

also that some public benefit likely came from inmate work programs that entail telemarketing. The Commission noted that the record contained insufficient information upon which to base a proposal regarding prisoner telemarketing or to assess the costs and benefits of such a proposal. Therefore, the NPRM posed several questions to elicit comment on what action by the Commission, if any, might be appropriate regarding this issue.

In response to the NPRM, the Commission received several comments on this issue.⁸⁶² In addition, the June 2002 Forum devoted a session to the topic.⁸⁶³ Based on the entire record in this proceeding, the Commission has determined that any problems associated with the use of prison-based telemarketing would be more appropriately handled by the state legislatures and regulatory agencies than by adding a provision to the TSR.

The comments show that the number of inmates used for commercial telemarketing purposes is a small percentage of the prisoners who are employed in inmate work programs.⁸⁶⁴ The majority of prison-based telemarketing programs are used by federal and state governments, often for such tasks as providing information to consumers who call state tourist bureaus.⁸⁶⁵ A 1999 GAO Report reveals that only seven percent of the inmates who had access to consumer information were performing work for private firms, while 93 percent were working for government agencies, performing tasks such as answering calls from the public to state tourist centers.⁸⁶⁶ Thus, the vast majority of

prison-based telemarketing would be outside the ambit of the Rule because it does not involve "telemarketing" as that term is defined in the Rule.⁸⁶⁷

EPI estimates that there are only ten private companies in the United States who use prisoners as telemarketers, that these ten companies employ approximately 300 inmates in prison-based telemarketing programs, and that all these programs use inmates housed in state prisons.⁸⁶⁸ Commenters noted that the state prison work programs are heavily regulated by the state legislatures and Departments of Correction.⁸⁶⁹ EPI points out that the federally-administered Prison Industry Enhancement ("PIE") program was created to encourage the states and local governments to establish inmate work programs that mimic the private work environment. In passing the legislation, Congress elected to have the states manage these programs.⁸⁷⁰

Opponents of the use of prison-based telemarketing cited the potential for misuse of consumers' personal information by inmates, but were unable to point to actual incidents other than the isolated example raised during the Rule Review.⁸⁷¹ EPI noted that, after an exhaustive search, the 1999 GAO study was able to identify only nine incidents of misuse over an eight-year period, and only three of those nine incidents were the result of telemarketing for a private firm.⁸⁷² Commenters noted that similar problems occur, perhaps with even more frequency, among non-prisoner or civilian telemarketers.⁸⁷³

The proponents of prison-based telemarketing pointed out the significant social and economic benefits that accrue to the inmates, to the states, and to society as a whole by having inmates engage in productive work that develops skills that can later be transferred to a private sector job once the inmate is released.⁸⁷⁴ They indicate that inmate jobs serve as a source of funds to compensate crime victims, provide financial support to children of

inmates, repay taxpayers for the inmates' room and board, and are an effective tool for rehabilitation and reducing recidivism.⁸⁷⁵ They maintain that inmate jobs are "vital to helping keep prisons safe and secure and offering meaningful educational and vocational training to aid in successful re-entry."⁸⁷⁶ These commenters outlined the significant precautions taken in screening and monitoring inmates for these jobs.⁸⁷⁷

Based on the record in this proceeding, the Commission believes that, while there is some evidence of consumer injury in a very few documented cases, it is not possible to conclude that the risk of consumer harm outweighs the countervailing benefits. Such a conclusion would be necessary to condemn prison-based telemarketing as an abusive practice.⁸⁷⁸ The extensive system of state regulation, coupled with the local nature of the work programs, persuades the Commission that any problems associated with prison-based telemarketing would best be handled at the state level.

Use of couriers: In response to the NPRM, AARP again raised its concern that the Commission ban the practice of allowing couriers, including overnight mail delivery services, to pick up payment for goods and services purchased through telemarketing.⁸⁷⁹ AARP points out that the use of couriers in sweepstakes and lottery scams is prevalent, and that some unscrupulous telemarketers use couriers not only to quickly separate the consumer from his or her money, but to make a "contest seem more 'official.'"⁸⁸⁰ AARP notes that, in some instances, even legitimate companies benefit unfairly from the use of couriers by avoiding oversight by the U.S. Postal Service, and by ensuring that non-refundable "deposits" are secured, diminishing the likelihood, in many instances, that a consumer would back out of a transaction.⁸⁸¹ NACAA concurred, and noted its further concern that in-person payment pickups by those posing as public safety officers is a practice perhaps even more harmful to consumers who are intimidated into quickly giving a contribution.⁸⁸²

⁸⁶² DialAmerica-NPRM at 28; Spiegel-NPRM at 1; Worsham-NPRM at 6. In addition, *see generally* CURE-NPRM; CCA-NPRM; UNICOR-NPRM; EPI-NPRM; and EPI-Supp.

⁸⁶³ June 2002 Tr. III at 115-57.

⁸⁶⁴ The comments indicate that federal inmates are not used as telemarketers except in connection with sales to the federal government. (UNICOR is the trade name for Federal Prison Industries, Inc., a wholly-owned government corporation within the U.S. Department of Justice, Federal Bureau of Prisons. UNICOR sells its products primarily to federal agencies and uses federal prisoners in connection with those sales. In addition to calling UNICOR's federal government agencies, the federal prisoners also call the businesses that support UNICOR's federal sales.) UNICOR-NPRM at 2; *see also* EPI-Supp. at 1. UNICOR's sales using prisoner-based telemarketing would not be covered by the TSR. Section 310.6(g) of the Rule exempts telemarketing sales to businesses. In addition, sales to government entities do not fall within the Rule's definition of "person."

⁸⁶⁵ EPI-Supp. at 1.

⁸⁶⁶ "Prison Work Programs, Inmates" Access to Personal Information," GAO/GGD-99-146, cited in EPI-NPRM at 13, n.18. *See also* EPI-Supp. at 1 (All prisoners employed as telemarketers by the private sector are inmates in state prisons, regulated by state agencies.).

⁸⁶⁷ "Telemarketing" is defined, in part, as a "plan, program or campaign which is conducted to induce the purchase of goods or services or a charitable contribution . . ." The prison-based telemarketing used by government agencies does not appear to involve calls to "induce the purchase of goods or services."

⁸⁶⁸ EPI-NPRM at 2, 3, 9.

⁸⁶⁹ CCA-NPRM at 2; EPI-NPRM at 3, 14.

⁸⁷⁰ EPI-NPRM at 3.

⁸⁷¹ DialAmerica-NPRM at 28; Spiegel-NPRM at 1; Worsham-NPRM at 6. *See also* June 2002 Tr. III at 115-57.

⁸⁷² EPI-NPRM at 10.

⁸⁷³ CURE-NPRM at 1; EPI-NPRM at 13-14. *See also* June 2002 Tr. III 115-57.

⁸⁷⁴ *See generally* CURE-NPRM; CCA-NPRM; EPI-NPRM; and UNICOR-NPRM. *See also* June 2002 Tr. III at 115-57.

⁸⁷⁵ *Id.*

⁸⁷⁶ CCA-NPRM at 1. *See also* EPI-NPRM at 5-8; and *generally* CURE-NPRM; and UNICOR-NPRM. *See also* June 2002 Tr. III at 115-57.

⁸⁷⁷ EPI-NPRM at 5-8. *See also* June 2002 Tr. III at 115-57.

⁸⁷⁸ *See* 67 FR at 4510-12.

⁸⁷⁹ AARP-NPRM at 9-10.

⁸⁸⁰ *Id.* (citing NAAG's comment in the original rulemaking proceeding).

⁸⁸¹ AARP-NPRM at 9-10.

⁸⁸² *See* NACAA-NPRM at 10-11.