**Policy 9600: TCPA, JFPA and CAN-SPAM**

**Model Policy Revised Date: 05/13/2024**

**General Policy Statement:**  
   
[[CUname]] (Credit Union) will ensure that all covered phone calls/texts, email communications and covered faxes comply with the requirements of the Telephone Consumer Protection Act (TCPA) (including revisions as a result of the Pallone-Thune Telephone Robocall Abuse Criminal and Deterrence Act (TRACED Act), the Junk Fax Prevention Act (JFPA), and the Controlling the Assault of Non-Solicited Pornography and Marketing Act (CAN-SPAM), . The Board delegates to management the responsibility for developing procedures in accordance with this policy.

**Definitions:**

1. **AUTOMATIC TELEPHONE DIALING SYSTEM (AUTODIALER).** The TCPA’s definition is any technology which has the capacity to store or produce telephone numbers to be called using a random or sequential number generator to dial such numbers. Even if the Credit Union’s system does not currently have the capacity or capability at this time to make these calls, the system would still be considered an “autodialer” if it had the capacity to be upgraded in the future to make these calls.
2. **COMMERCIAL MESSAGE.** Defined by CAN-SPAM as those having the primary purpose of advertisement or promotion of a product or service (including email that promotes content on commercial websites). “Transactional” or “relationship” messages are not considered commercial emails.
3. **TELEMARKETING.** The initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, investment in, property, goods, or services, which is transmitted to any person.
4. **TRANSACTIONAL OR RELATIONSHIP MESSAGE.** CAN-SPAM defines this to mean an email message with the primary purpose to:  
   1. Facilitate, complete, or confirm a commercial transaction that the recipient has previously agreed to enter into with the Credit Union (sender);
   2. Provide warranty information, product recall information or safety or security information with respect to a commercial product or service used or purchase by the recipient;
   3. Provide notification concerning a change in terms or features, recipient’s standing or status, or at regular periodic intervals: account balance information or other type of account statement for a subscription, membership account, loan or comparable ongoing commercial relationship involving the ongoing purchase or use by the recipient of products or services offered by the Credit Union (sender);
   4. Provide information directly related to an employment relationship or related benefit plan in which the recipient is currently involved, participating or enrolled; or
   5. Deliver goods or services, including product updates or upgrades, that the recipient is entitled to receive under the terms of a transaction that the recipient has previously agreed to enter into with the Credit Union (sender).
5. **UNSOLICITED ADVERTISEMENT.** TCPA defines this to mean “any material advertising the commercial availability or quality of any property, goods, or services, which is transmitted to any person without the person’s prior express invitation or permission, in writing or otherwise.”

**Guidelines:**

1. **EXPRESS WRITTEN CONSENT.** Credit Unions wishing to make calls, send text messages and send faxes for telemarketing purposes should have express written consent from the member to ensure compliance. The member’s express written consent must comply with the following disclosure requirements:   
   1. The consent is in writing bearing the signature of the consumer providing consent (written consent includes an electronic or digital form of signature pursuant to the E-SIGN Act);
   2. Specifies the telephone number/ fax number to which the consumer is consenting to be called/faxed;
   3. Clearly authorizes the Credit Union to call the consumer using an automatic telephone dialing system or prerecorded message for telemarketing purposes;
   4. The consent is applicable to the products and services the member is coming in for and the Credit Union will obtain additional consent for additional products and services to be marketed (for example consent at account opening would allow for marketing of account-related services and consent at loan application would allow for marketing of loan related products and services); and
   5. Is not a condition of purchasing goods or services.
2. **AFFIRMATIVE CONSENT**. Means that for commercial emails (which does not include “transactional or relationship messages”) sent by the Credit Union, the member expressly consented to:  
   1. Receive the message, either in response to a clear and conspicuous request for such consent or at the member’s own initiative; and
   2. If the message is from a party other than the party to which the recipient communicated such consent, the email recipient was given clear and conspicuous notice that at the time the consent was communicated, the recipient’s email address could be transferred to another party for the purpose of initiating commercial email messages.
3. **WIRELESS NUMBER AND RESIDENTIAL PHONE CALLS**. Because there are different restrictions and requirements for calls made to wireless numbers and residential lines, the Credit Union will follow their applicable procedures to ensure compliance.
4. **PRERECORDED MESSAGES**. If the Credit Union leaves an artificial or prerecorded telephone message, the message begins by stating the identity of the Credit Union and the telephone number of the Credit Union, including a toll-free number for the consumer to opt-out of future calls.
5. **E-MAIL COMMUNICATIONS.** Commercial email communications must include a clear and conspicuous identification that the message is an advertisement or solicitation, provide notice of the opportunity to decline to receive further commercial electronic mail messages from the Credit Union (sender), and include a valid physical postal address of the Credit Union (sender). The Credit Union will:  
   1. Not disguise the Credit Union’s name or the purpose of the message;
   2. Always aim to have affirmative consent from the recipient to send the e-mail message; and
   3. Include a clear and conspicuous way for members to opt out of receiving further e-mail solicitations using e-mail or by sending a written opt-out request to the Credit Union’s physical address.
6. **OPT-OUT NOTICES.** Senders of advertisements via fax must provide specified notice and contact information on the facsimile that allows recipients to “opt out” of any future facsimile transmissions from the senders. Any artificial or prerecorded message telemarketing calls that could be answered by the consumer must provide an interactive opt-out mechanism that is announced at the outset of the message and is available for the duration of the call.  
   1. **Clear and Conspicuous.** The opt-out notice must be “clear and conspicuous,” meaning that it is “apparent to a reasonable consumer.”
   2. **Cost-Free Mechanism to Opt-Out.** The Credit Union will identify a “cost-free mechanism” for a recipient to transmit an opt-out request. Such mechanisms can include a website address, e-mail address, toll-free telephone number or toll-free facsimile machine number, but need only include one mechanism.  
      1. **Local Telephone Numbers.** Local telephone numbers may be provided, so long as the advertisements are sent to local members for whom a call to that number would not result in long distance or other separate charges.
      2. **Website.** If a website is used to receive opt-out requests, the Credit Union will ensure that the first page of the site describes the opt-out mechanism and procedures clearly and conspicuously.
      3. **Availability.** Whichever mechanism is used, the Credit Union will ensure that opt-out requests can be accepted 24 hours, 7 days a week.
   3. **Responding to Opt-Out Requests.** The Credit Union will comply with opt-out requests as soon as possible. The Credit Union will also have procedures to avoid future calls/faxes being made to consumers who have opted out.
   4. **Email Opt-Out Requests.** When a member sends an opt-out request for commercial email communications, the Credit Union will not initiate another message to that member 10 days after receiving the opt-out. The member must be able to send a reply e-mail message or visit a single web page to opt out of receiving future emails.  
      1. The Credit Union will retain an opt-out list for electronic solicitations for 5 years after the request is made.
      2. The Credit Union will also monitor and maintain the list accordingly.
7. **REVOCATION OF CONSENT.** The member can revoke consent at any time and that revocation will be accepted if submitted to the credit union in any reasonable manner. For certain calls and text messages, the use of “Stop” or other similar message in a text reply is considered reasonable and must be accepted by the Credit Union. The Credit Union will have procedures in place to process the revocation in less than 10 business days after receipt of the request.
8. **PROCEDURES.** The Credit Union will have procedures in place to comply with the requirements of the TCPA, JFPA, and CAN-SPAM. Procedures will be comprehensive to avoid multiple calls/text messages/emails/faxes being made, comply with applicable message requirements, including, but not limited to messages sent to reassigned/wrong numbers or to consumers who have opted out.