



DIRECT SELLING ASSOCIATION

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DIRECT SELLERS SHOULD BE EXEMPT FROM TELEMARKETING “DO NOT CALL” LEGISLATION

Background

Since the mid-1980's, there has been a significant amount of legislation and regulations at both the state and federal level regarding telephone solicitation and telemarketing fraud. In the absence of federal action, many states have passed “Do Not Call” restrictions. These measures help consumers prevent unsolicited commercial telephone calls, as well as requiring telephone companies and states to maintain “Do Not Call” lists to protect consumers not wishing to receive unsolicited commercial telephone calls from telemarketers.

In 2003, the Federal Trade Commission (FTC), in coordination with the Federal Communications Commission (FCC), launched the National Do-Not-Call Registry. The FTC uses the registry to enforce the “Do-Not-Call” provisions of the Telemarketing Sales Rule and the FCC uses it to enforce the “Do-Not-Call” provisions of the federal Telephone Consumer Protection Act. The FTC's and FCC's regulations are different in scope and application. While there is only one registry, there are two federal agencies which enforce different regulations.

Position

DSA agrees that “Do-Not-Call” laws are well intentioned. However, direct sellers are not “telemarketers” and regulations on telemarketing should not apply to direct selling activities. The business is based upon face-to-face contact. However, direct sellers could inadvertently be subjected to these requirements depending on how they contact consumers. Direct sellers need to be able to contact current customers, including calling prospects that have been personally recommended to them by current customers.

Policy Alternatives

- DSA supports the current exemptions that cover the vast majority of calls made by individual direct sellers and exemptions for direct selling companies consistent with 26 USC § 3508.
- DSA also supports additional exemptions that include isolated transactions where the solicitation is not performed on a repetitive schedule - such as used by a telemarketer - if the call is made to schedule an in-person appointment with an existing customer.
- DSA works to preserve the right of direct sellers to service existing customers by phone.