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EFC, NCHER, and SLSA Respond to FCC's Proposal Restricting Effective Contact to Student Loan Borrowers

Washington, DC (May 9, 2016) — Friday evening, the Federal Communications Commission (FCC) released a Notice of Proposed Rulemaking (NPRM) to implement a provision in the *Bipartisan Budget Act of 2015*, signed into law by President Obama in November, amending the *Telephone Consumer Protection Act* (TCPA). While the legislation applies to calls "solely to collect a debt owed to or guaranteed by the United States," it has special significance in the context of federal student loans because it will allow federal student loan servicers to contact borrowers on their cell phones to counsel them on their best repayment options, remind them of important deadlines to prevent increasing monthly payments, and help distressed borrowers to rehabilitate their loans and their credit reports.

This provision has long been supported by the Obama Administration and was included in each of the last four budgets proposed by the President. It can help student loan borrowers nationwide by enabling federal student loan servicers and collectors to effectively contact and communicate with those who are struggling by helping them to navigate the often-confusing array of student loan repayment options, and working to provide tailored solutions to prevent unnecessary delinquencies and defaults.

Education Finance Council, the National Council of Higher Education Resources, and the Student Loan Servicing Alliance agree with the NPRM's provision allowing calls for pre-default servicing, but believe it does not go far enough in allowing servicers to reach struggling borrowers who need additional assistance in navigating the complicated federal loan repayment process. While the FCC acknowledges that "debt servicing calls may provide a valuable service by offering information about options and programs designed to keep at-risk debtors from defaulting or becoming delinquent on their loans," the FCC's restriction that prevents servicers from calling borrowers until they become delinquent ensures that borrowers in distress will not be provided with sufficient notice and information on how to manage their payments, including on how to enroll in income-driven repayment plans, until the negative consequences of delinquency have already set in.

The FCC's proposal also includes an arbitrary limit on the number of call attempts to delinquent borrowers that is far too restrictive to meet the Administration's and Congress's goals. In general, it takes several call attempts simply to establish live contact with a borrower, and multiple live contacts to help the borrower enroll in an appropriate repayment plan or rehabilitation program to resolve their delinquency or default. However, the NPRM sets a maximum limit of three call attempts per month. Under this three-call attempt limit, servicers and collectors will, in most instances, be unable to make live contact with a borrower before it's too late to help keep them out of delinquency or default, or to help those in default to rehabilitate their loans. As the rulemaking progresses, we look forward to providing the FCC with our specific recommendations to improve the proposed rule so that it focuses on most effectively helping student and parent borrowers. As stated, we believe a special case can and should be made to help borrowers of federal student loans.

According to the Federal Reserve, more than 41 million Americans collectively owe over $1.35 trillion in student loan debt. The Department of Education states that nearly $121 billion in federal student loans is in default; almost one in five Federal Direct Loan borrowers in repayment is more than 30 days past due on their loans. The Department also reported that between October 2013 and November 2014, 60 percent of borrowers on an income-driven repayment plan failed to recertify their eligibility on time, resulting in an unnecessary increase in their monthly payment. The federal government offers myriad repayment plans, one for almost any issue a borrower is facing, but these options need to be communicated and explained to borrowers. Allowing servicers and collectors to use modern technology to reach more borrowers will help reduce delinquency and default.

The TCPA was enacted into law at a time when cell phones were rare and consumers were assessed charges for specific calls or time spent using the phone. This is no longer the case, as many plans offer flat rate or unlimited calling and texting plans. Cell phones are an indispensable part of modern life, particularly with the student loan borrower population — 71 percent of adults aged 25-29 and 68 percent of adults aged 30-34 live in households with only wireless telephones, according to a recent U.S. Department of Health and Human Services study. A recent Google Consumer Survey of current and former college students with student loans found that 89.3 percent of respondents felt that the current methods of contact used by federal student loan organizations — primarily phone calls to landlines and traditional mail — are ineffective means of communication. The survey found instead that over 70 percent of respondents indicated that cell phone calls, text messages, and e-mails are the best means to reach borrowers.

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Education Finance Council (EFC) is a national trade association representing nonprofit and state-agency student loan organizations. These entities operate as student loan servicers, alternative student loan originators, and the go-to sources in their states for college planning. EFC members work within their communities and states to provide counseling to students and families to encourage college attendance, saving for college, selecting and paying for college, and managing student loan debt. EFC members – while considered part of the private loan market – are distinct from traditional commercial financial institutions that make and service student loans. As state-based, nonprofit entities, EFC members are driven by a public purpose mission to expand borrowers' financial knowledge, prevent over-borrowing, and promote positive repayment behavior.

The National Council of Higher Education Resources (NCHER) is a nonprofit trade association that represents a nationwide network of higher education assistance agencies that administer education programs that make grant and loan assistance available to students and parents to pay for the costs of postsecondary education. NCHER members provide higher education access, outreach, financial literacy, and counseling programs, and service Federal Direct Loans.

The Student Loan Servicing Alliance (SLSA) is a non-profit, membership organization of student loan servicers and software providers in the Federal Family Education Loan Program (FFELP) and Federal Direct Loan Program (FDLP). SLSA has approximately 40 members, and together we service more than 90 percent of all outstanding student loans. Our members provide the full range of servicing operations, including loan origination, customer service, conversion from in-school status to repayment, payment processing, collections, and claims processing.