FTC FACTS for Business

Debt Relief Services & the Telemarketing Sales Rule: What People Are Asking

Federal Trade Commission
Protecting America's Consumers
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When people are struggling to pay their credit card bills, some turn to companies offering what are advertised as debt relief services. The Federal Trade Commission (FTC), the nation's consumer protection agency, amended the **Telemarketing Sales Rule** (TSR) to add specific provisions to curb deceptive and abusive practices associated with debt relief services. When the Rule was announced, the FTC published practical guidance on compliance – ***Debt Relief Services & the Telemarketing Sales Rule: A Guide for Business*** – which is your best source for how-to advice. Since the announcement, debt relief providers have raised additional questions to FTC staff attorneys about the Rule's coverage and impact. To supplement the guide, here are the staff attorneys' answers to the questions people are asking.

Who's Covered by the Rule

My debt relief service company doesn't make outbound telemarketing calls to consumers. Are we exempt from the Rule?

Not necessarily. The Rule covers outbound calls – calls that you or someone who works for you place to potential customers. But the Rule also covers many in-bound calls – calls potential customers place to you or someone working on your behalf – including calls potential customers make in response to advertisements you've placed on TV, radio, or the Internet, and most direct mail promotions. For more information, read ***Debt Relief Services & the Telemarketing Sales Rule: A Guide for Business***.

I've heard that the TSR applies only to interstate telemarketing calls. Suppose I hire a few different telemarketing companies and each company limits its contacts to people in its state. That way, none of my telemarketers are making interstate calls. Does that exempt my company from the TSR?

No, it doesn't. An operation that hires representatives in each state to conduct telemarketing calls within that state is still involved in a telemarketing plan, program, or campaign covered by the Rule.

Is my company exempt from the Rule if we have attorneys on our staff or use outside attorneys to perform some of our services? Can I avoid having to comply with the Rule by collecting fees as a "retainer?" I've heard that companies that use an "attorney model" or that say they're collecting their fees as a "retainer" are exempt from the Rule.

Hiring or using attorneys does not exempt you from the advance fee ban or other aspects of the Rule. Nor does calling your fees a "retainer" allow you to collect them in advance. The Rule does permit you to require that your customers pay your fees in advance into a dedicated account held by an independent, insured financial institution, but only if the account meets several conditions. Read ***Debt Relief Services & the Telemarketing Sales Rule: A Guide for Business*** to find out more. When determining whether companies are complying with the Rule, the FTC looks at their practices, not the terms they use to describe themselves.

I'm an attorney. Although I generally don't provide debt relief services, I sometimes help a current client settle or resolve his or her credit card debts. Am I covered by the Rule?

It depends on the facts. Attorneys are not exempt from the Rule automatically, but in many cases attorneys who assist individual clients are likely not covered by the Rule, for two main reasons: 1) the TSR applies only to providers who use interstate telemarketing, that is, a plan, program, or campaign to sell products or services using the telephone; and 2) providers – including attorneys – who make their sales presentations in face-to-face meetings before enrolling customers likely are exempt from most of the Rule's provisions. For more information, read ***Debt Relief Services & the Telemarketing Sales Rule: A Guide for Business***.

Am I covered by the Rule if I sell books, software, or other products designed to help people settle or reduce their credit card debt?

That depends on the nature of your business and the claims you make. The Rule generally doesn't cover products like books or software; nevertheless, you can't evade the Rule just by providing a product to your customers in connection with your debt relief service. If you sell a product like a how-to book and you don't promote or provide any other service in connection with it, you're probably not covered by the Rule. Of course, even if you're not covered, you still have to comply with Section 5 of the FTC Act and state laws that prohibit unfair or deceptive acts or practices.

I have heard that investment advisors are exempt from the TSR. Am I exempt from the Rule as long as I hire an investment advisor to work at my company or call myself an investment advisor?

Probably not. The Rule does not apply to investment advisors acting in that capacity who are licensed and registered with the Securities and Exchange Commission or a state under the Investment Advisors Act. But, simply calling yourself an investment advisor or hiring one to oversee a debt relief telemarketing operation will not exempt you from the Rule. The FTC looks at a company's practices to determine if they're covered by the Rule, not the terms they use to describe themselves.

The Face-to-Face Exemption

Suppose my company hires someone to meet with potential customers before we sign them up for our service. Do we qualify for the face-to-face exemption to the TSR?

Under the Rule, whether a particular telemarketing transaction qualifies for the face-to-face exemption will depend on the facts of each case. A telemarketing transaction qualifies for the exemption if: (1) the face-to-face meeting takes place *before* the sale is completed and *before* the consumer is required to pay or authorize payment; and (2) the meeting includes an actual sales presentation to the buyer. The key to the face-to-face exemption is the direct and personal contact between the buyer and seller. You can't get around the Rule by hiring representatives just to hold cursory pre-enrollment meetings with potential customers.

Keep in mind that, if you or your employee give a sales presentation away from your usual place of business, like at the consumer's home, you must comply with the FTC's **Cooling Off Rule**. This Rule gives customers the right to cancel agreements with you within three days of signing up. It also requires you to tell customers about their right to cancel and to give them a cancellation form to use if they decide to exercise that right. Note that even when the TSR doesn't apply to a transaction, Section 5 of the FTC Act and state laws do, and compliance is your responsibility.

Before people sign up for our debt relief service, we require that they speak with one of our sales representatives online using a webcam. Does this qualify us for the Rule's face-to-face exemption?

Webcam conversations and other online interactions don't count as face-to-face meetings. To qualify for the exemption, face-to-face sales presentations have to be in person.

Fees

May I charge my customers a small membership fee, application fee, or maintenance fee before I've reduced or settled their debts?

Under the Rule, you can't collect *any* money from customers until you've settled or otherwise resolved at least one of their debts. Specifically, before collecting a fee, you must get your customer's consent to the offer from the creditor or debt collector and wait until the customer has made at least one payment on the debt.

If my customer has several debts enrolled in my service, can I collect my entire fee after settling one debt?

The Rule makes it illegal to front-load your fees that way. If your customer has multiple debts enrolled in your program and you settle one of them, you may collect a portion of the fee, calculated by using one of the two options in the Rule. Read ***Debt Relief Services & the Telemarketing Sales Rule: A Guide for Business*** for more information.

Effective Date

What's the effective date for the Rule?

Most of the provisions took effect on September 27, 2010, including the disclosures you must make and the ban on misrepresentations. The ban on collecting advance fees goes into effect on October 27, 2010. Starting that day, it's illegal to collect advance fees from people who sign up for your services until you have negotiated or settled at least one debt under an agreement executed by your customer, and the customer has made at least one payment under the agreement.

Where Can I Learn More?

For more information about your obligations under the TSR, read ***Debt Relief Services & the Telemarketing Sales Rule: A Guide for Business*** and ***Complying with the Telemarketing Sales Rule***.

About the FTC

The FTC works to prevent fraudulent, deceptive and unfair business practices in the marketplace and to provide information to help consumers spot, stop and avoid them. To file a complaint or get free information on consumer issues, visit **ftc.gov** or call toll-free, 1-877-FTC-HELP (1-877-382-4357); TTY: 1-866-653-4261. Watch a new video, How to File a Complaint, at **ftc.gov/video** to learn more. The FTC enters consumer complaints into the Consumer Sentinel Network, a secure online database and investigative tool used by hundreds of civil and criminal law enforcement agencies in the U.S. and abroad.

Opportunity to Comment

The National Small Business Ombudsman and 10 Regional Fairness Boards collect comments from small businesses about federal compliance and enforcement activities. Each year, the Ombudsman evaluates the conduct of these activities and rates each agency's responsiveness to small businesses. Small businesses can comment to the Ombudsman without fear of reprisal. To comment, call toll-free 1-888-REGFAIR (1-888-734-3247) or go to **www.sba.gov/ombudsman**.

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