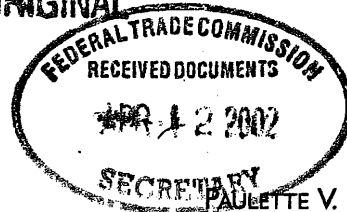


# AFP

Association of  
Fundraising Professionals

ORIGINAL



PAULETTE V. MAEHARA, CFRE, CAE  
PRESIDENT & CEO

March 29, 2002

Office of the Secretary  
Room 159  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, DC 20580

Dear Mr. Secretary:

On behalf of our 23,000 members across the United States, I am pleased to present the comments of the Association of Fundraising Professionals (AFP) regarding the Federal Trade Commission's (FTC) proposed amendments to the Telemarketing Sales Rule (TSR). Our comments focus primarily on the FTC's proposed national "do not call" list and the expansion of FTC's jurisdiction to for-profit consulting firms that provide services to charitable organizations. We are concerned about the potential unintended impact of the proposed national "do not call" list on charities, whether or not they employ a for-profit telemarketing firm, and that implementation, while perhaps easy in theory, will be very difficult and confusing in practice for both donors and charities.

## Organizational Background

For more than forty years, the Association of Fundraising Professionals (AFP), has provided guidance and standards to those engaged in the philanthropic process. AFP's considerable expertise in the legislative field is based upon the combined experience of its 25,000 members across North America. We have **163** chapters located in almost every state and metropolitan area, as well as in Canada and Mexico.

AFP members are required annually to sign our Code of Ethical Principles and Standards of Professional Practice, which were first developed in 1964. AFP instituted a credentialing process in 1981 – the CFRE, Certified Fund Raising Executive designation, which is now the industry standard. This certification program was designed to identify for the giving public fund raisers who possess the demonstrated knowledge and skills necessary to perform their duties in an effective, conscientious, ethical, and professional manner. We also have a strong ethics enforcement policy that can result in the revocation of credentials and expulsion of members who engage in unethical behavior.

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## **Donor Privacy**

This background is cited to emphasize the importance that **AFP** and its members place on ethical fundraising, especially in the context of donor privacy. **AFP** has championed donor rights for more than 40 years. **AFP** was the driving force behind the creation of the Donor Bill of Rights and provides information to potential donors about how to select and evaluate charities, and give wisely to them.

**AFP** is committed to protecting the privacy and confidentiality of all donor transactions. Ethical fundraising is by its very nature donor-centered – the wishes and well being of the donor must come first above all else. Consequently, donor privacy is an issue of extreme priority for **AFP** and the entire charitable fundraising profession.

**AFP's** Code of Ethics reflects this considerable regard for privacy. Several specific standards from our Code manifest this concern:

Standard 12: Members shall not disclose privileged or confidential information to unauthorized parties.

Standard 13: Members shall adhere to the principle that all donor and prospect information created by, or on behalf of, an organization is the property of that organization and shall not be transferred or utilized except on behalf of that organization.

Standard 14: Members shall give donors the opportunity to have their names removed from lists that are sold to, rented to, or exchanged with other organizations.

These standards concerning privacy are already in place in the charitable fundraising profession and go a long way to protect the same interests sought to be defended by the proposed rules. Again, **AFP** has a strong enforcement policy for fundraisers who fail to satisfy these standards.

At a time when other sectors of the economy are being given new freedoms to self-regulate, it seems contradictory to impede the strong existing tradition of self-regulation in the nonprofit sector. Rather than promulgating new bureaucratic limitations on the ability of a charity to contact the philanthropic donor, existing standards should be the starting point for the development of refined donor privacy safeguards.

Expansion of the **TSR** to Representatives of Charitable Organizations  
(Questions 12a, b and c, Abusive Telemarketing Acts or Practices)

The USA PATRIOT Act gives the FTC jurisdiction over for-profit telemarketers soliciting on behalf of charitable organizations and mandates that these for-profit representatives of the charity disclose certain matters. These matters include the identity of the charitable organization on behalf of which the request is being made; and that the purpose of the call is to solicit a charitable contribution.

AFP agrees with the FTC that this information should be disclosed at the beginning of each call. AFP's own Code of Ethical Principles and Standards of Professional Practice mandates such disclosure. In response to Questions 12a and b, we believe that the current disclosures laid out by the FTC are sufficient to effectuate the purposes of the USA PATRIOT Act amendments. Additional disclosures are unnecessary and undesirable.

AFP does not believe that the proposed mandatory disclosure of the mailing address of a charity would provide any benefit to the donor. Many solicitations are now made long-distance to donors all over the country. A mailing address, in most cases, would provide the prospective donor very little help in determining whether the charity was legitimate, and in any event, a fraudulent organization could always concoct an address. The time it would take to disclose an address (especially a long one), and the distraction it would create, would be counter-productive to the charitable donation process.

However, AFP does not see any problem with requiring such disclosure if the donor asks. As the AFP Code of Ethics requires truthful responses from a fundraiser in all instances, such disclosures would conform to the Code.

National **“Do Not Call”** List  
(Questions 2 and 3, Scope)  
(Questions 5a, 6 and 9c, Abusive Telemarketing Acts or Practices)

AFP is extremely concerned about the development of a national “do not call” list and its application to for-profit telemarketers working on behalf of a charitable organization. We believe that the trouble, confusion and burden that it will place on *all* charitable organizations does not justify its imposition on charity telemarketers.

There are more than 650,000 charitable organizations in the United States. Many use staff and their own volunteers to make calls, and these organizations would not be affected by the list. But many charities do not have sufficient staff or volunteers to make solicitation calls, so they often hire for-profit telemarketers. And because they do, the FTC proposal would require their telemarketer to obtain the “do not call” list and these charities will not have access to the same number of prospective donors.

The proposal creates an uneven playing field for those charities that do not have the staff of volunteers available to make solicitation calls. The mission and message of a charity does not change simply because it employs a for-profit telemarketing firm. Its status as a tax-exempt nonprofit does not change, and contributions to it are still tax-deductible. Yet, under the FTC proposal, it will not have access to the same donors. The government should not favor charities that employ one gift solicitation method over another.

The situation becomes even more tenuous when one considers that many large charitable organizations have several campaigns going on throughout the year. One campaign might use volunteers and staff, while the other is being coordinated by a for-profit telemarketing firm (or in other cases where one large campaign is using both volunteers and a for-profit telemarketing firm). Assuming that an individual had signed up for the “do not call” list as created by the FTC proposal, the charity would be able to contact that person regarding the campaign that was using volunteers. But that very same charity would be unable to contact that same individual for the campaign that was employing a for-profit telemarketer.

Further exacerbating the situation is that charities using a third-party telemarketer wouldn't be permitted to contact individuals who had signed up for the list, but had previously given to the charity. A contribution, and especially a series of contributions, clearly suggests implied consent for further communications. In these circumstances, a pre-existing relationship exists between the charity and the donor. The nature of the relationship between a charity and a donor is also significantly different from the between a consumer and a for-profit company.

Consumers, intent upon product acquisition, will compare products, and generally seek the lowest price. While donors should insist upon capable management of nonprofit organizations, few are seeking a “bargain” when they consider whether and to which charities to make gifts. Some donors give to a health care facility because they are the proverbial grateful patient, or have a family member who was aided by the charity. Others give to a charity because they are volunteers who have come to know and understand the economic requirements of the organization. Still others still others want to add their support to achievement of an objective they know could never be realized unless many similarly interested parties banded together. Most often, people have a personal reason for giving.

For nearly all nonprofit organizations, pre-existing donors and volunteers constitute the source of a majority of all gifts and volunteer time. These individuals are most committed to a cause and best understand the organization. Donors should not lose the opportunity to hear from organizations they supported in the past. (9c)

In addition, scrubbing the names of individuals who have signed up for a national “do not call” list from a particular calling list is an expensive proposition. For-profit marketers can be expected to pass on these costs to the charity, which will mean the charity has fewer funds to spend on its programs. The government should actively avoid unnecessary requirements that reduce the stream of charitable dollars to charity stakeholders. (5a)

Finally, AFP is extremely concerned about the relationship between a national “do not call” list and the various state lists that have either been already created or are being discussed by legislatures. The national list would not preempt state lists. Thus, telemarketers working on behalf of charities would have to acquire both a state and national list (and potentially all state lists if a national campaign is being run, a common practice), thereby further increasing the cost to both charities and donors. The state lists are often inconsistent in terms of their own definitions, which will cause additional confusion about which organizations and activities are covered under various state laws. (6)

The declared problem that the FTC is seeking to address does not warrant the burdens and confusion that the proposed national “do not call” list will create. The proposal will be costly to charities, reducing the amount of money they can spend on their stakeholder programs, and will create confusion among both charities and donors. In addition, AFP believes the proposal is unfair to charities that hire for-profit telemarketers. The FTC should not show any bias towards any charitable fundraising methods. It is doubtful that Congress intended to give charities that use staff and volunteers an advantage over those charities that hire third-party solicitors.

AFP’s Recommendation: For-profit telemarketers should be exempt from the requirement to use the national “do not call” list when working on behalf of a charitable, 501(c)(3) organization.

### **Exemption for Volunteering** (Question 3, Definitions)

While often charities make phone contacts for gift solicitation purposes, they also use this medium to educate the public about community needs and find new volunteers. As volunteers become more involved with a charity, they often enlist their own colleagues to either give or volunteer their own time.

This kind of charity communication via telephone does not involve financial contributions. AFP does not accept the implied suggestion by the Commission that Congress meant to regulate these types of calls. Volunteering is an important activity and not only helps the charity, but also improves the community and creates critical societal bonds and connections. Accordingly, the definition of “charitable contribution” should also be clarified to exclude calls where the request is for volunteers.

AFP appreciates this opportunity to comment on the FTC proposals related to amendments in the Telemarketing Sales Rules and the creation of a national “do not call” list. However, AFP does not believe that the FTC’s new jurisdiction over telemarketers working on behalf of charities was intended to encourage new and unnecessary creeping encroachment on the free speech rights of charities.

The application of a national “do not call” list to telemarketers that provide services to charities will create a myriad of problems that outweigh any suggested benefit to the public, especially in light of ethical standards that are already in place. The FTC should show regulatory restraint and exempt telemarketers from the list requirements when working on behalf of a charity.

AFP offers its resources and perspective if the FTC has additional questions or queries regarding these comments. We look forward to working with the FTC to refine these proposals to ensure charities have the ability to raise critically needed funds while safeguarding the privacy rights of the public.

Sincerely,

A handwritten signature in cursive script, reading "Paulette V. Maehara". The signature is written in black ink and is positioned below the word "Sincerely,".

Paulette V. Maehara, CFRE, CAE  
President & CEO