

Consumer Mortgage Coalition

June 21, 2016

Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: CG Docket No. 02-278
Telephone Consumer Protection Act and Bipartisan Budget Act of 2015
Reply Comments
Filed at <http://apps.fcc.gov/ecfs/>

Dear Commissioners:

The Consumer Mortgage Coalition (“CMC”), a trade association of national mortgage lenders, servicers, and service providers, with the Mortgage Servicer Working Group, appreciates this opportunity to submit reply comments on a Federal Communications Commission (“FCC”) notice of proposed rulemaking under the Bipartisan Budget Act of 2015.

A 2015 FCC Order¹ (the “2015 Order”) under the Telephone Consumer Protection Act of 1991 (“TCPA”)² effectively prohibits mortgage servicers from calling defaulting borrowers and owners of mortgaged properties. Foreclosure prevention policies rely on servicers calling owners and borrowers in these cases, and the calls need an exemption from the 2015 Order.

The 2015 Order Conflicts and Interferes With Foreclosure Prevention Needs

Several commenters discussed conflicts between the 2015 Order and multiple mortgage foreclosure prevention policies and requirements.

The National Consumer Law Center (“NCLC”) acknowledges that “there are a myriad of other laws and regulations that require callers to contact consumers by phone.”³ However, the NCLC does not acknowledge that calling consumers and complying with the 2015 Order are inconsistent. The NCLC states, “these requirements are for *contact*. They do not require contact by *robocall* There are no rules or regulations that require contacts by robocall.” Effectively, there are. The FCC defines autodialer

¹ [Declaratory Ruling and Order](#), CG Docket No. 02-278 (July 10, 2015).

² Pub. L. No. 102-243, 105 Stat. 2394, codified at 47 U.S.C. § 227.

³ NCLC Letter at 28.

extremely broadly to include devices that have the present capacity to autodial or to store phone numbers, and even the “potential ability” to do so. This includes all or almost all telephone equipment developed in the past several decades. That is, a caller can be assured not to run afoul of the 2015 Order only by using antiquated equipment, which is not a viable business option, or by calling only land-line telephones.

The Consumer Financial Protection Bureau (“CFPB”) more realistically acknowledges that servicers cannot both call consumers and comply with the 2015 Order. The CFPB:

“notes that, as the prevalence of borrowers with landline telephone numbers decreases, collectors and servicers must be able to deliver these required communications to consumers through other methods, including calls made to wireless telephone numbers.”⁴

Similarly, Federal Housing Finance Agency (“FHFA”) comments discuss the conflict between the 2015 Order and mortgage foreclosure prevention requirements:

“The CFPB servicing regulations and the servicing guidelines of Fannie Mae and Freddie Mac require servicers to contact delinquent borrowers at specified times in connection with loss mitigation efforts. Requiring mortgage servicers to have the consumer's express consent to be contacted or face potential liability under the TCPA adversely impacts outreach efforts for loss mitigation and homeownership preservation. . . . FHFA recommends that the Commission exercise regulatory authority to exempt entities that service 1-4 unit residential mortgage loans from prohibitions against the use of automatic telephone dialing systems or artificial or prerecorded voices when calling a delinquent borrower for the purpose of servicing that borrower's mortgage. This exemption would enable servicers to manage delinquent mortgage loans in accordance with the CFPB regulations and Fannie Mae and Freddie Mac servicing requirements, where applicable, without potential for conflict with the TCPA requirements.”⁵

The CFPB similarly noted conflicts:

“servicers should be permitted to convey content that is: (1) required by a law or regulation that governs the servicing . . . or (2) relates to an effort to engage in loss mitigation[.]”⁶ This includes “[a] servicer engaged in specific types of communications with borrowers pursuant to requirements in the [CFPB’s]

⁴ CFPB Letter at 7.

⁵ FHFA Letter at 2 - 3.

⁶ CFPB Letter at 7.

Mortgage Servicing Rules, including live contact by telephone with delinquent borrowers.”⁷

Additionally, the Federal Trade Commission (“FTC”) letter discusses several areas where conflicts could arise, and “recommend[s] that the FCC attempt to harmonize its rules as much as possible with existing laws[.]”⁸

Early Consumer Contact is Critical in Preventing Foreclosures

FHFA, which oversees most of the consumer mortgage market in this country, commented on the importance of direct contact with consumers early in a delinquency:

“A voiding foreclosure requires mortgage servicers to work directly with individual loan borrowers, typically through telephone contact. Under FHFA’s Servicing Alignment Initiative, . . . FHFA directed the Enterprises [Fannie Mae and Freddie Mac] to align the contractual obligations they impose on their mortgage servicers in most areas of loss mitigation and foreclosure prevention. This includes, but is not limited to, mandating outreach to delinquent borrowers for the purposes of avoiding foreclosure. Since the financial crisis arose in 2007, the Enterprises have determined that **reaching borrowers in the earliest stages of a delinquency has the highest chance for successfully avoiding foreclosure on a borrower.**”⁹

The FTC staff also comments that the FCC should permit payment demands via robocalls “when a consumer is already in default.”¹⁰ The CFPB noted that “servicing calls can be beneficial to consumers.”¹¹

Servicers Need to Call a Mortgaged Property’s Owner to Prevent Foreclosure

The NCLC “strongly support[s] the Commission’s proposal to limit the ‘persons whom covered calls may be made’ to the debtor.”¹² We were surprised to read this because the NCLC has been a strong advocate that servicers should be permitted *more* communication with successors to mortgage borrowers. After a mortgage borrower dies, the borrower’s family often wants to keep the loan out of foreclosure, but may not know

⁷ CFPB Letter at

⁸ FTC Letter at 1.

⁹ FHFA Letter at 2 (emphasis added).

¹⁰ FTC Letter at 6.

¹¹ CFPB Letter at 6.

¹² NCLC Letter at 21.

what the required payment is or what the loan balance is. Under current privacy laws, servicers are sometimes prohibited from providing loan information to property owners who are not borrowers. This restriction on communication can create difficulties for families because any owner of a mortgaged property risks foreclosure if either the loan or the mortgage goes into default.

For purposes of the FCC's rulemaking, owners of a mortgaged property should be treated as borrowers even if they are not obligated on the promissory note or did not sign the mortgage instrument. If either the loan or the mortgage is in default, the servicer should be able to call the borrower, the borrower's estate, or any owner of the mortgaged property. This would help families avoid foreclosure after a borrower's death.

Conclusion

We continue to recommend that the FCC define telephone calls by mortgage servicers regarding a consumer mortgage loan that is in default, even one day delinquent, according to the promissory note, or that is in default according to the mortgage contract (security instrument), to be "made for emergency purposes" within the meaning of 47 U.S.C. § 227(b)(1)(A). This approach would align the FCC with all the agencies that are trying to prevent consumer mortgage foreclosures.

Sincerely,



Anne C. Canfield
Executive Director