

FTC FACTS for Business

Calling All Telemarketers:

Amendments to the FTC's Telemarketing Sales Rule



The Federal Trade Commission (FTC) has amended the Telemarketing Sales Rule (TSR) to give consumers a choice about whether they want to receive most telemarketing calls. Consumers soon will be able to put their phone numbers on a national “do not call” registry. It will be illegal for most telemarketers or sellers to call a number listed on the registry.

In addition to establishing a national “do not call” registry, amendments to the TSR restrict call abandonment, crack down on unauthorized billing, and require telemarketers to transmit caller ID information.

Who is covered by the amended TSR?

The TSR applies to any plan, program or campaign to sell goods or services through interstate phone calls. This includes *telemarketers* who solicit consumers, often on behalf of third party sellers. It also includes *sellers* who provide, offer to provide, or arrange to provide goods or services to consumers in exchange for payment.

The amended TSR also applies to for-profit telemarketers who conduct interstate solicitation of charitable contributions by phone. According to the amended TSR, telemarketers soliciting charitable contributions do not have to access the national “do not call” registry, but they must honor “do-not-call” requests from individual consumers.

Some businesses remain exempt from the TSR, including long-distance phone companies and airlines, and insurance companies operating under state regulations. Although these companies are not subject to the TSR, any telemarketers they hire to make calls on their behalf are required to comply.

When will the national “do not call” registry take effect?

- In July, consumers may begin registering for free online or by calling a toll-free number. To better manage the anticipated volume of registrations, initial sign-up by phone for the national “do not call” registry will be phased in, region-by-region, over an eight-week period. Online registration will be available nation-wide in July.
- In September, telemarketers and other sellers will have access to the registry. They will be required to scrub their call lists against the national “do not call” registry at least once every 90 days.
- In October, the FTC and the States will start to enforce the national “do not call” registry provisions of the Amended Telemarketing Sales Rule. Violators are subject to a fine of up to \$11,000 per violation. At this point, consumers on the registry should start to get fewer telemarketing calls.

The FTC’s implementation schedule for the national “do not call” registry will be updated at www.ftc.gov/donotcall.

How will the national “do not call” registry work?

Under the amended TSR, telemarketers and sellers will be required to search the registry at least quarterly and drop from their call lists the phone numbers of consumers who have registered. Telemarketers and sellers must access the national “do not call” registry to “scrub” their call lists. A dedicated, fully automated and secure website will provide this information to telemarketers and sellers.

When a telemarketer or seller accesses the system for the first time, they will have to provide some identifying information, such as company name and address, company contact person, and the contact person’s telephone number and email address. If a telemarketer is

accessing the registry on behalf of a client seller, the telemarketer will need to identify the client (or clients).

The only consumer information telemarketers and sellers will be able to access from the national registry is a registrant’s telephone number. Consumers’ phone numbers will be sorted and available by area code. Each company accessing the registry data will be required to pay an annual fee based on the number of area codes the company accesses.

On subsequent visits to the website, telemarketers and sellers will be able to download either a complete updated list of numbers from their selected area codes or a more limited list that shows additions or deletions since the company’s last download.

A consumer’s number will stay on the registry for five years, until the consumer asks for the number to be removed from the registry, or until the consumer changes phone numbers. Consumers will be able to renew their registration every five years.

After the law takes effect, a consumer who receives a telemarketing call despite being on the registry will be able to file a complaint with the FTC, either online or by calling a toll-free number. Violators could be fined up to \$11,000 per incident.

What about an established business relationship?

A telemarketer or seller may call a consumer with whom it has an established business relationship for up to 18 months after the consumer’s last purchase, delivery, or payment — even if the consumer’s number is on the national “do not call” registry. In addition, a company may call a consumer for up to three months after the consumer makes an inquiry or submits an application to the company. And if a consumer has given a company written per-

mission, the company may call the consumer even if the consumer's number is on the national "do not call" registry.

One caveat: if a consumer asks a company not to call, the company may not call, even if there is an established business relationship. Indeed, a company may not call a consumer — regardless of whether the consumer's number is on the registry — if the consumer has asked to be put on the company's "do not call" list.

How does the national "do not call" registry square with state "do not call" lists?

Some states have their own "do not call" registries. The FTC is working to coordinate the national "do not call" registry with the states to avoid duplication. Check the FTC's website at www.ftc.gov/donotcall, or check with your state attorney general for updates.

What else is new in the TSR?

New provisions for interstate solicitations of charitable contributions

Amendments to the TSR require that a for-profit telemarketer soliciting on behalf of a charitable organization promptly identify both the organization and the fact that the call is being made to solicit a charitable contribution. These changes were mandated by the USA PATRIOT Act.

The amendments also prohibit certain misrepresentations in charitable fundraising calls by for-profit telemarketers. Telemarketers soliciting charitable contributions are not required to comply with the national "do not call" registry provisions of the TSR, but are required to accept and honor an individual consumer's specific request that they not call.

New provisions on call abandonment

In addition to creating the national "do not call" registry, the amended TSR contains new provisions on call abandonment. This practice

violates the Rule. However, the amendment gives your business a "safe harbor" on call abandonment if you meet certain requirements.

Specifically, you must:

- ensure that no more than three percent of calls that are answered by a person are abandoned, measured per day per calling campaign;
- allow each called consumer's telephone to ring for at least 15 seconds or four rings before disconnecting;
- connect each call to a sales representative within two seconds of the consumer's greeting, or, if a sales representative is not available to speak with the consumer within two seconds of the call being answered, you must play a recorded message stating the name and telephone number of the seller. The message cannot include a sales pitch;
- maintain records showing compliance with the requirements for abandonment rate, ring time and recorded message.

New provisions to restrict unauthorized billing

The amended TSR includes new provisions to restrict unauthorized billing:

- The amended Rule expands the requirement that a seller or telemarketer obtain a consumer's express verifiable authorization to be billed, to cover any payment method that does not already afford the consumer the liability limits and dispute resolution protections of the Fair Credit Billing Act or the Electronic Funds Transfer Act.
- When the written confirmation method of obtaining express verifiable authorization is used, the confirmation must be sent, via first class mail, in an envelope clearly labeled as a confirmation. The written confirmation method is not allowed when a seller or telemarketer possesses pre-acquired account information and offers the goods or services on a free-to-pay conversion basis — that is, when the consumer is allowed to try out the goods or services for

free for a limited time and then be charged automatically.

- When the oral authorization method of express verifiable authorization is used, two additional pieces of information must be provided to the customer or donor: the billing information, in specific, understandable terms so the customer knows he will be billed; and the date the charge will be submitted for payment.
- Telemarketers are not allowed to traffic in unencrypted consumer account numbers for telemarketing. You may not buy or sell unencrypted consumer account numbers.
- Telemarketers must obtain the consumer's "express informed consent" before submitting a charge for payment. The new TSR specifies that unauthorized billing is an abusive practice.
- In transactions involving pre-acquired account information and free-to-pay conversion offers, a company can obtain "express informed consent" only by doing all three of the following: 1) obtaining the consumer's express agreement to be charged using a particular account number; 2) requiring the consumer to recite at least the last four digits of the account number to be charged; 3) making an audio recording of the entire telemarketing transaction not just a verification after the initial sales pitch.

New provision to require caller ID transmission

When the amended TSR goes into effect, telemarketers will be required to transmit their telephone number, and if possible, their name, to consumers' caller ID services. While it is technologically possible to transmit callers' numbers nearly everywhere now, transmission of callers' names may not be available everywhere yet. Transmission of callers' ID information will enable consumers to know who is calling. This provision will take effect one year after the release of the Rule.

What provisions remain in the TSR?

The following provisions of the TSR have not changed:

- Telemarketers and sellers still may call consumers only between 8 a.m. and 9 p.m.
- Telemarketers still must promptly identify themselves as a seller and explain that they're making a sales call before pitching a product or service.
- Telemarketers still must disclose all material information about the goods or services they are offering and the terms of the sale. Misrepresenting any terms or conditions of the sale is still prohibited.

For more information on the Telemarketing Sales Rule, visit www.ftc.gov/donotcall.

The FTC works for the consumer to prevent fraudulent, deceptive and unfair business practices in the marketplace and to provide information to help consumers spot, stop and avoid them. To file a complaint or to get free information on consumer issues, visit www.ftc.gov or call toll-free, 1-877-FTC-HELP (1-877-382-4357); TTY: 1-866-653-4261. The FTC enters Internet, telemarketing, identity theft and other fraud-related complaints into Consumer Sentinel, a secure, online database available to hundreds of civil and criminal law enforcement agencies in the U.S. and abroad.

The National Small Business Ombudsman and 10 Regional Fairness Boards collect comments from small businesses about federal compliance and enforcement activities. Each year, the Ombudsman evaluates the conduct of these activities and rates each agency's responsiveness to small businesses. Small businesses can comment to the Ombudsman without fear of reprisal. To comment, call toll-free 1-888-REGFAIR (1-888-734-3247) or go to www.sba.gov/ombudsman.