

# Do Not Call!

## The New Legal Restrictions on Telemarketing

by Mitch Talenfeld, [MDT Direct](#)

### Attention All For-Profit Schools...

Beginning October 1, 2003, you are required by federal law to modify the way you operate your business or be subject to major fines, up to \$11,000 per occurrence.

Sweeping new changes in the **Federal Telemarketing Sales Rule** and the **Telephone Consumer Protection Act** rules affect every for-profit school that uses the telephone for outgoing calls as part of the admissions process, *including those schools that make follow-up calls to people who have expressly asked for enrollment information.* (The good news for non-profits is that they are presently exempt.)

It is imperative that for-profits begin developing and implementing strategies to enable them to work successfully within these new Federal Trade Commission (FTC) and Federal Communications Commission (FCC) guidelines. It will be virtually impossible to run admissions without good lead tracking and management software packages that have been updated to flag all prospects on the **Federal "Do Not Call" Registry** and manage every outgoing admissions call. If ever challenged, the law requires you to produce records for at least twenty-four (24) months and demonstrate that as a regular business practice, you have a comprehensive system in place to follow the new federal guidelines.



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years. Known for his ability to plan and execute complex marketing programs, he is widely recognized in the business community through his involvement in the direct marketing industry.

Mitch's companies work with over 200 schools and colleges nationwide, helping them to improve their advertising, communications and admissions effectiveness. By combining the use

of traditional direct marketing techniques with some of today's cutting-edge technology, Mitch has raised the bar in the world of traditional school advertising. He received the Florida Direct Marketing Association's highest honor, the Golden Conch Award, for outstanding leadership and achievements in the direct marketing industry. He has conducted numerous advertising seminars and written many articles on this field.

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On June 27, 2003, the FTC began registering the phone numbers on the Federal “Do Not Call” Registry. According to an August 25<sup>th</sup> FTC press release, the Registry has surpassed 41,000,000 numbers. California leads with the greatest number of state registrations at 5.3 million, followed by New York with 3.5 million, Florida with 2.5 million, and Texas with 2.2 million, making it abundantly clear that people do not want to be bothered at home with uninvited solicitation calls.

In speaking with schools about this issue one thing is apparent...not enough people are preparing for these new regulations, unaware of their impact. Although deciphering these new regulations is very cumbersome and still unclear, it is still important to begin developing new telemarketing strategies. At this point, thirty-four (34) states presently have their own telemarketing regulations, some of which will not fold into the federal regulations, forcing you to deal with both the state and federal laws to comply. More challenging yet is the fact that the FTC and FCC are still working on the final rules. The bottom line: ***Make sure you consult a knowledgeable attorney to help you develop your plans.***

***(Editor’s note:*** Since this is a new and rapidly developing area of the law, we have asked Peter Leyton to do a quick study of the rules from the career college perspective. Peter’s legal review will appear in next month’s issue.)

**Below is some of the basic information that you need to know:**

1. People whose phone numbers are on the “Do Not Call” Registry may not be called for a solicitation of any sort by anyone in your company unless: your business is exempt, that person has an “established business relationship” with your company, the person making the phone call has a personal relationship with the person being called, or the person being called had earlier given your company written authorization to make such calls.

- **Non-Profit Postsecondary Schools and Colleges** are presently exempt as long as all of their solicitation calls are made by their own employees and not by a for-profit telemarketing company.

- **“Established business relationship”** as mentioned above means either:

- A student or customer of your school. (In this case they may be called for solicitation purposes within eighteen [18] months immediately preceding the date of their last financial transaction with your school.)
- An inquiry or prospective student. (Admissions may only call them for up to three [3] months following their inquiry or application to your school.)

2. The person that you are calling has given you their express permission, in writing, prior to you calling them. This written agreement must clearly evidence the person’s authorization that calls made by or on behalf of your school may be placed to that person. This authorization must include the telephone number to which the calls should be made and contain their written or electronic/digital signature.
3. You may not call anyone who previously stated that he or she does not wish to receive calls made by or on behalf of your school. (You will now be required to develop and manage your own company in-house “do not call” list.)
4. It is against the law to call (or cause a telemarketer to call) anyone whose number is within a given area code (whether their number is on the Federal “do not call” list or not) unless you have first paid the annual fee for access to the portion of the Registry that includes numbers within that area code.
5. Prospect files and student records will need to be regularly “scrubbed” (minimally every ninety [90] days) against the Federal “Do Not Call” Registry (so you know who is on the “Do Not Call” list) so every outgoing communication can be managed correctly.

## Fighting Back Strategies

1. **Employ an Electronic Call-Tracking System** that identifies callers' phone numbers, flags those on the "Do Not Call" Registry, records their request for enrollment information, and logs the time and date of their call.
2. **Set up or implement a Lead-Tracking System** that will manage and track all prospects to make sure you are in compliance with the new regulations.
3. **Make sure that every prospective student visiting your school signs something that gives you their express permission to call them.**
4. Add a paragraph on every business reply card or email form requesting information that gives you express permission to call them back. Make sure that you include a space for the phone number(s) that they want you to use when contacting them in the future. Include a space for their signature (an electronic signature will suffice on an Internet form).
5. Increase your telemarketing efforts to existing prospects before your ninety (90) day period is up. Each time you make contact with a prospective student and you get a renewed interest in your school, the ninety (90) day clock can begin again.
6. Implement a written telemarketing policy, set up employee training and manage the process to ensure that you are in compliance.

Schools must have a telemarketing strategy in place to protect themselves against significant fines that could be levied as a result of this new law.

- They must "scrub" their internal prospect databases (call lists) at least every ninety (90) days.
- To protect your school, you must demonstrate that, as part of your routine business practice:
  - You have established and implemented written procedures to comply with the law.
  - You have trained your staff on the requirements of this law.
  - Any person or any company making calls on your behalf is in compliance with these new rules and regulations.
  - You or a company making calls on your behalf is monitoring and enforcing compliance with telemarketing laws and procedures.
  - You or a company making calls on your behalf use a process to prevent telemarketing calls to any telephone numbers on a "do not call" Registry that you have obtained from the Commission no more than three (3) months prior to the date of any such calls and maintain records documenting this process.

Several good Web sites to help you understand the rules and the impact of these new regulations are:

<http://www.ftc.gov/bcp/online/pubs/alerts/dncbizarlt.htm>  
<http://www.ftc.gov/bcp/online/edcams/donotcall/businfo.html>  
[http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/FCC-03-153A1.doc](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-03-153A1.doc)

Title: **FCC PUBLISHES RULES IMPLEMENTING DO-NOT-CALL PLAN AND OTHER TELEPHONE CONSUMER PROTECTION ACT CHANGES.**

Journal: The DMA's Daily Digest

Abstract: The Federal Communications Commission has published its report and order pertaining to its national do-not-call plan and other changes to the Telephone Consumer Protection Act of 1991 (CG Docket No. 02-278). The DMA is still reviewing the 163-page document, which will soon be published in the Federal Register. However, The DMA yesterday praised the FCC for taking a step toward creating a uniform national policy regarding interstate telephone marketing calls. To access the FCC's rule, go to [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/FCC-03-153A1.doc](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-03-153A1.doc)

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### **National Do Not Call Registry to Be Available to Telemarketers Beginning September 2, 2003 *Labor Day Should Remain a Holiday!***

The Federal Trade Commission today announced that telemarketing organizations will have access to the National Do Not Call Registry on **September 2, 2003**, one day later than the opening date originally announced. The URL to access telephone numbers in the registry, [www.telemarketing.donotcall.gov](http://www.telemarketing.donotcall.gov), will NOT be available until September 2, 2003. From that date forward, organizations that complete application information, pay any applicable fees, and certify under penalty of law that they are accessing the registry solely to prevent telephone calls to telephone numbers on the registry, will be granted access to the consumer telephone numbers included in the registry.

Specific information about accessing telephone numbers and downloading files from the national registry is available at <http://www.ftc.gov/opa/2003/08/tmkcraccessinfo.htm>. Additional information will be provided on the telemarketer Web site, [www.telemarketing.donotcall.gov](http://www.telemarketing.donotcall.gov).

The Federal Trade Commission would like to remind organizations of the details included in the final rules establishing fees for the Telemarketing Sales Rule (<http://www.ftc.gov/opa/2003/07/tsrfeesfrn.htm>):

- The annual cost for organizations to access phone numbers in the registry will be \$25 per area code, with a maximum annual fee of \$7,375 to access numbers for the entire country, including U.S. territories. There will be no charge for companies to access the first five area codes of data.
- Fees paid via credit card will permit the transfer of data immediately, if the payment is approved. Electronic funds transfer (EFT) will require the organization to wait approximately three days for the funds to clear before data access will be provided.
- Sellers and exempt entities can pay the fee directly or through their telemarketers or service providers.
- After paying the appropriate fee, organizations are provided with a unique account number that they can provide to any telemarketer or service provider that they employ on their behalf. The account number will allow those entities to access the national registry, at no additional cost, on behalf of the seller-client.
- On subsequent visits to the Web site, [www.telemarketing.donotcall.gov](http://www.telemarketing.donotcall.gov), either a full updated list of numbers from selected area codes, or a more limited list, consisting only of changes to the registry, will be available for download.
- Any entity that accesses the registry is prohibited from participating in any arrangement to share the cost of access, including any arrangement with a telemarketer or service provider to divide the cost of access among various clients to that telemarketer or service provider.
- There is a "bright line" test to determine whether corporate divisions, subsidiaries, and affiliates are treated as separate sellers for purposes of paying for access to the national registry. These entities would be considered separate sellers if: 1) they are separately incorporated or, for non-corporate entities such as a partnerships, they are similarly distinct legal entities; and 2) they have different names or market their products under different names.
- The FTC will allow organizations that are not required to purchase the list—political fund-raisers, non-profits, and those conducting surveys—to access the registry voluntarily. Numbers in the national registry will be available to these organizations at no cost.

The complete text of the amended TSR is available on the FTC's Web site at the following address: [www.ftc.gov/os/2003/01/tsrfrn.pdf](http://www.ftc.gov/os/2003/01/tsrfrn.pdf). Copies of the Federal Register notice, as well as related information for consumers and businesses, are available from the FTC's Web site at <http://www.ftc.gov> and also from the FTC's Consumer Response Center, Room 130, 600 Pennsylvania Avenue, N.W., Washington, DC 20580.