

NFIB CARRIES THE VOICE OF SMALL BUSINESS TO CAPITOL HILL: Information on the New Faxing Regulations



As required by the Junk Fax Prevention Act of 2005, the Federal Communications Commission will implement new regulations regarding the sending of fax advertisements effective Aug. 1, 2006.

Under the new rules:

- Businesses will be able to send advertisements to recipients with whom they have an existing relationship.
- Businesses will be required to provide a cost-free mechanism to allow the recipient to opt-out of future advertisement faxes that can accept requests 24/7.
- The opt-out notice must be on the first page and be “clear and conspicuous” so any reasonable customer can see it.
- Opt-out requests must be handled within 30 days.

Established Business Relationship

An EBR can be formed between a business and a customer by any of the following: an inquiry, application, purchase or transaction by the business or residential subscriber.

Senders must have obtained the fax number directly from the recipient in the context of the EBR or ensure that the recipient voluntarily agreed to make the number available unless the EBR was obtained prior to July 9, 2005. The FCC notes that the provision of a fax number on business cards, on Web sites or verbally over the phone reflects a willingness to receive faxes. If the sender receives the number from a third party then the sender must verify consent before sending fax advertisements.

Without an EBR the sender must obtain express prior permission to send fax advertisements.

* Note that if questions arise regarding the validity of an EBR it will be the burden of the sender to demonstrate its existence through records that are kept in the ordinary course of business including purchase agreements, sales slips, applications and inquiry records.

Opt-Out Notice

Senders must include a “clear and conspicuous” notice on the first page of the unsolicited advertisement that instructs the recipient how to request that they no longer receive fax ads. The notice must be distinguishable from the rest of the fax and placed at either the top or the bottom of the page. The opt-out notice must include at least one cost-free point of contact.

NFIB

1201 F. Street, NW Suite 200 Washington, DC-20004 (800) 552-NFIB NFIB.com

Be Heard.

Be Involved.

Be Smarter.

Be Connected.

NFIB
The Voice of Small Business®

Cost-Free Mechanism

Cost-free mechanisms include Web site address, e-mail address, toll-free phone number or toll-free fax number.

A business that only faxes to local customers who will not incur long-distance charges may use a local telephone number. The sender must ensure that method they choose is able to accept opt-out requests 24/7.

Opt-Out Requests

Opt out requests must be dealt with within 30 days and honored whether or not the recipient continues to do business with the sender.

A recent court decision found that these regulations will preempt state laws that try to regulate interstate commerce; the issue of whether these regulations will preempt state laws that cover faxes sent within the state is still being decided.

Faxes that fall outside the definition of unsolicited advertisements and are therefore exempt from these limitations: faxes about debt collection, messages related to existing accounts and ongoing transactions fall, information only communications, industry news articles, legislative updates, employee benefit information, messages involving political or religious discourse, such as a request for a donation to a political campaign, political action committee or charitable organization.

States that have laws regarding faxing unsolicited advertisements:

Arizona	Louisiana	New York	Tennessee
California	Maine	North Carolina	Texas
Colorado	Maryland	North Dakota	Utah
Connecticut	Michigan	Ohio	Virginia
Georgia	Minnesota	Oklahoma	Washington
Idaho	Montana	Oregon	West Virginia
Illinois	Nebraska	Pennsylvania	Wisconsin
Kansas	Nevada	Rhode Island	
Kentucky	New Mexico	South Carolina	

May 2006

NFIB

1201 F. Street, NW Suite 200 Washington, DC-20004 (800) 552-NFIB NFIB.com

Be Heard.

Be Involved.

Be Smarter.

Be Connected.

NFIB
The Voice of Small Business®