UNITED STATES DEPARTMENT OF EDUCATION

THE UNDER SECRETARY

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Room TW-B204
Washington, DC 20554

Re: Docket No. 02-278

Dear Ms. Dortch:

The United States Department of Education ("Department") appreciates the opportunity to share its views on the Federal Communications Commission's ("FCC") proposed rules related to the Telephone Consumer Protection Act, specifically related to telephone calls directed to federal student loan borrowers to collect their student loan debts, and to assist borrowers to select and stay on loan repayment plans that work for them. Student loan servicers and private collection agencies ("PCAs") make telephone calls to borrowers for a wide range of purposes. They contact borrowers not only to seek repayment of loans, but also to help borrowers identify better repayment plans that can lower their monthly payment obligations, apply for loan forbearance, and determine whether they may be eligible for discharges of their loans. Thus, the rules related to when and how servicers contact borrowers are critical for ensuring both that borrowers are not inappropriately contacted and that borrowers get the information they need to manage their loans effectively.

The Department is committed to ensuring that borrowers receive the best loan servicing possible and that student loan debt is manageable. To support those objectives, the Department is implementing income-driven repayment options like the President's Pay As You Earn plan, which caps monthly student loan payments at 10 percent of income to help borrowers who are struggling to repay their loans. Helping borrowers who are struggling to afford monthly student loan payments enroll in income-drive repayment plans is a key way to reduce student loan defaults, which can inflict real damage on borrowers' credit histories.

In that light, while the Department agrees with many of the FCC's proposals, we are concerned that some provisions may not strike an appropriate balance between protecting federal student loan borrowers from unwelcome telephone phone calls and allowing loan servicers and PCAs to provide borrowers with the best service and the information they need to avoid delinquency or default and to get out of default. In this letter we address two issues: (1) whether loan servicing calls should be considered calls "made solely to collect a debt owed to or guaranteed by the United States" ("covered calls") and (2) what, if any, limits should be imposed on the number of covered calls a servicer may make to an individual.

Background: Federal Student Loans Are Different From Other Federal Debts

The volume of federal student loan debt held by the Department and other entities is significant. At the end of fiscal year 2016, 41.7 million student loan borrowers owed $1.25 trillion in federal student loans to the Department, banks, guaranty agencies, and schools. Approximately 80% of those loans are Direct Loans and Federal Family Education Loan Program ("FFELP") loans made under parts D and B of title IV of the Higher Education Act that are held by the Department and collected by loan servicers and PCAs on the Department's behalf. Most of the remaining 20% are FFELP loans held by private lenders and state or non-profit guaranty agencies.

The Department of Education's loan servicers perform a variety of functions. For example, they assist borrowers to select repayment plans, send monthly bills to borrowers, process requests for deferment or forbearance of repayment, respond to correspondence and telephone inquiries from borrowers, and process applications for loan discharge or consolidation. Servicers also report information about loans to credit reporting agencies and send letters and make other contacts with borrowers who have missed payments to remind them of their obligations and help them stay out of default.

After a borrower defaults on a loan and the loan is transferred to the Department's debt collection unit, the Department typically refers the loan to a PCA. Generally, under the Higher Education Act, default is defined as the failure of a borrower to make an installment payment when due, provided the failure persists for 270 days. PCAs perform functions specific to borrowers in default status, including negotiating repayment schedules with borrowers and assisting them with the rehabilitation and consolidation of their loans.

Federal student loans are highly distinguishable from other kinds of debts collected by the government. Federal student loans are provided to students and parents to allow them to invest in a student's future through the pursuit of higher education and, for the large majority of borrowers, without regard to credit worthiness. Student loans have long repayment terms, sometimes up to 30 years, and the Department and other loan holders work with borrowers throughout the entire repayment period to ensure that those borrowers are able to stay current on their payments and stay out of default.

The Higher Education Act and Department regulations provide borrowers with a variety of repayment options and loan forgiveness opportunities, as well as the opportunity to suspend repayment under certain circumstances. Depending on the type of loan, borrowers can choose from up to four income-driven repayment plans, under which a borrower's monthly payment is based on the borrower's income, rather than the amount borrowed. Under the income-driven plans, any amount of the balance that a borrower has not paid at the end of the repayment term, which varies from 20-25 years, is forgiven. Borrowers may also select standard, extended, and graduated repayment plans.

In addition, borrowers are entitled to receive deferment or forbearance of repayment if they are in-school, suffering from economic hardship, or engaged in military service, among other circumstances. Borrowers may also have their loans discharged if they become eligible for a Total and Permanent Disability discharge if they are unable to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment, attended a school that closed before they were able to complete their degree, or are determined eligible for a borrower defense to repayment discharge if a school committed fraud. Servicers and PCAs play a valuable role helping borrowers become aware of these options, in order to avoid the severe consequences of delinquency and default.

The consequences of default on a federal student loan are indeed severe, and effective communication to borrowers by their loan servicers before default is critical to helping borrowers avoid those consequences. Defaulted borrowers are subject to offset of federal and state payments (including tax refunds and Social Security benefit payments) under the Treasury Offset Program, administrative wage garnishment, reporting of the default to credit reporting agencies, ineligibility for additional student loans, and potentially a civil judgment. Given these consequences, some of which are only available to collect on debts owed to the federal government, it seems appropriate to weigh the cost of a potentially unwanted phone call against garnishing the wages of a borrower who could have been enrolled in an income-driven repayment plan.

<u>Loan Servicing Calls Should Be Considered Covered Calls</u>

The Department agrees with the FCC that loan servicing calls should be considered covered calls under the exception from the TCPA's requirement for consent for calls "made solely to collect a debt owed to or guaranteed by the United States." Pre-delinquency outreach to borrowers about issues such as, but not limited to, available repayment plans and deferment and forbearance options are essential to help borrowers avoid delinquency. For example, borrowers in income-driven repayment plans must provide information about their incomes to the Department annually in order for payments to be calculated based on income. For borrowers with relatively low incomes, payments can be as low as $0. Failure to provide annual income information results in the monthly payment a borrower is required to pay to be based, in general, on a repayment period of 10 years or less, which could result in a significantly higher monthly repayment amount than an income-driven plan. The Department believes that outreach to borrowers who have failed to provide income information can help borrowers stay on plans they can afford before they go delinquent should fit under the definition of a covered call. Likewise, covered calls should include servicer outreach to borrowers at risk of becoming delinquent, such as contacting a borrower who has omitted necessary information in a repayment plan selection form or informing a borrower that a period of deferment or forbearance is about to end.

Contact to borrowers in delinquency is also important to keep those borrowers from entering default. A borrower can cure a delinquency by making payments or, in some cases, obtaining deferment or forbearance. Outreach to these borrowers, which might include providing information about the borrower's eligibility to make lower monthly payments or assisting them in choosing the proper repayment plan, is vital to preventing borrowers from facing the consequences of default.

Covered Calls Should Not Be Limited To Three Per Month

The Department believes that the FCC's proposal to limit the number of covered calls to three per month per delinquency and only after delinquency has occurred, would not afford borrowers sufficient opportunity to be presented with options to establish more reasonable payment amounts and avoid default, especially given that the proposal limits the number of initiated calls, even if the calls all go unanswered. We think these limitations may be unnecessary given the other aspects of the proposed rule, such as a borrower's right to stop calls and the requirement that borrowers be informed of this right, as well as restrictions on the time of day when borrowers can be called, which we also think can ensure that servicer outreach is productive and that borrowers are not inappropriately contacted.

We think that these kinds of safeguards are a better mechanism for protecting borrowers from heavy-handed outreach than severe limitations on the number of calls initiated, which has significant downsides to borrowers in terms of the information they need to make sound decisions to manage their debt effectively. There are many daily circumstances that can cause an individual to simply not be able to answer his or her cell phone, including work environments that do not permit an individual to answer a phone, irregular work hours, long commutes, and family responsibilities. The Department does not believe that allowing loan servicers and PCAs to make three covered calls per month would measurably increase the likelihood that they would reach a borrower in order to provide them an opportunity to enroll in an income-driven repayment plan or take advantage of another federal student loan benefit. We think that a higher limit that will reasonably allow loan servicers and PCAs to reach borrowers, while ensuring that the number of calls made to a borrower's number would not be harassing or abusive will better serve borrowers.

The Department hopes that this information will be helpful to the FCC in its development of final rules.

Sincerely,

Ted Mitchell
Undersecretary