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April 23, 2015

VIA ELECTRONIC DELIVERY

Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, NW
Washington, DC 20554

Re: Notice of Ex Parte Presentation – CG Docket No. 02-278

Dear Ms. Dortch,

On April 21, 2015, Sara Davis, Executive Director of Government and Industry at Nelnet; Joseph Popevis, President of Diversified Solutions at Nelnet; and I (Al Mottur) of Brownstein Hyatt Farber Schreck, LLP, counsel to Nelnet, met with the following staff of the Federal Communications Commission Consumer & Governmental Affairs Bureau to discuss issues related to the Telephone Consumer Protection Act of 1991 ("TCPA"): Mark Stone (Deputy Bureau Chief); Aaron Garza (Bureau Front Office Legal Advisor); Kurt Schroeder (Chief, Consumer Policy Division); John Adams (Deputy Chief, Consumer Policy Division); and Kristi Lemoine (Attorney Advisor, Consumer Policy Division).

During the meeting, we discussed the lack of clarity under the TCPA, which is negatively impacting Nelnet's ability to contact student loan borrowers and provide them valuable information about their loans, payments options, and forebearance options, if necessary. Mr. Popevis and Ms. Davis provided an overview of Nelnet and discussed how the company works with borrowers to prevent default. We discussed the problem of a strict liability approach for reassigned numbers, in those cases where the contacting party believes in good faith it was contacting an individual who had consented to such outreach. We also discussed the need for clarity with respect to the definition of automatic telephone dialing system ("ATDS") in light of technological advances since enactment of TCPA in 1991, and in light of court cases that have expansively defined ATDS beyond the plain language of the statute. And, we discussed the public interest associated with the core aspect of Nelnet's business – namely, servicing student loans for the federal government, and educating consumers on their options in those instances in which full repayment has become challenging for them. Finally, we discussed the proliferation of litigation that has blossomed in recent years due to the lack of clarity. We provided Commission staff members with a handout touching on the aforementioned issues, a copy of which is attached.

Please contact me if you have any questions regarding this matter.

Respectfully submitted,

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TCPA Impact to Federal Student Loan Servicing

This document reviews the impact of the current state of interpretation and enforcement of the Telephone Consumer Protection Act (TCPA) on federal student loan servicing. The insights and conclusions are drawn from Nelnet's historical data as a Title IV Additional Servicer (TIVAS) working under Federal Student Aid's contract. Our analysis indicates that certain restrictions within the TCPA – while well intentioned when enacted many years ago – limit our ability to effectively reduce delinquency, prevent default of federal assets, and successfully communicate with customers using the channels they prefer. Defaulted loans delay cash flow, generate costly collection fees, and in many cases result in forfeiting payments altogether – not to mention the adverse and often life-altering experience of default for the borrowers.

The stakes are high. We currently service nearly six million Direct Loan borrowers representing $150 billion. We also service an additional one million borrowers and $25 billion as part of the federally guaranteed, legacy FFEL program. At these volumes, even incremental degradations in performance have a large-scale fiscal impact. The goal of this whitepaper is to help demonstrate and quantify this impact using statistical analysis of Nelnet's data. While the numbers presented here are specific to Nelnet, we expect that other student loan servicers are facing similar challenges, likely multiplying the overall effect of the TCPA on the Department's portfolio.

To provide a comprehensive picture of the TCPA's impact to servicing, the document starts by clarifying specific TCPA issues. We then provide analysis on the resulting impact, explain how the requirements have an impact on federal loan servicing, evaluate what we can expect in the future, and close with recommendations.

Key TCPA Issues

Cell Phone Consent (CPC). In order to use an automated dialing system[1] to contact serviced borrowers on a wireless phone number, the consumer must have provided prior express consent. Many borrowers have not been reached to obtain consent, which eliminates an important phone channel for resolving delinquency. Cell phone consent language is included on the federal Master Promissory Note, but it is limited to the phone numbers provided on the initial application or subsequently by the borrower. Consent does not extend to new numbers identified by skip-tracing or similar methods. This borrower demographic changes their phone numbers often, so by the time a borrower enters repayment consent must often be re-established.

Ownership Verification. Current TCPA interpretations also require that the party making a call with auto dialing equipment must ensure the owner of the wireless number is still the person who provided consent to auto dial. Unfortunately, many consumers do not notify us when they change numbers. As a result, we employ a third-party verification process using external vendors and registries, which often have incomplete information for this demographic. This results in diminishing the records eligible to auto dial, even for those customers who have provided their consent.

Text Messaging. Text messaging has seen a rapid rise in popularity – particularly among students and the younger demographics – as a favorite method of communication. However, current TCPA interpretations provide that a consumer must not only expressly consent to be contacted by text message, but must also opt-in a second time in response to a confirmatory text message (the so-called "double opt-in"). Many borrowers will not go through the cumbersome process, limiting the ability to use this important communication channel.

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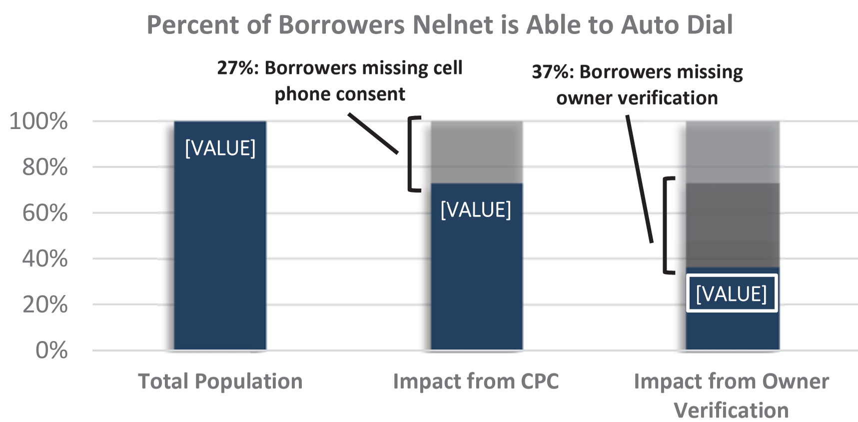
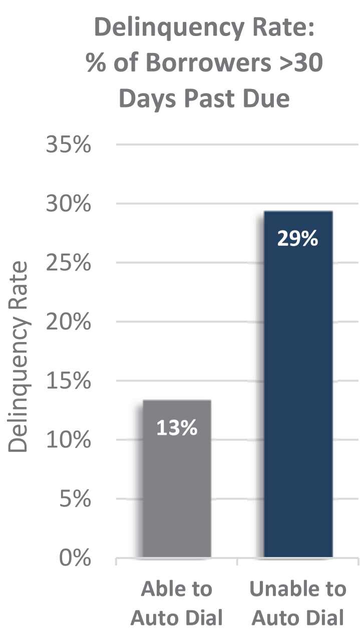
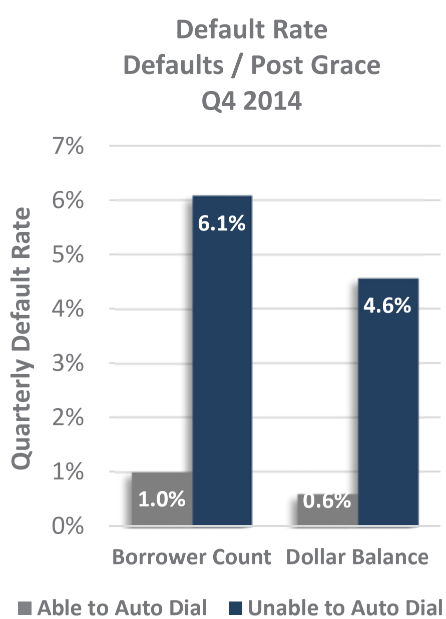
[1] For purposes of this paper, we use the term "automated dialing system" or "auto dial" generally to refer to the many technologies available to servicers to efficiently contact consumers. The Federal Communications Commission and Federal courts have not uniformly defined "automatic telephone dialing system" as the term is used in the TCPA, resulting in significant industry confusion about which dialing systems and technologies may be permitted.

Impact Assessment

This section explores the impact to delinquency and default for borrowers that cannot be auto-dialed due to TCPA restrictions. Below, we empirically quantify the differences in these rates between borrowers we can auto-dial and those we cannot, and calculate an overall impact. The data set is based on our most recent quarter (Q4 2014) for the FSA Direct Loan portfolio.







1 Scope: How Many Borrowers are Impacted

The chart at left examines how many borrowers are impacted by the TCPA consent, and ownership verification requirements.

Currently, 64% of borrowers are impacted by one of these requirements -- 27% due to no cell phone consent and an additional 37% due to our inability to verify ownership.

2 Impact to Delinquency Rate

Borrowers that we are able to auto dial have delinquency rates less than half that of those we cannot auto dial (13% versus 29%). This metric evaluates borrowers that are greater than 30 days past due as a percentage of all post-grace period borrowers.

3 Impact to Default Rate

Borrowers that we were able to auto dial in Q4 2014 had default rates 7 times lower than those we could not auto dial (0.6% versus 4.6% of dollar balance). This metric evaluates defaulted borrowers as a percentage of all post-grace period borrowers.

4 The Math: A Quantification of Default Losses

It is clear the TCPA restrictions on our ability to auto dial have major implications for delinquency and default rate. If our improved, auto dial default rates (at left) are applied to the population of borrowers we are unable to dial (above left), we can calculate the amount of impact for our Direct Loan portfolio:

Able to Auto Dial Default Rate:	0.6%
Unable to Auto Dial Default Rate:	4.6%
Unable to Auto Dial: Q4 2014 Defaults:	$651,520,108
Qtrly Impact, Difference in Rate x Volume:	**$565,475,190**

On an Annual Basis, TCPA contributes up to

$2,261,900,761

in extra defaults

How TCPA Affects Servicing Performance

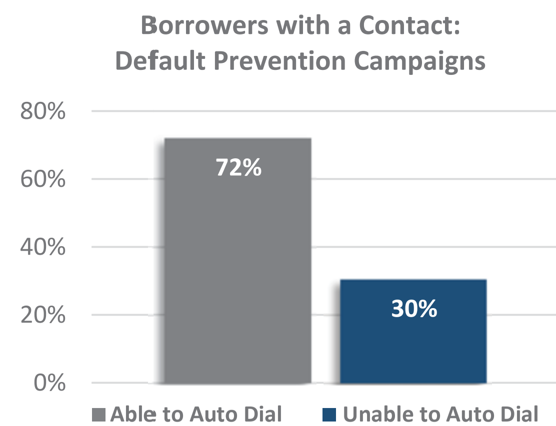
This section covers how the TCPA impacts servicing performance by restricting the use of auto-dialing technology. In addition to being efficient, modern auto dialers provide much of the logistical and data-driven intelligence that power successful communication campaigns. When these features are removed it impacts performance, reflected in lower contact rates, reduced account resolution and elevated default.

5 Weakened Ability to Make Contact

Effectively contacting borrowers is critical to a successful default prevention campaign; most customers more than 30 days past due will not self-resolve, so each interaction is a pivotal opportunity to find a solution and bring the loan current.

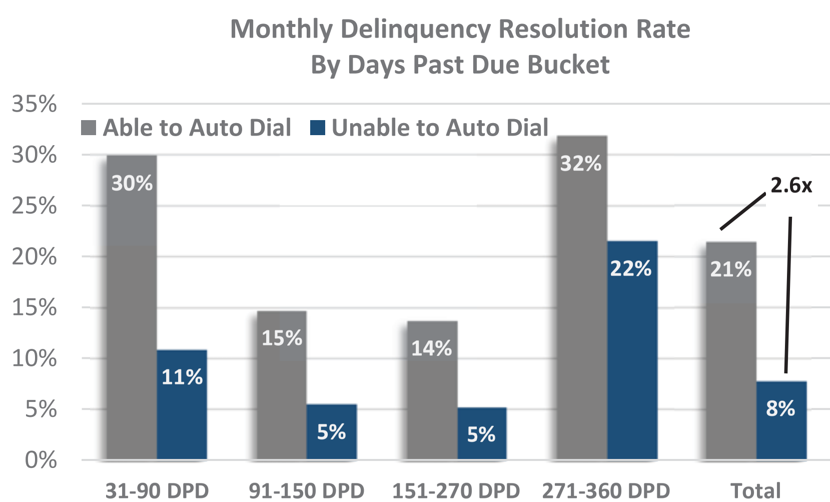
Today's auto dialers improve the contact rate by allowing for a greater number of attempts, and leveraging software that enhances the process. These features can rotate dial attempts through different time slots to find a window when the borrower is available, identify the best numbers to call based on prior history, and provide valuable data to analyze which campaigns and methodologies are most effective.

When evaluating default prevention contact rate, 72% of customers we are able to auto dial had a contact versus just 30% for those restricted due to TCPA requirements.



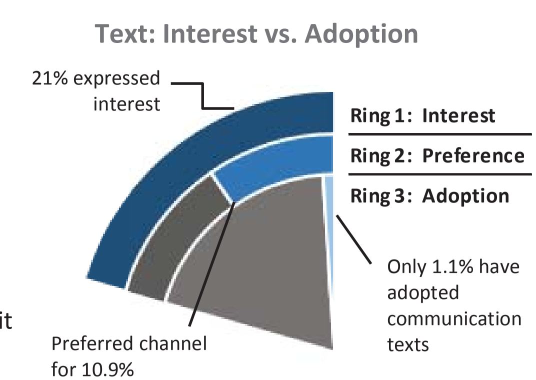
6 Decreased Resolution Rates

Fewer contacts results in fewer resolved borrowers, and the further into delinquency a borrower lapses, the harder it is to bring them current without the use of programs like forbearance. Within every stage of delinquency, borrowers we are able to auto dial resolve at a significantly higher rate – up to 3 times more.



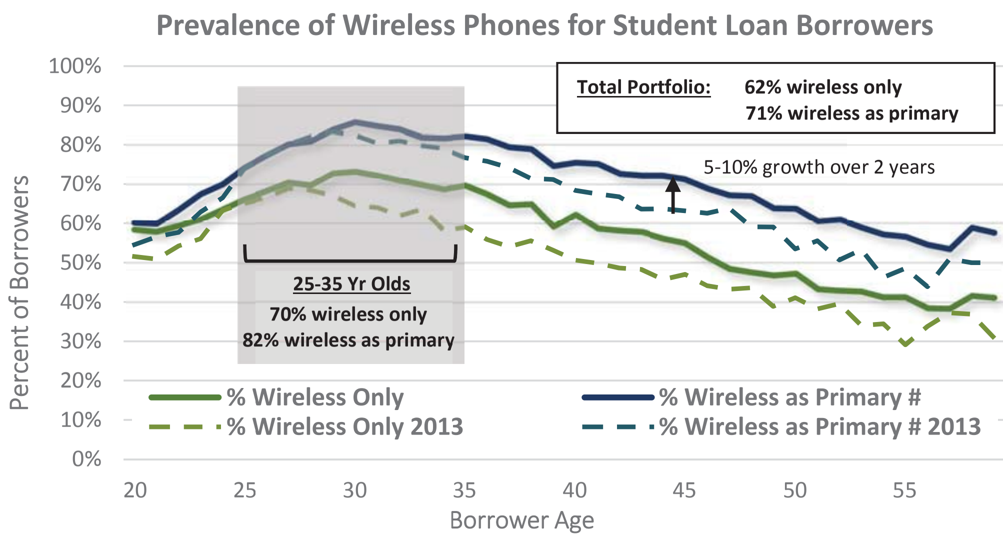
7 Limited Use of Text Messaging

While many customers prefer text messaging as a communication channel, very few are able to receive the service since they are not willing to navigate the double opt-in process. In our borrower surveys, 21% of customers expressed interest in receiving important communications via text (and 11% listed it as a preferred method) but only 1.1% have enrolled.



THE FUTURE LANDSCAPE

This section analyzes current industry trends and changing demographics to better understand what the future landscape looks like for TCPA regulations and their impact to student loan servicing. Particular focus is given to the 25-35 year old demographic, as these customers represent a large portion of our serviced borrowers, are highly transitory, technologically progressive, and vulnerable to default.



8 A Growing Trend: The Cell Phone Only Borrower

We service a young, mobile demographic with distinctive communication styles, patterns, and behavioral preferences. A large and increasing number of borrowers use wireless phones as their only or primary means of phone communication. In particular, the default-susceptible borrower population aged 25-35 show a significantly higher reliance on wireless communication; 70% of this cohort only list a cell phone with us, and as much as 82% list a cell phone as their primary number.

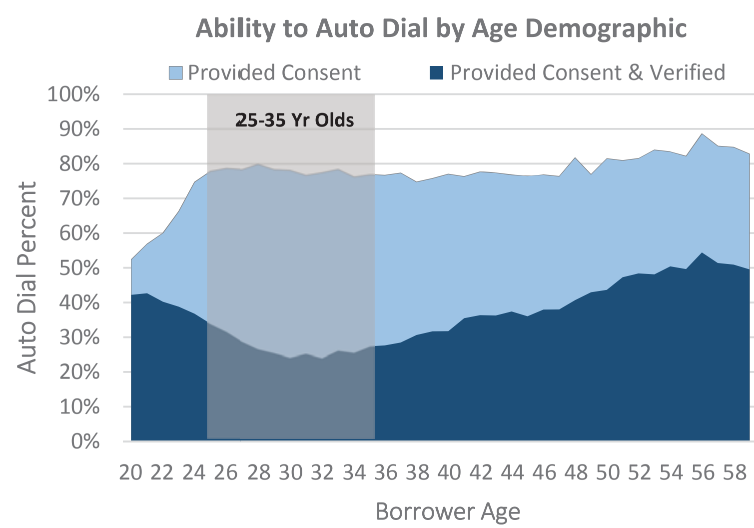
In the two years since this analysis was last completed, the percentage of borrowers using wireless communication has rapidly increased (at left, compare 2013 trend lines). Most age ranges show a 5-10% increase in wireless rates, indicating TCPA will have an even greater impact in the future.

9 Increasing Challenges for Young, Progressive Cohorts

Borrowers in the 25-35 year old age group account for a large percent of annual defaults and exhibit the highest use of wireless communication. However, due to TCPA requirements, only 28% of that population can be contacted via more effective auto dial communications (dark blue area at right). This percentage will very likely continue to drop for this population, and we expect the increased difficulty in communications to continue driving their elevated default rate.

10 Ownership Verification Will Remain Unrealistic for Many Borrowers

We do not expect any material change in the rate at which this unique customer base moves, adapts to new technology, or switches phone numbers. As a result, the need to verify phone ownership will continue to restrict a large portion of phone numbers from being contacted via more effective auto dial strategies. Just last year, 39.7% of borrowers had changes to their address, and 28.6% had changes to a phone number.



Recommendations

In order to protect federal assets and enable student loan servicers to assist and communicate with borrowers in the best means available, change and clarity regarding the TCPA are needed. Congress is not likely to act to provide this reform in the near term. The FCC, however, has the authority to fix the problem and in fact has pending before it multiple petitions for declaratory rulings on the TCPA. The FCC may soon issue a NPRM so as to react to the pending petitions, while affording interested parties a further opportunity to weigh in.

In doing so, it is imperative that the Commission act to clarify three important areas of ambiguity:

1. **Reassigned Numbers:** The FCC should declare that the TCPA permits outreach to reassigned numbers when the contacting party believed in good faith it was contacting a party who had consented to such outreach– even where the contact ends up being someone else. The benefits of this small exemption from liability are immense, protecting legitimate marketing or student loan servicing activities from liability where they were acting entirely in good faith and without knowledge that their outreach was to a new party. It is important to note also that the harm, if any, is minimal in these circumstances, in that presumably there will be no further efforts to contact that person/number once the contacting party learns that the recipient is not in fact the party they are trying to reach.

2. **TCPA Exemption for Calls on Behalf of the Federal Government:** The FCC should declare that the use of automatic dialing systems and prerecorded voice messages is allowed when contacting wireless phones to service student loans, consistent with the last two of President Obama's budgetary submissions to Congress. The public interest benefits of this exemption from liability are significant to the U.S. Treasury; and, in those instances in which debtors owe private monies, are nonetheless significant to those individual debtors, many of whom "time out" and default on their student loans, in part because their servicers cannot efficiently reach them. In addition, contacting allows for more opportunities for former students to stay current, especially as the Administration expands its Pay as you Earn (PAYE) program.

3. **Definition of ATDS that tracks the statute and the legislative history:** A number of courts have construed the definition of ATDS broadly. The TCPA defines an ATDS as "equipment which has the capacity (A) to store or produce telephone numbers to be called, using a random or sequential number generator; and (B) to dial such numbers." The FCC should promulgate a more narrow definition that tracks the language of the statute and takes into account advances in technology such as those utilized by Nelnet, who contacts parties from their limited database who have *consented to such contact*.

In each of the instances above, the Commission is fully empowered to implement protective measures that enable student loan servicers to better assist borrowers while still preventing undue harassment -- thereby addressing concerns of consumer groups while keeping the public's best interest at heart.