

July 18, 2016

**EX PARTE NOTICE VIA ECFS**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street SW, Room TWA325  
Washington, DC 20554

RE: CG Docket No. 02-278 — Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991

Dear Secretary Dortch:

In anticipation of the Commission's final ruling on the matter, Education Finance Council (EFC) submits this letter to bring to the Commission's attention additional information that supports many of the points that EFC and other commenters have made regarding the Commission's Notice of Proposed Rulemaking (NPRM) revising rules under the Telephone Consumer Protection Act (TCPA). The proposed rules are to implement a provision of the Bipartisan Budget Act of 2015 that excepts from the TCPA's prior-express-consent requirement autodialed and prerecorded calls "made solely to collect debt owed to or guaranteed by the United States."

A number of EFC members, many of whom served as state-based and not-for-profit (NFP) lenders under the Federal Family Education Loan Program (FFELP), also contract with the Federal government to service Federal Direct Loans. Some members also still service older FFELP loans. EFC members provide exemplary service to borrowers and the Education Department.

On July 1, 2016, the Bureau of Fiscal Service (Fiscal) at the U.S. Department of the Treasury (Treasury) released a report, "Initial Observations from the Fiscal-Federal Student Aid Pilot for Servicing Defaulted Student Loan Debt."<sup>1</sup> The report details observations from an ongoing two-year pilot program launched in February 2015 by Fiscal and the Office of Federal Student Aid (FSA) at the U.S. Department of Education. The purpose of the pilot is to give Fiscal "first-hand experience in servicing the defaulted federal student loan debt" usually collected by FSA through its contracted private collection agencies (PCAs) or by guaranty agencies that participate in the legacy Federal Family Education Loan Program. The following report findings support many of the points made by EFC and others regarding this proceeding, including:

- **Student loans are unlike any other type of federal debt and defaulted student loans are very difficult to resolve.**
  - Unlike other types of federal debt, the collection and resolution of delinquent federal student loan debt is managed by FSA, not Treasury.

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<sup>1</sup> Bureau of the Fiscal Service, U.S. Department of the Treasury, "Report on Initial Observations from the Fiscal-Federal Student Aid Pilot for Servicing Defaulted Student Loan Debt" (2016), available at: <https://www.treasury.gov/connect/blog/Documents/student-loan-pilot-report-july-2016.pdf>.

- Federal student loan debt stays in delinquency much longer than other types of federal debt before it is referred to private collection agencies. According to Fiscal, “Typically, federal agencies refer debts to Fiscal for collections by the time they reach 180 days of delinquency. In contrast, student loans are at least 420 days delinquent before they are first referred to PCAs by FSA. Many defaulted student loans have been referred to multiple PCAs, and some may not have ever made a payment on the loan.”<sup>2</sup>
- Fiscal notes that the multitude and complexity of repayment options is unique to federal student loans.
- **Student loans are very complex, and, as such, adequately informing and explaining repayment options to borrowers necessitates live contact and longer call handling times. Therefore, the Commission should not limit the duration of a call with a borrower.**
  - Fiscal reported that there are a number of repayment options available for student loan borrowers that many borrowers may not be aware of or understand, including income-based repayment options that have additional terms and requirements that necessitate explanation. Of the myriad repayment options, Fiscal reports, “These additional options, while of potential value to borrowers, present additional communication challenges.”<sup>3</sup>
  - Additionally, Fiscal reported finding:
    - “Borrowers in default may be more willing to take action on their defaulted loan if they have clear information about the available options.”<sup>4</sup>
    - “Borrowers cannot resolve their loans on their own, except through full repayment of outstanding principal and interest. **Therefore, speaking with a call center agent is critical to identifying and enrolling in a repayment option**”<sup>5</sup> [emphasis added].
    - “[The] complexity of repayment options is reflected in materially longer call handling times relative to Fiscal’s other defaulted debts...In addition, the post-call work time, during which call center agents update the borrower’s file and send the borrower any required form or information, was nearly 4.5 minutes longer for pilot borrowers.”<sup>6</sup>

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<sup>2</sup> Bureau of the Fiscal Service, U.S. Department of the Treasury, “Report on Initial Observations from the Fiscal-Federal Student Aid Pilot for Servicing Defaulted Student Loan Debt” (2016).

<sup>3</sup> *Ibid* p. 2

<sup>4</sup> *Ibid* p. 5

<sup>5</sup> *Ibid* p. 5

<sup>6</sup> *Ibid* p. 6

- **Student loan borrowers are difficult to engage through paper mail and landline telephone calls. This supports EFC's position that the Commission's proposal limiting call attempts to three per month is insufficient.**
  - During the first year of the pilot, relatively few borrowers responded to Fiscal's outreach.<sup>7</sup> Fiscal sent more than 33,000 letters to borrowers and placed more than 21,000 calls in an attempt to initiate dialogue regarding the borrower's debt. Fiscal called borrowers in the pilot no more than once per week (approximately 4.25 times per month). Borrowers answered Fiscal's calls less than two percent of the time. Fiscal spoke with approximately 3,900 calls that were initiated by borrowers. By the end of the first year, "Fiscal spoke to 33 percent of borrowers by phone, **with extremely low response rates to outbound calls**"<sup>8</sup> [emphasis added].
- **Student loan servicers should be permitted to contact borrowers at phone numbers other than those provided by the borrower, and should not be penalized for placing calls to a reassigned number if the company has not been informed that they have reached a reassigned number.**
  - Fiscal reports, "In the federal student loan program, borrowers provide their contact information at the time of the loan application and, per the master promissory note and rights and responsibility statement, they are required to update the information throughout the life of their loan. However, Fiscal observed that contact information may not be updated and, as a result, can be outdated when these loans are referred for collection."<sup>9</sup>
  - Fiscal also noted in a footnote to the report, "Prior to contacting borrowers, Fiscal attempted to update contact information with a commercially available database. Few borrowers made direct contact with Fiscal."<sup>10</sup>

In addition to the findings outlined in the Fiscal report, EFC would like to provide the Commission with the results of an informal poll that EFC recently conducted of its members to determine the effectiveness of borrower live contact on reducing delinquencies.

- EFC members reported that, on average, delinquencies dropped by 79.83 percent after live contact with a borrower, with a range of the findings falling between 63.08 percent and 98 percent.
- One member reported that, on average, delinquencies were resolved eight calendar days after the first contact during the delinquency episode. The median time to resolution for

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<sup>7</sup> Prior to contacting borrowers, Fiscal attempted to update contact information with a commercially available database. Few borrowers made direct contact with Fiscal: Bureau of the Fiscal Service, U.S. Department of the Treasury, Report on Initial Observations from the Fiscal-Federal Student Aid Pilot for Servicing Defaulted Student Loan Debt (2016)

<sup>8</sup> *Ibid* p. 5

<sup>9</sup> *Ibid* p. 5

<sup>10</sup> *Ibid* p. 5

those contacted was two calendar days; 80 percent were resolved within 10 calendar days and 92 percent within 30 calendar days.

- Of the members that responded, several noted that they did not contact borrowers by cell phone or text message due to the risk and consequence of a potential accidental TCPA violation. In reporting their data, several respondents did not distinguish between landline and cell phone contact.

The findings of this informal survey overwhelmingly support Fiscal's findings, and bolster EFC's claim that, in a majority of cases, if a borrower can be contacted, that borrower can be helped.

EFC appreciates the importance of weighing student loan servicers' fiduciary duty to collect debts owed to the United States and a borrower's consumer rights. However, in an attempt to prioritize consumer rights, the Commission's proposal creates an unhealthy balance which will ultimately hurt the student borrowers it seeks to protect. By severely limiting student loan servicers' ability to make live contact with borrowers before and after delinquency, the Commission is ignoring all evidence that borrowers are helped and delinquencies are reduced when a servicer is able to make live contact.

Our survey further supports that using cell phone calls and text messages to communicate with a borrower leads to a greater reduction of delinquencies. However, the existing and proposed risk of punitive penalties and frivolous class action lawsuits has driven several student loan servicers to limit outbound calls to borrowers through landlines only — an increasingly antiquated means of contact which has been proven several times over to be ineffective at reaching today's student loan borrower population.

EFC and the Commission share a common goal: to help borrowers and to collect on debt owed to taxpayers. Therefore, EFC implores the Commission to take into consideration the reasonable and balanced proposals offered in EFC's previously submitted response to the NPRM.

Sincerely,



Debra J. Chromy, Ed.D.  
President