April 5, 2016

VIA ELECTRONIC DELIVERY

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

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

Dear Ms. Dortch:

On April 1, 2016, the National Council of Higher Education Resources (NCHER) met with staff of three Federal Communications Commission (FCC) commissioners to discuss potential regulations implementing Section 301 of the Bipartisan Budget Act of 2015, which amended the Telephone Consumer Protection Act (TCPA) to explicitly authorize the use of auto-dialer technology to collect debts owed to or guaranteed by the United States. The FCC is required by the new law to promulgate regulations that may “restrict or limit the number and duration of calls made to a telephone number assigned to a cellular telephone service to collect a debt owed to or guaranteed by the United States,” under Section 227(b)(2)(H) of the Communications Act of 1934 (47 U.S.C. 227(b)(2)(H)), as recently amended by Section 301 of the Bipartisan Budget Act of 2015 (Public Law 114-74).

NCHER is a national, nonprofit trade association that represents a nationwide network of higher education assistance agencies that administer education programs that make grant and loan assistance available to students and parents to pay for the costs of postsecondary education. Our membership includes organizations under contract with the U.S. Department of Education to service and recover outstanding loans made under the Federal Direct Loan Program and organizations that service and recover outstanding loans made under the Federal Family Education Loan Program. All of these state, nonprofit, and for-profit organizations are impacted by the potential Notice of Proposed Rulemaking (NPRM) on the use of auto-dialer technology to collect debts owed to or guaranteed by the United States.

NCHER members and staff in attendance for all of the meetings included:

- Phillip Cervin, Texas Guaranteed.
- Sean Deverey, NCHER.
- Timothy Fitzgibbon, NCHER.
- Lynn Heineman, Account Control Technology, Inc.
- Susan High, Texas Guaranteed.
- Dwight Vigna, Ceannate Corp.

The FCC staff with which the above individuals met included:

- Amy Bender, Commissioner Michael O'Rielly.
- Nicholas Dagani, Commissioner Ajit Pai.
- Travis Litman, Commissioner Jessica Rosenworcel.
- Jennifer Thompson, Commissioner Jessica Rosenworcel.

During each meeting, NCHER discussed the following points regarding the potential NPRM amending the TCPA to authorize the use of certain auto-dialed calls as referenced above:

- We discussed the unique nature of the federal student loan market and the many tools available pre-and post-default – tools that are not available in other consumer credit products – to help borrowers, especially low income borrowers, manage their student loan debt. We discussed that over 90 percent of all outstanding student loans are owned or guaranteed by the U.S. government. We also discussed how complicated many of the repayment, deferment, and discharge options are under the federal student loan programs, which is why it is critically important to have live telephone conversations with borrowers, particularly those in financial distress, to help them avoid the consequences of default or remaining in default.

- We discussed how it can take multiple attempts to produce a live contact with a student loan borrower - the federal student loan servicer, Navient, wrote in a March 1, 2016 ex parte to the FCC that "it took 40 or more call attempts to reach the live contact" for 25 percent of their borrower calls – and that it often takes three or more live contacts to help the borrower find a resolution that best meets his or her individual needs.

- According to a February 25, 2016 letter from FCC Chairman Tom Wheeler to multiple Members of Congress, the potential draft NPRM limits the number of auto-dialed calls to cell phones without the consent of the borrower to "three per month per delinquency." We stated our concern that if this is defined as three attempts, rather than contacts, it would result in little to no live contacts with a borrower in the student loan space and, therefore, tens of thousands of borrowers each month would time out and needlessly default, or languish in default, simply due to not receiving timely information needed by those borrowers to understand their rights under the federal student loan program and choose the repayment plan or other resolution that best fits their individual circumstances. We pointed out that the National Consumer Law Center and the National Association of Consumer Advocates, in a June 6, 2015 ex parte to the FCC, recommended that the "FCC should limit collection calls to three calls per week, voicemail messages to one per week, and call-backs to once per week unless the consumer gives specific consent at the time of the calls." This is <u>four times the number</u> included in the potential draft NPRM, according to Chairman Wheeler's letter to Congress. We also note that the recommendation applied to all product categories. As mentioned above, we think a special case can be made for calls in the federal student loan area, based on the borrower friendly features created by Congress and the Administration.

- We discussed the difficulties of leaving meaningful messages on borrowers' cell phones due to conflicting federal and state laws and regulations, further increasing the importance of live telephone conversations.

- We discussed the results of a Google survey commissioned by NCHER that asked current student loan borrowers how they wanted to receive information regarding their student loans. The survey, which is attached, found that the current methods of contact used by federal servicers and collectors to assist student and parent borrowers to help them avoid delinquency or default, notably phone calls to landlines and traditional mail, are ineffective means of communication for reaching borrowers. The survey also demonstrated that the increased use of calls to cell phones, text messages, and e-mails are the best means to reach borrowers, including struggling borrowers, and that federal policy must adapt to changing borrower demographics and preferences.

  - Specifically, among the survey findings, 78.9 percent of respondents, aged 18-24, reported only owning a cellphone, compared to 3.1 percent of respondents, aged 18-24, who only own a landline.

  - 70.7 percent of respondents selected e-mail, text messages, or cell phone calls as the most effective and primary method of getting information to them.

  - 74 percent of respondents selected e-mail, text messages, or cell phone calls as the best way to contact them if there was an important change to their student loans such as going into default or becoming delinquent.

- We discussed the importance of timely and accurate communication throughout the student loan repayment experience, particularly as borrowers move into delinquency and/or post-default status. We cautioned the FCC to avoid discriminating against borrowers at different stages of pre- and post-delinquency and post-default, as information is critically important at all stages of the student loan life-cycle and the Commission should not choose which borrowers receive timely information and which do not.

- We discussed how calls with student loan borrowers can average 20 minutes or more in length and can often last more than an hour in cases where borrowers need to provide financial and other data for the caller to help the borrower understand and choose the resolution that best meets his or her needs. Because of this, we cautioned the FCC against any arbitrary rules limiting the duration of student loan servicing or collection calls. We specifically addressed the benefits of the federal government's loan rehabilitation program whereby borrowers in default can pay as little as $5 per month over a 10-month period and remove their loans from default status, regain eligibility for federal student aid, and remove the record of default from their credit reports. We pointed out that it often takes lengthy telephone contacts with borrowers to help them enroll in and successfully complete the loan rehabilitation process, another compelling reason to not arbitrarily limit the duration of calls. Borrowers always have the ability to end any call at their discretion.

If you have any questions, please feel free to contact me at (515) 224-1400.

Respectfully submitted,

Timothy M. Fitzgibbon

Timothy M. Fitzgibbon
Senior Vice President

Attachment

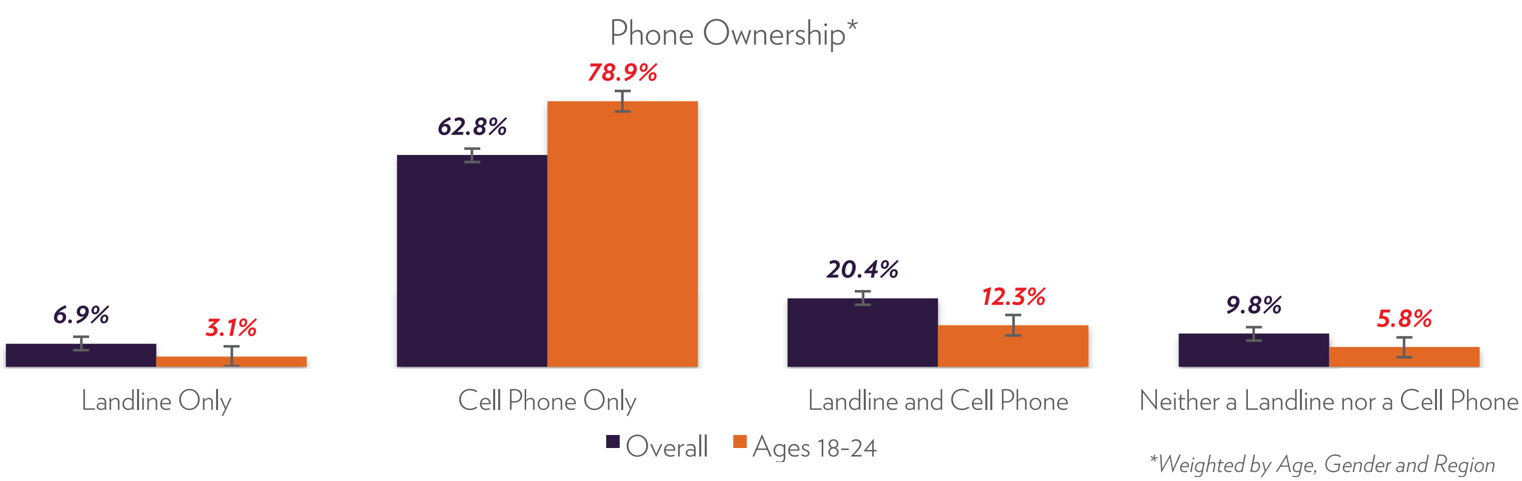
STUDENT LOAN ONLINE SURVEY INSIGHTS
FEBRUARY 12, 2016

Introduction

Between January 24 and 27, 2016, the National Council of Higher Education Resources (NCHER) fielded an online poll using Google Consumer Surveys among current and former students on the issue of education loan servicing and methods of communication. In total, 4,004 respondents completed the entire survey. 2,221 (55%) of respondents were college or university graduates with loans, 1,255 (31%) were current students with loans and 546 (14%) were former students with loans who did not graduate. The following document outlines notable results from the poll that suggest current methods of contact available to student loan providers – notably landline phone calls and traditional mail – are not effective means of communication for reaching borrowers and that increased use of cell phone calls, text messages and e-mails would be the best means of adapting current policy to meet changing borrower demographics and preferences.

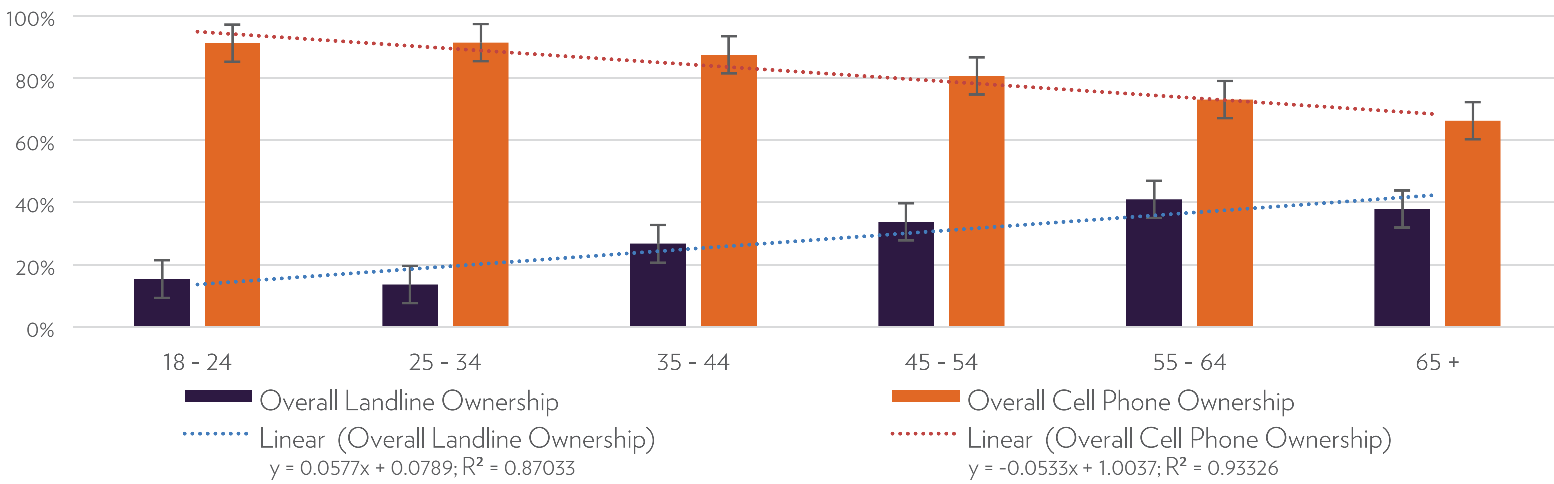
Device Usage

Overall, the survey found significant rates of cell phone ownership among student borrowers and notable disparities in communications technology usage between different age groups. As a whole, 83.2 percent of all survey respondents report owning a cellphone, compared to 27.3 percent who own a landline. In the 18-24 age group, however, 91.2 percent of borrowers own a cell phone while just 15.4 percent report owning a landline.



This high degree of correlation between age and phone ownership suggests that primarily older borrowers own landlines while younger borrowers are much more likely to own only cell phones. There is also considerably less dual adoption among younger borrowers, as just 12.3 percent of survey respondents between the ages of 18 and 24 own both a cell phone and a landline.

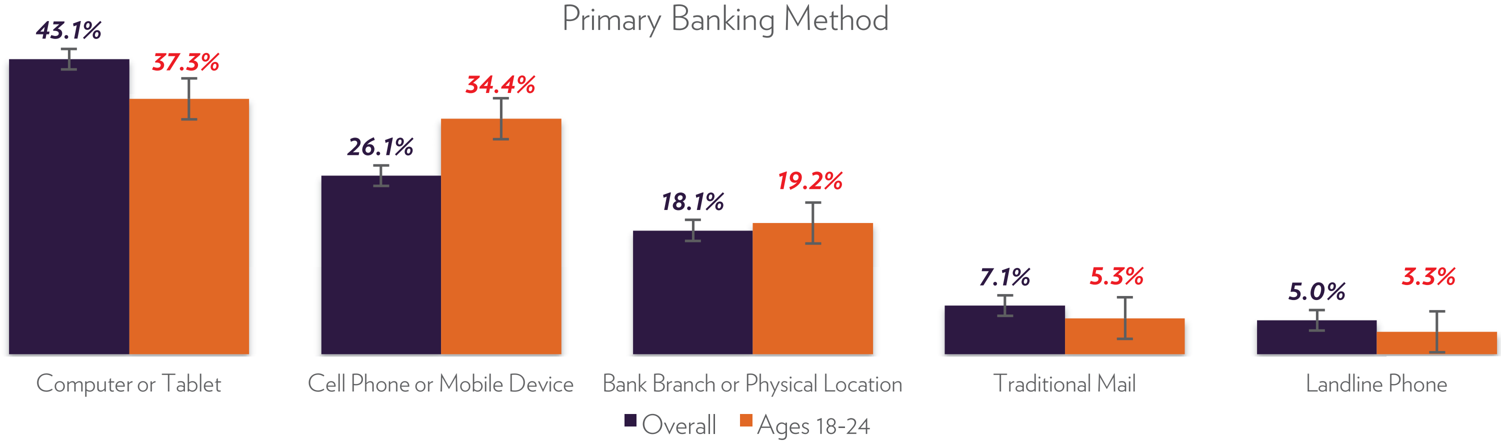
Overall Phone Ownership by Age Group*



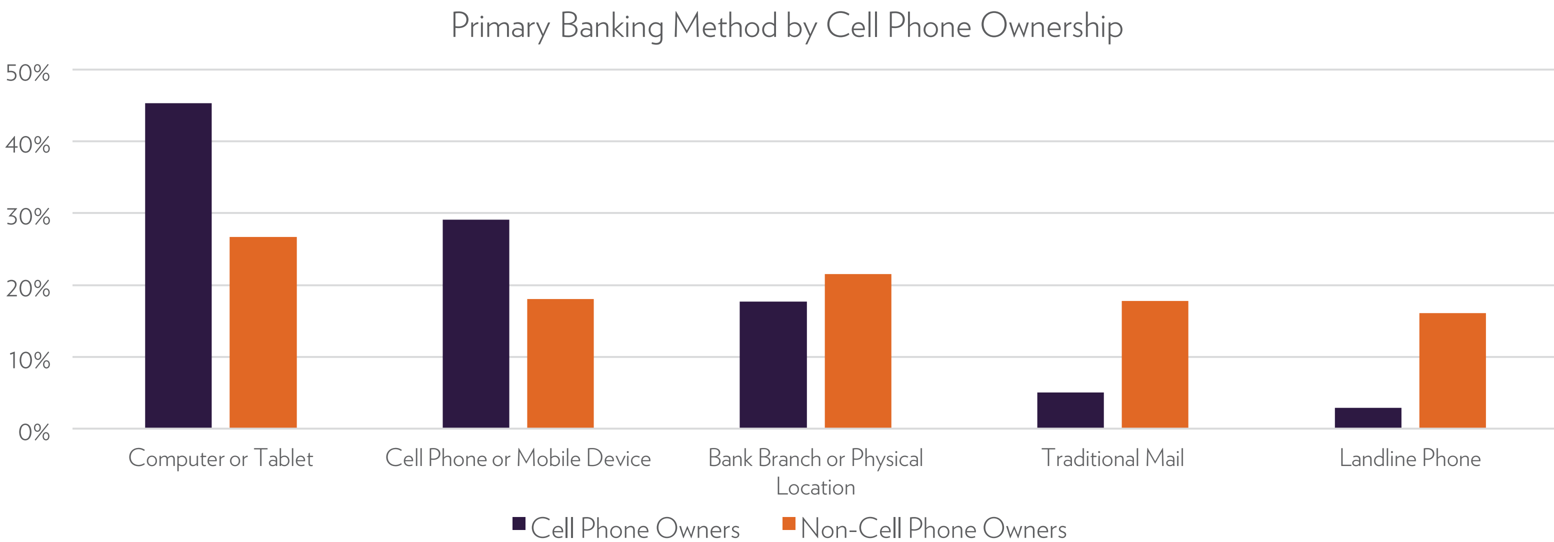
Weighted by Age, Gender and Region

Age also plays a significant role in determining methods of banking activity. Overall, 43 percent of borrowers report making financial decisions on a computer or tablet, with cell phones and mobile devices ranking second at 26 percent. However, younger respondents are 30 percent more likely to use cell phones as their primary method of banking. Of borrowers in the 18 to 24 age group, 34.3 percent rank mobile devices as their top method of banking, in a statistical tie with computers and tablets at 37.3 percent.

Primary Banking Method



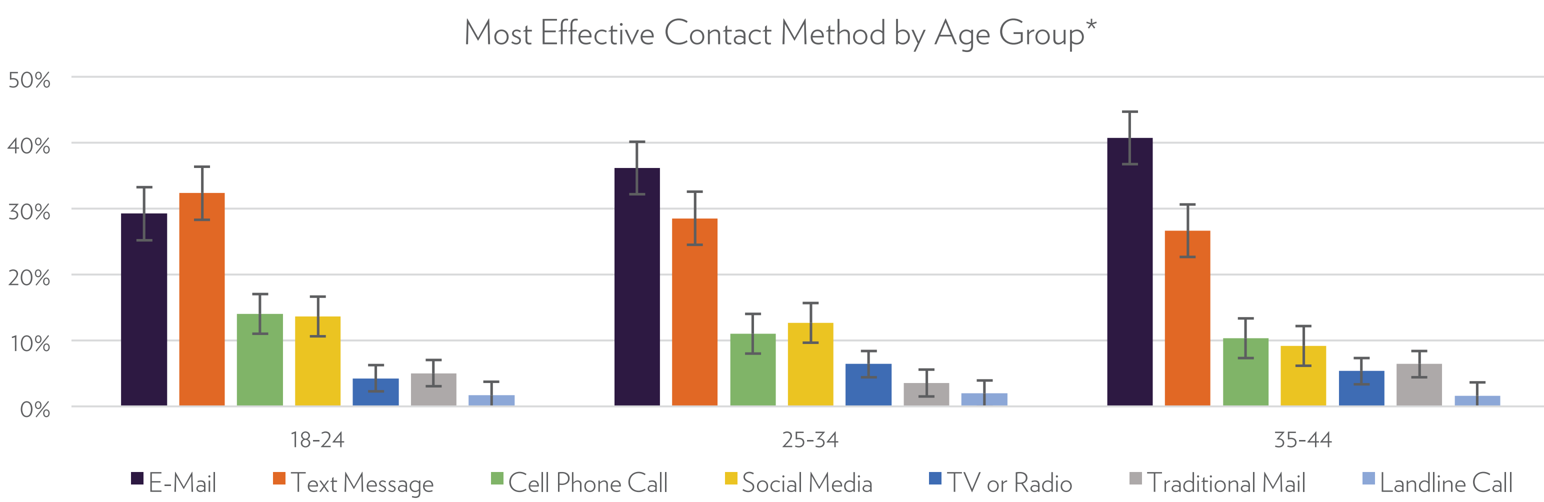
Banking methods vary by device ownership as well. Among borrowers who own a cell phone, over 70 percent select a digital platform such as computer or mobile device as their top means of making financial decisions. For those without cell phones – primarily older borrowers – traditional methods of banking such as visiting a physical branch, receiving mail and completing a landline phone call are more popular.



As new generations of students take out loans to finance their education, it is clear that they will be reachable via cell phones rather than landlines and accustomed to making their financial decisions electronically. These differences between age groups indicate a shift in technology adoption and preferences that policy must adapt to.

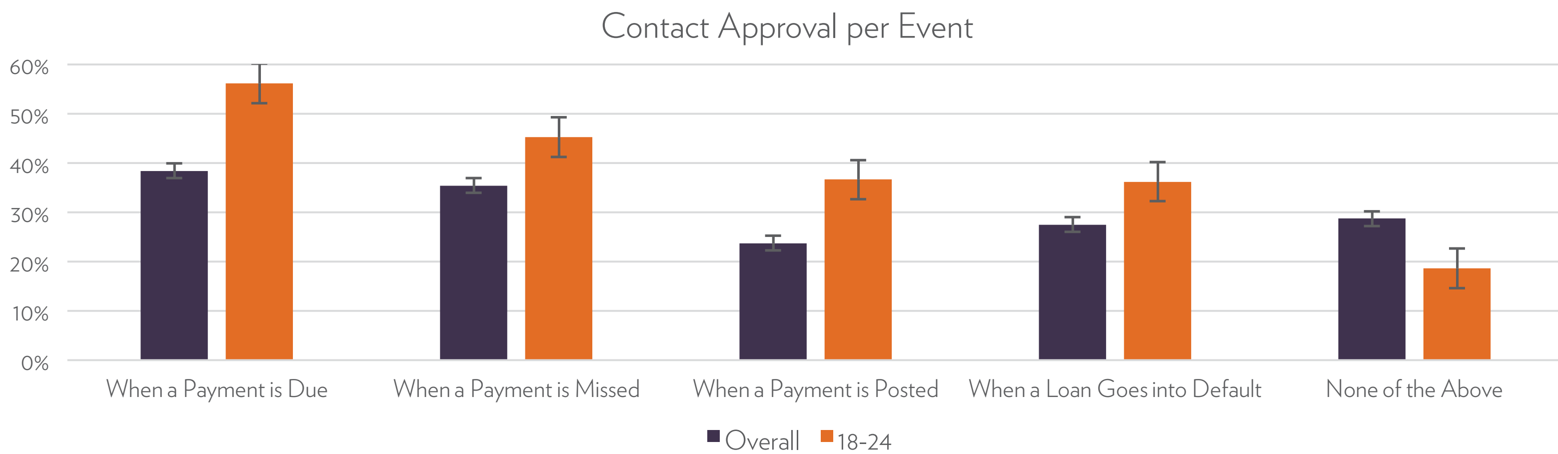
Contact Preferences

When asked about the most effective method of getting information to them, borrowers overwhelming select e-mail and text message as their primary means of communication. E-Mail ranks as the top method for all borrowers at 35 percent, but younger audiences gravitate much more towards mobile devices, as nearly half of 18 to 24 year olds select cell phone calls or text messages. For respondents of all age groups – and especially younger borrowers – traditional mail and landline calls rank among the least-selected methods of effective contact.



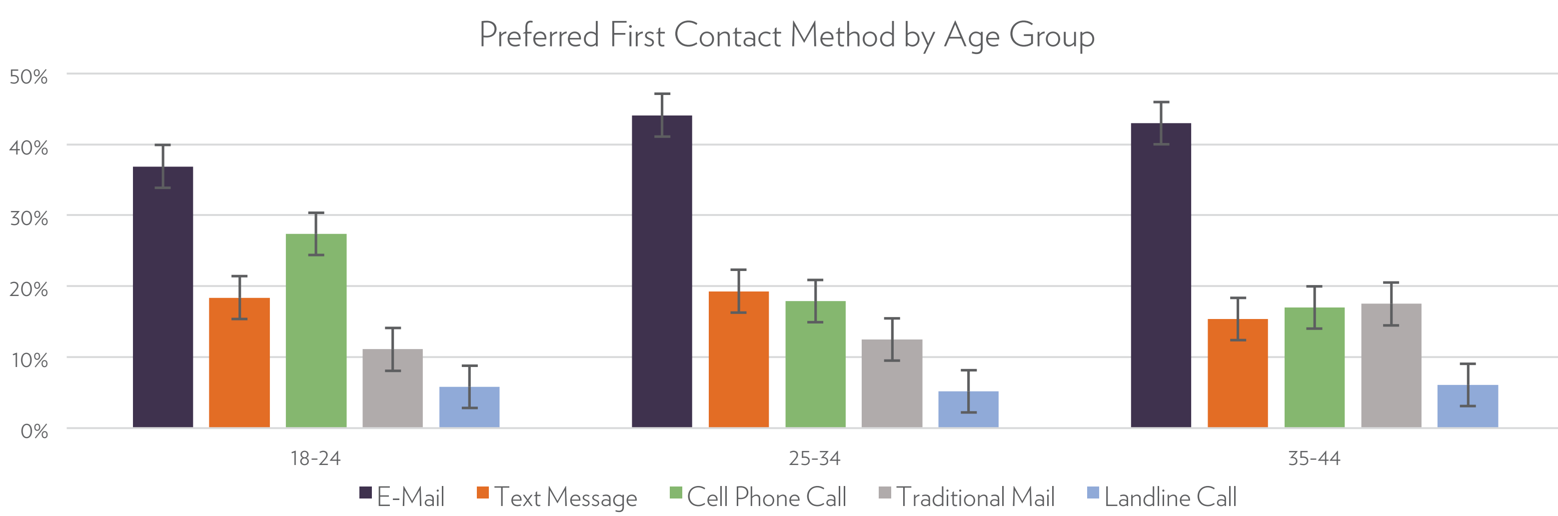
**Weighted by Age, Gender and Region*

Respondents also demonstrate a desire to be contacted around important events related to their student loans. When presented with a range of options, 71.3 percent of all borrowers and 81.4 percent of borrowers aged 18 to 24 select at least one event for which they would like to receive information. Among the youngest age group, over half select "when a payment is due" and 68.4 percent select one or both of "when a payment is due" and "when a payment is missed."



Though respondents demonstrate some reluctance to openly welcome contact, there is significant evidence that younger borrowers are more willing to receive information about important events, as those aged 18 to 24 are 35 percent less likely to select none of the events.

When presented with a specific scenario, such as loan default or delinquency, borrowers indicate a desire to be reached via their most effective method of communication. E-mail again ranks as the top method; though younger audiences select some form of mobile communication – either a cell phone call or text message – 45.8 percent of the time and significantly more than their older counterparts.



Conclusion

Overall, student borrowers represent significant generational and technological divides. From landline ownership to banking methods, younger borrowers are significantly more likely to only own cell phones and conduct their communications and financial decisions electronically. Whereas older and less technologically advanced borrowers demonstrated a reluctance to be contacted, younger survey respondents were significantly more interested in receiving important updates about their student loans and do so on their mobile devices via cell phone call or text message. The same group also relies much less on landline calls and traditional mail to get information and is largely uninterested in receiving time-sensitive information via those methods. In order to effectively adapt to coming demographic and technological shifts, policy must be ready to meet student borrowers where they are: on mobile devices and electronic platforms.