



## ABC's of Consumer Lending Laws

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## Introduction



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# Truth-in-Lending Act (“TILA”) & Regulation Z



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## History of TILA

- **May 29, 1968:** TILA was enacted as part of the Consumer Credit Protection Act
- **July 1, 1969:** TILA became effective

### TILA and Reg Z Amendments:

- **1970:** TILA first amended to prohibit unsolicited credit cards
- **1974:** Fair Credit Billing Act
- **1976:** Consumer Leasing Act
- **1980:** Truth-in-Lending Simplification and Reform Act
- **1981:** Consumer leasing provisions moved from Regulation Z to Regulation M
- **1987:** Reg Z amended to implement section 1204 of the Competitive Equality Banking Act
- **1988:** Fair Credit and Charge Card Disclosure Act; Home Equity Loan Consumer Protection Act; Reg Z amended to include adjustable rate mortgage loan disclosures
- **1994:** Home Ownership and Equity Protection Act
- **1995 – 1996:** Amendments for real estate secured credit tolerances
- **2000:** E-Sign Act
- **2007:** Reg Z amended to provide guidance on electronic delivery of disclosures
- **2008:** Reg Z amended applying to higher-priced mortgage loans; Mortgage Disclosure Improvement Act
- **2009:** Credit CARD Act; Higher Education Opportunity Act; Helping Families Save their Homes Act
- **2010:** Dodd-Frank Wall Street Reform and Consumer Protection Act
- **2013 – 2014:** CFPB issues rules to implement TILA amendments

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## Applicability of Reg Z

- Who must comply with Reg Z requirements?
  - A person that extends credit if the following four (4) conditions are met:
    1. Credit is offered or extended to consumers
    2. Offering or extending credit is done regularly
    3. Credit is subject to a finance charge or payable by written agreement in more than four installments, and
    4. Credit is primarily for personal, family, or household purposes



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## Applicability of Reg Z

Reg Z sets different requirements for the following types of transactions:

- Open-End Credit
- Closed-End Credit
- High-Cost Mortgages
- Reverse Mortgages
- Private Education Loans
- Credit Card Accounts

Reg Z does not apply to:

- Business loans
- Loans above a threshold amount (currently \$66,400)



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# General Disclosure Requirements

- **Must be:**
  - clear and conspicuous,
  - in writing,
  - In a form the consumer can keep, and
  - grouped together, segregated from everything else, and cannot contain anything not directly related to the required disclosures
- **May include:**
  - an acknowledgment of receipt,
  - the date of the transaction,
  - the consumer's name, address, and account number,
  - the identity of the creditor,
  - The variable rate example,
  - Insurance or debt cancellation, and
  - Certain security interest charges



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# Content of Disclosures

Key Disclosures include:

- APR
- Finance Charge
- Amount Financed
- Total of Payments
- Payment Schedule
- Late Charges
- Prepayment

H-2—Loan Model Form

ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate.	FINANCE CHARGE The dollar amount the credit will cost you.	Amount Financed The amount of credit provided to you or on your behalf.	Total of Payments The amount you will have paid after you have made all payments as scheduled.
%	\$	\$	\$

You have the right to receive at this time an itemization of the Amount Financed.  
 I want an itemization.     I do not want an itemization.

Your payment schedule will be:

Number of Payments	Amount of Payments	When Payments Are Due

**Insurance**  
 Credit life insurance and credit disability insurance are not required to obtain credit, and will not be provided unless you sign and agree to pay the additional cost.

Type	Premium	Signature
Credit Life		I want credit life insurance.    Signature
Credit Disability		I want credit disability insurance.    Signature
Credit Life and Disability		I want credit life and disability insurance.    Signature

You may obtain property insurance from anyone you want that is acceptable to \_\_\_\_\_ If you get the insurance from \_\_\_\_\_ you will pay \$ \_\_\_\_\_.

**Security:** You are giving a security interest in:  
 the goods or property being purchased.  
 (total assignment of other property).

Filing fees \$ \_\_\_\_\_ Non-filing insurance \$ \_\_\_\_\_

Late Charge: If a payment is late, you will be charged \$ \_\_\_\_\_ / \_\_\_\_\_ % of the payment.

**Prepayment:** If you pay off early, you  
 may     will not    have to pay a penalty.  
 may     will not    be entitled to a refund of part of the finance charge.

See your contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.  
 \_\_\_\_\_ means an estimate



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## Miscellaneous Requirements

- Advertising
- Record Retention
- Oral Disclosures
- Language of Disclosures



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## Costs of Noncompliance – Civil and Criminal Liability

### Civil Liability

- If a creditor fails to comply with any requirements of the TILA, it may be held liable to the consumer for:
  - Actual damage, and
  - Cost of any successful legal action together with reasonable attorney's fees.
- The creditor also may be held liable for:
  - In an individual action, twice the amount of the finance charge involved.
  - In a class action, such amount as the court may allow (with no minimum recovery for each class member). However, the total amount of recovery in any class actions arising out of the same failure to comply by the same creditor cannot be more than \$1 million or 1 percent of the creditor's net worth, whichever is less.

### Criminal Liability

- Anyone who willingly and knowingly fails to comply with any requirement of the TILA will be fined not more than \$5,000 or imprisoned not more than one year, or both.



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## Costs of Noncompliance – Administrative Enforcement

- TILA authorizes the CFPB to require financial institutions to make monetary and other adjustments to the consumers' accounts when the true finance charge or APR exceeds the disclosed finance charge or APR by more than a specified accuracy tolerance.
  - Authorization extends to unintentional errors, including isolated violations
- Under certain circumstances, TILA requires financial institutions to reimburse consumers when understatement of the APR or finance charge involves:
  - Patterns or practices of violations
  - Gross negligence.
  - Willful noncompliance intended to mislead the person to whom the credit was extended.



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## The Equal Credit Opportunity Act (ECOA)



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## History of ECOA

- 1974 – common discrimination against women, enacted to prohibit discrimination re: sex or marital status
- 1976 – amended to include many additional protected groups, including race, national origin, age, and more



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## ECOA: What Exactly is Prohibited?

### Unlawful Discrimination

- It is unlawful for any creditor to discriminate against any applicant, with respect to any aspect of a credit transaction, on a prohibited basis.
- Types of unlawful discrimination:
  - Overt
  - Disparate Treatment
  - Disparate Impact

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# ECOA: What Exactly is Prohibited?

## Prohibited Basis for Discrimination

- Race, Color, National Origin, Religion, Sex, Marital Status, Age, Public Assistance Income, Exercise in good faith of rights under certain consumer protection laws
- Not Included as Basis for Discrimination: Limited English Proficiency, Geographic Area, Disability, Veteran Status, Familial Status (beyond marriage status), and others



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# ECOA: What is Covered?

## Credit Products v. Non-Credit Products

- The Equal Credit Opportunity Act prohibits discrimination in any aspect of a credit transaction. It applies to any extension of credit, including extensions of credit to consumers, small businesses, corporations, partnerships, and trusts.
- Coverage of Act does not include transactions without an extension of credit. Some examples:
  - Deposit accounts
  - Savings accounts
  - Payments
  - Purchase/sale financing agreements (factoring, MCA, etc.)
  - Some BNPL products



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## Latest Developments: *Townstone Financial*

- 12 C.F.R. § 1002.2(e): Applicant means any person who requests or who has received an extension of credit from a creditor, and includes any person who is or may become contractually liable regarding an extension of credit
- *CFPB v. Townstone Financial, Inc.* (Feb. 3, 2023)  
statute, or even whether it is reasonably related to the ECOA's objectives. To be clear, the Court appreciates the expertise of the CFPB in implementing the ECOA and commends its attempts to prevent the deplorable practice of discouraging people, on the basis of race, from applying for credit. The practice of limiting credit to individuals based on criteria other than creditworthiness is as odious as it is offensive. However, the Court is duty-bound to follow precedent, which means the Court can only defer to an agency's interpretation of a statute, no matter how laudable its purpose, when it survives the two-step *Chevron* framework. The anti-discouragement provision of Regulation B with respect to "prospective applicants" does not survive *Chevron* step one, so the Court does not defer to the CFPB's interpretation.
- Does this definition also include a prospective applicant?
- Appeal noticed by CFPB, pending in Seventh Circuit

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## Gramm-Leach Bliley Act ("GLBA") & Regulation P

- **Financial Privacy Rule**
- Safeguards Rule
- Pretexting Provisions



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## Reg P Overview

Regulation P requires **financial institutions** to provide certain privacy notices and to comply with certain limitations on the disclosure of **nonpublic personal information** to nonaffiliated third parties and requires financial institutions and others to comply with certain limitations on redisclosure and reuse.

Financial Institutions include:

- Banks, savings associations, and credit unions
- Non-bank mortgage lenders
- Businesses that extend credit or service loans
- Insurance underwriters and agents
- Mortgage brokers
- Personal property and real estate appraisers
- Tax preparers
- Providers of real estate settlement services
- Businesses that provide check cashing or wire transfer services
- Debt collectors



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## Reg P Overview

- Nonpublic personal information includes:
  - Information provided on a loan application
  - Account balance information
  - Payment history
  - Overdraft history
  - Credit or debit card purchases
  - The fact that an individual is or has been a customer
  - Information from a consumer report
  - Information collected through an internet “cookie”



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## Privacy Notice Requirements continued

- **Revised Privacy Notice.** Required if a financial institution wants to:
  - Disclose a new category of nonpublic personal information to a nonaffiliated third party;
  - Disclose nonpublic personal information to a new category of nonaffiliated third party; or
  - Disclose nonpublic personal information about a former customer to a nonaffiliated third party, if that former customer has not had the opportunity to exercise an opt out right regarding that disclosure.



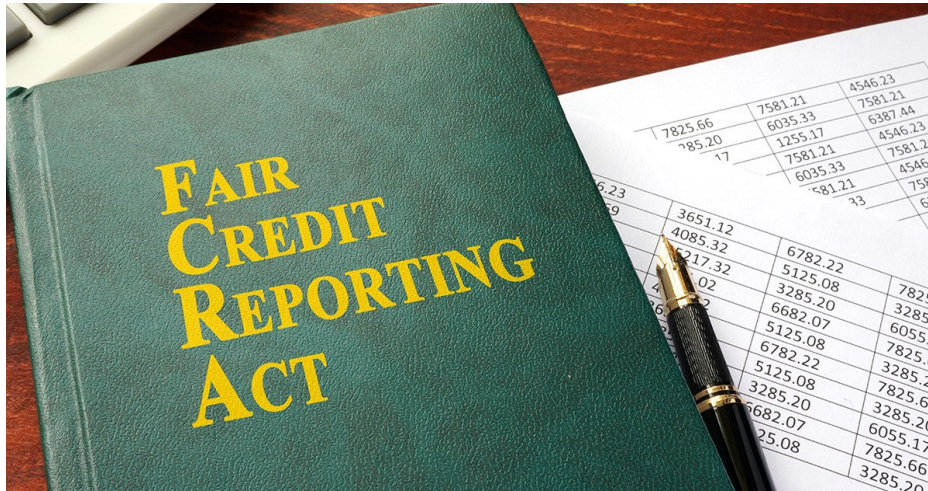
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## Why does this matter?



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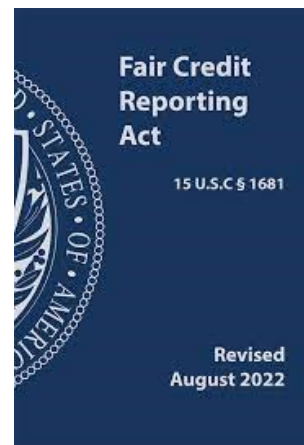
## The Fair Credit Reporting Act (FCRA)



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## History of the FCRA

- 1970 – solely enacted to regulate Consumer Reporting Agencies
- 1996 – amended to include data furnishers, limited lawsuit rights



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# Data Furnishers v. Consumer Reporting Agencies

## Data Furnisher

- Furnisher means an entity that furnishes information relating to consumers to one or more consumer reporting agencies for inclusion in a consumer report.

## Consumer Reporting Agency

- The term “consumer reporting agency” means any person who, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and who uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.



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# Data Furnishers: Legal Obligations

## 1. Provide Complete and Accurate Information to CRAs

- 1681s-2(a) provides affirmative duty to correct/update information a furnisher knows is inaccurate or has reason to know
- Flag consumer disputes of credit information to CRAs
- No private right of action



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## Data Furnishers: Legal Obligations

### 2. Investigate Consumer Disputes Received from CRAs

- Consumer dispute to CRA, CRA provides notice of dispute to furnisher
- Consumer Dispute Verification requires furnisher to:
  - Conduct a reasonable investigation
  - Review all relevant information
  - Report the results of its investigation to CRA
  - If existing information inaccurate/incomplete, report results to each CRA to which it was furnished
  - Modify/delete/permanently block reporting of inaccurate/incomplete info or info unable to be verified within 30/45 days
- No private right of action unless CRA sends notice of dispute to furnisher under 1681s-2(b)



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## Data Furnishers: Legal Obligations

### 3. Investigate Certain Direct Consumer Disputes

- 12 CFR § 1022.43 most disputes involving trade line information about the furnisher's account with consumer
- Multiple content exceptions, including frivolous/irrelevant disputes



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## Notable FCRA Litigation Trends

- Article III Standing
- Factually v. Legally Inaccurate Information



## Fair Debt Collection Practices Act (“FDCPA”) & Regulation F





## Applicability of Reg F

- Only applies to a **debt collector** when collecting a debt related to a consumer financial product or service.
- **Debt collector.** Any person who uses any instrumentality of interstate commerce or mail in any business the principal purpose of which is the collection of debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due, or asserted to be owed or due, **to another**. The term includes any creditor that, in the process of collecting its own debts, **uses any name other than its own** that would indicate that a third person is collecting or attempting to collect such debts.



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## Debt Collector Rules

Reg F regulates how and when a debt collector can communicate with a consumer or third-party relating to a consumer debt and prohibits harassing, deceptive, or unfair means to collect on a debt.

- These rules include:
  - Prohibiting a debt collector from:
    - Contacting a consumer at an unusual time or place
    - Contacting a consumer represented by an attorney
    - Communicating with a consumer at his or her place of employment if the consumer's employer prohibits the consumer from receiving such communication
    - Attempting to communicate with a consumer that gave the debt collector a cease-and-desist notice
  - Placing a telephone call:
    - more than 7 times within 7 consecutive days, or
    - Within a period of 7 consecutive days after have a phone call with the person in connection with collection of the debt.



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## Debt Collector Rules continued...



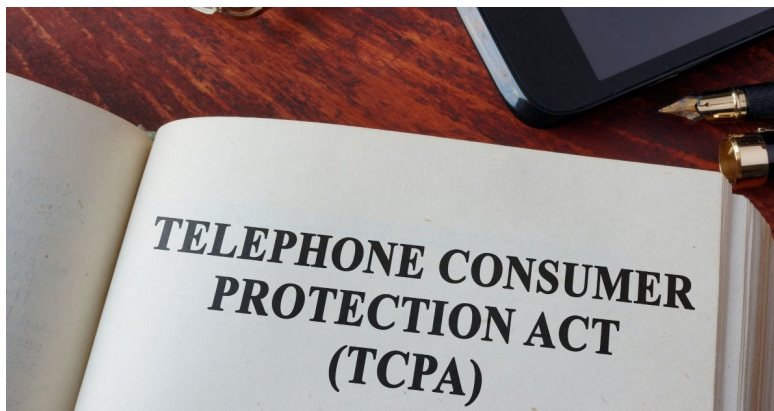
**Debt collectors are also prohibited from the following:**

- Abusing or harassing debtors or third parties
- Publishing debtor's names, along with debt information
- Using bad language when making contact
- Making false statements or representing themselves as other individuals such as attorneys or police
- Misrepresenting the amount owed
- Giving false information about debts owed
- Suing or threatening to sue to collect a time-barred debt
- **Trying to collect extra fees**



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## The Telephone Consumer Protection Act (TCPA)



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## History of the TCPA

- Communications Act of 1934
- 1991 – amendments enacted, codified as 47 U.S.C. § 227
- 1992 – FCC Adopts Implementing Order
- 2015 – FCC Adopts Omnibus TCPA Order (capacity to dial language)
- 2021 – Supreme Court ruling in *Facebook v. Duguid* (capacity to store or produce telephone numbers to be dialed using ATDS)



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## TCPA: High-Level Overview

### Do Not Call Requirements

- FTC Rule established Do Not Call Registry Oct. 1, 2003
- No “person or entity” shall initiate a “solicitation” to any residential or wireless telephone subscriber who has registered his/her telephone number on registry
  - Safe harbor for human error despite procedures in place
  - Other exceptions include written consent, established business relationship
  - Requirement to monitor (scrub) against DNC registry every 31 days
  - Company-specific DNC registry (internal) to permit parties receiving calls to request discontinuance of future calls

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# TCPA: High-Level Overview

## Telemarketing Call Requirements – What is an ATDS?

- Automatic Telephone Dialing System
- ATDS is “equipment which has the capacity to store or produce telephone numbers to be called, using a random or sequential number generator, and to dial such numbers”
  - Also includes predictive dialer
  - 2015: FCC held that “the capacity of an autodialer is not limited to its current configuration but also includes its potential functionalities”
  - 2021: *Facebook v. Duguid* - “To qualify as an automatic telephone dialing system under the Telephone Consumer Protection Act, a device must have the capacity either to store a telephone number using a random or sequential number generator, or to produce a telephone number using a random or sequential number generator.”



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# TCPA: High-Level Overview

## Telemarketing Call Requirements – What Consent Needed?

- Prior Express Written Consent
  - Telemarketing or advertising calls made using ATDS or prerecorded/synthesized voice
  - Includes dual-purpose calls if part of call is motivated by telemarketing goal
  - PEWC: signed agreement, in writing, disclosing that the person authorizes telemarketing calls using an automatic telephone dialing system or an artificial or prerecorded voice to a specified telephone number
- Prior Express Consent
  - Non-telemarketing calls or texts to cell phones using ATDS or prerecorded voice
  - Includes ringless voicemail for same purposes



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# TCPA: High-Level Overview

## Penalties for Noncompliance

- FCC Penalties
  - Up to \$16,000 per violation, or \$26,000 per intentional violation
- Private Lawsuit
  - \$500 per communication
  - \$1,500 per willful or knowing violation
  - Class action risks based upon common issues of law and fact



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# TCPA: Evolving Regulatory Guidance

## Amendments to 47 C.F.R. § 64.1200(a)(3)(ii) through (v), etc.

- Effective date: **July 20, 2023**
- Amendment of TCPA Consent Exemptions
  - Revises exemptions for non-commercial calls to a residence, commercial calls to a residence that do not include an advertisement or constitute telemarketing, tax-exempt nonprofit organization calls to a residence, and HIPAA-related calls to a residence.
  - Limits number of exempted artificial or prerecorded voice calls made to a residential landline to three calls within any consecutive thirty-day period for non-commercial calls, commercial calls that do not include an advertisement or constitute telemarketing, and tax-exempt nonprofit organization calls. The new call limit for HIPAA calls to a residence is one artificial or prerecorded voice call per day, with a maximum of three artificial or prerecorded voice calls per week.
  - Parties will be required to obtain prior express consent before making calls using an artificial or prerecorded voice to a residential line if such calls would exceed the new call limits.



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# TCPA: Evolving Regulatory Guidance

## Amendments to 47 C.F.R. § 64.1200(a)(3)(ii) through (v), etc.

- Effective date: **July 20, 2023**
- Amendment of Opt-Out Rules
  - All artificial or prerecorded voice calls to residential landlines must:
    - (1) permit called parties to make do-not-call requests during regular business hours;
    - (2) Provide opt-out mechanism
  - If opt-out occurs, must add number to company's DNC registry, end call
  - If artificial or pre-recorded voice message left, must provide call back number for opt-out



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# TCPA: Evolving Regulatory Guidance

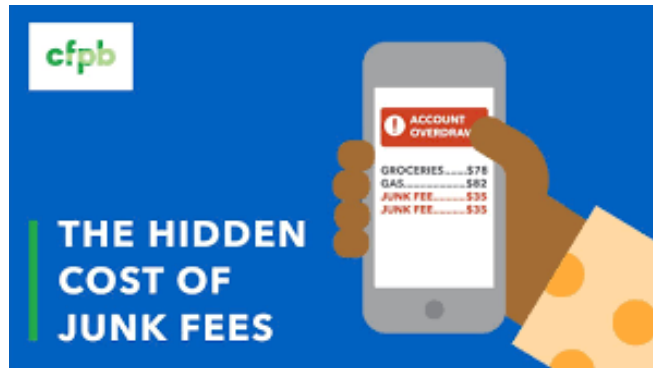
## Amendments to 47 C.F.R. § 64.1200(a)(3)(ii) through (v), etc.

- Effective date: **July 20, 2023**
- Amendment of Landline Call Rules
  - New rules prohibit all exempted artificial or prerecorded voice calls made to residential landlines, unless the caller has established procedures for maintaining a list of persons who request not to receive such calls made by or on behalf of the caller.
  - To maintain such procedures, callers generally must:
    - Maintain a written do-not-call list policy that is available on demand.
    - Train personnel on the existence/use of the do-not-call list.
    - Record/honor do-not-call requests within a "reasonable time" (defined as not exceeding 30 days).
    - Provide the called party with the name of the individual caller, the name of the person or entity on whose behalf the call is being made, and a telephone number or address at which the person or entity may be contacted.
    - Honor DNC requests made to affiliated entities if the called party would reasonably expect such a request to apply.
    - Maintain a record of do-not-call requests for five (5) years.



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## CFPB and “Junk Fees”



## Miscellaneous Laws

- **Military Lending Act (“MLA”)**
  - Caps the permissible APR at 36% for consumer loans to a covered member of the armed forces.
- **Servicemembers Civil Relief Act (“SCRA”)**
  - Provides protections for servicemembers that get called to active duty.
- **Regulation E**
  - Prohibits a lender from conditioning credit on repayment by a pre-authorized ACH or debit card payment
- **UDAAP**

**Questions?**

