Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Rules and Regulations Implementing the	)	CG Docket No. 02-278
Telephone Consumer Protection Act of 1991	)	

Reply Comments
of the
National Consumer Law Center

on behalf of its low-income clients and the following:

Center for Responsible Lending
Consumer Action
Consumer Federation of America
Consumers Union
Justice in Aging
National Association of Consumer Advocates
National Association of Consumer Bankruptcy Attorneys
National Center for Law and Economic Justice
National Legal Aid and Defender Association
U.S. PIRG

Western Center on Law & Poverty, California
Jacksonville Area Legal Aid, Inc., Florida
Atlanta Legal Aid, Georgia
Legal Aid Foundation of Chicago, Illinois
Legal Services of New Jersey
Legal Services NYC, New York
MFY Legal Services, New York
South Carolina Appleseed Legal Justice Center
Mountain State Justice, West Virginia
West Virginia Center on Budget and Policy
Virginia Poverty Law Center

June 21, 2016

Introduction

These reply comments are submitted by the National Consumer Law Center[1] on behalf of its low-income clients and Center for Responsible Lending; Consumer Action; Consumer Federation of America; Consumers Union; Justice in Aging; National Association of Consumer Advocates; National Association of Consumer Bankruptcy Attorneys; National Center for Law and Economic Justice; National Legal Aid and Defender Association; U.S. PIRG; Western Center on Law & Poverty, California; Jacksonville Area Legal Aid, Inc., Florida; Atlanta Legal Aid, Georgia; Legal Aid Foundation of Chicago, Illinois; Legal Services of New Jersey; MFY Legal Services, New York; Legal Services NYC, New York; South Carolina Appleseed Legal Justice Center; Mountain State Justice, West Virginia; West Virginia Center on Budget and Policy; and the Virginia Poverty Law Center.

These comments are entirely consistent with and in furtherance of our original comments,[2] which were filed on behalf of NCLC's low-income clients and twenty-four other national and state organizations.[3] These reply comments target specific issues raised by industry callers, and other commentators, in their comments submitted in response to the Federal Communications Commission's Notice of Proposed Rulemaking[4] (NPRM) initiating the implementation of section 301 of the Bipartisan Budget Act (hereinafter Budget Act).[5] Section 301 created an exception from the requirements of the Telephone Consumer Protection Act[6] (TCPA) regarding consent when robocalls[7] are "made solely to collect a debt owed to or guaranteed by the United States."[8]

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[1] The National Consumer Law Center (NCLC) is a nonprofit corporation founded in 1969 to assist legal

[2] *See*, Comments of the National Consumer Law Center to the FCC on behalf of 24 national, state and local consumer organizations on Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CG Docket No. 02-278 (June 6, 2016) [hereinafter Original Comments], *available at* https://ecfsapi.fcc.gov/file/60002097480.pdf.

[3] Center for Responsible Lending, Consumer Action; Consumer Federation of America; Consumers Union; Justice in Aging; National Association of Consumer Advocates; National Association of Consumer Bankruptcy Attorneys; National Center for Law and Economic Justice; National Fair Housing Alliance; National Legal Aid and Defender Association; Public Citizen; U.S. PIRG; Western Center on Law & Poverty, California; Jacksonville Area Legal Aid, Inc., Florida; Atlanta Legal Aid Society, Inc., Georgia; Legal Aid Foundation of Chicago, Illinois; Legal Aid Society of Southwest Ohio; Legal Services NYC, New York; MFY Legal Services, New York; North Carolina Justice Center; South Carolina Appleseed Legal Justice Center; and Virginia Poverty Law Center; West Virginia Center on Budget and Policy; Mountain State Justice, West Virginia. Additionally, Legal Services of New Jersey and Mississippi Center for Justice asked to sign on to those comments but made their requests too late to be included.

[4] *In re* Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Notice of Proposed Rulemaking, FCC 16-57, CG Docket No. 02-278 (Rel. May 6, 2016), *available at* https://apps.fcc.gov/edocs_public/attachmatch/FCC-16-57A1.pdf.

[5] Bipartisan Budget Act of 2015, Pub. L. No. 114-74, 129 Stat. 584.

[6] 47 U.S.C. § 227.

[7] We are using the term "robocalls" to refer to calls made with either an automatic telephone dialing system ("autodialer") or with a prerecorded or artificial voice, or with both. *See In re* Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CG Docket No. 02-278, Declaratory Ruling and Order, 30 FCC Rcd 7961, 7694, ¶ 1 n.1 (2015) [hereinafter 2015 TCPA Declaratory Ruling and Order].

We have previously addressed most of the issues raised by the industry comments, and we will not repeat the points we have already made. Instead, these comments target the following specific issues:

1. The TCPA is fully applicable to contractors that collect debts owed to or guaranteed by the federal government.

2. The TCPA is fully applicable to collectors for state agencies and entities created by state governments.

3. The proposed limitations on robocalls will not hinder collectors' and servicers' compliance with regulatory requirements to contact borrowers.

4. The status of the debt should control whether calls relating to it fit within this exemption. Indeed, we recommend including a "pending delinquency" for qualifying for a special payment plan as an additional qualification for coverage by this rule.

In these reply comments, we also reiterate and further explain the following points that were previously addressed in our original comments:

5. We do not object to the proposal to apply the limit of three calls per month to the debts from a particular agency collected by a servicer or collector, rather than to all debts collected by that servicer or collector.

6. The Commission is correct to impose its limits on reassigned numbers in this rulemaking because Congress gave its authority to limit the calls made under this exemption, and a reasonable method can be developed for callers to ensure that they are calling the proper parties.

7. Callers need not be limited to the phone number originally provided by the debtor, but should be allowed to call a new number that the debtor has acquired, so long as there is a reasonable, documented, basis for believing the phone number belongs to the debtor.

8. We agree with the suggestions made by the Consumer Financial Protection Bureau (CFPB), and we propose specific means by which the CFPB debt collection rules can be synchronized with these TCPA rules.

9. It would be illegal, and entirely improper, for the Commission to provide an exemption from compliance with the TCPA for Fannie Mae, Freddie Mac and their servicers.

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[8] Budget Act § 301(a)(1)(A) (amending 47 U.S.C. § 227(b)(1)(A)); *see also id.* at § 301(a)(1)(B) (amending 47 U.S.C. § 227(b)(1)(B) to read, in part, that artificial- or prerecorded-voice calls cannot be made to a residential telephone line without the consent of the called party unless the call is "made solely pursuant to the collection of a debt owed to or guaranteed by the United States"). The Commission has interpreted the TCPA to apply both to voice calls and to text messages. 2015 TCPA Declaratory Ruling and Order at 8016-17, ¶ 107.

After the discussion of these points, we offer our **proposed language for the regulation**, with the changes suggested in these reply comments underlined.

Correction regarding Protecting Vulnerable Populations: We also have a small correction to section II.7 of our original comments, relating to our discussion of the need to protect especially vulnerable populations from robocalls to collect debt that they cannot pay. We are suggesting that Treasury regulations should be amended to ensure that its contractors do not use robocalls to collect federal debt against SSI recipients. We used a wrong number to describe SSI recipients' financial qualifications.

SSI recipients receive a maximum federal benefit of $733 a month and cannot receive more than $20 in income monthly, without an offset dollar for dollar against the SSI benefit after the $20 per month. Because of the inability of this population to pay off debts without suffering deprivation, Treasury regulations implementing the Treasury Offset Program (TOP) exempt SSI benefits from offset to recover government debts. It would make no sense to subject this vulnerable population to harassing phone calls, causing potential emotional distress when it has already been determined that these individuals do not have the ability to pay.

1. The TCPA is fully applicable to contractors that collect debts owed to or guaranteed by the federal government.

Several industry commenters, citing the recent U.S. Supreme Court case of *Campbell-Ewald Co. v. Gomez,*"[9] argued that federal government contractors are not covered by the TCPA as long as they "perform as directed." But the Supreme Court did not say this. Instead the Court noted that the federal contractor had not performed as required, and thus clearly was not entitled to immunity:

> Campbell's status as a federal contractor does not entitle it to immunity from suit for its violation of the TCPA. Unlike the United States and its agencies, federal contractors do not enjoy absolute immunity. A federal contractor who simply performs as directed by the Government may be shielded from liability for injuries caused by its conduct. . . . But no "derivative immunity" exists when the contractor has "exceeded [its] authority" or its authority "was not validly conferred."[10]

Finding that no immunity existed because the contractor had not followed government policy does not mean that following government policy provides the contractor with immunity.

Moreover, the congressional action in 2015 establishing the exemption that led to the Commission's regulation at issue here proves that Congress plainly believed that federal contractors are subject to the TCPA. If they were not, there would have been no reason to create the exemption. The only persons subject to the exemption are contractors with the federal government. If there was some doubt about that issue, then Congress, instead of amending the TCPA to allow the exemption, could simply have passed a clarification stating that Congress believed that federal government contractors are not subject to the TCPA. And, if contractors are not subject to the TCPA, there

[9] 136 S. Ct. 663, 672 (2016).

[10] *Id.* at 665-66 (citations omitted).

would have been no necessity for Congress to provide explicitly in the Budget Amendment that the Commission "prescribe regulations to implement the amendments . . . ."[11]

The federal regulations, and the contractual provisions governing the relationship between the federal agencies and the contractors collecting federal debt implicitly (and sometimes explicitly) require compliance with applicable laws. Non-compliance with the TCPA would mean that the contractor had *not* "performed as directed" and thus would face the same fate as the defendant-contractor in *Campbell-Ewald Co. v. Gomez*. There is no immunity for government contractors who fail to comply with the TCPA or the regulations issued by the Commission to implement the Act.

2. The TCPA is fully applicable to collectors for state agencies and entities created by state governments. .

The Commission should also take this opportunity to address squarely the issue of whether guaranty agencies, which claim to be agents of state governments, are subject to the TCPA. The Commission should clearly articulate this point in order to avoid any confusion in the future.

Some states have created what are essentially commercial enterprises in the form of "guaranty agencies" that service federal, state, and private loans and operate well outside the state's borders. While these agencies have often argued that they are an "arm of the state" and thus are immune from legal challenges to their activities, the courts have disagreed.[12] The courts have recognized that while these entities are creatures of state law, they are not immune to suit whether they are acting in the state which created them or in a sister state.[13]

The TCPA amendments specifically empower the Commission to issue regulations to limit the number and duration of robocalls to collect debts owed to or guaranteed by the federal government, and the Commission should affirm that state guaranty agencies are subject to the Commission's regulations on robocalls despite having some affiliation with a state government.

3. The proposed limitations on robocalls will not hinder collectors' and servicers' compliance with regulatory requirements to contact borrowers.

Industry argues vigorously and repeatedly that the Commission's proposed limitations on the calls that can be made pursuant to this regulation will interfere with their obligations to contact consumers imposed by federal and state laws, and even in the contracts they have with the federal agencies. However, the industry is conveniently omitting the fact that while these contacts are required, and the required contacts are often actual telephone calls, none of the requirements are

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[11] Budget Act § 301(b).

[12] *See* Pele v. Pennsylvania Higher Educ. Assistance Agency, 628 Fed. Appx. 870 (4th Cir. 2015) (PHEAA is not immune from suit under the Fair Credit Reporting Act). *See also* United States *ex rel.* Oberg v. Pennsylvania Higher Educ. Assistance Agency ("Oberg III"), 804 F.3d 646 (4th Cir. 2015) (describing the commercial nature and vast revenue generation of PHEAA's business activities).

[13] Nevada v. Hall, 440 U.S. 410, 414-21 (1979).

that robocalls be used to make these contacts. Contrary to what seems to be the industry's understanding, there is no inherent right to make robocalls.

Robocalls subject to the exemption governed by this regulation comprise only a small subset of all the means of contact with debtors that are available to collectors and servicers. All of the following contacts will fall outside this regulation, and will still be possible for collectors to make under appropriate circumstances:

- Robocalls to cell phones with consent (presumably collectors and servicers will be able to obtain consent to future calls through both the calls they make pursuant to this regulation and other contacts they have with borrowers—such as email, U.S. mail, payments made, online queries by the debtors, and more);
- Hand-dialed calls to cell phones;
- Calls to residential lines and work phones;
- U.S. mail correspondence;
- Email correspondence; and
- Internet queries by the debtor.

The number of calls, and possibly all contacts, from the collector to the debtor will likely be limited by the CFPB once it issues its long-awaited rule on debt collection.[14] However, the only issue in this proceeding is the number of unconsented-to robocalls to cell phones for the collection of federal debt. Given especially how many other forms of contacts collectors can still have with debtors, three per month is a logical and appropriate limit.

The industry cites numerous situations in which they say it will be essential for the good of the debtor that callers be permitted to make these unconsented-to calls, even when the debtor is not in default. But in most, if not all, of these examples, the debtor has been provided the opportunity to consent to future robocalls.[15] Indeed the online forms appear to require this consent as a condition of obtaining the special payment program. Given these mandatory consent requirements, it seems hard to imagine too many scenarios in which the debtors will not have already consented to receiving robocalls—making this regulation inapplicable to the situation altogether.

4. The status of the debt should control whether calls relating to it fit within this exemption. Indeed, we recommend including a "pending delinquency for qualifying for a special payment plan" as an additional qualification for coverage by this rule.

The Commission is correct in proposing to allow robocalls to be made without consent only when the debtor is delinquent or in default. This limit is in keeping with the definition of the exemption as applying only to calls made for the purpose of collecting debts, and with the consumer protection mandate implicit in the congressional direction to the Commission to limit the number of calls.

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[14] Press Release, CFPB Considers Debt Collection Rules (Nov. 6, 2013), a*vailable at* http://www.consumerfinance.gov/about-us/newsroom/cfpb-considers-debt-collection-rules/.

[15] *See, e.g.,* Income-Driven Repayment Plan Request, Dep't of Educ. Form No. 1845-0102, at 4, *available at* http://ifap.ed.gov/dpcletters/attachments/18450102IDRFINALExtended.pdf.

In our original comments, we recommended allowing calls to be made when the debtor was delinquent in making payments, or delinquent "in complying with requirements to obtain or maintain eligibility for a payment plan or other program relating to the debtor's obligations to pay the debt."[16] However, we have since been persuaded that this window for allowable calls should be expanded a slight bit more to include the 30-day period before the debtor will be delinquent in maintaining eligibility for payment plan. This additional period of eligibility should apply only for recertification for payment plans or similar programs relating to obligations to pay debt such as student loans. We agree with others who have said that these calls may be helpful to those debtors who risk losing their eligibility for a valuable payment plan for student loans.

The additional 30-day window for allowable calls should not apply to the period before the debtor is delinquent in making payments, as that application would have the effect of allowing these calls regardless of the status of the debt.

As a result of this proposed change, we are revising our proposed language for § 64.1200(a)(1)(iii)(I), as follows, with the new language underlined:

> (I) The debtor who owes the debt about which the call is made is (A) delinquent in making payments, or (B) is currently delinquent or will in 30 days be delinquent in complying with requirements to obtain or maintain eligibility for a payment plan or other program relating to the debtor's obligations to pay the debt;

5. We do not object to the proposal to apply the limit of three calls per month to the debts from a particular agency collected by a servicer or collector, rather than to all debts collected by that servicer or collector.

The Commission proposed that three calls per month be permitted to each debtor. In our original comments, we pointed out that three unconsented-to robocalls per loan per month will lead to far too many calls, especially in the student loan collections arena. Most student loan borrowers take out two loans each semester, sometimes more. As a result, many student loan borrowers who complete a four-year course of study have eight to ten different loans. A borrower who is delinquent on one loan is likely to be delinquent on all of them. Allowing three robocalls per month for each loan would allow 30 calls per month *without consent* to a borrower with ten student loans.[17] We proposed that the limitation should be applied to each servicer.[18]

We understand that a request has been made to recognize that some servicers collect debts owed to different agencies of the federal government, yet the collection activities devoted to separate agencies are cabined such that it would be difficult for the servicers to coordinate among sections. Therefore, we do not object to the language proposed on this point. As a result, we have changed our language in the relevant section of the proposed regulation to the following:

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[16] *See* Original Comments at section III.C in response to Question 18, and proposed § 64.1200(a)(1)(iii)(IV) in section IV.

[17] *See* Original Comments at section III in response to Question 8, and proposed § 64.1200(a)(1)(iii)(I) in section IV.

[18] *Id.*

(IV) No more than three calls per month are made to each debtor from whom the caller is seeking to collect debts covered by this subsection on behalf of the same loan holder or federal agency, and provided that each call causing either the debtor's phone to ring or for which a voice mail message is created counts as one call, no voice mail message is more than 30 seconds, and no more than one of these calls is a call using a prerecorded message or an artificial voice;[19]

6. The Commission is correct to impose its limits on reassigned numbers in this rulemaking because Congress gave its authority to limit the calls made under this exemption, and a reasonable method can be developed for callers to ensure that they are calling the proper parties.

The calling industry forcefully objects to the Commission's application of its rules for calling reassigned numbers from the 2015 Omnibus Order[20] to the calls made under this regulation. However, as Congress clearly gave the Commission the authority to limit the number of these calls,[21] limiting the calls permitted to reassigned numbers fits comfortably within that purview.

As we have pointed out in other comments, the industry already has numerous ways to avoid calling reassigned numbers. Moreover, the calling industry knows exactly how it can stop making inadvertent calls to reassigned numbers. As was recently suggested in a Senate hearing on the TCPA by both the National Consumer Law Center and Monica Desai,[22] a lawyer who regularly represents industry interests before the Commission, the cure for the problem is to establish a mandatory database. The database "would require the participation of all carriers, and timely updates by the carriers to the database."[23]

A recent press report quoted the Chairman of the Senate Commerce Committee as commenting favorably on the idea of creating a database:

> [H]e may also consider requiring wireless carriers to participate in a registry of phone numbers that once belonged to consumers who consented to robocalls but have since been reassigned to other people. Some companies say they accidentally violate the TCPA by robocalling such numbers but have no way of knowing in advance they've been reassigned.

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[19] Proposed § 64.1200(a)(1)(iii)(IV).

[20] 2015 TCPA Declaratory Ruling and Order at 8006-8011, ¶¶ 85-93.

[21] Budget Act § 301(a)(1)(H).

[22] *See* Hearing on The Telephone Consumer Protection Act at 25: Effects on Consumers and Business Before the United States Senate Comm. on Commerce, Science and Transportation, 114th Cong., 2d Sess. (May 18, 2016) (statement of Monica Desai, Partner, Squire, Patton Boggs), *available at* https://www.commerce.senate.gov/public/_cache/files/11ba8b7f-dea2-4c81-a515-7e312a50f40f/E74117FDEE42CEBCE9832497DF2AB5CB.monica-desai-testimony.pdf.

[23] *Id.* at 20.

> "I suspect the carriers would push back against that, but I think it's something we ought to maybe take a look at," the senator said. "Clearly having someplace where people can go to find out numbers that have been reassigned makes sense. . . ."[24]

The problem of calling the wrong number is one that can be solved if the Commission maintains the pressure on industry to solve it. The alternative is that many millions of wrong-number calls will continue to be made to consumers who would have no redress and no ability to stop the calls. This would undoubtedly violate both the letter and the spirit of the TCPA.

7. Callers need not be limited to the phone number originally provided by the debtor, but should be allowed to call a new number that the debtor has acquired, so long as there is a reasonable, documented, basis for believing the phone number belongs to the debtor.

As we implicitly said in our original comments, but explicitly say in these reply comments, we do not think it necessary for callers to be limited to calling the numbers originally provided by the debtors.[25] However, to ensure that callers have a reasonable basis for calling numbers that were not provided by the debtor, it is essential that the Commission require that callers document the basis for calling the particular phone number. Without this requirement, there would be no reasonable way to ensure that callers are diligently limiting their calls to numbers for which there is a reasonable basis to believe they are reasonably accurate. And, callers should remain liable for calling wrong numbers, with the exception of the first call to a number that is incorrect because it was reassigned from the debtor to some other person. Therefore, we have recommended, and are continuing to recommend, that the regulatory language include the following:

> (V) The caller has records demonstrating the basis upon which it believes that each call will be received by the debtor intended to be called;

8. We agree with the suggestions made by the Consumer Financial Protection Bureau (CFPB), and we propose specific means by which the CFPB debt collection rules can be synchronized with these TCPA rules.

We completely agree with all of the suggestions made by the CFPB in its comments to the Commission on this proposed regulation.[26] There was one issue left open by the CFPB comments that we want to address. That is the interplay between two provisions in the Fair Debt Collection Practices Act (FDCPA) and the proposed right for debtors under the Commission's proposed regulation to tell callers that they want the calls to stop.

As the calls made pursuant to this regulation are to be made without consent, there will be no consent to revoke. This means that the only way consumers will have the right to control incoming robocalls to their cell phones is if the Commission provides them with an affirmative right

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[24] Kate Tummarello, *Thune may seek repeal of government debt robocall exemption,* Politico, May 18, 2016.

[25] *See* Original Comments at section III in response to Question 13.

[26] *See* Comments of the Consumer Financial Protection Bureau on the FCC's proposed rulemaking implementing Section 301 of the Bipartisan Budget Act of 2015, *available at* https://ecfsapi.fcc.gov/file/60002112663.pdf.

to stop the calls. The Commission's proposal to provide this right to stop calls is a critically important part of its proposed regulation. This protection is fully within the Commission's statutory authority. Requiring calls to stop after the consumer so requests constitutes a limit on the number of calls that can be made, and Congress explicitly authorized the Commission to limit the number of calls.

The FDCPA contains a right for consumers to demand that debt collectors cease communications with them in 15 U.S.C. § 1692c(c). For the following reasons, this provision is very different from the Commission's proposed right of debtors to tell servicers and collectors to stop robocalling them:

- The FDCPA applies only to collectors collecting a debt that was in default when the collector obtained the right to collect it.[27] So that law does not apply to any of the collection efforts made by servicers collecting delinquent but non-defaulted debt. This in itself justifies the need for many of the consumer protections in the Commission's proposed regulation.
- There is no requirement that consumers be provided notice of the FDPCA's right to stop communications, while the Commission has proposed that the callers must inform debtors of the right to stop these robocalls.
- The cease communication request under the FDCPA is valid only when the consumer has made the request in writing,[28] whereas the Commission's proposed request to stop the calls can be made verbally or in some other way.
- The cease communication request under the FDCPA stops almost all future communication, whereas the Commission's proposed request to stop calls would apply only to robocalls made without consent. All other communications, such as emails, letters, and other contacts, would not be affected by the request.

The FDCPA contains another provision that is relevant to this discussion, namely 15 U.S.C. §1692c(a), which provides:

> [A] debt collector may not communicate with a consumer in connection with the collection of any debt—
>
> (1) at any … time or place known or which should be known to be inconvenient to the consumer.[29]

This FDCPA subsection is the way to connect the two requirements, one under the TCPA and the other under the FDCPA. Assuming the FDCPA applies to the calls, if a debtor tells a servicer or collector to stop calling her, without specifying that she means that she only wants the robocalls to stop, those callers that are subject to the FDCPA should interpret that request to be a statement that she wants all calls to stop. If the collector continues to call the consumer, even without using an autodialer or pre-recorded voice—so that the call would not be covered by the TCPA—the consumer would likely have a claim against the collector under 15 U.S.C. §1692c(a) for communicating with the consumer at a time or place known to be inconvenient to the consumer.

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[27] 15 U.S.C. § 1692a(6)(F)(iii).

[28] 15 U.S.C. § 1692c(c).

[29] 15 U.S.C. §1692c(a)(1).

9. It would be illegal, and entirely improper, for the Commission to provide an exemption from compliance with the TCPA for Fannie Mae, Freddie Mac and their servicers.

The Federal Housing Finance Agency (FHFA) acknowledges that servicers collecting debt owned by its governed entities—Fannie Mae and Freddie Mac—are not exempted from the requirement for consent for robocalls, and are not covered by this proposed regulation.[30] However, it proposes that the Commission use its exemption authority to exclude all calls made by these servicers from the TCPA.

This is an alarming and fairly absurd proposal. This would exempt from a critically important consumer protection law an enormous percentage of the home loans currently outstanding in the United States. If this proposal is to be seriously considered, it should at least be a separate, stand-alone regulatory proceeding. The consumer protection violations of these servicers collecting debts owed to Fannie Mae and Freddie Mac are ongoing and voluminous.[31] It would be entirely inappropriate to give them a free pass—one that Congress clearly did not determine was appropriate for them—from the important consumer protection requirements of the TCPA.

Moreover, the Commission lacks the authority to provide any exemption for calls made to cellular telephones. One provision cited by the FHFA only allows the Commission to exempt calls made to residential numbers.[32] The other provision only allows the Commission to exempt calls made to cellular numbers "that are not charged to the called party."[33] As we explained in our original comments, there are over 75 million Americans who have limited minutes and texts on their cell phone plans.[34] This means that unless the FHFA is proposing that all of its callers will make special arrangements for their calls and texts to not be charged to the called party, this exemption would not apply.

Our Specific Proposed Regulation with Changes (underlined):

§ 64.1200 Delivery restrictions.

(a) No person or entity may:

(1) Except as provided in paragraph (a)(2) of this section, initiate any telephone call (other than a call made for emergency purposes or is made with the prior express consent of the called party) using an

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[30] *See* Comments of the Federal Housing Finance Agency on Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991 [CG Docket No. 02-278; FCC 16-57], at 2, *available at* https://ecfsapi.fcc.gov/file/60002096538.pdf.

[31] *See, e.g.,* Federal Housing Finance Agency Office of the Inspector General, FHFA's Oversight of the Servicing Alignment Initiative (Feb. 12, 2014), *available at* http://www.fhfaoig.gov/Content/Files/EVL-2014-003.pdf.

[32] 47 U.S.C. § 227(b)(2)(B).

[33] 47 U.S.C. § 227(b)(2)(C).

[34] *See* Original Comments at section II.3.

automatic telephone dialing system or an artificial or prerecorded voice;
...
(iii) To any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call, unless such call is made solely to collect a debt currently owed to or guaranteed by the United States **and complies with the following requirements:**

> **(I)The debtor who owes the debt about which the call is made is <u>(A)</u> delinquent in making payments, or <u>(B)</u> <u>is currently</u> delinquent <u>or will in 30 days be delinquent</u> in complying with requirements to obtain or maintain eligibility for a payment plan or other program relating to the debtor's obligations to pay the debt;**
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> **(II) The call is made only to the debtor, is not made before 8 am or after 9 pm in the time zone reflected by the debtor's current area code and current zip code, and is made only by the United States or a person who has contracted directly with the United States for the servicing or collection of this debt owed to or guaranteed by the United States;**
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> **(III) Each call includes a message at the outset of the call that the debtor has the right to request that these calls stop, with, in the case of a call that delivers a prerecorded or artificial-voice message, an automated, interactive voice- and/or key press-activated opt-out mechanism, and the caller makes no calls to a debtor after such a request has been made to the caller or to previous persons collecting the subject debt;**
>
> **(IV) No more than three calls per month are made to each debtor from whom the caller is seeking to collect debts covered by this subsection <u>on behalf of the same loan holder or federal agency</u>, and provided that each call causing either the debtor's phone to ring or for which a voice mail message is created counts as one call, no voice mail message is more than 30 seconds, and no more than one of these calls is a call using a prerecorded message or an artificial voice;**
>
> **(V) The caller has records demonstrating the basis upon which it believes that each call will be received by the debtor intended to be called;**
>
> **(VI) The call deals only with one or more debts currently owed to or guaranteed by the United States serviced by the caller, and information obtained during the call is used only for the purpose of collecting those debts; and**
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> **(VII) The calls otherwise comply with the Commission's rules, including those relating to calls made to parties the callers do not intend to reach.**

(3) Initiate any telephone call to any residential line using an artificial or prerecorded voice to deliver a message without the prior express written consent of the called party, unless the call;
...
(v) Delivers a "health care" message made by, or on behalf of, a "covered entity" or its "business associate," as those terms are defined in the HIPAA Privacy Rule, 15 CFR 160.103;

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