HOPENOW

Support & Guidance For Homeowners

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Before the Federal Communications Commission

Washington DC 20554

In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991

CG Docket No. 02-278

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In Support of the Petition for Exemption

The following is a support letter for the MBA Petition for Exemption for certain non-telemarketing residential mortgage servicing calls to cellular telephone numbers. The HOPE NOW Alliance supports the request of this exemption to ensure the Telephone Consumer Protections Act (TCPA) does not restrict telephone communications between families needing assistance on their mortgage by their mortgage servicer or related third party service providers, including non-profit housing counselors.

The HOPE NOW Alliance has seen firsthand the importance of having access to telephonic communications in a mortgage crisis. HOPE NOW has assisted thousands of distressed borrowers with outbound communications, either through servicer call centers or with third party providers, often HUD-approved counseling agencies. The needs for delinquent borrowers can be critical and having unfettered access to a borrower provides the best outcome for a family working through a delinquent mortgage. The outbound residential mortgage servicing calls are critical to ensure that borrowers understand available options to avoid foreclosure. A lesson learned in the crisis is that sometimes a HUD-approved agency can take a lead role helping borrowers by providing the education and understanding to facilitate a successful workout solution. Simply put, a customer, although delinquent on the mortgage, sometimes does not want to talk to their servicer. In these cases, the servicers will contract with HUD-approved agencies to leverage their call centers to provide further outreach and manage capacity. This outreach effort increased the number of homeowners by a trusted third party that avoided foreclosure and provided a timely response to a crisis situation.

While we recognize that a delinquent borrower is dealing with a confusing situation and that frequent call attempts by servicers and third parties can seem overwhelming, it is critical to point out that these solicitation tactics are intended to benefit the consumer. These attempts may be the final chance a homeowner has at rectifying their situation and they are not traditional debt-collection calls. Loss mitigation calls done by either the servicer or counselor are not pre-recorded robo-calls and are human-to-human interactions. It is also imperative to note that these communications are mandated by multiple federal and state laws, regulations and requirements. A servicer is required to make Right Party

Contact and Quality Right Party Contact; these consumer protections are ensured by various regulators. In other words, you may make contact with the borrower (Right Party Contact) but what are their desires and capability to help cure the delinquency (Quality Right Party Contact). To accomplish these steps, could take time and persistence.

A specific concern of the Alliance is the need to exempt from the "prior express consent" requirements under the TCPA to certain non-telemarketing residential mortgage servicing calls to cellular numbers. Again, from the HOPE NOW experience, in the crisis mortgage servicers were under great stress and sometimes pools of borrowers were transferred to a new servicer. This "prior express consent" would complicate a quick to market solution, involving outbound calls to collect information and review for programs. This would also prohibit servicers from engaging a non-profit agency to address capacity solutions and provide increased customer engagement. By allowing the initial consent to carry through the loan to the servicer on the loan or a third party would help alleviate potential confusion and delays.

An unintended consequence of not exempting mortgage servicing calls is a threat to consumer protections mandated by federal and state requirements on mortgage servicers for communicating with borrowers by telephone. The federal and state requirements mandate specific outbound telephone calls to borrowers as frequently as twice per week to preserve homeownership. We support the pro consumer communications that have been laid out by many Federal Agencies. Unfortunately, these regulations conflict with the current TCPA guidelines and consumers will ultimately be impacted by this.

By simply offering a different and limited exemption for mortgage loans that are only owed or guaranteed by the United States, we are creating an uneven playing field for customers needing assistance. Imagine three homes in a row, all serviced by Bank A. If they each had different investors on the loan for instance, private label, FHA and Fannie Mae, the customer service and protections provided to them would be different, although from a customer point of view, they are all being serviced by Bank A. These inconsistencies erode consumer confidence and create unnecessary "noise" in the system with housing advocacy groups, attorney generals and consumer groups. We can avoid uneven consumer protections by supporting this exemption. These calls do not advertise and do not market products. We also support FHFA's recommendation embodied in the MBA petition, to ensure that TCPA does not impact mortgage servicing calls to any borrowers, not just those mortgage loans that are owed to or guaranteed by the United States.

The TCPA was not intended to obstruct effective communications between mortgage servicers and their borrowers. Today, potential TCPA liability jeopardizes the ability of at-risk homeowners to receive important information that could keep them in their homes. Removing these communications would have detrimental impacts in managing a crisis and working with third parties that often act as a consumer's representative. By granting the relief requested, the Commission can ensure that the TCPA does not interfere with mortgage servicers' ability to communicate with borrowers.

We support the MBA's request, for the reasons stated above. As homeowners migrate to a more cellular dependent society it's critical that we keep options open. These concerns are even more important when a family is facing foreclosure and needs every opportunity to communicate with their mortgage servicers and nonprofit housing counseling agencies. These calls deserve the same protection from the prior express consent requirements as the Commission provided to calls from healthcare providers. The learnings from the financial crisis should be considered so we are not creating a complicated and burdensome environment. We strongly urge the Commission to consider the MBA petition.

Thank you,

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