

or her telephone number on the national “Do-Not-Call” registry. A safe harbor exists for an inadvertent violation of this requirement if the telemarketer can demonstrate that the violation was an error and that its routine practices include:

1. Written procedures.
 2. Training of personnel.
 3. Maintenance of a list of telephone numbers excluded from contact.
 4. Use of a version of the national “Do-Not Call” registry obtained no more than three months prior to the date any call is made (with records to document compliance).
 5. Process to ensure that it does not sell, rent, lease, purchase, or use the do-not-call database in any manner except in compliance with regulations. [47 CFR 64.1200(c)(2)(i)]
- Companies must maintain company-specific do-not-call lists reflecting the names of customers with established business relationships who have requested to be excluded from telemarketing. Such requests must be honored for five years. [47 CFR 64.1200(d)(6)]
 - Telemarketing calls can only be made between the hours of 8 a.m. and 9 p.m. (local time at the called party’s location). [47 CFR 64.1200(c)(1)]
 - All telemarketers must comply with limits on “abandoned calls” and employ other consumer-friendly practices when using automated telephone-dialing equipment. A telemarketer must abandon no more than 3 percent of calls answered by a person and must deliver a prerecorded identification message when abandoning a call. Two or more telephone lines of a multi-line business are not to be called simultaneously. Telemarketers must disconnect an unanswered telemarketing call prior to at least 15 seconds or four rings. All businesses that use autodialers to sell services must maintain records documenting compliance with call abandonment rules. [47 CFR 64.1200(a)(4, 5 and 6)]
 - All prerecorded messages, whether delivered by automated dialing equipment or not, must identify the name of the entity responsible for initiating the call, along with the telephone number of that entity that can be used during normal business hours to ask not to be called again. [47 CFR 64.1200(b)]
 - All telemarketers must transmit caller ID information, when available, and must refrain from blocking any such transmission(s) to the consumer. [47 CFR 64.1601(e)]⁶

⁶ The rule sets forth the technical information that must be made available (subject to differing technologies). The FCC stated that Caller ID information should also increase accountability and provide an important resource for the FCC and FTC in pursuing enforcement actions against TCPA violators. (68 FR 44166, July 25, 2003)

- Unsolicited fax transmissions must be preceded by the advertiser’s receipt of the express written permission and signature of the intended recipient, unless there is an “existing business relationship.” However, the express permission cannot be conveyed through the use of a “negative option.” Businesses that advertise by fax are required to maintain records demonstrating that recipients have provided express permission to send fax advertisements or that there is an existing business relationship. [47 CFR 64.1200(a)(3) and 47 USC 227 as amended by the Junk Fax Prevention Act of 2005]
- Tax-exempt nonprofit organizations are not required to comply with the do-not-call provisions of the TCPA. [47 CFR 64.1200(d)(7)]

Examination Objectives:

1. Assess the quality of a financial institution’s compliance program for implementing TCPA by reviewing the appropriate policies, procedures, and other internal controls.
2. Determine the reliance that can be placed on a financial institution’s audit or compliance review in monitoring the institution’s compliance with TCPA.
3. Determine a financial institution’s compliance with TCPA.
4. Initiate effective corrective actions when violations of law are identified, or when policies or internal controls are deficient.

Examination Procedures

Initial Procedures

1. Through discussions with appropriate management officials, determine whether or not management has considered the applicability of TCPA and what, if any, steps have been taken to ensure current and future compliance.
2. Through discussions with appropriate management officials, ascertain whether the financial institution is subject to TCPA by determining whether it or a third-party telemarketing firm engages in any form of telephone solicitation.

Stop here if the financial institution itself does not engage directly or indirectly through a third-party telemarketing firm, in any form of telephone solicitation via telephone or facsimile machine. The financial institution is not subject to TCPA, and no further examination for TCPA is necessary.

3. Determine, through a review of available information, whether the financial institution’s internal controls are adequate to ensure compliance with TCPA. Consider the following:

- Organization chart to determine who is responsible for the financial institution’s compliance with TCPA;

- Process flow charts to determine how the financial institution’s TCPA compliance is planned for, evaluated, and achieved;
 - Policies and procedures that address:
 - a. Recording a telephone subscriber’s request not to receive calls from a particular financial institution and the maintenance of those recordings for five years.
 - b. Placement of the telephone subscriber’s name, if given, and telephone number on the financial institution’s do-not-call list.
 - c. Maintenance of the list of telephone numbers that the financial institution may not contact.
 - d. Compliance with the national do-not-call rules.
 - e. Use of a telephone facsimile machine, computer, or other device to send an unsolicited advertisement to a telephone facsimile machine.
 - Training of the financial institution’s personnel engaged in telemarketing as to the existence and use of the financial institution’s do-not-call list and the national do-not-call rules; [47 CFR 64.1200(d)(2)]
 - Process for recording a telephone subscriber’s request not to receive calls and to place the subscriber’s name, if provided, and telephone number on a do-not-call list; [47 CFR 64.1200(d)(3)]
 - Process used to access the national do-not-call database; [47 CFR 64.1200(c)(2)(i)(D)]
 - Process to ensure that the financial institution (and any third-party engaged in making telemarketing calls on behalf of the financial institution) does not sell, rent, lease, purchase, or use the national do-not-call database for any purpose except for compliance with the TCPA; [47 CFR 64.1200(c)(2)(i)(E)]
 - Process to ensure that telemarketers making telemarketing calls are providing the called party with the name of the individual caller, the name of the financial institution on whose behalf the call is being made, and a telephone number (that is not a 900 number or a long distance number) or address at which the financial institution may be contacted; [47 CFR 64.1200(d)(4)] and
 - Internal checklists, worksheets, and other relevant documents.
4. Review applicable audit and compliance review material, including work papers, checklists, and reports, to determine whether:
 - The procedures address the TCPA provisions applicable to the institution;
 - Effective corrective action occurred in response to previously identified deficiencies;
 - The audits and compliance reviews performed were reasonable and accurate;
 - Deficiencies, their causes, and the effective corrective actions are consistently reported to management or the members of the board of directors; and
 - The frequency of the compliance review is satisfactory.
 5. Review a sample of complaints to determine whether or not any potential violations of TCPA exist.
 6. Based on the review of complaints that pertain to aspects of TCPA, revise the scope of examination focusing on the areas of particular risk. The verification procedures to be employed depend upon the adequacy of the institution’s compliance program and level of risk identified.

Verification Procedures

1. Obtain a list of marketing or promotional programs for products and services that the financial institution promoted with telemarketing either directly or through a third-party vendor.
2. Obtain a sample of data, or through testing or managements demonstration, for at least one program, determine whether:

Do-Not-Call List

- The institution or its third-party vendor verified whether the subscriber’s telephone number was listed on the national “Do-Not Call” registry. [47 CFR 64.1200(c)(2)]
- If the telephone subscriber is on the national “Do-Not Call” registry and a telemarketing call is made, the existence of an established business relationship between the subscriber and the financial institution can be confirmed [47 CFR 64.1200(f)(3)] or the safe harbor conditions have been met. [47 CFR 64.1200(d)]
- Through testing or management’s demonstration, verify that the financial institution has a process to determine whether it has an established business relationship with a telephone subscriber. [47 CFR 64.1200(f)(3)]
- A telephone subscriber’s desire to be placed on a company-specific do-not-call list was honored for five years. [47 CFR 64.1200(d)(6)]
- The institution or its third-party vendor employs a version of the national “Do-Not Call” registry or portions of the database for areas called that was obtained no more than three months prior to the call date (three-month process). [47 CFR 64.1200(c)(2)(i)(D)]