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# Update on FCC Rule to Close the Lead Generator “Loophole”

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## Compliant Lead Generation – Why it Matters

Utilizing lead generation services can be a successful and efficient means of matching students and institutions. However, *noncompliant* lead generation poses significant legal and reputational risk to institutions and is not in students' best interest.

- **Federal Trade Commission** – Schools are responsible for the actions of downstream third party lead generators.
- **U.S. Department of Education** – Title IV liabilities from “substantial misrepresentation” and “Borrower Defense to Repayment” (including potential new BDR ground for aggressive and deceptive recruitment conduct or tactics) can arise from the conduct of third party lead generators.
- **Consumer Financial Protection Bureau** – Lead generator conduct and private student loan conduct within its jurisdiction.
- **Complaints** arising from improper lead generation conduct can be associated with institution – accreditation, state, and other impacts.

## Significant Risk Areas

1. **Misrepresentation Laws and Standards** - FTC, U.S. Department of Education, State Unfair and Deceptive Trade Practices, Accreditation, CFPB
2. **Laws Regarding Unwanted Contacts (today's focus)** – FCC, FTC

# A History of Commitment to Lead Generation Compliance Education

- **December 2020:** “Compliance and Best Practices in Student Inquiry Generation: A Guide for Schools”, published by a CECU Task Force.
  - Stay tuned for 2024 update to this Report.
- **Today’s Compliance Update:** Understanding new Federal Communications Commission rules under the Telephone Consumer Protection Act impacting lead generators and other companies that regularly contact consumers via phone or text message.

## Current “Express Written Consent” Requirements

- Written Agreement
  - Signed
  - Phone number
  - Specific to seller initiating calls
  - “Clear and Conspicuous Disclosure”
    - By executing agreement, person authorizes seller to deliver telemarketing messages using ATDS or prerecorded message
    - Consent is not required to purchase goods or services

**KEEP RECORDS OF CONSENT FOR 5 YEARS**

## What is Changing

- **One-to-One Consent**
  - Closes “loophole” of having a single consent apply to multiple telemarketers at once.
  - Clearly *and conspicuously* consent to *one seller at a time*
- **Logically and Topically Related**
  - Calls and texts must be logically and topically related to the interaction that prompted consent
- **Do-Not-Call Rule for Texts**
  - Codifies prior FCC and court precedent that texts are “calls”

## Revised Definition of Prior Express Written Consent

(f)(9) The term prior express written consent means an agreement, in writing, that bears the signature of the person called **or texted** that clearly **and conspicuously** authorizes **no more than one identified** seller to deliver or cause to be delivered to the person called or texted advertisements or telemarketing messages using an automatic telephone dialing system or an artificial or prerecorded voice. **Calls and texts must be logically and topically associated with the interaction that prompted the consent and the agreement must identify the telephone number to which the signatory authorizes such advertisements or telemarketing messages to be delivered**

## Effective Dates

- **DNC Rules – March 26, 2024**
- **Express Written Consent – January 27, 2025**



## Federal Do Not Call

- Prohibits telemarketing to anyone on registry
- Requires internal DNC list
- Requires written policy and must be provided upon request
- Exceptions:
  - Established business relationship (EBR)
    - 18 months since last transaction
    - 3 months from inquiry
  - Written Consent
    - Can be withdrawn any time – trumps EBR
    - Does not need to be in writing

# What Lead Generators Are Saying

## (Organic)

It won't affect us because we are 100% organic and exclusive direct to client .edu already. This is why we've sat on our exclusive direct-to-form lead hill for the last 5+ years.

I've had this discussion with a couple of other larger clients and they are not necessarily worried at a catastrophic level but they are definitely aware this will hurt or damage a good portion of their lead flow.

## (Multi-Channel)

From my understanding this will not have an impact on how we are doing business aside from when and if we sell our website data to another company. We have 3<sup>rd</sup> parties publishers that mail our offers with data from their partners so things may change a bit in the email channel. In the call center channel many schools are getting away from job data and once there are restrictions on "edu data" the call center channel will see some serious consolidation again.

## (Web & Call Center)

We are prepared and are ahead of this, we have built out exclusive offer pages/functionality as well as single offer submits.

Our strategy is high quality web traffic - both clicks and leads; our web traffic has increased 40% this year.

## (Call Center)

We are working on flushing all of this out and still have a lot of questions that we need to get answered first. We need to make sure we have a good plan in place and don't want to react to quickly.

## (Multi-Channel)

Our in house Compliance and Legal teams have been closely monitoring the FCC rule change and will be prepared to share feedback to our partners in the very near term. The ruling won't go into effect until next August and there is still some lack of clarity on the expectation.

## Who Are Affected Most

- Schools
  - With large amount of enrollments come from PPL
  - With high lead rejection rates
  - Smaller schools who might not be able to compete with large competitors with economies of scale
- Providers
  - Call center generators affected most
    - Might see more consolidation
    - Harder for schools to get proof of consent vs website
  - Exclusive providers affected least
  - Providers without sophisticated tech

## Mitigation Actions

- Schools
  - Can invest in 3<sup>rd</sup> party TCPA compliance partners
  - Should begin exploring or improving other channels' performance
- Providers
  - Lead scoring
  - Explore or improve PPC models
  - Begin or continue implementing required changes ahead of time

## Overall Impacts

- + Better for consumers
- + Should not affect exclusive leads or PPC leads
- + Should lead to more higher quality leads with higher conversion
- Likely to increase overall cost per lead
- Job sites may not be logically and topically associated
- May be harder to meet burden of establishing consent due to higher clear *and conspicuous* requirement

## Questions?

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