



January 26, 2016

Via Electronic Delivery

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

**RE: CG Docket No. 02-278
Calls to Collect a Debt Owed to or Guaranteed by the United States**

Dear Ms. Dortch:

On behalf of the Education Finance Council (“EFC”), the National Council of Higher Education Resources (“NCHER”), and the Student Loan Servicing Alliance (“SLSA”), please consider the following background on federal student loan programs and related debt collection efforts as the Federal Communications Commission (“FCC”) considers whether to adopt regulations that “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,” as authorized under Section 227(b)(2)(H) of the Communications Act of 1934,¹ as recently amended by Section 301 of the Bipartisan Budget Act of 2015.²

About Us. EFC is a national trade association representing nonprofit and state-agency student loan organizations that are dedicated to improving college access, success, and affordability in their states and nationwide. NCHER is a national trade association that represents a nationwide network of state, nonprofit, and for-profit 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. SLSA is a national trade association that represents student loan servicers in the Federal Family Education Loan Program (“FFELP”); many of its members also service loans in the William D. Ford Federal Direct Loan Program (“Direct Loan Program”), as well as private education loans.

¹ 47 U.S.C. § 227(b)(2)(H).

² Bipartisan Budget Act of 2015, Pub. L. No. 114-74, § 301(a)(2)(H), 129 Stat. 584 (2015).

Our combined membership has a long history of assisting borrowers with debts owed to or guaranteed by the federal government, in identifying available repayment tools, and in providing solutions tailored to their individual needs. For example, our members assist the federal government in collecting delinquent federally guaranteed loans made under FFELP. Several of our members also have contracts with the U.S. Department of Education (“Department”) to collect delinquent federally held education loans, including loans made under the Direct Loan Program. A number of our members also collect defaulted loans made under the FFELP and the Direct Loan Program. Many of our members, including state agencies and state-designated authorities, also provide higher education access, outreach and financial literacy programs, counseling, and delinquency and default aversion services.

As discussed in more detail below, the federal student loan programs - including loan repayment options - have become increasingly complex, and many borrowers are finding it more difficult to understand and navigate the multitude of options available to them to avoid the negative consequences of delinquency and default. Our members’ data indicates that direct communication with borrowers is critical to addressing and eventually resolving delinquent and defaulted loans. Pre- and post-default calls to collect federal student loan payments fall squarely within the scope of the new law, which offers our members an opportunity to help borrowers avoid delinquency and default (and the severe penalties imposed by federal law), rehabilitate defaulted loans, and access any discharge programs for which they are eligible. Fortunately, Congress’ recent amendment removes one of the main barriers to communicating effectively with today’s student loan borrowers, who increasingly either predominantly use or only use cell phones.

The federal student loan programs have grown exponentially over the past decade and include more than \$1.2 trillion in outstanding loans.³ Approximately \$115 billion of these federal loans are in “default,”⁴ according to the Department.⁵ Further, the Department reports that slightly more than one in five Direct Loan Program borrowers in repayment are more than 30 days past due.⁶ Nearly 13 percent of these borrowers are seriously delinquent and have gone more than 90 days without making a payment.⁷

Federal student loan programs, including loan repayment options, have become increasingly complex. The federal student loan programs are unique among consumer credit programs because they allow students and parents to borrow large sums without showing credit-worthiness or an ability to pay. Equally unique are the many program features designed to address personal

³ See Department of Education, Federal Student Aid Data Center, *Federal Student Aid Portfolio Summary*, <https://studentaid.ed.gov/sa/about/data-center/student/portfolio> (last visited Jan. 20, 2016)

⁴ A student loan becomes “past due” or “delinquent” when a payment is missed. A loan becomes in “default” when it has been delinquent for 271 days. See 34 C.F.R. § 682.411 (outlining due diligence “collection efforts” lenders must engage in while a FFELP loan is delinquent).

⁵ See Department of Education, Federal Student Aid Data Center, *Direct Loan and Federal Family Education Loan Portfolio by Loan Status*, <https://studentaid.ed.gov/sa/about/data-center/student/portfolio> (last visited Jan. 20, 2016).

⁶ See Department of Education, Federal Student Aid Data Center, *Direct Loan Portfolio by Delinquency Status*, <https://studentaid.ed.gov/sa/about/data-center/student/portfolio> (last visited Jan. 20, 2016).

⁷ See *id.*

circumstances and to help distressed borrowers faced with loan collection. For example, payments on federal student loans can be deferred for borrowers who return to school, are unemployed, or are otherwise experiencing a financial hardship.

Once in repayment, borrowers have a large number of options. These include fixed payments based on a 10- to 30-year repayment period, graduated payments that increase over time, and *six different plans that base payments on a borrower's current income*. Under the income-driven repayment (“IDR”) plans, some borrowers will have no monthly payments, and some borrowers can have their remaining balances forgiven. Eligibility requirements differ for each plan, and federal law requires borrowers to update their financial and demographic data on an annual basis to stay enrolled in an IDR plan. Unfortunately, some borrowers fall into delinquency and default without accessing these increasingly complex options. When borrowers fall into delinquency, federal student loan servicers must be able to proactively reach out to them to make them aware of their options and to help them access the repayment plan that best suits their needs.

Multiple deferment and forbearance options are also available to distressed borrowers. Some federal student loans can also be discharged due to special circumstances such as disability, identity theft, and false certification of a loan application. Many of the borrowers who are eligible for deferment or discharge are unaware of the options available to them and successfully access these programs only if they can be reached by their loan servicer and engage in two-way conversations.

Finally, if a borrower defaults on a federal student loan, the federal loan rehabilitation program allows him or her to “rehabilitate” that loan by making nine “reasonable and affordable” monthly payments over a 10-month period.⁸ Successful rehabilitation removes a loan from “default” status and erases the default status from the borrower’s credit report. Individuals who rehabilitate their loans also regain all of their rights under the federal financial assistance programs, including eligibility for new loans and grants if they go back to school. Meanwhile, the payments can be as low as \$5 per month.

The federal government has established severe consequences for student loan delinquency and default. Yet another unique aspect of the federal student loan programs is the set of collection tools provided by Congress that make delinquency and default particularly detrimental to the borrower.⁹ For example, borrowers who default on their federal student loans are subjected to significant additional fees (up to 25 percent on loans held by the federal government), garnishment of wages or Social Security benefits without the need for a court order, the offset of federal tax refunds, and the loss of eligibility for federal financial assistance. Federal student loan defaults also remain on an individual’s credit report for seven years (absent rehabilitation), and bankruptcy relief is extremely difficult to obtain.

Our members’ data indicates that direct communication with borrowers is critical to addressing and eventually resolving delinquent and defaulted loans. Many federal student loan borrowers, especially those whose loans are delinquent or in default, do not fully grasp the multitude of available repayment options and solutions available to them and for which our

⁸ 34 C.F.R. § 682.405(b)(1)(iii).

⁹ See, e.g., 34 C.F.R. § 682.411 (requiring lenders to send borrowers with delinquent FFELP loans “collection letters” that describe some of these tools).

members can provide information and assistance. For many borrowers, the consequences of delinquency and default can be avoided successfully through one or more of the available repayment options established by federal law. However, locating and communicating with borrowers to explain their repayment options can be particularly challenging for student loan servicers. Personal collection outreach is critical for success.

Our members' experience has been that it takes sustained effort over a period of time to successfully contact a delinquent or defaulted borrower to collect on a student loan and explain repayment options. In fact, data from several large student loan servicers show that it takes many collection call attempts to even lead to a live communication with a borrower. Then, once a borrower is reached, it usually takes several real-time conversations to select and finalize the repayment option.

The takeaway is clear: call attempts lead to live contacts, and live contacts lead to successful resolutions. However, far too many borrowers fail to have any meaningful contact with their student loan servicer. Industry experience shows that the majority of student loan defaulters never make their first payment or have a single conversation with their servicer.

Meanwhile, pre- and post-default calls regarding federal student loan payments fall squarely within the scope of the new law, which encompasses calls “to collect” certain debts. The plain meaning of the term “collect” is “to obtain payment on,”¹⁰ which is the purpose of such federal student loan calls. Indeed, the Supreme Court has found on multiple occasions that, in ordinary English, a person “collects” a debt by attempting to obtain payment on it.¹¹ The Fifth Circuit has even observed that “the term ‘collect’ could be extended from demanding payment [of an amount owed] to merely receiving it.”¹²

The Department's federal student loan rules also confirm that calls “to collect” a debt occur both before and after default. For example, the Department's FFELP rules define the term “collection activity” to include “making an attempt to contact the borrower by telephone to urge the borrower to begin or resume payment” and “any telephone discussion or personal contact with the borrower so long as the borrower is apprised of the account's past-due status.”¹³ They also require lenders to undertake a number of “collection efforts” when a loan is delinquent, including sending “collection letters” and attempting to contact borrowers by telephone.¹⁴ Similarly, the Department's Direct Loan Program rules specify that borrowers are responsible for “collection charges before default,” which include “costs incurred . . . in collecting installments not paid when due.”¹⁵

Fortunately, Congress' recent amendment removes one of the barriers to communicating effectively with today's student loan borrowers, who increasingly either predominantly or

¹⁰ See, e.g., Black's Law Dictionary 263 (6th Ed. 1990).

¹¹ See, e.g., *Heintz v. Jenkins*, 115 S.Ct. 1489, 1491 (1995); *Direct Mktg. Ass'n v. Brohl*, 135 S.Ct. 1124, 1130 (2015).

¹² *Pilalas v. Cadle Co.*, 695 F.3d 12, 16 (5th Cir. 2012).

¹³ See 34 C.F.R. § 682.411.

¹⁴ See *id.*

¹⁵ See *id.* §§ 685.202(e), 685.207(a)(1).

only use cell phones. According to a recent study from the Centers of Disease Control and Prevention (“CDC”),¹⁶ nearly one-half of American homes (47.4 percent) had only wireless telephones during the first half of 2015—an increase 3.4 percent over the last year. This number is even higher for those age brackets more likely to have student loans—more than two-thirds of adults aged 25–29 (71.3 percent) and aged 30–34 (67.8 percent) live in households with only wireless telephones. As reflected by Congress’ recent amendment, the use of autodialed or prerecorded calls can allow our members to help tens of thousands more federal student borrowers each month.¹⁷

A number of reports released by the Department and others in 2015 highlight the importance of contacting borrowers on their cell phones to collect on federal student loans. For example, the Department explained in one report that:

If servicers are able to contact a borrower, they have a much better chance at helping that borrower resolve a delinquency or default. Many student loan borrowers, especially those that may just be graduating, move frequently in addition to no longer having landline phone numbers. As such, it can be difficult for servicers to find a borrower except by using a cell phone number.¹⁸

In another report, the Department explained that “[w]here permissible, text message notifications of important deadlines . . . will ‘nudge’ borrowers who fail to check their account statements or miss other communication from contractors.”¹⁹ Similarly, Pew Research Center (“Pew”) found that young adults (*i.e.*, those who are more likely to have student loans) are especially avid users of text messaging.²⁰ Pew also found that young adults are increasingly using their smartphones for “information seeking and transactional” activities such as online banking.²¹

We view the recent legislation as an opportunity to help federal student loan borrowers avoid delinquency and default, rehabilitate defaulted loans, and access any discharge programs for which they are eligible. The evidence is overwhelming that distressed borrowers do not actively seek out assistance. Without being contacted and provided with timely and accurate information regarding their rights and responsibilities, many borrowers will continue to struggle to avoid

¹⁶ Stephen J. Blumberg & Julian V. Luke, *Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, January–June 2015*, National Center for Health Statistics (Dec. 1, 2015), <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201512.pdf>.

¹⁷ See, e.g., Judy Xanthopoulos, *Modifying the TCPA to Improve Services to Student Loan Borrowers and Enhance Performance of Federal Loan Portfolios*, Quantria Strategies, LLC (July 2013), available at <http://apps.fcc.gov/ecfs/document/view?id=7521149517>.

¹⁸ *Strengthening the Student Loan System to Better Protect All Borrowers*, U.S. Department of Education 16 (Oct. 1, 2015), <https://www2.ed.gov/documents/press-releases/strengthening-student-loan-system.pdf>.

¹⁹ *Recommendations on Best Practices in Performance-Based Contracting*, U.S. Department of Education 10, (Aug. 28, 2015), <https://www2.ed.gov/finaid/loans/repay/best-practices-recommendations.pdf>.

²⁰ Aaron Smith, *U.S. Smartphone Use in 2015*, Pew Research Center (Apr. 1, 2015), <http://www.pewinternet.org/2015/04/01/us-smartphone-use-in-2015/>.

²¹ *Id.*

default. This is unnecessary as, given the features of the federal student loan programs, few if any borrowers should suffer the consequences of delinquency or languish in default. In developing regulations, we urge the FCC to adopt rules that permit reasonable and responsible calls to wireless telephones to assist student loan borrowers. We look forward to working with the FCC regarding this proceeding and ensuring a positive resolution for more student loan borrowers through direct communication about options and available solutions.

If you have questions or need additional information, please contact Debra Chromy with EFC at 202-955-5510 (debrac@efc.org), James Bergeron with NCHER at 202-822-2106 (jbergeron@ncher.us), or Winfield Crigler with SLSA at 202-955-6055 (WPCrigler@slsa.net).

Respectfully,



Debra J. Chromy, Ed.D.
President
Education Finance Council (EFC)



James P. Bergeron
President
National Council of Higher Education Resources (NCHER)



Winfield P. Crigler
Executive Director
Student Loan Servicing Alliance (SLSA)

cc:

Chairman Tom Wheeler
Commissioner Mignon Clyburn
Commissioner Jessica Rosenworcel
Commissioner Ajit Pai
Commissioner Michael O'Rielly