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Your Money is No Good Here: FTC Bans Telemarketers from Accepting Four Methods of Payment

Telemarketers are now prohibited from accepting four methods of payment that the Federal Trade Commission (“FTC”) believes allow fraudulent telemarketers to avoid detection and prevent chargebacks.

The FTC voted 3-1 to amend the Telemarketing Sales Rule (“TSR”), which helps protect consumers from fraudulent telemarketing calls and gives them certain protections under the National Do Not Call Registry.

The banned payment methods are:

- **Remotely Created Checks (“RCCs”):** While traditional checks require the signature of the drawer (account holder), RCCs are created by the payee, with the drawer’s authorization, using the payor bank’s account information. In place of the check’s normal signature, RCCs bear a statement indicating that the account holder has authorized the check. RCC’s are lawful and permitted under Regulation CC (parts 210 and 227), Regulation J, and most states’ Uniform Commercial Code adoptions, see e.g. §3-103(16).
- **Remotely Created Payment Orders (RCPOs):** RCPOs are simply electronic versions of RCCs. These are a type of the broader “Electronic Payment Order” concept. In brief, RCPOs never exist in paper form, while RCCs do.
- **Money Transfers:** Consumers purchasing a money transfer pay cash to a money transfer provider, which transfers the value to another person who can pick up cash in person.
- **Cash Reload Mechanisms:** Cash reload mechanisms include prepaid cards with a shielded code number. The cards are often sold at gas stations and convenience stores. Once unveiled, the code number can be used to reload cash onto the card, or to transmit loaded funds to a third party.

Each of these four payment devices are lawful, practical and legitimate instruments used frequently in a range of industries. However, the FTC has determined that they are now forbidden to telemarketers.

The stated public policy objective of the amendment is to curb telemarketing fraud. At its peak, telemarketer fraud allegedly cost American consumers \$40 Billion. The FTC noted that in the past two years alone, it has halted three telemarketing operations that were using RCCs or RCPOs to defraud thousands of consumers out of over thirteen million dollars. These methods of payments are frequently used by perpetrators of telemarketing scams because, according to the FTC, they provide a fast way to anonymously and irrevocably extract money from the victims of fraud. Not everyone agrees with the FTC's new rule amendment. Commissioner Maureen K. Ohlhausen voted against the amendment and issued a statement that the measures were premature.

Other commentators opined that the amendment will stifle advancements in the electronic payment industry.² And lawyers familiar with the controlling laws for these payment methodologies can credibly argue that the supposed sins of both anonymity and irreversibility are misplaced arguments.

Members of the financial services industry fiercely opposed the restrictions on RCCs and RCPOs, arguing that the ban would be a direct and impermissible regulation of banks. Those depository institutions also argued that the ban would have a *per se* application beyond the telemarketing industry, however it is to be defined, with the consequence that banks may proactively have to adopt a blanket policy of refusing deposit of any RCCs or RCPOs. But given the reality of the amendment's adoption, banks may have cause to revisit their CIP procedures and account agreement's terms to ensure that they are protective of the institutions' interests.

Responding to these concerns, the FTC believes that the amendment is sufficiently tailored and flexible to enable the use of current and future payment alternatives. The FTC noted that the definition of RCPOs excludes "digital checks" that a consumer creates and sends via a smartphone application, for example, as

long as the payment was not created by the payee-merchant.

Finally, the FTC is confident that the recent ban will in no way impact legitimate telemarketers, believing that they do not ordinarily rely on such payment methods. Whether the amendment will have broader implications is to be determined.

¹ <https://www.ftc.gov/news-events/press-releases/2015/11/ftc-amends-telemarketing-rule-ban-payment-methods-used-scammers>

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https://www.ftc.gov/system/files/documents/public_statements/881203/151118

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