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RESEARCH FINDINGS

To:
From: LegalEase Solutions, LLC
Date:
Re: Telephonic Solicitation Survey – Federal

INTRODUCTION

██████████ is the nation's largest online home mortgage lender. Part of its business development activities include telemarketing calls related to their mortgage services. ██████████ has requested a survey on any and all State and Federal Statutes and Regulations dealing with phone solicitations/telemarketing calls by businesses to consumers (as opposed to business to business solicitations).

FEDERAL LAWS REGARDING TELEPHONIC SOLICITATION

1. Overview

In response to growing concerns raised by consumers and businesses relating to unsolicited telemarketing, the United States Congress has enacted legislation such as the Telephone Consumer Protection Act of 1991 (47 U.S.C.S. § 227 *et seq.*), Restrictions on Telemarketing, Telephone Solicitation, and Facsimile Advertising (47 C.F.R. 64.1200 *et seq.*),

Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C.S. § 6101 *et seq.*), National do-not-call registry (15 U.S.C.S. § 6151 *et seq.*) and the Telemarketing Sales Rule (16 C.F.R. 310 *et seq.*). Moreover, the Federal Trade Commission (“FTC”) has established a national Do-Not-Call Registry pursuant to 15 U.S.C.S. § 6151 *et seq.*

2. Definitions

Telemarketing is defined as a plan, program, or campaign which is conducted to induce the purchase of goods or services or a charitable contribution, by use of one or more telephones and which involves more than one interstate telephone call. *See* 16 CFR 310.2(cc); 15 U.S.C.S. § 6106.04; 18 U.S.C.S. § 2325. The term “telephone solicitation” means 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, which is transmitted to any person.” 47 C.F.R. 227(a) (4). The term does not include calls or messages placed with express prior permission, by or on behalf of a tax-exempt non-profit organization, or from a person or organization with which the recipient has an established business relationship. *Id.*

3. Prohibited Acts/Abusive Conduct

a. Prohibited Acts

Any telephone solicitation calls to person’s home before 8 am or after 9 pm is prohibited. 47 U.S.C. 227(e) (3). *See also* 16 C.F.R. 310.4(d).

b. Abusive Conduct

Pursuant to 16 CFR 310.4(b) (1), abusive telemarketing acts or practices occur when:

- The telephone rings continuously, or engages any person in telephone conversation repeatedly with the intent to annoy or abuse that person.
- The telemarketer denies or interferes in any way (directly or indirectly) with the consumer's right to be placed on the Do not call registry
- The consumer has previously expressed his/her wish not to receive any outbound calls from the telemarketer
- If the consumer/recipient is registered in the "Do-not-call registry, maintained by FCC
- Any outbound telephone call is abandoned.
- Initiating any outbound telephone call that delivers a prerecorded message, other than a prerecorded message as per 16 CFR § 310.4(b) (4) (iii).

4. Law Regarding Prerecorded Messages

In the case of artificial or prerecorded messages, no person or entity shall initiate a call to any residential line without the prior express consent of the recipient. 47 C.F.R. 64.1200(a) (2).

However artificial or prerecorded messages may be initiated to a residential line when:

- It is made for emergency purposes; 47 C.F.R. 64.1200(a)(2)(i)
- It is not made for a commercial purpose; 47 C.F.R. 64.1200(a)(2)(ii)
- It is made for a commercial purpose but does not include or introduce an unsolicited advertisement or constitute a telephone solicitation; 47 C.F.R. 64.1200(a)(2)(iii)
- It is made to any person with whom the caller has an established business relationship at the time the call is made; 47 C.F.R. 64.1200(a)(2)(iv) or
- It is made by or on behalf of a tax-exempt nonprofit organization. 47 C.F.R. 64.1200(a)(2)(v)

There are exemptions to the above rule, such as:

- Conduct that is covered by the Federal Trade Commission's (FTC) trade regulation rule regarding pay-per-call services. 16 C.F.R. 310.6 (b) (1).
- FTC's trade regulation rule regarding the sale of franchises. 16 C.F.R. 310.6 (b) (2).
- Calls that require face to face meeting with the seller before the sale or donation is completed. 16 C.F.R. 310.6 (b) (3).
- Unsolicited calls initiated by the customer. 16 C.F.R. 310.6 (b) (4).
- Customer initiated calls in response to any media advertisement other than direct mail solicitation. 16 C.F.R. 310.6 (b) (5). This exception does not apply to responses to advertisements for investment opportunities or for services relating to clearing derogatory information from credit reports, business opportunities not covered by the Franchise Rule, goods or services to protect a customer in the event of unauthorized use of the customer's credit card, recovering money expenditures resulting from a previous telemarketing transaction, or obtaining a loan or extension of credit if payment of an upfront fee is required. *Id.*
- Customer initiated calls that respond to direct mail solicitations that fully disclose the details of the transaction as required in the rule. 16 C.F.R. 310.6 (b) (6). This exception does not apply to responses to direct mail solicitation relating to the type of transactions specified in investment opportunities, business opportunities other than business arrangements covered by the Franchise Rule, or goods or services described in §§ 310.3(a)(1)(vi) or to prize promotions.
- Calls between a telemarketer and any business. 16 C.F.R. 310.6 (b) (7). The exception does not apply to retail sale of non-durable office and cleaning supplies. *Id.*

5. Law Regarding Do-Not-Call Registry

Pursuant to the national do-not-call registry telemarketers must comply with any do-not-call requests the consumer makes directly to the caller during a solicitation call. *See* 16 C.F.R. 310.4(b)(1)(iii). Once the telephone number is registered on the national do-not-call registry, it will not be automatically removed. 15 U.S.C.S. § 6155 (a). If the person registers in the national do-not-call registry, it will be automatically updated by the State in their do-not-call registry. The national do-not-call registry applies to all telemarketers except for the following:

- Calls from organizations with which a recipient has an established business relationship. 16 CFR 310.4(b) (1) (iii) (B) (ii).
- Calls for which the recipient has given prior written permission. 16 CFR 310.4 (b) (1) (iii) (B) (i).
- Calls which are not commercial or do not include unsolicited advertisements.
- Calls by or on behalf of tax-exempt non-profit organizations.

When a person wishes to not receive solicitation calls and informs the seller of such requests, that person is automatically registered to the Company's do-not-call list maintained by that Company. 16 C.F.R. § 310.4 (b) (1) (iii) (A). Those who sign up for the federal do-not-call registry are automatically placed on state's do-not-call list.

The Telephone Consumer Protection Act of 1991 ("TCPA"), was enacted to reduce the nuisance and invasion of privacy caused by telemarketing and prerecorded calls. The TCPA restricts the telemarketing calls and the use of automatic telephone dialing systems and artificial or prerecorded voice messages. 47 U.S.C.S. 227 (b). The rules apply to common carriers as well as to other marketers. 47 U.S.C.S. 227. Unsolicited advertisements may not be transmitted by telephone facsimile machines. 47 U.S.C.S. 227 (a) (3). Those using telephone facsimile

machines or transmitting artificial or prerecorded voice messages are subject to certain identification requirements. 47 U.S.C.S. 227 (d).

6. Exemptions To The Do-Not-Call Registry

The TCPA prohibits autodialed and prerecorded voice message calls to emergency lines, health care facilities or similar establishments, and numbers assigned to radio common carrier services or any service for which the called party is charged for the call, unless the call is made with the prior express consent of the called party or is made for emergency purposes. 47 U.S.C.S. 227 (a) (1). The TCPA also prohibits artificial or prerecorded voice message calls to residences made without prior express consent, unless it is an emergency call or specifically exempted by the Commission. 47 U.S.C.S. 227 (a) (2).

7. Information To Be Disclosure By The Solicitor

Anyone making a telephone solicitation call to a person's home should provide his or her name; the name of the person or entity on whose behalf the call is being made; and a telephone number or address at which that person or entity can be contacted. 47 U.S.C. 227(e) (2) (iv). The Federal Communications Commission has adopted a similar rule in 16 C.F.R. 310.4(d).

8. Investigation, Civil Remedies, Criminal Remedies

Private individuals as well as the Attorney General or an authorized person on behalf of States can file complaint for the violation of Rule 47 U.S.C.S. § 227, if they receive more than one call within a 12 month period after their number is registered in the do-not-call registry. See 47 U.S.C.S. § 227(c) (5) and 47 U.S.C.S. § 227(f). The complainants can receive their actual monetary loss or \$500, whichever is greater for the damages caused. 47 U.S.C.S. § 227 (c) (5)

(B). The courts are authorized to penalize the telemarketing violator to an amount equal to three times the amount he may have received from clause (B) of the Rule. 47 U.S.C.S. § 227 (c) (5).

The complaint should include:

- name, address, and telephone number where the person can be reached during the business day;
- the telephone number involved with the complaint;
- as much specific information about the complaint as possible, including the identity of the telemarketer or business that called and what the call was about.
- if the person is filing a Do-Not-Call complaint, in violation of Do-Not-Call rules, the date that person put his/her telephone number on the National Do-Not-Call Registry (if known) or the date the person made a Do-Not-Call request to this telemarketer or company, as well as the date(s) on which he/she received subsequent call(s).

If a civil action is brought for a violation of 47 U.S.C.S. § 227, the federal courts have exclusive jurisdiction. 47 U.S.C.S. § 227 (f) (2). For purposes of bringing any civil action under 47 U.S.C.S. § 227 (f) (5), powers are conferred on the attorney general of the States or on the designated officer of that state to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence. 47 U.S.C.S. § 227 (f) (5). As to the effect of state court's proceeding, it is clarified in the Rule that the state's can pass civil or criminal laws and such laws if violated can be proceeded on as per the law of that state. See 47 U.S.C.S. § 227(f) (6).

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