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Five Steps to Boosting TCPA Compliance

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The Telephone Consumer Protection Act (TCPA) continues to be a tool utilized by the plaintiffs' bar for class action litigation. But the Act is also being wielded in run-of-the-mill bankruptcy adversary proceedings as debtors' lawyers see an opportunity to recover potentially large damages not available under other statutory schemes. As a result, it is important to remember what exact conduct the TCPA prohibits and review a checklist of actions to help boost compliance with the Act.

The TCPA is found at 47 U.S. Code § 227 and prohibits the following:

Making any call ... using any automatic telephone dialing system or an artificial or prerecorded voice – (iii) to any ... cellular telephone service...;

Initiating any telephone call to any residential telephone line using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party...; and

Using any telephone facsimile machine ... to send ... an unsolicited advertisement, unless – (i) the unsolicited advertisement is from a sender with an established business relationship with the recipient; (ii) the sender obtained the number of the telephone facsimile machine through – [permissible means] and (iii) the unsolicited advertisement contains a notice meeting the requirements under paragraph (2)(D)

The key component of the TCPA is the amount of damages available for violations. Damages range from \$500 to \$1,500 (if willful or knowing) **per call** with no cap on aggregate damages. One call, text or fax often can form the basis of a nationwide class action complaint or a more expensive settlement in a standard bankruptcy or state court case. There have been cases with the possibility of billions of dollars in exposure and settlements of up to \$75 million. Even innocent TCPA violations can place companies at risk. Here are five actions to take now to help bolster compliance with the Act:

1. Use opt-out messaging in all outbound calls or text messages.
2. Investigate the options for mobile app notifications as an alternative form of communication.
3. The ability for a customer to opt-out of inbound contact must be easy. Ensure there are opt-out options imbedded in your processes at various points in the relationship and look for opportunities available at account set up as part of regular billing and during customer service calls.
4. In addition to multiple opt-out options during the lifecycle of the relationship, consider having a specific, annual opportunity for customers to update their preferences.
5. Conduct an analysis of training of front-line employees. Could your team use a refresher on the importance of validating customer contact information each time there is customer interaction?