Federal Housing Finance Agency
Constitution Center
400 7th Street, S.W.
Washington, D.C. 20219
Telephone: (202) 649-3800
Facsimile: (202) 649-1071
www.fhfa.gov

June 6, 2016

Marlene H. Dortch, Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Room TW-A325
Washington, D.C. 20554

RE: Federal Communications Commission
Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991
[CG Docket No. 02–278; FCC 16–57]

Dear Secretary Dortch:

The Federal Housing Finance Agency ("FHFA") submits these comments in response to the Federal Communication Commission's (the "Commission") proposed rules to implement an exemption from the Telephone Consumer Protection Act's ("TCPA") consent requirement for autodialed and prerecorded calls "made solely to collect a debt owed to or guaranteed by the United States." As explained below, FHFA by this communication seeks an exemption for entities that service one to four unit residential mortgages in order to manage delinquent mortgage loans in accordance with the Consumer Financial Protection Bureau regulations and servicing requirements of FHFA's regulated entities without potential conflicts with TCPA requirements.

Background

FHFA provides comprehensive regulation for Fannie Mae and Freddie Mac (the "Enterprises"). Since September 20, 2008, FHFA has served as conservator for the Enterprises. Collectively, the Enterprises own or guarantee approximately 55% of all single-family residential mortgages outstanding in the United States and have actively supported the housing market through the purchase of approximately 90% of all recently originated single-family mortgages. The Enterprises have been a significant force in ameliorating the impact of the financial crisis by engaging in more than 3.6 million foreclosure prevention actions, which includes more than 1.9 million loan modifications, since September 2008.[1]

As regulated entities, the Enterprises are subject to comprehensive supervision and their third party mortgage servicers—which traditionally are the lenders who originated and sold the mortgage loans to the Enterprises—operate under specific Enterprise guidelines to perform the collection, loss

[1] FHFA Foreclosure Prevention Report – February 2016 (published May 10, 2016).

mitigation and foreclosure avoidance activities on behalf of the Enterprises. Failure of third-parties to meet Enterprise guidelines may result in sanctions. Additionally, such servicers are subject to other consumer protection statutes such as the Fair Debt Collection Practices Act.

Avoiding foreclosure requires mortgage servicers to work directly with individual loan borrowers, typically through telephone contact. Under FHFA's Servicing Alignment Initiative, which commenced in 2011, FHFA directed the Enterprises to align the contractual obligations they impose on their mortgage servicers in most areas of loss mitigation and foreclosure prevention. This includes, but is not limited to, mandating outreach to delinquent borrowers for the purposes of avoiding foreclosure. Since the financial crisis arose in 2007, the Enterprises have determined that reaching borrowers in the earliest stages of a delinquency has the highest chance for successfully avoiding foreclosure on a borrower. However, with each passing month of a delinquency, late fees of up to 5% of the monthly mortgage payment accrue and a borrower's credit score declines, resulting in increased borrowing and other consumer costs. Extended periods of delinquency result in significant accumulation of additional costs for borrowers and these costs often become insurmountable for severely delinquent borrowers, making them ineligible for an alternative to foreclosure.

FHFA has determined that, in its role as conservator, its obligation to preserve and conserve assets as well as meet other statutory goals, supports programs that permit borrowers to remain in their homes. This helps communities prevent vacant properties and blighted neighborhoods. The efficient and early resolution of a delinquency to avoid foreclosure is the key to ensuring a borrower does not lose his or her home.

FHFA recognizes the purposes of the TCPA's general prohibitions against autodialing and the use of artificial or pre-recorded voices. FHFA has worked collaboratively with the Consumer Financial Protection Bureau to develop extensive mortgage servicing regulations to protect borrowers. In 2013, the CFPB issued regulations addressing early intervention, continuity of contact and loss mitigation assistance for delinquent consumers. The CFPB servicing regulations and the servicing guidelines of Fannie Mae and Freddie Mac require servicers to contact delinquent borrowers at specified times in connection with loss mitigation efforts. Requiring mortgage servicers to have the consumer's express consent to be contacted or face potential liability under the TCPA adversely impacts outreach efforts for loss mitigation and homeownership preservation.

FCC Exemption Authority

Although the statutory exemption for debts owed to or guaranteed by the United States does not appear applicable to Fannie Mae and Freddie Mac loans, the Commission has existing regulatory authority under the TCPA to exempt certain calls from the prior express consent requirement "subject to such conditions as the Commission may prescribe as necessary in the interest of the privacy rights this section is intended to protect" and also may, subject to such conditions as the Commission may prescribe, permit "...(ii) such classes or categories of calls made for commercial purposes as the Commission determines – (I) will not adversely affect the privacy rights that this section is intended to protect; and (II) do not include the transmission of any unsolicited advertisement."[2]

FHFA recommends that the Commission exercise regulatory authority to exempt entities that service 1-4 unit residential mortgage loans from prohibitions against the use of automatic telephone dialing systems or artificial or prerecorded voices when calling a delinquent borrower for the purpose of servicing that borrower's mortgage. This exemption would enable servicers to manage delinquent mortgage loans in accordance with the CFPB regulations and Fannie Mae and Freddie Mac servicing requirements, where applicable, without potential for conflict with the TCPA requirements.

FHFA appreciates the opportunity to provide the foregoing comments to the Commission on the proposed rules. FHFA would welcome a conversation to elaborate on these comments and to address any unanswered questions you may have about them. Please feel free to contact me directly at 202-649-3050 or Maria Fernandez at 202-649-3103 or maria.fernandez@fhfa.gov.

Sincerely,

Alfred Pollard
General Counsel

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[2] Telephone Consumer Protection Act of 1991, 47 USC 227(b)(2)(B) & (C).