



SEIA CONSUMER PROTECTION INDUSTRY ALERT: TELEMARKETING RULES

INTRODUCTION

As the residential solar industry expands nationally, solar companies are engaging more with telemarketing and lead generation companies to connect with consumers. These include both companies who are members of the Solar Energy Industries Association (SEIA) and those who are not. Solar companies need to understand all applicable laws that govern those activities, including federal law. Although the vast majority of solar companies do comply with applicable laws, the Federal Communications Commission (FCC) has received complaints involving residential solar transactions.

As part of SEIA's consumer protection efforts and as a service to the industry, this alert provides an overview of relevant rules that companies need to be aware of to stay compliant with the law. *This alert does not provide legal or other professional guidance. If you have questions regarding the legality of any business action, please consult with legal counsel before taking such action.*

SEIA SOLAR BUSINESS CODE

As a condition of membership, SEIA member companies must abide by the *SEIA Solar Business Code* (the "Code"), the first version of which was approved by the SEIA Board of Directors in 2015. The Code provides rules of conduct on advertising, marketing and consumer interactions, and contracts, in addition to reiterating that SEIA member companies must follow any applicable federal law governing telemarketing. In addition, the Code specifically states that any SEIA member company that engages third parties for telemarketing or lead generation must "take commercially reasonable measures" to make sure those third parties abide by the Code. Otherwise, a SEIA member company can be held accountable for Code violations committed by its third-party service providers.

SPOOFING

Some telemarketers falsify, alter, or obscure the number and name that appears on Caller ID. This practice is known as "spoofing" and is prohibited by the FCC because it misleads consumers as to the caller's identity. Every telemarketer must "[t]ransmit or display its telephone number or the telephone number of the seller on whose behalf the telemarketer is calling, and, if possible, its name or the name and telephone number of the

company for which it is selling products or services.”¹ See <https://www.fcc.gov/consumers/guides/caller-id-and-spoofing> for further information on spoofing from the FCC directly.

TELEMARKETING/UNWANTED CALLS

Calls made with the intent to sell or market goods or services (“marketing calls”) are highly regulated, and companies need to understand the rules governing them. For instance, federal law provides that if a consumer is on the national *Do-Not-Call* list,² no solar company can call that consumer without first obtaining written consent to make such calls, or by having an established business relationship with that consumer. In addition, a company must maintain its own internal *Do-Not-Call* list and honor all requests to be put on that list. The established business relationship exemption does not apply to consumers who have asked to be on internal *Do-Not-Call* lists. When a consumer is not on the national *Do-Not-Call* list, solar companies are given greater ability to use autodialed and manually-dialed calls without a consumer’s permission.

There are also federal and state limitations and requirements relating to (i) the times of day that calls can be made, (ii) how long after an auto-dialed call is answered that the consumer must be connected to a live representative, (iii) the need for prior written consent for receiving prerecorded messages, (iv) the automated option to be placed on internal *Do-Not-Call* list, (v) the disclosure of *Do-Not-Call* options on any message left on answering machines, (vi) how many rings must occur before a call is disconnected, and (vii) what the caller (live or automated) must say about the purpose of the call and about itself to the consumer at the very start of each call.

Calling mobile phones is more complicated. Any autodialed call to a consumer’s mobile phone requires the caller to obtain that consumer’s prior written consent, and an established business relationship is not an exception to the rule. While manually-dialed calls are only subject to *Do-Not-Call* list restrictions, the FCC’s definition of an autodialed call is broad. For instance, the FCC considers autodialing to include calls from devices that can store telephone numbers and dial them along with devices that can be modified to do so later. Taken together, virtually every company needs prior express written consent before calling a mobile phone. See <https://transition.fcc.gov/cgb/policy/Telemarketing-Rules.pdf> for further information from the FCC directly.

LEAD GENERATION

Some companies hire third-party entities known as lead generators for consumer acquisition purposes. Using third parties to obtain leads raises concerns about how such third parties obtain the prior written consent for the company to later call the leads in compliance with the foregoing *Do-Not-Call*, autodial, prerecorded message and mobile phone limitations. There are also concerns about deceptive statements made by those lead generators in trying to obtain the leads. Solar companies are responsible for taking “commercially reasonable steps” to make sure that lead generators they hire comply with the *SEIA Solar Business Code*.

¹ <https://consumercomplaints.fcc.gov/hc/en-us/articles/202654304>

² <https://www.donotcall.gov/>

State and federal law may hold companies liable for any violations committed by lead generators they engage. SEIA encourages all solar companies to be mindful of potential accountability or liability associated with actions of lead generators and the acquisition and use of lead lists from third parties. See the [SEIA Solar Business Code](#), including Sections 1.5.1 and 4.1-4.5, for further information on complying with the Code.

CONCLUSION

With the great success of the solar industry, including the residential sector, solar companies have availed themselves of modern consumer acquisition techniques. SEIA strongly encourages attention to and understanding of how to successfully conduct business while remaining in legal compliance in these areas. Solar companies must always comply with state and federal laws and regulations. SEIA strongly encourages nonmember companies to follow the helpful *SEIA Solar Business Code*, while SEIA member companies are already bound by the Code. Otherwise, companies may find themselves facing heavy fines or other legal repercussions, as well as potential SEIA enforcement actions for violations of the Code. Remember- stay informed of the law, and keep your consumers informed as well.

ADDITIONAL RESOURCES

- Solar Energy Industries Association (<http://www.seia.org/policy/consumer-protection>)
- Federal Communications Commission (<https://www.fcc.gov>)

ABOUT SEIA

Through advocacy and education, SEIA is building a strong solar industry to power America. As the voice of the industry, SEIA works with its member companies to champion the use of clean, affordable solar in America by expanding markets, removing market barriers, strengthening the industry and educating the public on the benefits of solar energy. For additional information about SEIA's consumer protection efforts, please visit www.seia.org/policy/consumer-protection or email us at consumer@seia.org.

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