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March 29, 2016

VIA ELECTRONIC DELIVERY

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

Re: CG Docket No. 02-278

Dear Ms. Dortch:

The Federal Communications Commission ("FCC" or "Commission") is considering a Notice of Proposed Rulemaking ("NPRM") that seeks comment on proposals related to the implementation of Section 301 of the Bipartisan Budget Act of 2015,[1] which exempts from the Telephone Consumer Protection Act's ("TCPA") technology-based "prior express consent" restriction calls that are made "solely to collect a debt owed to or guaranteed by the United States."[2] Navient commends the FCC for acting quickly to implement this important legislation and offers the following information for consideration as it finalizes the proposals.

As of the first quarter of 2016, nearly $121 billion in federal student loans were in default.[3] Congress has afforded the federal government unique collection tools that make default particularly detrimental to borrowers, including: the potential for significant additional fees, garnishment of wages and Social Security benefits without the need for a court order, and offset of federal tax refunds and loss of eligibility for federal financial assistance. In addition, bankruptcy relief from federal student loan debt is extremely difficult to obtain, and federal student loan defaults remain on an individual's credit report for seven years (absent rehabilitation).

These consequences are avoidable. The federal government has expanded the number of programs available to assist struggling borrowers, increasing the number of federal student loan repayment, deferment, and forbearance options available in recent years. For example, today, federal student loan borrowers have a dozen different repayment options to choose from, including

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[1] *See* Letter from Tom Wheeler, Chairman, FCC, to Edward J. Markey, Senator, U.S. Senate (Feb. 25, 2016) ("Wheeler Letter"); Bipartisan Budget Act of 2015, Pub. L. No. 114-74, § 301(a)(2)(H), 129 Stat. 584 (2015).

[2] *See* 47 U.S.C. § 227(b)(1).

[3] See Department of Education, *Fed. Student Aid Data Center*, https://studentaid.ed.gov/sa/about/data-center/student/portfolio (last visited Mar. 28, 2016). Additionally, nearly one in five Direct Loan Program loans in repayment were more than 30 days past due. Nearly 12 percent of Direct Loan Program loans were seriously delinquent and had gone more than 90 days without payment. *See id*.

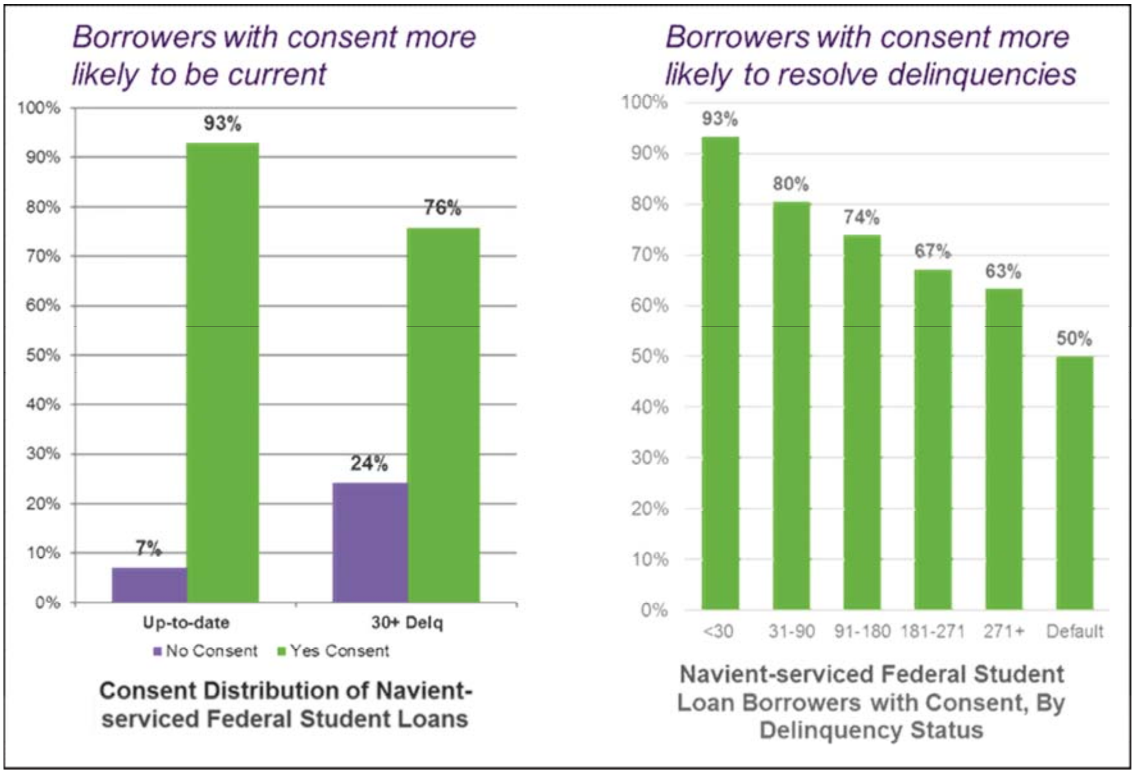
repayment plans based on income. Monthly payments can be as low as $0. In addition, borrowers have 32 deferment, forbearance, or forgiveness options to choose from (subject to certain qualifications).

Personal contact is critical for helping federal student loan borrowers resolve delinquencies and prevent default, and it is key for discussing repayment, deferment, or forbearance solutions. Navient is able to help **more than 90 percent** of student loan borrowers avoid default when it has a telephone conversation with the borrower. Reaching borrowers on their cell phones has also shown to be a key component to resolving delinquencies. Half of borrowers who have defaulted have not provided consent to contact them on their cell phones, having limited our ability to reach them and assist them in finding the right plan to avoid default. The consequence of not reaching a struggling borrower with personal contact: 90 percent of the borrowers who default on their federal student loans have not had a telephone conversation with Navient about their delinquent accounts – despite Navient's best efforts to reach them.

A student loan borrower is considered in "default" if the borrower has not made a payment in more than 360 days – one year. The consequences of default are significant when the more onerous federal collection tools described above can be employed. Yet, even in default, there are options that can help borrowers avoid these consequences. For example, loan "rehabilitation" allows defaulted borrowers to restore their federal student loans to good standing by making nine monthly payments that are based on income and can be as low as $5. Once a loan has been rehabilitated, the default is removed from the borrower's credit report, all remaining collections fees are waived, and the loan is returned to a loan servicer for regular repayment.

Since 2012, Navient has helped 150,000 defaulted student loan borrowers successfully rehabilitate their student loans. As mentioned above, Navient has found that personal contact is the key to finding and assisting a defaulted student loan borrower. For example, it typically takes four or more conversations with a student loan borrower to explain the repayment (or forbearance or forgiveness) options, select an option, and then finalize the federally required paperwork.

Cell phone contact, in particular, is critical in assisting student borrowers avoid delinquency and resolve defaults. Ninety-three percent of the student loan borrowers serviced by Navient who are current on their loans have provided consent to be contacted on their cell phones. Meanwhile, student loan borrowers serviced by Navient who are delinquent or in default are far less likely to have provided such consent. Only 76 percent of delinquent borrowers have consented to be called on their cell phones, and less than half of defaulted borrowers have consented to be called on their cell phones.



Any limit on the "number" of federal student loan calls allowed by the exemption should be expressed in terms of live connections. Navient continues to believe that proposing a specific numerical call limit in the NPRM is unnecessary and would be premature given the record's dearth of information about this issue. However, if the Commission opts to propose a specific limit in the NPRM on the "number" of calls allowed under the exemption, then three live connections with the borrower per month per delinquency would be an appropriate limit. Navient is able to effectively counsel borrowers on their repayment options only when it is able to have direct conversations with them. Consequently, live connections — rather than call attempts — are the key to keeping federal student loan borrowers on track and out of delinquency. A limit of three live connections per month per delinquency would also not unduly burden these borrowers.

Certain calls to non-delinquent federal student loan borrowers should also be allowed under the exemption. The Budget Act exemption applies based on the purpose of the calls rather than the delinquency or default status of the account.[4] Under the statute, callers are exempt from the TCPA's "prior express consent" requirement as long as the calls' purpose is "solely to collect a debt owed to or guaranteed by the United States."[5] Moreover, many of the calls to help borrowers avoid delinquency are time-sensitive. For example, federal student loan borrowers have a six-month "grace period" after leaving school before they have to begin making payments. This period is an important window for ensuring that borrowers are aware of their repayment options. Most of this outreach is done through letters and e-mails, but phone outreach is appropriate in some cases—especially to those borrowers who separate from school without a degree and statistically are far more likely to default.

[4] *See* 47 U.S.C. § 227(b)(1)(A).

[5] *See id*.

Navient also calls non-delinquent borrowers to remind them to complete their annual Income-Driven Repayment ("IDR") plan recertifications. Federal law requires borrowers enrolled in IDR plans to annually update their income documentation via the Department of Education's website or by submitting a paper form to their servicer.[6] If borrowers fail to timely recertify for an IDR plan, any unpaid interest on their loans will capitalize, and their monthly payment amounts will increase—sometimes substantially. Navient has been able to increase timely recertification through reminder calls and texts as the annual deadline approaches when it has consent to contact a borrower.

Navient also calls previously delinquent borrowers who have resolved their delinquencies (through forbearance or deferment) but who are eligible for an IDR plan. Because of Department of Education regulations, once we reach a delinquent borrower, we cannot enroll them in IDR directly; rather borrowers must take the extra step of filling out a paper form and providing income verification or enrolling through studentloans.gov (the Department of Education's on-line student loan site). Because of this extra step, previously delinquent borrowers frequently do not complete their IDR applications. Navient recently tested the effect of additional outreach to help borrowers get through this extra step and found that follow-up outreach and contact to these borrowers on their cell phones increased their successful IDR enrollment by **50 percent.** For borrowers who had been in the latest stage of delinquencies (271 days or more delinquent), follow-up contact increased enrollment by 62 percent (see Appendix A).

The Commission should not foreclose servicers from placing these and other beneficial, otherwise exempt calls simply because a borrower is not technically delinquent or in default at the time of the call, and it should seek comment on which specific types of calls to non-delinquent borrowers should be allowed.

Similarly, the exemption should allow federal student loan calls to individuals other than the borrower in certain circumstances. As mentioned above, the exemption applies based on the purpose of the calls.[7] Navient's experience has been that calling a parent or relative, or a contact reference listed on a federal student loan application, can be the most effective conduit for reaching the borrower and that calling numbers obtained through skip tracing is sometimes the *only* way to reach a defaulted borrower. It may be appropriate to adopt different limits for these types of calls than for calls intended to reach the borrower. We respectfully request that the Commission seek comment on any such limits, as the calls are included within the scope of the Budget Act exemption and play an important role in the student loan servicing process.

Finally, Navient notes that a number of existing federal and state servicing and collection laws and regulations provide significant consumer protections, including the Higher Education Opportunity Act and the Department of Education's rules applicable to servicers.[8] Federal student loan servicers are also subject to consumer satisfaction and servicer quality standards benchmarks, and must meet or exceed certain benchmarks as a significant part of their compensation under the servicer contract with the Department of Education.

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[6] *See, e.g.*, Navient, Income-Driven Repayment Annual Renewal, https://www.navient.com/loan-customers/payment-plans/income-driven-repayment-annual-renewal/ (last visited Mar. 28, 2016).

[7] *See id*.

[8] *See, e.g.*, Higher Education Opportunity Act, Pub. L. No. 110-315, 122 Stat. 3078 (2008).

Navient takes its obligations under state and federal law seriously, and it is committed to rigorous compliance with regulatory requirements. Please let us know if you have questions or require additional information.

Respectfully submitted,

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Appendix A

Case Study: Previously Delinquent Borrowers Successfully Enroll in IDR Plans More Often When Contacted On Cell Phones

- Delinquent borrowers may cure their delinquency through contact but then must take extra steps to successfully enroll in IDR plans.
- IDR enrollment cannot be done in a borrower's account; it only be done by paper or through studentloans.gov.
- Previously delinquent borrowers frequently do not complete IDR enrollment.
- In a recent pilot, Navient tested follow-up outreach (phone) for previously delinquent borrowers who agree to sign up for IDR.
  1. Follow-up phone calls to borrowers with consent to contact on cell phones were placed to assist them in completing their IDR applications.
  2. No follow-up was done where there was no consent (this group served as the control group).
- Findings: **Connecting with borrowers resulted in 50% increase in IDR enrollment rates overall.**
  - Overall, 69% of previously delinquent borrowers with follow-up contact successfully enrolled in IDR compared to only 46% of the control group.
  - For late stage delinquencies, IDR enrollment rates increased 62% with follow-up contact (55% versus 34%).