VIA ELECTRONIC DELIVERY

June 5, 2015

The Honorable Tom Wheeler
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Chairman Wheeler:

We, the undersigned, are writing to urge the Federal Communications Commission ("the Commission") to take immediate action to implement reasonable reforms to the Telephone Consumer Protection Act ("TCPA") rules for organizations acting on behalf of the federal government to allow for the effective administration of federal student loan servicing and collection.[1] Current TCPA restrictions severely impede the ability of student loan organizations and institutions of higher education to contact federal student loan borrowers by limiting the use of text messages and phone calls to wireless telephone numbers. Failure to act has resulted in unnecessary barriers to communication and has resulted and will continue to result over the next decade in millions of unnecessary student loan defaults. We urge the Commission to take immediate action — through either a declaratory ruling or rulemaking — to clarify and confirm that student loan organizations and institutions of higher education are permitted to use

[1] The federal student loan programs that are the subject of this letter include the William D. Ford Federal Direct Loan Program, the Federal Family Education Loan Program and the Federal Perkins Loan Program, all of which are administered by the U.S. Department of Education and are authorized by title IV of the Higher Education Act of 1965, as amended, and the federal student loan programs administered by the U.S. Department of Health and Human Services under titles VII and VIII of the Public Health Service Act.

automatic dialing systems and prerecorded voice and text messages when contacting borrowers on their wireless phones, as outlined in President Obama's budget for FY16.

Loan servicers and collectors[2] must be able to contact borrowers to educate, inform, and guide them through the complicated world of federal loan repayment plans. Effective communication between borrowers and servicers is essential to preventing delinquency and default. Unfortunately, given court interpretations of the TCPA and numerous, frivolous lawsuits, this crucial communication is impaired. We have read the Fact Sheet Chairman Wheeler released on May 27, 2015 entitled "Wheeler Proposal to Protect and Empower Consumers Against Unwanted Robocalls, Texts to Wireless Phones" ("Fact Sheet"). Given the importance of the issues addressed herein, we recommend that if the Commission moves ahead with the declaratory ruling described in the Fact Sheet that the servicing and collection of federal student loans, together with appropriate consumer protections, be part of the permitted exceptions referenced in the Fact Sheet.

According to a recent Centers for Disease Control and Prevention study[3], 58.4 percent of all American households are either exclusively or predominantly wireless, and the percentage is even higher for those in age brackets more likely to have student loans. A recent Gallup poll found that 68 percent of Americans aged 18-to-29 either sent or received a text message on the previous day, and that 50 percent made or received a phone call using a cellphone.[4] Only seven percent of respondents had made or received a call using a landline phone. Our respective memberships report similar findings — that younger generations are not inclined to read or respond to traditional mail or email communications.

As evidenced in the Gallup poll, young adults rely on texting on a mobile phone as their preferred mode of communication, which renders the use of landline phones as an increasingly obsolete method of effective communication.[5] Preview dialers, predictive dialers, and similar modern technological communication methods are far more efficient and effective than manual dialing in reaching student and parent borrowers on their cell phones. Expert staff are consequently given more time to assist struggling borrowers prior to default, or to assist borrowers languishing in default. Such uses of modern technology should be encouraged, not penalized**.** Contacting borrowers on their cell phone is simply the most effective way to reach more of them.

Approximately 90 percent of all outstanding student loans have been made under the federal student loan programs. These programs have features that can help most borrowers avoid default and, for those that do default, help them rehabilitate their defaulted loans and clear their credit records of the default. Servicers can offer deferments (which in many cases are federally subsidized), extended and graduated repayment plans, and forbearances. Income-driven repayment ("IDR") plans, which take ability-to-pay into consideration, are also available. These

[2] The term "loan servicers and collectors" as used herein is intended to include all organizations that have roles in administering federal student loans.
[3] Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, January-June 2014, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services (December 2014).
[4] "The New Era of Communication Among Americans," Gallup, November 10, 2014.
[5] Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, January-June 2014, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services (December 2014).

programs would be of particular benefit to the more than 25 percent of federal student loan borrowers who are delinquent at any point in time, but many borrowers are not aware of these options without effective communication from their servicer.[6]

Under these plans, monthly payments for struggling borrowers can be as low as zero (depending on income), and borrowers qualify to have their remaining balances forgiven after 20 to 25 years. The U.S. Department of Education's (the "Department's") student loan servicers send out approximately five million pieces of mail each month to inform borrowers of their many options, but a substantial portion of this mail goes unread. Consequently, a large number of borrowers with wireless phones cannot be contacted in a successful or timely manner, and do not receive the assistance they need in preventing or resolving their loan delinquency.

Borrowers who are successfully enrolled in a repayment plan would also benefit from increased communication, as they are required to reapply for an IDR plan each year to stay in the program. If they fail to recertify their income, they could face the potential negative consequences of skyrocketing monthly payments, missed opportunity for forbearance or deferment, and even the possibility of delinquency and default. These consequences were confirmed by U.S. Department of Education data that revealed that between October 2013 and November 2014 nearly 60 percent of borrowers enrolled in Income Driven Repayment programs did not recertify their incomes as required before their deadlines.[7] To ensure borrowers reapply, it is necessary and most effective to conduct a calling campaign. On average, one of the four major federal student loan servicers, was able to contact only 1,130 borrowers by dialing manually — but reached 13,675 delinquent borrowers per week using automated dialing technology. Contacting these borrowers on their cell phones would facilitate increased and improved contact and protect borrowers from facing the difficult consequences of delinquency or default.

President Obama and the Department have launched a major campaign to enroll more borrowers in IDR plans. According to a White House press release, the Department is redoubling its effort to identify who may be struggling to repay and to provide them with timely information about options to help them avoid or get out of default.[8] The challenge in all cases is to reach borrowers to present them with the available options — if a loan servicer can talk to a borrower, in most cases they can find a solution to avoid default. However, many distressed borrowers simply do not open their mail. Borrower passivity, combined with restrictions on servicers' ability to communicate, most often leads to default. The negative consequences of a loan default are many — a negative credit rating, offset of tax refunds and federal benefits, administrative wage garnishment, and increased fees and balances.

Collection agencies, including those under contract with the Department and nonprofit guaranty agencies, notify defaulted borrowers that they may be eligible to rehabilitate their defaulted loans or that they may have consolidation, cancellation, or forbearance options. Federal student loan borrowers who have defaulted can rehabilitate their loans by making nine "reasonable and

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[6] "Student Loan Delinquency: A Big Problem Getting Worse?", Federal Reserve Bank of St. Louis, April 10, 2015.
[7] U.S. Department of Education, *Sample Data on IDR Recertification Rates*, Handout at Negotiated Rulemaking Session April 2, 2015.
[8] Taking Action: Higher Education and Student Debt, The Domestic Policy Council and the Council of Economic Advisors, June 10, 2014.

affordable" monthly payments over a 10-month period. Under Department regulations that took effect July 1, 2014, an IDR-like "ability-to-pay" formula must initially be used to establish the repayment schedule.[9] The monthly payment can be as low as five dollars. As in the case of pre-default servicing, it is much more effective to discuss the details and benefits of loan rehabilitation directly with the borrower. One senior management representative from a collection agency, who works for one of the Department's contractors, states that they are able to help 90 percent of the borrowers they are able to contact by phone.

Student loan servicers and collectors do not make telemarketing calls as part of their servicing activities; all of their telephone contacts are of an informational, non-marketing nature. Student loan servicers must communicate by telephone with their customers in order to be effective, which means, for most borrowers, by cell phone. Where they are permitted to do so under the law, servicers use text and prerecorded voice messages and other automated technologies to reach their customers' cell phones for many reasons, including:

- To respond to customer inquiries received by mail, email, or phone;
- To contact borrowers when mail is returned undelivered;
- To notify borrowers that their grace period after leaving or completing college is ending, and that their student loans are about to go into repayment;
- To notify borrowers that a period of deferment or forbearance on their student loans is ending and that they are about to re-enter repayment status;
- To notify borrowers that their annual period for one of the federal income-driven repayment plans (Income-Based Repayment, Income Contingent Repayment, or "Pay As You Earn") is ending and that they must requalify in order to remain eligible;
- To remind borrowers that a payment is due;
- To let borrowers know that a payment is late or has not been received;
- To notify borrowers that their annual student loan interest statement (Internal Revenue Service Form 1098-E) is available on the servicer's website;
- To make due diligence telephone contacts to delinquent borrowers as required by the Higher Education Act and its implementing regulations;
- To let borrowers know that their monthly payment amount is changing (for example, borrowers with variable rate loans or graduated repayment plans);
- To inform defaulted borrowers of their available options, which include loan consolidation and loan rehabilitation;

[9] See 34 CFR 682(b)(1)(i)(D), as published in the Federal Register on November 1, 2013 (78 Fed. Reg. 65815).

- For borrowers choosing loan consolidation, following up to ensure all information is provided; and

- For borrowers choosing loan rehabilitation, reminding borrowers over the course of the rehabilitation period of the need to continue to submit timely payments.

To show the potential benefits of personalized contact to borrowers, a study was prepared by a respected and independent economist who found that, assuming the current rate of growth in cell phone usage, over the next 10 years nearly 12 million student loan borrowers will avoid the painful and costly consequences of default if their loan servicers are able to contact them using predictive dialing technology.[10] Even if this projection proves to be high, the number of borrowers who could benefit from the requested change would still be significant.

The current legal landscape creates unacceptable risks for servicers and collectors seeking to use modern telecommunications technology to reach student loan borrowers. TCPA restrictions were originally enacted to prohibit telemarketing excesses, where numbers were randomly or sequentially generated and dialed. However, the restrictions have been adapted to encompass efforts to reach specific individual borrowers on behalf of the lender, the Department, or the guaranty agency that insures federally-backed loans. While the TCPA defines an Automatic Telephone Dialing System as a system that has the "capacity to store or produce numbers to be called using a random or sequential number generator," some courts have found that predictive dialers, which do not generate phone numbers, fall within the definition. Some courts have even found that "preview" dialing, where specific phone numbers are selected and dialed by a person, and manual dialing, if made through a system that has access to predictive capacity, fall within the definition.

Many organizations have taken comfort in the Commission's position that consent exists where the consumer provides the number, but even this protection is of questionable legal value. As consent can be revoked orally and at any time, plaintiffs commonly argue that they have revoked consent. Litigating this issue has become extremely expensive. Given the possibility of class action lawsuits, student loan servicers and collectors face costly "bet the company" damage exposure. In addition, plaintiff law firms are actively soliciting TCPA plaintiffs; one firm even has a "Block Calls/Get Cash" cell phone application that they are advertising to automatically track and funnel potential TCPA violation calls to the law firm.[11]

The result is a heightened reluctance to use dialer technology, especially when calling cell phones. This means that calls must be made manually, which increases costs, places unnecessary restraint on finite resources and, most importantly, reduces the number of consumers who can be reached and informed in a timely manner about ways to avoid default or options to resolve their default. Though intended to benefit consumers, the outdated interpretations result in an increasing number of borrowers who cannot obtain timely information and therefore face

[10] "Modifying the TCPA to Improve Services to Student Loan Borrowers and Enhance Performance of Federal Loan Portfolios," Prepared by Judy Xanthopoulos, PhD., Quantria Strategies, LLC (July 2013). A summary of the study's findings is included as an attachment.

[11] http://www.blockcallsgetcash.com/

damaged credit and, in some cases wage garnishment and potential legal action – all because of unnecessary barriers to communication.

Rohit Chopra, Assistant Director and Student Loan Ombudsman at the Consumer Financial Protection Bureau ("CFPB"), has stated in testimony before Congress, "Loan servicers are the primary point of contact on student loans for more than 40 million Americans. High-quality servicing can contribute to an individual borrower's ability to successfully repay their debt, especially through enrollment into affordable repayment plans."[12] Deputy Treasury Secretary Sarah Bloom Raskin stated in a speech before the National Consumer Law Center's Consumer Rights Litigation Conference that a student loan servicer "must do a substantial amount of work with a student loan borrower to find the option that best meets the borrower's needs before the borrower becomes delinquent or in default."[13] We agree with Mr. Chopra and Deputy Secretary Raskin's assertions. However, servicers and collectors need a more effective way to perform their required duties.

Federal student loans comprise a large portion of federal consumer debt. For the last four years, President Obama's budget has included a proposal to provide authority for federal agents to contact delinquent individuals on debt owed to or guaranteed by the federal government via their cell phones using automatic dialing systems and prerecorded voice messages.[14] The budget proposal would also authorize the Commission to implement rules to protect consumers from harassment and unreasonable contact. We support the President's budget proposal and would welcome the opportunity to work with the Commission on crafting additional appropriate consumer protections. In 2010, the U.S. Department of the Treasury and the Department of Education wrote to the Commission requesting that auto-dialer restrictions not apply to the servicing and collection of debts, or at least to the collection of federal debt including federal student loans; we understand these views remain unchanged.

While we believe many consumer advocates understand the benefits of the consumer protections available in the federal student loan programs, we understand that that there remains concern that use of dialer technology may lead to borrower harassment. One such group has said that if the definition of auto-dialer is changed "[t]here will be no longer any limit on calls to cell phones."[15] This argument is invalid, as there are currently multiple federal and state laws to prevent harassment that are completely independent of the TCPA. The Fair Debt Collection Practices Act ("FDCPA") and similar state laws prohibit debt collectors from harassing borrowers, and the CFPB has signaled that it may apply many of the FDCPA rules to first-party servicers as well. Our organizations stand willing to work with the Commission and consider any additional reasonable consumer protections to bolster confidence that TCPA reform will not permit any abuse or harassment of students and their families.

Some additional consumer protections that the Commission may wish to consider include:

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12 Testimony of Rohit Chopra before the United States Senate Committee on the Budget, June 4, 2014.

13 Prepared remarks of Deputy Secretary Raskin on student loans at the National Consumer Law Center's Consumer Rights Litigation Conference, November 6, 2014.

14 Fiscal Year 2016 Budget of the U.S. Government, Analytical Perspectives, p.128. Excerpt included as an attachment.

15 National Consumer Law Center Ex Parte Presentation dated June 6, 2014, p. 10.

- Borrowers would only be auto-dialed on their cell phones where there is proof of a business relationship–i.e., where proof of the debt is established;

- No solicitation of any kind would occur as part of auto-dialed calls made to borrower cell phones;

- FDCPA guidelines would be followed for all auto-dialed calls made to borrower cell phones, including:
    - Calling at reasonable hours of the day, and
    - Avoidance of any conduct that would be deemed to constitute harassment;

- Borrowers would, upon request, be provided a toll-free telephone number at which they can reach the servicer or collector; and

- Requests by the borrower to suspend auto-dialing would be honored.

We reiterate our request that the Commission take immediate action — either through a declaratory ruling or rulemaking — to clarify and confirm that the use of automatic dialing systems and prerecorded voice and text messages is allowed when contacting borrowers on their wireless phones in the servicing and collection of federal students loans. As mentioned at the outset, if the Commission moves ahead with the declaratory ruling described in the Fact Sheet, the Commission should include the relief described herein, including the consumer protections, as part of the permitted exceptions. While we believe broader relief would be appropriate, this step will allow servicers and collectors of federal student loans to counsel borrowers on all avenues of repayment relief provided by Congress. This will mitigate the harmful effects of TCPA restrictions on student and parent borrowers who fail to receive time sensitive and financially critical information in the way that is most convenient for them.

Respectfully,

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cc:

Commissioner Mignon Clyburn
Commissioner Jessica Rosenworcel
Commissioner Ajit Pai
Commissioner Michael O'Rielly

Attachments:

Gallup Poll
Summary of the Quantria Strategies Study
Excerpt from the President's FY 2016 Budget Request