

New TCPA Rules For Some “Exempt” Calls Will Go Into Effect on July 20, 2023

January 20, 2023

On January 20, 2023, the Federal Communication Commission (FCC or Commission) announced the long-awaited effective date of new requirements for certain calls that are otherwise exempt from the Telephone Consumer Protection Act. These new rules stem from a December 2020 Report and Order, which updated a number of TCPA exemptions pursuant to the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act (TRACED Act). Among other things, the Report and Order added call limits and opt-out requirements for the following types of artificial or prerecorded voice calls: (1) non-commercial calls to a residence; (2) commercial calls to a residence that do not include an advertisement or constitute telemarketing; (3) tax-exempt nonprofit organization calls to a residence; and (4) HIPAA-related calls to a residence.

Even though the Report and Order was initially adopted over two years ago, several rules have not gone into effect yet, as they were pending Office of Management and Budget (OMB) approval. Today’s publication announces the rules’ approval and launches a 6-month period for impacted callers to come into compliance with the new rules, which will be effective as of **July 20, 2023**.

Entities that rely on TCPA exemptions—including entities placing calls subject to the Health Insurance Portability and Accountability Act of 1996 (HIPAA calls), political callers, and non-profit entities—should ensure that their outbound calls are in compliance with the TCPA in light of these updates. Below, we briefly summarize the new rules taking effect on July 20, 2023.

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First, the Report and Order amends TCPA consent exemptions for artificial or prerecorded voice calls made to residential telephone lines. Specifically, it revises exemptions for non-commercial calls to a residence, commercial calls to a residence that do not include an advertisement or constitute telemarketing, tax-exempt nonprofit organization calls to a residence, and HIPAA-related calls to a residence. The new rules limit the number of exempted artificial or prerecorded voice calls made to a residential landline to three calls within any consecutive thirty-day period for non-commercial calls, commercial calls that do not include an advertisement or constitute telemarketing, and tax-exempt nonprofit organization calls. The new call limit for HIPAA calls to a residence is one artificial or prerecorded voice call per day, with a maximum of three artificial or prerecorded voice calls per week.

As of July 20, 2023, parties will be required to obtain prior express consent before making calls using an artificial or prerecorded voice to a residential line if such calls would exceed the new call limits.^[1] For all exempted calls to a residence, moreover, the Report and Order also amends the TCPA rules to require callers to honor requests to opt out of future artificial or prerecorded voice calls.

Second, the Report and Order requires that all exempted artificial or prerecorded voice calls to residential landlines, as described above: (1) permit called parties to make do-not-call requests during regular business hours; and (2) “provide an automated, interactive voice- and/or key press-activated opt-out mechanism for the called person to make a do-not-call request, including brief explanatory instructions on how to use such mechanism, within two (2) seconds of providing” the name of the caller.^[2] Moreover, if a called party elects to opt out using this mechanism, “the mechanism, must automatically record the called person’s number” to the caller’s do-not-call list and “immediately terminate the call.”^[3] Additionally, “[w]hen the artificial or prerecorded voice . . . message is left on an answering machine or a voice mail service, such message must also provide a toll free number that enables the called person to call back at a later time and connect directly to the automated, interactive voice- and/or key press-activated opt-out mechanism and automatically record the called person’s number” to the calling party’s do-not-call list.^[4]

Third, the new rules extend the TCPA’s company-specific do-not-call rules to exempted artificial or prerecorded voice calls made to residential landlines, as described above. Specifically, the new rules prohibit all exempted artificial or prerecorded voice calls made to residential landlines, unless the caller has established procedures for maintaining a list of persons who request not to receive such calls made by or on behalf of the caller. This broadly means that such callers must:

- Maintain a written do-not-call list policy that is available on demand.
- Train personnel on the existence and use of the do-not-call list.
- Record and honor do-not-call requests within a “reasonable time” (defined as not exceeding 30 days).
- Provide the called party with the name of the individual caller, the name of the person or entity on whose behalf the call is being made, and a telephone number or address at which the person or entity may be contacted.
- Honor do-not-call requests made to affiliated entities if the called party would reasonably expect such a request to apply.

- Maintain a record of do-not-call requests for five (5) years.[5]

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With the effective date for the Report and Order now set, do not hesitate to reach out to one of the authors listed on this alert if you have questions about updating your TCPA compliance plan.

[1] Although the Report and Order originally required parties making such calls to obtain prior express *written* consent after exceeding the new call limits, the Commission revised this to only require prior express consent in a recent Order on Reconsideration. OMB already approved the change adopted in the Order on Reconsideration, and it will become effective with the other TCPA rule changes on July 20, 2023.

[2] Proposed 47 C.F.R. § 64.1200(b)(3) (effective July 20, 2023).

[3] *Id.*

[4] *Id.*

[5] Proposed 47 C.F.R. § 64.1200(d) (effective July 20, 2023).