

## Telemarketing Sales Rule

The Telemarketing Sales Rule covers telemarketing - any plan, program, or campaign to sell goods or services through interstate telephone calls. With some important exceptions explained below, any persons or companies that take part in any plan, program, or campaign to sell goods or services through interstate telephone calls must comply with the Rule. This is true whether, as "telemarketers," they initiate or receive telephone calls to or from consumers, or whether, as "sellers," they provide, offer to provide, or arrange to provide goods or services to consumers in exchange for payment. Certain sections of the Rule also apply to persons or companies other than sellers or telemarketers if such persons or companies provide substantial assistance or support to sellers or telemarketers. The Rule also applies to persons or companies that provide telemarketers with unauthorized access to the credit card system.

The Rule requires telemarketers to make certain disclosures and prohibits lies. It gives state law enforcement officers the authority to prosecute fraudulent telemarketers who operate across state lines. And it gives consumers instructions on how to stop unwanted calls. Just say, "Put me on your DO-NOT-CALL list."

### The Rule Requires Sellers and Telemarketers to Disclose Material Information

The Rule requires a seller or telemarketer, whether making outbound calls to consumers or receiving inbound calls from consumers, to provide certain material information before that consumer pays for goods or services that are the subject of the sales offer. **Material** information is information that would likely affect a person's choice of goods or services, or their conduct regarding them. More simply, it is information necessary for a consumer to make an informed purchasing decision. Sellers and telemarketers may provide the material information either orally or in writing. In the case of outbound calls, however, there are certain items of information that a telemarketer must promptly disclose to consumers **orally** in the sales presentation, as explained in greater detail later. Failure to provide any of the required information in a "*clear and conspicuous*" manner, before the consumer pays for the goods or services offered, is a deceptive telemarketing act or practice that violates the Rule, and subjects a seller or telemarketer to a \$10,000 fine for each violation.

**"Before a Consumer Pays:"** *Before a seller or telemarketer obtains a consumer's consent to purchase, or persuades a consumer to send any full or partial payment, either by check, money order, wire, in cash, or by any other means, a seller or telemarketer must provide a consumer with the information required by the Rule. A seller or telemarketer also must provide the required information before requesting any credit card, bank account, or other information that a seller or telemarketer will or could use to obtain payment. In addition, a*

*seller or telemarketer must provide a consumer with the required information before requesting, arranging for, or asking a consumer to request or arrange for a courier to pick up payment for the offered goods or services. Couriers include Federal Express, DHL, UPS, agents of the seller or telemarketer, or any other person who will go to a consumer's home to pick up payment for the offered goods or services.*

**"Clear and Conspicuous:"** *Clear and conspicuous means that information is presented in a manner that a consumer will notice and understand. The goal is for the disclosures to be communicated as effectively as the sales message. When made in writing, clear and conspicuous information generally is printed in type of a size that a consumer can readily see and understand and with the same emphasis and degree of contrast with the background as is the sales offer, and is not "buried" on the back, bottom, or in unrelated information that a person would not think to be important to read. Where a seller or telemarketer opts to make required disclosures in a written document that it sends to a consumer, followed by an outbound sales call to the consumer, in order for the disclosures to be clear and conspicuous, they must be sufficiently close in time to the call to enable the consumer to associate the telephone call with the written disclosures. In the case of oral disclosures, clear and conspicuous means at a normal speed and in the same tone and volume as the sales offer.*

## **What Information Does the Rule Require Sellers and Telemarketers to Provide to Consumers?**

The law generally requires that when a seller or telemarketer offers to sell goods or services, the seller or telemarketer must provide the consumer with material information about the offered goods or services necessary to avoid misleading consumers. The term **material** means **likely to affect a person's choice of goods or services, or their conduct regarding them**. In other words, material information is information that a consumer needs to make an informed purchasing decision.

The Rule specifies four broad categories of material information that sellers and telemarketers must provide to consumers:

### **1. Cost and Quantity**

The Rule requires a seller or telemarketer to disclose the total costs to purchase, receive, or use the offered goods or services. (It is sufficient to disclose the total number of installment payments, and the amount of each payment, to satisfy this requirement.) The Rule also requires a seller or telemarketer to tell a consumer the total quantity of goods the consumer must pay for and receive. Both of these items of material information must be provided to the consumer before that consumer pays for the goods or services that are the subject of the sales offer.

Sellers and telemarketers may provide this material information either orally or in writing, as long as it is clear and conspicuous.

Sometimes, the total cost and quantity are not fixed when the initial transaction takes place, but are drawn out over time. For example, in a **negative option plan**, such as those offered by some record or book clubs, the consumer may agree to purchase a specific number of items over a specified time period. The consumer receives periodic announcements of the selections; each announcement describes the selection, which will be sent automatically and billed to the consumer unless the consumer tells the company not to send it. Similarly, a **continuity plan** offers subscriptions to collections of goods, and during the course of the plan, the consumer can opt to purchase some or all of the offered items in the collection. When consumers agree to buy an offered introductory selection they also agree to receive additional selections on a regular schedule until they cancel their subscriptions.

Both negative option plans and continuity plans are structured to provide consumers the opportunity to purchase a series of products over time; the cost of the plan as a whole is determined by the number and type of items in the series the consumer decides to accept. Thus, in both continuity and negative option plans, at the time of the initial sales offer neither the seller nor the consumer necessarily knows the quantity of products the consumer will ultimately purchase, or the total cost for those products. To comply with the Rule, a seller or telemarketer that offers a negative option plan or a continuity plan need only disclose the total costs and quantity of goods or services that are part of the initial offer of the plan; the total quantity of additional goods or services, if any, that a consumer must purchase over the duration of the plan; and the cost, or range of costs, to purchase each individual additional good or service. (Negative option plans are subject to the FTC negative option rule

*Cost and Quantity Disclosure in the Marketing of Credit Products: If a seller or telemarketer is offering credit products subject to the Truth in Lending Act (TILA) or Regulation Z, compliance with the credit disclosure requirements and the timing of those disclosures mandated by DLA or Regulation Z will constitute compliance with the total cost and quantity disclosure requirements of the Telemarketing Sales Rule with respect to the credit instrument itself. However, the cost and quantity of any goods or services purchased with that credit would also have to be disclosed.*

## **2. Material Restrictions, Limitations, or Conditions**

The Rule requires sellers and telemarketers to disclose to a consumer all material restrictions, limitations, or conditions to purchase, receive, or use goods or services that the seller or telemarketer is offering to the consumer. As noted

above, **material** information is information that a consumer needs to make an informed purchase decision. So a material restriction, limitation, or condition is one that, if a consumer knew of it, would likely affect the consumer's decision to purchase offered goods or services, to purchase them at the offered price, or to purchase them from that particular seller. Here are some examples of material information that must be disclosed:

- A requirement that a consumer pay for offered goods or services by cashier's check, money order, or in cash;
- In the case of an offer of a credit card, a requirement that a consumer must make a deposit in order to receive and use the offered card (in other words, that the credit card is a secured card); or
- In the case of a vacation certificate, a restriction, limitation or condition that prevents a purchaser from using the certificate during the summer, or that requires a purchaser to make reservations a year in advance in order to travel using the certificate, or that requires the consumer to incur expenses beyond the price of the certificate itself in order to redeem the certificate for a vacation.

Sellers and telemarketers may disclose information about material restrictions, limitations, or conditions to purchase, receive, or use offered goods or services either orally or in writing, as long as the information is clear and conspicuous and is disclosed before the consumer pays.

### 3. No-Refund Policy

If the seller has a policy of honoring requests for refunds, cancellations of sales or orders, exchanges, or repurchases, the seller or telemarketer is required to disclose information about the policy only if the seller or telemarketer makes a statement about the policy during the sales presentation. If the sales presentation includes a statement about such a policy, it must also disclose, clearly and conspicuously, all terms and conditions of the policy that would likely affect a consumer's decision on whether to purchase the offered goods or services.

If the seller has a policy of **not** giving refunds, not allowing cancellation of sales or orders, not providing exchanges for goods or services, **or** not repurchasing the offered goods or services - in other words, a policy of "*all sales are final*" - the Rule requires the seller or telemarketer to inform consumers of this fact before they pay for the offered goods or services. This information may be given to consumers either orally or in writing, as long as the information is clear and conspicuous.

### 4. Prize Promotions

A "*prize promotion*" includes (1) any sweepstakes or other game of chance, and (2) any representation that a person has won, has been selected to receive, or

may be eligible to receive a prize or purported prize. A "prize" is anything offered and given to a consumer by chance.

In order for the element of chance to be present, all that is required under the Rule is that the consumer is guaranteed to receive an item and, at the time of the offer, the telemarketer does not identify the specific item that the person will receive. For example, if a seller or telemarketer sends out a solicitation promising recipients of the solicitation that they will receive one of four or five listed items, but the seller or telemarketer does not tell recipients which of the listed items they will receive, any item the consumer receives is a prize, and the solicitation is a prize promotion.

A seller or telemarketer that offers a prize promotion must provide consumers with several items of information before the consumer pays for any offered goods or services. This information may be given to consumers either orally or in writing, as long as the information is clear and conspicuous.

First, a seller or telemarketer must tell consumers the odds of winning the prize(s). If the odds cannot be calculated in advance because, for example, they depend upon the number of people who ultimately enter the promotion, the seller or telemarketer must tell consumers this fact, along with any other factors used in calculating the odds.

Second, a seller or telemarketer must tell consumers that they can participate in the prize promotion or win a prize without buying anything or making any payment. **Note: in outbound calls that offer a prize promotion, this information must be provided orally, in a prompt disclosure.** A legitimate prize promotion does not require any purchase or payment of money to participate or win. If a purchase or payment of money is required to be eligible to win a prize, it is not a prize promotion; it is a lottery that is generally unlawful under federal and state lottery laws. Therefore, the Rule requires sellers or telemarketers that offer prize promotions to tell consumers that they are not required to purchase anything or pay any money in order to participate in the promotion or win a prize.

Third, a seller or telemarketer must tell consumers how they can enter the prize promotion without paying any money or purchasing any goods or services. This disclosure must include either instructions on how to enter or an address or local or toll-free telephone number where consumers can get the no-purchase/no-payment entry information.

Finally, a seller or telemarketer must tell consumers of any material costs or conditions to receive or redeem any prize. For example, if one of the offered prizes is a "vacation," but the recipient must pay for his or her own accommodations, this is a cost or condition that would likely affect a consumer's response to the offer and must therefore be disclosed.

To file a complaint with the Federal Trade Commission for a violation of the Telemarketing Rule, call toll-free, 1-877-FTC-HELP (1-877-382-4357), or use the on-line form at [https://rn.ftc.gov/pls/dod/wsolcq\\$.startup?Z\\_ORG\\_CODE=PU01](https://rn.ftc.gov/pls/dod/wsolcq$.startup?Z_ORG_CODE=PU01)

The FTC enters Internet, telemarketing, identity theft and other fraud-related complaints into Consumer Sentinel, a secure, online database available to hundreds of civil and criminal law enforcement agencies in the U.S. and abroad.

The Telemarketing Sales Rule is codified in [15 U.S.C. §§ 6101-6108](#). The Regulations covering the Rule are found at [16 CFR Part 310](#).

The above article was reprinted from the Federal Trade Commission's guide book called "Complying with the TSR".