

# **Q&A FOR TELEMARETERS AND SELLERS ABOUT THE DO NOT CALL PROVISIONS OF THE FTC'S TELEMARKETING SALES RULE**

Federal Trade Commission ■ Bureau of Consumer Protection ■ Office of Consumer and Business Education

## **BACKGROUND**

### **1. What is the National Do Not Call Registry?**

The National Do Not Call Registry is a list of phone numbers from consumers who have indicated their preference to limit the telemarketing calls they receive. The registry is managed by the Federal Trade Commission (FTC), the nation's consumer protection agency. It is enforced by the FTC, the Federal Communications Commission (FCC), and state officials.



**NATIONAL  
DO NOT CALL  
REGISTRY**

### **2. Why was the National Do Not Call Registry created?**

The registry was created in 2003 to offer consumers a choice regarding telemarketing calls. The FTC's decision to create the National Do Not Call Registry was the culmination of a comprehensive, three-year review of the Telemarketing Sales Rule, as well as the FTC's extensive experience enforcing the Rule in the previous seven years. The FTC also held numerous workshops, meetings and briefings to solicit feedback from interested parties, and considered more than 64,000 public comments, most of which favored creating the registry. You can review the entire record of the Rule review at [www.ftc.gov/bcp/rulemaking/tsr/tsrrulemaking/index.htm](http://www.ftc.gov/bcp/rulemaking/tsr/tsrrulemaking/index.htm).

## **COVERAGE UNDER THE TSR**

### **3. What calls are covered?**

The do not call provisions of the TSR cover any plan, program or campaign to sell goods or services through interstate phone calls. This includes calls by telemarketers who solicit consumers, often on behalf of third party sellers. It also includes sellers who are paid to provide, offer to provide, or arrange to provide goods or services to consumers.

The National Do Not Call Registry covers intrastate telemarketing calls under the FCC's rules. You can find information on the FCC's regulations at [www.fcc.gov/cgb/donotcall/](http://www.fcc.gov/cgb/donotcall/).

### **4. What types of calls are not covered by the National Do Not Call Registry?**

The do not call provisions do not cover calls from political organizations, charities, telephone surveyors, or companies with which a consumer has an existing business relationship.

### **5. Do the do not call provisions of the TSR cover calls soliciting money for charities?**

Charities that are calling on their own behalf to solicit charitable contributions are not covered by the requirements of the national registry. However, if a third-party telemarketer is calling on behalf of a charity, a consumer may ask not to receive any more calls from or on behalf of that specific charity. If a third-party telemarketer calls again on behalf of that charity, the telemarketer may be subject to a fine of up to \$11,000.

## **6. Do the do not call provisions of the TSR cover tax exempt organizations?**

Entities that have been granted tax exempt status under the Internal Revenue Code are not necessarily Exempt Organizations for purposes of the National Do Not Call Registry. See, e.g., *FTC v. National Consumer Council, Inc.*, and *FTC v. Debt Management Foundation Services, Inc.*, at <http://www.ftc.gov/opa/2005/03/creditcouncil.htm>. There, the FTC successfully challenged the status of a purported nonprofit organization whose role in fact was simply to generate leads for other firms which then charged consumers thousands of dollars in fees for their services.

For more information see “10. What is an Exempt Organization?” below.

## **7. Do the do not call provisions of the TSR cover political solicitations?**

No. Political solicitations are not covered by the TSR at all, since they are not included in its definition of “telemarketing.”

## **8. If a call includes a telephone survey and a sales pitch, is it covered?**

Yes. Callers purporting to take a survey, but also offering to sell goods or services, must comply with the do not call provisions. But if the call is for the sole purpose of conducting a survey, it is exempt.

## **9. How does the established business relationship provision work for a consumer whose number is on the registry?**

A company with which a consumer has an established business relationship may call for up to 18 months after the consumer’s last purchase or last delivery, or last payment, unless the consumer asks the company not to call again. In that case, the company must honor the request not to call. If the company calls again, it may be subject to a fine of up to \$11,000.

If a consumer makes an inquiry or submits an application to a company, the company can call for three months. Once again, if the consumer makes a specific request to that company not to call, the company may not call, even if it has an established business relationship with the consumer.

A consumer whose number is not on the national registry can still prohibit individual telemarketers from calling by asking to be put on the company’s own do not call list.

## **10. What is an Exempt Organization?**

In general, your organization is not required to access the National Do Not Call Registry, and thus may access as an Exempt Organization, if one or more of the following is true:

1. Your organization is not subject to either the FTC’s or the FCC’s jurisdiction. For example, a non-profit charitable organization may be an Exempt Organization, assuming, of course, that it is truly a non-profit. Entities that have been granted tax exempt status under the Internal Revenue Code are not necessarily Exempt Organizations for purposes of the National Do Not Call Registry. See, e.g., *FTC v. National Consumer Council, Inc.*, and *FTC v. Debt Management Foundation Services, Inc.*, at <http://www.ftc.gov/opa/2005/03/creditcouncil.htm>. There, the FTC successfully challenged the status of a purported nonprofit organization whose role in fact was simply to generate leads for other firms which then charged consumers thousands of dollars in fees for their services.

2. Your organization does not engage in any “telemarketing” or “telephone solicitation” activities, as defined by the FTC and FCC, respectively. For example, survey calls and political polling calls are not covered by the definition of “telemarketing” or “telephone solicitations.” An organization that places ONLY these types of calls may be an Exempt Organization.

3. Your organization qualifies for one or more of the specific exemptions contained in the FTC’s and FCC’s rules, such as:

- a. you only call to solicit charitable contributions; or
- b. you only call consumers with whom you have an established business relationship; or
- c. you only call consumers from whom you have received written permission to call; or
- d. you only make business-to-business calls.

If you are a for-profit telemarketer, you are NOT an Exempt Organization, even if you call consumers on behalf of an Exempt Organization, such as a non-profit. See, e.g., National Federation of The Blind v. FTC, 420 F.3d 331 (4th Cir. 2005).

Additionally, you must be accessing the National Registry solely to prevent telephone calls to telephone numbers on the National Registry.

Whether your organization is exempt is a decision that requires an understanding of the FTC’s and FCC’s requirements, as well as your specific business practices. Therefore, whether you should subscribe as an Exempt Organization is a decision you must make. In making this decision, you may wish to consult with an attorney.

If you are not an Exempt Organization and you have nevertheless subscribed to the Registry as an Exempt Organization, you may be subject to civil and/or criminal penalties. If you subscribed as an Exempt Organization by mistake, and wish to withdraw your subscription, please contact the HELPDESK at <http://telemarketing.donotcall.gov>.

You may wish to consider the following materials when deciding whether to subscribe to the National Do Not Call Registry as an Exempt Organization:

- The FTC Act at 15 U.S.C. §§ 41-58 and related case law.
- The Communications Act at 47 U.S.C. §§ 151-757 and related case law.
- The Telephone Consumer Protection Act (TCPA) at 47 USC §227 and related case law.
- The Telemarketing and Consumer Fraud Abuse Prevention Act at 15 U.S.C. §§ 6101-6108 and related case law.
- The Do Not Call Implementation Act at P.L.108-10, 117 Stat. 557, and related case law.
- The Telemarketing Sales Rule at 16 C.F.R. § 310 and related Agency statements and case law.
- The FCC’s rules implementing the TCPA at 47 C.F.R. § 64.1200 and related Agency statements and case law.

NOTE: You may also want to review the requirements in those states in which you plan

to do business and/or to which you plan to place calls. Many states prohibit calls to telephone numbers listed on the National Do Not Call Registry.

## **ACCESSING THE REGISTRY**

### **11. Who can access the national registry?**

Access to the national registry is limited to sellers, telemarketers and other service providers. Sellers are companies that provide, offer to provide, or arrange for others to provide goods or services to a customer in return for some type of payment as part of a telemarketing transaction. Telemarketers are companies that make telephone calls to consumers on behalf of sellers. Service providers are companies that offer services to sellers engaged in telemarketing transactions, such as providing lists of telephone numbers to call, or removing telephone numbers from the sellers' lists.

Some sellers are exempt from the FTC's rules, but are required to access the registry under the FCC's rules. As explained above, some entities (Exempt Organizations) are exempt from accessing the national registry under both agencies' rules (see "10. What is an Exempt Organization?"). These Exempt Organizations still may access the registry voluntarily, and do not have to pay a fee for that access. They must, however, submit appropriate certification information to gain access to the registry.

### **12. Can I use numbers on the registry for any purpose other than preventing telemarketing calls?**

No. The registry may not be used for any purpose other than preventing telemarketing calls to the telephone numbers on the registry. Any entity that accesses the national registry will be required to certify, under penalty of law, that it is accessing the registry solely to comply with the TSR or to prevent calls to numbers on the registry. Use of the registry for purposes other than those set forth in the certificate could subject you to legal action.

### **13. How can I access the registry?**

The registry can be accessed only through the fully automated and secure website at [www.telemarketing.donotcall.gov](http://www.telemarketing.donotcall.gov). The first time you access the registry, you must set up a profile and provide identifying information about you and your organization. If you are a telemarketer or service provider accessing the registry on behalf of your seller-clients, you will be required to identify your seller-clients and provide their unique Subscription Account Numbers (SANs). The only consumer information available from the registry is telephone numbers. After you (or the company telemarketing on your behalf) have accessed the registry and downloaded telephone numbers the first time, you'll have the option of downloading only changes in the data that have occurred since the last time you accessed the registry.

### **14. What information must I provide to access the registry?**

The first time you access the system, you will be asked to create a profile and provide certain limited identifying information, such as your company name and address, contact person, and the contact person's telephone number and email address. If you are accessing the registry on behalf of a seller-client, you also will have to identify that seller-client.

**15. How often must I access the registry and remove numbers from my calling list?**

If your calls are covered by the registry, you have to synchronize your lists with an updated version of the registry at least every 31 days.

**16. How often may I download data from the national registry?**

You will be able to access data for those area codes for which you have paid as often as you like during your annual period. However, to protect system integrity, you may download data files from the national registry only once in any 24-hour period.

**17. What information can I access from the national registry?**

The only consumer information that companies will receive from the national registry is registrants' telephone numbers. The numbers will be sorted and available by area code. Companies will be able to access as many area codes as desired (and paid for), by selecting, for example, all area codes within a certain state. Of course, companies also will be able to access the entire national registry.

**18. Do I need to pay for area codes that change (split)?**

Occasionally, area codes will be "split" into other area codes to provide more numbers to a densely populated area. When this occurs, telemarketers who want those numbers will be required to subscribe to the new area code (assuming they have not already) and pay for the new area code if it exceeds their limit of five "no-cost" area codes. If you have subscribed to all area codes (the Global list) you will not be required to pay for the new area code.

**19. May I check just a few numbers at a time to see if they are registered?**

Companies that have provided the required identification information and certification, and paid the appropriate fee (there is no fee to subscribe to five or fewer area codes) will be allowed to check a small number of telephone numbers (10 or less) at a time via interactive Internet pages. This will permit small volume callers to comply with the do not call requirements of the TSR without having to download a potentially large list of all registered telephone numbers within a particular area.

**20. What format does the registry use?**

Data is available from the national registry using Internet-based formats and download methods that serve both small and large businesses. Data also is available in three different sets: full lists, change lists, and small list look-ups. Full lists and change lists are available as flat files or XML tagged data files. You indicate your preference for flat files or XML tagged data files as part of your profile.

With a Web browser, you may access a secure Web page that allows you to select the download set that you prefer. For the small list lookup, you will be asked to enter from one to 10 telephone numbers on an online form. After entering the numbers and clicking a button, the national registry will display the list of numbers you entered and whether each number is in the national registry.

You will be limited to the numbers in the area code(s) to which you have subscribed. The full list will contain just 10-digit telephone numbers, with a single number on each line. For the change list in flat file format, each line of the file will contain a telephone number, the date of the

change, and an “A” (for Added) or “D” (for Deleted). The change list data will be fixed-width fields.

For those who select XML tagged data, the XML tags include: a login and encrypted password; the name and email address of the company contact person; certification that access to the registry is solely to comply with the provisions of the TSR; the account number(s) for which the download is being performed; and whether a full list or change list is to be downloaded.

For both flat files and XML tagged data, if you select a change list, you will be provided all telephone numbers that have been added to, or deleted from, the registry since the date of your previous access. Change lists, for both flat files and XML tagged data, are available to provide changes on a daily basis (representing the additions and deletions from the day before).

To assist in automating the download process, the national registry offers the option to set up Web services for requesting change lists in XML tagged data format.

## **PAYING FOR ACCESS**

### **21. How much does it cost to access the registry?**

Data for up to five area codes is free. Beginning October 1, 2008, the annual fee will be \$54 per area code of data (after five) up to a maximum annual fee of \$14,850.

### **22. How often do I have to pay a fee?**

The fee must be paid annually. Payment of the fee provides access to the data for an “annual period,” which is defined as the twelve months following the first day of the month in which the seller paid the fee. For example, a seller who paid its annual fee on September 15, 2004, has an “annual period” that runs from September 1, 2004 through August 31, 2005.

### **23. What is the process for renewing my subscription?**

The registry began accepting subscription renewals on September 1, 2004. Organizations are notified of their expiration dates when they log on to the system. An organization may renew its subscription no earlier than one month before its expiration. Subscriptions also are renewable after they expire. The new 12-month subscription period runs from the first day of the month in which an organization renews. Or, if the organization renews during the month before its expiration, the new 12-month subscription runs from the first day of the next month — starting immediately after the old subscription ends.

### **24. Who must pay the fee?**

All sellers covered by the TSR must pay the appropriate fee for an area code of data before they call, or cause a telemarketer to call, any consumer within that area code, even those consumers whose telephone numbers are not on the registry. (Access to five or fewer area codes is free.) The only exceptions are for sellers that call only consumers with which they have an existing business relationship or written agreement to call, and do not access the national registry for any other purpose. Exempt Organizations that voluntarily want to access the national registry to prevent calling consumers whose numbers are on the registry may access it at no cost (see “10. What is an Exempt Organization?”). NOTE: Entities that have been granted tax exempt status under the Internal Revenue Code are not necessarily Exempt Organizations for purposes of the National Do Not Call Registry. See, e.g., *FTC v. National Consumer Council, Inc.*, and *FTC v. Debt*

Management Foundation Services, Inc., at <http://www.ftc.gov/opa/2005/03/creditcouncil.htm>. There, the FTC successfully challenged the status of a purported nonprofit organization whose role in fact was simply to generate leads for other firms which then charged consumers thousands of dollars in fees for their services.

Telemarketers and service providers may access the registry, at no cost, through the use of their seller-client's unique Subscription Account Number (SAN). Even though they are not required by law to do so, telemarketers and service providers may gain access to the national registry on their own behalf, but they must pay a separate fee for that ability. But before placing calls on behalf of a seller-client, telemarketers are required to ensure that their seller-client has a valid SAN.

## **25. How can I pay the fee?**

Fees are payable only via credit card (which permits the transfer of data in the same session, if the payment is approved) or electronic funds transfer (EFT). EFT requires you to wait approximately three days for the funds to clear before data access will be provided. The FTC does not accept checks or any other form of payment. You must pay the fee prior to gaining access to the registry. Sellers can pay the fee directly or through their telemarketers or service providers (to which the seller or exempt entity has provided the necessary authority).

## **26. What if I pay for a small number of area codes, and then later in the year expand my business to call more area codes? Will I have to pay twice?**

If you need to access data from more area codes than you initially selected, you may do so, but you will have to pay for access to those additional area codes if your total number of area codes exceeds five. Beginning October 1, 2008, obtaining additional data from the registry during the first six months of your annual period will require a payment of \$54 for each new area code. During the second six month period, the charge to obtain data from each new area code will be \$27. Payment for additional data provides you with access to the additional data for the remainder of your annual period.

## **27. What happens after I pay for access?**

After payment is processed, you will be given a unique Subscription Account Number (SAN) and permitted access to the appropriate portions of the registry. Using that SAN in future visits to the website will speed the time needed for access. On subsequent visits to the website, you will be able to download either a full updated list of numbers from your selected area codes, or a more limited list, consisting of changes to the registry (both additions and deletions) that have occurred since the day of your last download. This limits the amount of data that you need to download during each visit. The change file will consist of each telephone number that has changed, whether it was added or deleted, and the date of the change.

## **28. If I'm a telemarketer or service provider working for a seller, can I use the seller's account number to access the registry?**

A telemarketer or other service provider working on behalf of a seller may access the registry directly or through the use of its seller-client's SAN. If access is gained through its seller-client's SAN, the telemarketer or service provider will not have to pay a separate fee for that access. The extent of its access will be limited to the area codes requested and paid for by its seller-client.

If a telemarketer or service provider is accessing the registry directly — that is, if a telemarketer

or service provider decides to obtain the information on its own behalf — it will have to pay a separate fee and comply with all requirements placed on sellers accessing the registry. Such a telemarketer or service provider will be provided a SAN that can be used only by that company. In other words, that SAN is not transferable.

**29. What if a seller uses one telemarketer at the beginning of the year and switches to another later in the year? Will the seller have to pay twice?**

No. Each seller will have a SAN that it can give to the telemarketers and service providers who may access the registry on the seller's behalf.

## **COMPLIANCE**

**30. What happens to companies that don't pay for access to the registry?**

A company that is a seller or telemarketer could be liable for placing any telemarketing calls (even to numbers NOT on the registry) unless the seller has accessed the registry and paid the fee, if required. Violators may be subject to fines of up to \$11,000 per violation. Each call may be considered a separate violation.

**31. What if I call a number that's not on the registry without checking the registry first?**

It's against the law to call (or cause a telemarketer to call) any number on the registry (unless the seller has an established business relationship with the consumer whose number is being called, or the consumer has given written agreement to be called). But it's also against the law for a seller to call (or cause a telemarketer to call) any person whose number is within a given area code unless the seller first has subscribed to and accessed the portion of the registry that includes numbers within that area code, and paid the annual fee, if required.

In addition, it's against the law for a telemarketer, calling on behalf of a seller, to call any person whose number is within a given area code unless the seller has first subscribed to and accessed the portion of the registry that includes numbers within that area code, and paid the annual fee, if required. Telemarketers must make sure that their seller-clients have paid for access to the registry before placing any telemarketing calls on their behalf.

**32. What's my liability if my company inadvertently calls a number on the registry?**

The TSR has a "safe harbor" for inadvertent mistakes. If a seller or telemarketer can show that, as part of its routine business practice, it meets all the requirements of the safe harbor, it will not be subject to civil penalties or sanctions for mistakenly calling a consumer who has asked for no more calls, or for calling a person on the registry. To meet the safe harbor requirements, the seller or telemarketer must demonstrate that:

1. it has written procedures to comply with the do not call requirements
2. it trains its personnel in those procedures
3. it monitors and enforces compliance with these procedures
4. it maintains a company-specific list of telephone numbers that it may not call
5. it accesses the national registry no more than 31 days (starting January 1, 2005) before calling any consumer, and maintains records documenting this process
6. any call made in violation of the do not call rules was the result of an error.



## **TROUBLESHOOTING**

### **33. What if I have problems when I try to access the national registry?**

The website at [www.telemarketing.donotcall.gov](http://www.telemarketing.donotcall.gov) has an online help desk available for email help requests during regular business hours via a secure electronic form. You need to provide your Organization ID and password to access the HELPDESK.

### **34. What if I lose my password?**

If you have forgotten or lost your password, there is a separate link to assist you. To receive a new password, you will need to provide your Organization ID and the email address of your Authorized Representative.

### **35. Where can I get more information about compliance?**

The best source of information about complying with the do not call provisions of the TSR is the FTC's website at [www.ftc.gov/donotcall](http://www.ftc.gov/donotcall). You can view the entire TSR at that site. The comprehensive guide, *Complying with the Telemarketing Sales Rule*, is at [www.ftc.gov/bcp/online/pubs/buspubs/tsrcomp.pdf](http://www.ftc.gov/bcp/online/pubs/buspubs/tsrcomp.pdf).

It's important that sellers and others involved in telemarketing recognize that both the FTC and the FCC regulate telemarketing practices. Those involved in telemarketing should review regulations put in place by both agencies. The FCC's regulations may be found at [www.fcc.gov/cgb/donotcall/](http://www.fcc.gov/cgb/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. The FTC manages the National Do Not Call Registry, which gives consumers a choice about getting telemarketing calls at home. To register a number, log on to [DONOTCALL.GOV](http://DONOTCALL.GOV), or call toll-free, 1-888-382-1222; TTY 1-866-290-4236. If your number is registered and you have received an unwanted telemarketing call, you may file a complaint at [DONOTCALL.GOV](http://DONOTCALL.GOV), or call toll-free, 1-888-382-1222; TTY 1-866-290-4236.

## **YOUR OPPORTUNITY TO COMMENT**

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](http://www.sba.gov/ombudsman).



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