

DMA

TELESERVICES ETHICS ALERT

TCPA Compliance Requirements

How Does The Telemarketing Safe Harbor Work?

March 2005

In March 2005, the Federal Communications Commission (“FCC”) imposed a hefty fine of \$770,000 against a mortgage company for violating do-not-call (“DNC”) provisions of the Telephone Consumer Protection Act (“TCPA”). The mortgage company raised a safe harbor defense, but the FCC rejected it.

The DMA’s Teleservices Ethics Committee is issuing this alert to remind telemarketers about what they need to do in order to comply with the TCPA and to maintain the records necessary to invoke the FCC’s safe harbor.

General Reminder: TCPA Safe Harbor Requirements

The FCC’s decision makes clear that in order to invoke the TCPA’s safe harbor defense, companies engaged in outbound telemarketing must do the following as part of their normal business practices:

- (1) Have written procedures in place;
- (2) Follow these procedures;
- (3) Have proof or documentation that you followed your own procedures; and
- (4) Be able to demonstrate that any calls placed to someone on the national DNC list (or on your own company-specific DNC list) were made in error.

The following checklist fleshes out the above safe harbor provisions and is intended to help companies conducting telemarketing campaigns quickly determine if they have in place the necessary components to comply with the FCC’s safe harbor requirements.

TCPA: SAFE HARBOR REQUIREMENTS

CHECKLIST

To ensure that you meet the FCC's safe harbor standards, you should:

- ❑ **HAVE IN PLACE WRITTEN PROCEDURES:** All companies conducting telemarketing campaigns must have in place written procedures to comply with national DNC rules, including but not limited to how to handle and process DNC requests from consumers.
 - Make sure these written procedures are detailed and specific about how both the national DNC and company-specific DNC lists are used by your company.
 - If using an outside telemarketing service bureau, you must have a contract or agreement that clearly states the type of list or program you are contracting to be called and the specific time frame of the established business relationship ("EBR") if applicable. Also, the document should clearly state that both parties agree to comply with all state and federal laws and have provisions for processing DNC requests within the 30-day requirement.

- ❑ **CONDUCT EMPLOYEE TRAINING:** You must train your employees, and any entity assisting in your company's compliance, on these written procedures.
 - Consider auditing your call centers for compliance with DNC requirements; look at training procedures and get signed compliance documents from all call center employees who deal with DNC requests.

- ❑ **MAINTAIN IN-HOUSE SUPPRESSION FILE(S):** You must maintain and record a list of telephone numbers that the seller may not contact, and you must have in place a process to prevent telephone solicitations to the numbers on your company's internal DNC list.
 - All phone numbers must remain on this file for a minimum of five years.
 - Any consumer requests for confirmation of a de-list sent by e-mail or letter should be processed as soon as possible.
 - Also, you must honor all requests for DNC policies and fulfill them immediately.

- ❑ **PURCHASE & USE FEDERAL DNC LIST:** The national DNC list must be purchased, downloaded, and scrubbed against every 31 days.
 - Make sure you purchase the DNC list from the administrator of the national database and that you do not participate in any arrangement to share the cost of accessing the national database, including any arrangement with

telemarketers who may not divide the costs to access the national database among various client sellers.

- In order to demonstrate that you use the national DNC list only for its intended purpose, you must implement a process to prevent telephone solicitations to any telephone number on the federal DNC list.
- You must keep records of purchasing the national DNC list, of downloading the list, and of using the list to scrub your call lists. Consider having your compliance staff maintain a calendar reminding them of the date to renew and/or load the files.
- If your company uses outside vendors, make sure you obtain written verification that the vendor purchases, downloads, and scrubs against the national DNC list. Moreover, make sure you monitor the outside vendor's compliance.
- *Keep in mind that DNC exemptions exist. For instance, there are exceptions for nonprofits, certain business-to-business calls, and established business relationships.*

☐ PURCHASE & USE STATE DNC LIST(S): You must obtain those state DNC list(s) that are not part of the national DNC list or those that require the purchase of their list as part of a registration requirement or other telemarketing law.

- Again, use a process to prevent telephone solicitations to any telephone number on the state DNC list(s). Such a process should include keeping careful records of purchasing and scrubbing against applicable state DNC lists.
- Also, remember that it is necessary to follow state telemarketing laws that are more restrictive than the federal standards (e.g. EBR rules).

As always, check with your legal counsel for specific direction on how to proceed with these requirements.

Please feel free to contact the DMA at teleservicesethics@the-dma.org if you have any questions or require additional clarification.

*This alert is brought to you by
The DMA's Teleservices Ethics Committee
Contact us at teleservicesethics@the-dma.org*

The Direct Marketing Association (DMA) represents the interests of direct, interactive, and database marketing, which in 2004 generated more than \$2.3 trillion in US sales, including \$143.3 billion in catalog sales and \$52.5 billion in Web-driven sales.

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