

# Federal Telephone Solicitation Guidelines

## INTRODUCTORY NOTE:

All state requirements pertaining to telephone and fax solicitations should be read in conjunction with the Federal requirements. State requirements must be followed when they are more restrictive than the Federal requirements. **Therefore, in some instances it is necessary to comply with both Federal and State law. Please check your state's laws and regulations.**

---

The Federal Communications Commission (FCC) has promulgated the following summarized rules to implement the Telephone Consumer Protection Act of 1991. **These summarized rules, unlike the Federal Trade Commission (FTC) rules, apply to insurance companies and financial institutions.**

## DEFINITIONS

**ABANDONED CALL:** A call is an "abandoned call" if it is not connected to a live sales representative within 2 seconds of the called person's completed greeting.

**ADAD:** An "ADAD" is equipment which has the capacity to store or produce telephone numbers to be called using a random or sequential number generator to dial telephone numbers.

**ESTABLISHED BUSINESS RELATIONSHIP:** "Established Business Relationship" is:

- a. a prior or existing relationship formed by a voluntary two-way communication between a person or entity and a residential subscriber;
- b. on the basis of the subscriber's transaction with the entity within the 18 months preceding the date of the call; or inquiry or application regarding products or services offered by the entity within the 3 months preceding the date of the call; and
- c. a relationship that has not been previously terminated by either party.

**FAX BROADCASTER:** A "fax broadcaster" is a person or entity transmitting messages to telephone facsimile machines on behalf of another person or entity for a fee.

**PERSONAL RELATIONSHIP:** A "personal relationship" means any family member, friend, or acquaintance of the telemarketer making the call.

**SELLER:** A "seller" is a person or entity on whose behalf a telephone call or message is initiated for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services.

**TELEMARKETER:** A "telemarketer" is a person or entity initiating a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services.

**TELEMARKETING:** "Telemarketing" is the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services.

**TELEPHONE SOLICITATION:** "Telephone solicitation" is the initiation of a telephone call or message to encourage the purchase or rental of, or investment in, property, goods, or services. "Telephone Solicitation" does not include a call or message to a person with that person's prior express invitation or

permission, or to any person with whom the caller has an established business relationship, or by or on behalf of a tax-exempt nonprofit organization.

**UNSOLICITED ADVERTISEMENT:** An "unsolicited advertisement" is any material advertising the availability or quality of any property, goods, or services which is transmitted to any person without a person's prior permission.

**UNSOLICITED FAX ADVERTISEMENT:** Beginning January 1, 2005, an "unsolicited fax advertisement" is one where the recipient has not granted the sender prior permission to deliver the advertisement, as evidenced by a signed, written statement that includes the fax number to which advertisements may be sent, and clearly indicates the recipient's consent to receive fax advertisements from the sender.

## **RECORD RETENTION**

1. A person or entity making calls for telemarketing purposes must maintain a record of a caller's request not to receive further telemarketing calls, and honor the request for 5 years from the time it is made.
2. The seller or telemarketer must maintain records establishing compliance with abandoned call requirements.

## **ADAD AND PRE-RECORDED MESSAGES**

A person or entity may not:

- a. initiate any telephone call, unless it is made with the prior consent of the called party, using an ADAD or an artificial or prerecorded voice;
  1. to an emergency telephone line, including any 911 line and any emergency line of a hospital, medical physician or service office, health care facility, poison control center, or fire protection or law enforcement agency;
  2. to the telephone line of any guest room or patient room of a hospital, health care facility, elderly home, or similar establishment; or
  3. to any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call; and
- b. use an ADAD in such a way that two or more telephone lines of a multi-line business are engaged simultaneously.

## **PRE-RECORDED MESSAGES**

### **MANDATORY ACTIVITIES**

All prerecorded messages must, at the beginning of the message, state the identity of the individual or entity that is responsible for initiating the call. If a business is responsible for initiating the call, the name under which the entity is registered to conduct business with the State Corporation Commission (or comparable regulatory authority) must be stated, and during or after the message, state the telephone number (other than that of the auto-dialer or prerecorded message player that placed the call) of the individual or entity.

The telephone number provided may not be a 900 number or a number for which charges exceed local or long distance charges, and must permit any individual to make a do-not-call request during regular business hours for the duration of the telemarketing.

#### **PROHIBITED ACTIVITIES**

An individual or entity may not initiate a telephone call to a residential line to deliver a prerecorded message without the prior consent of the called party, unless the call:

- a. is made for emergency purposes;
- b. is not made for a commercial purpose;
- c. is made for a commercial purpose but does not include or introduce an unsolicited advertisement or constitute a telephone solicitation; or
- d. is made to any person with whom the caller has an established business relationship at the time the call is made.

#### **ABANDONED CALL**

A telemarketing call is not considered an abandoned call if a prerecorded message begins within 2 seconds of a completed greeting and it delivers a prerecorded message to a residential telephone line that is assigned to a person who has granted prior consent for the call to be made, or an established business relationship with the caller.

#### **CALLER ID**

1. A person or entity engaging in telemarketing, must transmit and not block Caller ID information.
2. Caller ID information must include either the Calling Party Number (CPN) or Automatic Number Identification (ANI); and, when available, the name of the telemarketer.
3. It is not a violation to substitute (for the name and phone number used in making the call) the name of the seller on behalf of which the telemarketing call is placed and the seller's customer service telephone number.
4. A customer service telephone number must allow an individual to make a do-not-call request during regular business hours.

#### **FAXES**

#### **MANDATORY ACTIVITIES**

1. A fax broadcaster must clearly mark, in a margin at the top or bottom of each transmitted page of the message or on the first page of the transmission, the date and time it is sent, an identification of the business, other entity, or individual sending the message; and the telephone number of the sending machine or of the sending business, entity, or individual.
2. If a fax broadcaster, demonstrates a high degree of involvement in the sender's fax messages, such as supplying the numbers to which a message is sent, the broadcaster's registered business name must be identified on the fax, along with the sender's name. Fax machines manufactured on and after December 20, 1992, must clearly mark the identifying information on each transmitted page.

## PROHIBITED ACTIVITIES

A person or entity must not use a fax machine, computer, or other device to send an unsolicited fax advertisement.

## PENALTIES

A fax broadcaster is liable for violations if it is highly involved in, or has actual notice of, unlawful Activity, and fails to take steps to prevent such facsimile transmissions.

## GENERAL PROHIBITIONS AND RESTRICTIONS

1. A person or entity must not:
  - a. disconnect an unanswered telemarketing call prior to 15 seconds or 4 rings;
  - b. abandon more than 3% of all telemarketing calls that are answered live by a person, over a 30-day period; or
  - c. call a residential telephone subscriber before 8 a.m. or after 9 p.m. (local time at the called party's location.)
2. When a sales representative is not available to speak with the person answering the call within 2 seconds after the completed greeting, the person called must receive a prerecorded identification message:
  - a. stating the name;
  - b. telephone number of the business, entity, or individual on whose behalf the call was placed; and
  - c. that the call was for telemarketing purposes.
3. The telephone number provided when a sales representative is not available must:
  - a. permit an individual to make a do-not-call request during regular business hours for the duration of the telemarketing campaign; and
  - b. not be a 900 number or a number charging a long distance or any other charge.
4. A person or entity making a telemarketing call must provide the called party with:
  - a. the name of the individual caller;
  - b. the name of the person or entity on whose behalf the call is being made; and
  - c. a telephone number or address at which the person or entity may be contacted.
5. A provided telephone number may not be a 900 number or any other number for which charges exceed local or long distance transmission charges.
6. A person or entity may not use any technology to dial a telephone number for the purpose of determining whether the line is a fax or voice line.

## **DO-NOT-CALL LIST**

1. The national Do-Not-Call list database will be made available so that each state may use the telephone numbers relating to that state as part of a state Do-Not-Call list.
2. A person or entity must not call a residential telephone subscriber for 5 years after he has registered his telephone number on the national Do-Not-Call list.
3. A person or entity making telephone solicitations (or on whose behalf telephone solicitations are made) will not be liable for a violation if it can demonstrate that the violation is the result of error and, as part of its routine business practice, it:
  - a. has established and implemented written procedures to comply with the national Do-Not-Call laws;
  - b. has trained personnel and entities assisting in compliance;
  - c. has maintained and recorded a list of telephone numbers that the seller may not contact;
  - d. uses a process to prevent telephone solicitations to telephone numbers on any list established pursuant to the Do-Not-Call laws, employing a version of the national Do-Not-Call list, no more than 3 months prior to the date a call is made, and maintains records documenting this process; and
  - e. uses a process to ensure that it does not sell, rent, lease, purchase or use the national Do-Not-Call list, for any purpose other than compliance; and
  - f. purchases access to the relevant national Do-Not-Call list and does not participate in any arrangement to share the cost of the national Do-Not-Call list.
4. A person or entity is not liable for violating the 5-year calling restriction when a subscriber has registered on the Do-Not Call List if:
  - a. it has obtained the subscriber's prior permission, evidenced by a signed, written agreement, stating that the subscriber agrees to be contacted by the seller and includes the number to which calls may be placed; or
  - b. the telemarketer making the call has a personal relationship with the recipient.
5. No person or entity may initiate a telemarketing call to a residential telephone subscriber unless he has instituted procedures for maintaining a list of persons who request not to receive telemarketing calls. The procedures instituted must meet the following minimum standards.
  - a. Persons or entities making telemarketing calls must have a written policy, available upon demand, for maintaining a Do-Not-Call list.
  - b. Personnel engaged in any aspect of telemarketing must be trained in the existence and use of the Do-Not-Call list.

c. If a person or entity making a telemarketing call receives a request not to receive calls, they must record the request and place the subscriber's name and telephone number on the Do-Not-Call list.

1. A residential subscriber's Do-Not-Call request must be honored within a reasonable time from the date the request is made.
2. A request must be honored within 30 days from the date of the request.
3. If such requests are recorded or maintained by a party other than the person or entity on whose behalf the telemarketing call is made, the person or entity on whose behalf the telemarketing call is made will be liable for any failures to honor the do-not-call request.
4. A person or entity making a telemarketing call must obtain a consumer's prior permission to forward the consumer's request not to be called to a party other than the person or entity on whose behalf a telemarketing call is made or an affiliated entity.

d. A residential subscriber's do-not-call request applies to the particular business entity making the call (or on whose behalf a call is made), and will not apply to affiliated entities unless the consumer would expect them to be included.

6. The subscriber's seller-specific do-not-call request, terminates an established business relationship for purposes of telemarketing and telephone solicitation even if the subscriber continues to do business with the seller.

7. A subscriber's established business relationship with an entity does not extend to affiliated entities unless the subscriber would expect them to be included.