June 14, 2016

Ms. Marlene H. Dortch

Office of the Secretary

Federal Communications Commission

445 12th Street, NW

Washington, DC

Dear Ms. Dortch:

The HOPE NOW Alliance appreciates the opportunity to submit comments in response to the Federal Communications Commission’s (FCC) proposed revisions to an amendment of the Telephone Consumer Protection Act (TCPA), ratified under the Bipartisan Budget Act of 2015 (2015 Budget Act). Enacted in 1991, the TCPA was a statute that intended to address consumer privacy concerns by protecting consumers from excessive and unsolicited telemarketing calls. Automated calls to wireless numbers were restricted without the express prior consent of the consumer. Last year, Congress amended the TCPA through the 2015 Budget Act and exempted from its express consent rules autodialed and prerecorded calls “made solely to collect a debt owed to or guaranteed by the United States.”

The role of wireless communication devices such as cell phones has changed significantly since the TCPA’s enactment in 1991. Back then cell phones were simply not as common or affordable, they have now become commonplace and a shared mode of communication among all social classes. The increased access to cell phones has made information much more accessible to consumers, and thus any regulation on cell phones now affects a much larger number of people. By amending the TCPA, Congress recognized that communication via mobile devices is now the *preferred* mode of communication for consumers. Recently, research reports conducted by the Federal Deposit Insurance Corporation (FDIC) and the Consumer Financial Protection Bureau (CFPB) found that customers favored text messaging over email communication when receiving alerts from financial institutions and that alerts to cell phones help consumers access financial services and manage their personal finance. This information can be found also with several consumer trade groups and is widely recognized in the financial services industry.

In the financial services industry, the borrower is best served and more financially responsible when there is open communication with the lender, and the TCPA’s outdated restrictions prevented many consumers from receiving important communications regarding their home loans. The mortgage market is the largest industry for consumer financial products and services in the United States. Autodial machines help servicers and lenders contact – and therefore help – many more homeowners throughout a loan’s lifetime, providing financial service providers with a much more efficient form of communication and expediting a complicated process. These automated messages are not the telemarketing calls that the TCPA intended to prevent, rather they are tools that help borrowers receive information regarding homeowner assistance options. When an institution is trying to manage a crisis, like that of 2008, auto dialers are the quickest-to-market solution. We need access to tools that help disseminate service and information quickly.

HOPE NOW believes that Congress, through the amendment, still respected consumer privacy concerns while successfully representing consumer interests. Not only does the amendment allow lenders to communicate better with borrowers, but it also facilitates financial responsibility and loss mitigation. , These common practices are critical to assisting homeowners who are struggling with their financial obligations.

The proposed revisions (Rule) by the FCC threaten to undermine consumer interests and the aforementioned Congressional efforts. As proposed, the Rule would:

* Make the TCPA exemption only apply to delinquent or defaulted loans;
* Exclude from the exemption any call that is made to a number that belonged to a borrower at the time of the loan, but has since been reassigned without the caller’s knowledge;
* Extend the call restrictions to landline calls.

These limitations will make it so that fewer distressed borrowers can be contacted in times of need, because manual number dialing is much more time-consuming than autodialing. It’s also prone to human error and inefficacy. The limitations also have no basis according to the 2015 Budget Act. In the Act, Congress gave the FCC the authority only to “restrict or limit the number and duration of calls” made to a wireless number by an autodial machine to collect on debt owed to or guaranteed by the Unites States. Considering this statutory language, the Rule is inconsistent with the 2015 Budget Act in the following ways:

1. Pre-delinquency calls are valuable tools that encourage early intervention and have proven to reduce default rates. The information provided in these calls facilitates timely and accurate payment of the borrower’s loan, they are calls concerning the collection of a debt and fall within the exemption. These automated messages regarding loan statuses help reduce borrower costs.
2. One of the major reasons behind the exemption was to enable companies to call borrowers without prior consent in order to facilitate timely loss mitigation options. The Rule would undermine that purpose and render the original exemption essentially pointless. Mortgage lenders transfer responsibility of the loan to mortgage servicers. Under the Rule, accountability of information would be an issue in dealing with these loan transfers, because the servicer would not be able to prove that the borrower’s contact information was collected with express consent. This is an unnecessary risk that the exemption already successfully avoids.

HOPE NOW also believes that the FCC must consider the policies of other government agencies before proposing a Rule that seeks to limit the number of loss mitigation and workout solution calls initiated by the lender to “three calls per month, per delinquency, only after delinquency.” The FHA, the Department of Veterans Affairs (VA), and many other government agencies’ servicers all have policies and rules that may require more than three calls within one month. There must be consistency between agencies in order to reduce industry confusion. The following chart provides just some examples of federal servicing call requirements in conflict with the proposed FCC Rule:

|  |  |
| --- | --- |
| **Agency/Program** | **Required Contact** |
| CFPB Mortgage Servicing | Must establish live contact (in-person or by telephone) within 36 days of delinquency. *This might require more than three calls per month*. |
| FHA | Servicers must call at least twice per week until contact is established or it is determined that the property is vacant/abandoned. *This might require more than three call a month.* |
| VA | Must establish contact within 20 days of delinquency. *This might require more than three calls a month.* |
| Home Affordable Modification Program (HAMP) | At least four calls must be made over a period of 30 days. *This does require more than three calls a month.* |
| Fannie Mae and Freddie Mac | Must establish outbound contact (including text or telephone) within 36 days of delinquency by attempting every five days until contact is established. *This might require more than three calls per month*. |

Something to consider are simple human errors and mistakes that are easily solved and remediated with constant and unfettered contact. Common occurrences like families going on vacations, deaths in the family, job layoffs or medical crisis show that servicers need access and opportunity to remedy a mortgage. Finally, HOPE NOW reiterates that the TCPA amendment under the 2015 Budget Act should be applied to *all* types of mortgage obligations guaranteed by the US Government. Since 2008, the government-sponsored enterprises (GSE) Freddie Mac and Fannie Mae have been under the conservatorship of the US Government. As such, debt and mortgage-backed securities that are guaranteed by these GSEs should also be exempted under the proposed Rule. A separation between FHA and GSE loans would create unfair and inconsistent customer service.

HOPE NOW calls on the FCC to support the amendment of the TCPA – ratified in the 2015 Budget Act – through its proposed Rule, and be careful not to undermine its purpose and benefits. Additionally, greater harmonization of the Rule with other agencies will help mortgage servicers contact distressed or delinquent borrowers through the most effective and efficient means possible, creating a more transparent process and lowering the number of loan defaults. The industry must be allowed to remain flexible in responding to another crisis like that of 2008. The customer outcomes on delinquent mortgages will be greatly improved by access to a broad set of tools and customer contact options.

Eric Selk

Executive Director

HOPE NOW Alliance