, [title X, §1093\(6\), July 21, 2010](#), 124 Stat. 2097.)

EDITORIAL NOTES

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original "this subtitle", meaning subtitle A (§§501–510) of title V of Pub. L. 106–102, [Nov. 12, 1999](#), 113 Stat. 1436, which is classified principally to this subchapter. For complete classification of subtitle A to the Code, see Tables.

AMENDMENTS

2010—Subsec. (b). Pub. L. 111–203 substituted "Bureau of Consumer Financial Protection" for "Federal Trade Commission".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

§6808. Study of information sharing among financial affiliates

(a) In general

The Secretary of the Treasury, in conjunction with the Federal functional regulators and the Federal Trade Commission, shall conduct a study of information sharing practices among financial institutions and their affiliates. Such study shall include—

- (1) the purposes for the sharing of confidential customer information with affiliates or with nonaffiliated third parties;
- (2) the extent and adequacy of security protections for such information;
- (3) the potential risks for customer privacy of such sharing of information;
- (4) the potential benefits for financial institutions and affiliates of such sharing of information;
- (5) the potential benefits for customers of such sharing of information;
- (6) the adequacy of existing laws to protect customer privacy;
- (7) the adequacy of financial institution privacy policy and privacy rights disclosure under existing law;
- (8) the feasibility of different approaches, including opt-out and opt-in, to permit customers to direct that confidential information not be shared with affiliates and nonaffiliated third parties; and

(9) the feasibility of restricting sharing of information for specific uses or of permitting customers to direct the uses for which information may be shared.

(b) Consultation

The Secretary shall consult with representatives of State insurance authorities designated by the National Association of Insurance Commissioners, and also with financial services industry, consumer organizations and privacy groups, and other representatives of the general public, in formulating and conducting the study required by subsection (a).

(c) Report

On or before January 1, 2002, the Secretary shall submit a report to the Congress containing the findings and conclusions of the study required under subsection (a), together with such recommendations for legislative or administrative action as may be appropriate.

(Pub. L. 106–102, title V, §508, Nov. 12, 1999, 113 Stat. 1442.)

§6809. Definitions

As used in this subchapter:

(1) Federal banking agency

The term "Federal banking agency" has the same meaning as given in section 1813 of title 12.

(2) Federal functional regulator

The term "Federal functional regulator" means—

- (A) the Board of Governors of the Federal Reserve System;
- (B) the Office of the Comptroller of the Currency;
- (C) the Board of Directors of the Federal Deposit Insurance Corporation;
- (D) the Director of the Office of Thrift Supervision;
- (E) the National Credit Union Administration Board; and
- (F) the Securities and Exchange Commission.

(3) Financial institution

(A) In general

The term "financial institution" means any institution the business of which is engaging in financial activities as described in section 1843(k) of title 12.

(B) Persons subject to CFTC regulation

Notwithstanding subparagraph (A), the term "financial institution" does not include any person or entity with respect to any financial activity that is subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act [7 U.S.C. 1 et seq.].

(C) Farm credit institutions

Notwithstanding subparagraph (A), the term "financial institution" does not include the Federal Agricultural Mortgage Corporation or any entity chartered and operating under the Farm Credit Act of 1971 [12 U.S.C. 2001 et seq.].

(D) Other secondary market institutions

Notwithstanding subparagraph (A), the term "financial institution" does not include institutions chartered by Congress specifically to engage in transactions described in section 6802(e)(1)(C) of this title, as long as such institutions do not sell or transfer nonpublic personal information to a nonaffiliated third party.

(4) Nonpublic personal information

(A) The term "nonpublic personal information" means personally identifiable financial information—

- (i) provided by a consumer to a financial institution;
- (ii) resulting from any transaction with the consumer or any service performed for the consumer; or
- (iii) otherwise obtained by the financial institution.

(B) Such term does not include publicly available information, as such term is defined by the regulations prescribed under section 6804 of this title.

(C) Notwithstanding subparagraph (B), such term—

(i) shall include any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived using any nonpublic personal information other than publicly available information; but

(ii) shall not include any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived without using any nonpublic personal information.

(5) Nonaffiliated third party

The term "nonaffiliated third party" means any entity that is not an affiliate of, or related by common ownership or affiliated by corporate control with, the financial institution, but does not include a joint employee of such institution.

(6) Affiliate

The term "affiliate" means any company that controls, is controlled by, or is under common control with another company.

(7) Necessary to effect, administer, or enforce

The term "as necessary to effect, administer, or enforce the transaction" means—

(A) the disclosure is required, or is a usual, appropriate, or acceptable method, to carry out the transaction or the product or service business of which the transaction is a part, and record or service or maintain the consumer's account in the ordinary course of providing the financial service or financial product, or to administer or service benefits or claims relating to the transaction or the product or service business of which it is a part, and includes—

- (i) providing the consumer or the consumer's agent or broker with a confirmation, statement, or other record of the transaction, or information on the status or value of the financial service or financial product; and
- (ii) the accrual or recognition of incentives or bonuses associated with the transaction that are provided by the financial institution or any other party;

(B) the disclosure is required, or is one of the lawful or appropriate methods, to enforce the rights of the financial institution or of other persons engaged in carrying out the financial transaction, or providing the product or service;

(C) the disclosure is required, or is a usual, appropriate, or acceptable method, for insurance underwriting at the consumer's request or for reinsurance purposes, or for any of the following purposes as they relate to a consumer's insurance: Account administration, reporting, investigating, or preventing fraud or material misrepresentation, processing premium payments, processing insurance claims, administering insurance benefits (including utilization review activities), participating in research projects, or as otherwise required or specifically permitted by Federal or State law; or

(D) the disclosure is required, or is a usual, appropriate or acceptable method, in connection with—

- (i) the authorization, settlement, billing, processing, clearing, transferring, reconciling, or collection of amounts charged, debited, or otherwise paid using a debit, credit or other payment card, check, or account number, or by other payment means;
- (ii) the transfer of receivables, accounts or interests therein; or
- (iii) the audit of debit, credit or other payment information.

(8) State insurance authority

The term "State insurance authority" means, in the case of any person engaged in providing insurance, the State insurance authority of the State in which the person is domiciled.

(9) Consumer

The term "consumer" means an individual who obtains, from a financial institution, financial products or services which are to be used primarily for personal, family, or household purposes, and also means the legal representative of such an individual.

(10) Joint agreement

The term "joint agreement" means a formal written contract pursuant to which two or more financial institutions jointly offer, endorse, or sponsor a financial product or service, and as may be further defined in the regulations prescribed under section 6804 of this title.

(11) Customer relationship

The term "time of establishing a customer relationship" shall be defined by the regulations prescribed under section 6804 of this title, and shall, in the case of a financial institution engaged in extending credit directly to consumers to finance purchases of goods or services, mean the time of establishing the credit relationship with the consumer.

(Pub. L. 106–102, [title V](#), [§509](#), [Nov. 12, 1999](#), 113 Stat. 1443.)

EDITORIAL NOTES**REFERENCES IN TEXT**

This subchapter, referred to in text, was in the original "this subtitle", meaning subtitle A (§§501–510) of title V of Pub. L. 106–102, [Nov. 12, 1999](#), 113 Stat. 1436, which is classified principally to this subchapter. For complete classification of subtitle A to the Code, see Tables.

The Commodity Exchange Act, referred to in par. (3)(B), is act [Sept. 21, 1922](#), [ch. 369](#), 42 Stat. 998, which is classified generally to chapter 1 (§1 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

The Farm Credit Act of 1971, referred to in par. (3)(C), is Pub. L. 92–181, [Dec. 10, 1971](#), 85 Stat. 583, which is classified generally to chapter 23 (§2001 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 2001 of Title 12 and Tables.

SUBCHAPTER II—FRAUDULENT ACCESS TO FINANCIAL INFORMATION

§6821. Privacy protection for customer information of financial institutions

(a) Prohibition on obtaining customer information by false pretenses

It shall be a violation of this subchapter for any person to obtain or attempt to obtain, or cause to be disclosed or attempt to cause to be disclosed to any person, customer information of a financial institution relating to another person

- (1) by making a false, fictitious, or fraudulent statement or representation to an officer, employee, or agent of a financial institution;
- (2) by making a false, fictitious, or fraudulent statement or representation to a customer of a financial institution; or
- (3) by providing any document to an officer, employee, or agent of a financial institution, knowing that the document is forged, counterfeit, lost, or stolen, was fraudulently obtained, or contains a false, fictitious, or fraudulent statement or representation.

(b) Prohibition on solicitation of a person to obtain customer information from financial institution under false pretenses

It shall be a violation of this subchapter to request a person to obtain customer information of a financial institution, knowing that the person will obtain, or attempt to obtain, the information from the institution in any manner described in subsection (a).

(c) Nonapplicability to law enforcement agencies

No provision of this section shall be construed so as to prevent any action by a law enforcement agency, or any officer, employee, or agent of such agency, to obtain customer information of a financial institution in connection with the performance of the official duties of the agency.

(d) Nonapplicability to financial institutions in certain cases

No provision of this section shall be construed so as to prevent any financial institution, or any officer, employee, or agent of a financial institution, from obtaining customer information of such financial institution in the course of—

- (1) testing the security procedures or systems of such institution for maintaining the confidentiality of customer information;
- (2) investigating allegations of misconduct or negligence on the part of any officer, employee, or agent of the financial institution; or
- (3) recovering customer information of the financial institution which was obtained or received by another person in any manner described in subsection (a) or (b).

(e) Nonapplicability to insurance institutions for investigation of insurance fraud

No provision of this section shall be construed so as to prevent any insurance institution, or any officer, employee, or agency of an insurance institution, from obtaining information as part of an insurance investigation into criminal activity, fraud, material misrepresentation, or material nondisclosure that is authorized for such institution under State law, regulation, interpretation, or order.

(f) Nonapplicability to certain types of customer information of financial institutions

No provision of this section shall be construed so as to prevent any person from obtaining customer information of a financial institution that otherwise is available as a public record filed pursuant to the securities laws (as defined in section 78c(a)(47) of this title).

(g) Nonapplicability to collection of child support judgments

No provision of this section shall be construed to prevent any State-licensed private investigator, or any officer, employee, or agent of such private investigator, from obtaining customer information of a financial institution, to the extent reasonably necessary to collect child support from a person adjudged to have been delinquent in his or her obligations by a Federal or State court, and to the extent that such action by a State-licensed private investigator is not unlawful under any other Federal or State law or regulation, and has been authorized by an order or judgment of a court of competent jurisdiction.

(Pub. L. 106–102, [title V, §521](#), [Nov. 12, 1999](#), 113 Stat. 1446.)

§6822. Administrative enforcement

(a) Enforcement by Federal Trade Commission

Except as provided in subsection (b), compliance with this subchapter shall be enforced by the Federal Trade Commission in the same manner and with the same power and authority as the Commission has under the Fair Debt Collection Practices Act [15 U.S.C. 1692 et seq.] to enforce compliance with such Act.

(b) Enforcement by other agencies in certain cases**(1) In general**

Compliance with this subchapter shall be enforced under—

(A) section 8 of the Federal Deposit Insurance Act [12 U.S.C. 1818], in the case of—

(i) national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;

(ii) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act [12 U.S.C. 601 et seq., 611 et seq.], by the Board;

(iii) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System and national nonmember banks) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation; and

(iv) savings associations the deposits of which are insured by the Federal Deposit Insurance Corporation, by the Director of the Office of Thrift Supervision; and

(B) the Federal Credit Union Act [12 U.S.C. 1751 et seq.], by the Administrator of the National Credit Union Administration with respect to any Federal credit union.

(2) Violations of this subchapter treated as violations of other laws

For the purpose of the exercise by any agency referred to in paragraph (1) of its powers under any Act referred to in that paragraph, a violation of this subchapter shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in paragraph (1), each of the agencies referred to in that paragraph may exercise, for the purpose of enforcing compliance with this subchapter, any other authority conferred on such agency by law.

(Pub. L. 106–102, title V, §522, Nov. 12, 1999, 113 Stat. 1447.)

EDITORIAL NOTES**REFERENCES IN TEXT**

The Fair Debt Collection Practices Act, referred to in subsec. (a), is title VIII of Pub. L. 90–321, as added by Pub. L. 95–109, [Sept. 20, 1977](#), 91 Stat. 874, which is classified generally to subchapter V (§1692 et seq.) of chapter 41 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of this title and Tables.

Section 25 of the Federal Reserve Act, referred to in subsec. (b)(1)(A)(ii), is classified to subchapter I (§601 et seq.) of chapter 6 of Title 12, Banks and Banking. Section 25A of the Federal Reserve Act is classified to subchapter II (§611 et seq.) of chapter 6 of Title 12.

The Federal Credit Union Act, referred to in subsec. (b)(1)(B), is act [June 26, 1934](#), [ch. 750](#), 48 Stat. 1216, which is classified generally to chapter 14 (§1751 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1751 of Title 12 and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES**TRANSFER OF FUNCTIONS**

Functions vested in Administrator of National Credit Union Administration transferred and vested in National Credit Union Administration Board pursuant to section 1752a of Title 12, Banks and Banking.

§6823. Criminal penalty**(a) In general**

Whoever knowingly and intentionally violates, or knowingly and intentionally attempts to violate, section 6821 of this title shall be fined in accordance with title 18 or imprisoned for not more than 5 years, or both.

(b) Enhanced penalty for aggravated cases

Whoever violates, or attempts to violate, section 6821 of this title while violating another law of the United States or as part of a pattern of any illegal activity involving more than \$100,000 in a 12-month period shall be fined twice the amount provided in subsection (b)(3) or (c)(3) (as the case may be) of section 3571 of title 18, imprisoned for not more than 10 years, or both.

(Pub. L. 106–102, [title V](#), [§523](#), Nov. 12, 1999, 113 Stat. 1448.)

§6824. Relation to State laws

(a) In general

This subchapter shall not be construed as superseding, altering, or affecting the statutes, regulations, orders, or interpretations in effect in any State, except to the extent that such statutes, regulations, orders, or interpretations are inconsistent with the provisions of this subchapter, and then only to the extent of the inconsistency.

(b) Greater protection under State law

For purposes of this section, a State statute, regulation, order, or interpretation is not inconsistent with the provisions of this subchapter if the protection such statute, regulation, order, or interpretation affords any person is greater than the protection provided under this subchapter as determined by the Federal Trade Commission, after consultation with the agency or authority with jurisdiction under section 6822 of this title of either the person that initiated the complaint or that is the subject of the complaint, on its own motion or upon the petition of any interested party.

(Pub. L. 106–102, [title V](#), [§524](#), Nov. 12, 1999, 113 Stat. 1448.)

§6825. Agency guidance

In furtherance of the objectives of this subchapter, each Federal banking agency (as defined in section 1813(z) of title 12), the National Credit Union Administration, and the Securities and Exchange Commission or self-regulatory organizations, as appropriate, shall review regulations and guidelines applicable to financial institutions under their respective jurisdictions and shall prescribe such revisions to such regulations and guidelines as may be necessary to ensure that such financial institutions have policies, procedures, and controls in place to prevent the unauthorized disclosure of customer financial information and to deter and detect activities proscribed under section 6821 of this title.

(Pub. L. 106–102, [title V](#), [§525](#), Nov. 12, 1999, 113 Stat. 1448.)

§6826. Reports

(a) Report to the Congress

Before the end of the 18-month period beginning on November 12, 1999, the Comptroller General, in consultation with the Federal Trade Commission, Federal banking agencies, the National Credit Union Administration, the Securities and Exchange Commission, appropriate Federal law enforcement agencies, and appropriate State insurance regulators, shall submit to the Congress a report on the following:

(1) The efficacy and adequacy of the remedies provided in this subchapter in addressing attempts to obtain financial information by fraudulent means or by false pretenses.

(2) Any recommendations for additional legislative or regulatory action to address threats to the privacy of financial information created by attempts to obtain information by fraudulent means or false pretenses.

(b) Annual report by administering agencies

The Federal Trade Commission and the Attorney General shall submit to Congress an annual report on number and disposition of all enforcement actions taken pursuant to this subchapter.

(Pub. L. 106–102, [title V](#), [§526](#), Nov. 12, 1999, 113 Stat. 1448.)

§6827. Definitions

For purposes of this subchapter, the following definitions shall apply:

(1) Customer

The term "customer" means, with respect to a financial institution, any person (or authorized representative of a person) to whom the financial institution provides a product or service, including that of acting as a fiduciary.

(2) Customer information of a financial institution

The term "customer information of a financial institution" means any information maintained by or for a financial institution which is derived from the relationship between the financial institution and a customer of the financial institution and is identified with the customer.

(3) Document

The term "document" means any information in any form.

(4) Financial institution**(A) In general**

The term "financial institution" means any institution engaged in the business of providing financial services to customers who maintain a credit, deposit, trust, or other financial account or relationship with the institution.

(B) Certain financial institutions specifically included

The term "financial institution" includes any depository institution (as defined in section 461(b)(1)(A) of title 12), any broker or dealer, any investment adviser or investment company, any insurance company, any loan or finance company, any credit card issuer or operator of a credit card system, and any consumer reporting agency that compiles and maintains files on consumers on a nationwide basis (as defined in section 1681a(p) of this title).

(C) Securities institutions

For purposes of subparagraph (B)—

- (i) the terms "broker" and "dealer" have the same meanings as given in section 78c of this title;
- (ii) the term "investment adviser" has the same meaning as given in section 80b-2(a)(11) of this title; and
- (iii) the term "investment company" has the same meaning as given in section 80a-3 of this title.

(D) Certain persons and entities specifically excluded

The term "financial institution" does not include any person or entity with respect to any financial activity that is subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act [7 U.S.C. 1 et seq.] and does not include the Federal Agricultural Mortgage Corporation or any entity chartered and operating under the Farm Credit Act of 1971 [12 U.S.C. 2001 et seq.].

(E) Further definition by regulation

The Federal Trade Commission, after consultation with Federal banking agencies and the Securities and Exchange Commission, may prescribe regulations clarifying or describing the types of institutions which shall be treated as financial institutions for purposes of this subchapter.

(Pub. L. 106–102, [title V](#), [§527](#), [Nov. 12, 1999](#), 113 Stat. 1449.)

EDITORIAL NOTES**REFERENCES IN TEXT**

The Commodity Exchange Act, referred to in par. (4)(D), is act [Sept. 21, 1922](#), [ch. 369](#), 42 Stat. 998, which is classified generally to chapter 1 (§1 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

The Farm Credit Act of 1971, referred to in par. (4)(D), is Pub. L. 92–181, [Dec. 10, 1971](#), 85 Stat. 583, which is classified generally to chapter 23 (§2001 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 2001 of Title 12 and Tables.