

Two TCPA updates that auto finance companies need to know

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The Telephone Consumer Protection Act (TCPA), and the barrage of litigation that stems from its various interpretations, is always in the news. In fact, there is so much change that it's often hard for a casual follower to filter out the news from noise. For example, court cases discussing the [constitutionality of the TCPA](#) as a result of the government-debt exemption have been coming fast and furious.

But are lenders going to update their compliance policy after every ruling? Is it even possible to do so, considering the TCPA has been ripe for circuit splits?

The answer is: No. While a consumer compliance management program incorporates monitoring key litigation and legal updates, it's often hard to determine which information is relevant to particular practices, or which events may require a change in a compliance program.

Here are two high-level concepts to keep an eye on that are particularly relevant to auto finance:

1. TRACED Act rules

The Telephone Robocall Abuse and Criminal Enforcement and Deterrence Act (TRACED Act) directed the **Federal Communications Commission** (FCC) to issue rules to codify the TCPA exemptions for calls to wireless numbers in order to make those exemptions clearer and amend the TCPA exemptions for artificial or prerecorded voice calls made to residential telephone lines. This is to satisfy the TRACED Act's requirements to identify who can call, who can be called, and whether any limits are placed on the calls themselves.

Auto finance companies should know that the FCC has adopted limits for both commercial and noncommercial calls to a residence that are not advertising or telemarketing. Further, the FCC has clarified prior limits for calls made by a financial institution regarding fraudulent transactions, security data breaches and identity theft.

- For commercial calls that do not constitute telemarketing to a residential line that are made under an exemption, a company may make three calls using an artificial or prerecorded voice within any consecutive 30-day period. Consumers must be provided with the option to opt out of these calls.
- For noncommercial calls to a residential line, which could include research, market surveys or similar noncommercial activity made under an exemption, a company may make three calls using artificial or prerecorded voice within any consecutive 30-day period. Consumers must be provided with the option to opt out of these calls.
- Further, the FCC clarified that its prior guidance to financial institutions complies with the TRACED Act, which exempts a financial institution from the TCPA in order to make calls to wireless numbers for certain

events, like fraud or identity theft, data security breach, or an event giving rise to the need for remediation measures. For calls made under an exemption for one of these events using an automatic telephone dialing system or artificial or prerecorded voice, the FCC has limited the number of calls to not more than three calls over a three-day period from a single financial institution to the owner of an affected account.

2. The Supreme Court could rule on Facebook v. Duguid any day now

Facebook v. Duguid is a landmark **U.S. Supreme Court** case that will, hopefully, finally provide clarity for TCPA compliance nationwide. The Supreme Court will review whether an automatic telephone dialing system encompasses any device that can “store” and “automatically dial” telephone numbers, even if the device does not use a random or sequential number generator. The Supreme Court recently released opinions that were argued in late 2020, and we expect to see an opinion before the end of the term in June 2021.

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