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Commission's Secretary
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Subject: Comments of the Consumer Financial Protection Bureau on the FCC's proposed rulemaking implementing Section 301 of the Bipartisan Budget Act of 2015

Introduction

The Consumer Financial Protection Bureau (CFPB or Bureau) appreciates the opportunity to comment on the Federal Communication Commission's (FCC) notice of proposed rulemaking implementing Section 301 of the Bipartisan Budget Act of 2015. Since the CFPB's inception, our two agencies have maintained a valuable partnership that strengthens the work of both agencies.

The Telephone Consumer Protection Act (TCPA) is an important consumer protection statute that covers some of the same companies falling within the CFPB's authority. For example, financial institutions, loan servicers, and debt collectors have long been subject to the TCPA, and they are subject to laws for which the Bureau has responsibility, as discussed further below. The TCPA and its implementing rules generally require a caller to obtain the prior express consent of the called party when: (1) making a non-emergency telemarketing call using an artificial or pre-recorded voice to residential phone lines, and (2) making any non-emergency call using an automatic telephone dialing system or an artificial or prerecorded voice to a wireless telephone number.

Section 301 of the Bipartisan Budget Act of 2015 amended the TCPA to except calls from its prior express consent requirements if the calls are "made solely to collect a debt owed to or guaranteed by the United States." Section 301, however, also provides that the FCC "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." On May 4, 2016, the FCC adopted a Notice of Proposed Rulemaking (NPR) interpreting the scope of the exception to include both debt collection and servicing calls, as well as setting forth proposed limitations on the number and duration of calls falling within the exception.¹ The Bureau is

¹ Federal Communications Commission, In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Notice of Proposed Rulemaking, CG Docket No. 02-278 (May 6, 2016) (FCC NPR).

pleased to provide the comments below to assist the FCC in its development of final rules to implement Section 301.

CFPB Authority Over Debt Collection and Servicing

The Bureau has significant experience with debt collection and servicing through its supervisory, enforcement, regulatory, market monitoring, research, and consumer engagement and engagement activities. The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act or DFA), Public Law 111-203, 124 Stat. 1376 (2010), conferred on the Bureau the authority to supervise “larger participants” in markets for consumer financial products or services as the Bureau defines by rule.² In 2012, the Bureau issued a rule defining larger participants in the consumer debt collection market to mean any nondepository covered person with more than \$10 million in annual receipts from consumer debt collection activities.³ At the time the rule became effective, the definition covered about 175 debt collectors, which accounted for more than 60% of the annual receipts in the debt collection market. Since the effective date of its larger participant rule, the Bureau has supervised larger participants of the consumer debt collection market for compliance with Federal consumer financial law. These examinations provide valuable insights into the operations of debt collectors, including their calling practices.

In addition to the supervision of debt collectors, the Bureau supervises entities in connection with servicing loans. A large portion of debt owed to or guaranteed by the federal government is mortgage and student loan debt. The Dodd-Frank Act conferred on the Bureau the authority to supervise insured depository institutions and insured credit unions with total assets of more than \$10 billion, and their affiliates; this includes supervising these entities’ mortgage servicing and student loan servicing operations.⁴ In addition, the Bureau has the authority to supervise nonbanks, regardless of size, in certain specific markets, including mortgage servicers.⁵ Since the CFPB launched its supervision program, it has focused on the risks to consumers in mortgage servicing at both bank and nonbank entities. One of the key areas in mortgage servicing that presents risks to consumers is the loss mitigation process. In its examinations of mortgage servicers, the Bureau has focused on this area, including determining whether servicers are providing accurate information about alternatives to foreclosure.

The Bureau also supervises larger participants in the student loan servicing market. In 2013, the Bureau issued a rule defining larger participants in that market.⁶ At the time the rule became effective, the definition covered seven student loan servicers, which accounted for more than 70% of the activity in the market. Through its supervisory work, market monitoring, and

² Section 1024(a)(1)(B) of the Dodd-Frank Act, 12 U.S.C. § 5514(a)(1)(B).

³ Consumer Financial Protection Bureau, *Defining Larger Participants of the Consumer Debt Collection Market*, 77 Fed. Reg. 65775 (Oct. 31, 2012).

⁴ Section 1025(b) of the Dodd-Frank Act, 12 U.S.C. § 5515(b).

⁵ Section 1024(b) of the Dodd-Frank Act, 12 U.S.C. § 5514(b).

⁶ Consumer Financial Protection Bureau, *Defining Larger Participants of the Student Loan Servicing Market*, 78 Fed. Reg. 73383 (Dec. 6, 2013).

requests for public input, the Bureau has identified several consumer risks present in the student loan servicing market. These include servicing issues related to error resolution, income-based repayment plans, servicing transfers, payment processing, and cosigner release.⁷ Many of the issues the Bureau has identified relate to student loan servicers' communications with borrowers, particularly as they relate to consumer protections provided for under federal law.

The Bureau also brings enforcement actions against financial institutions, debt collectors, and servicers who violate the law. The Dodd-Frank Act gave the Bureau the authority to enforce a variety of laws, including the Fair Debt Collection Practices Act⁸ (FDCPA) and the Dodd-Frank Act's prohibition on unfair, deceptive, and abusive acts and practices (UDAAPs), against a variety of persons including creditors, debt buyers, and debt collectors. Since the Bureau commenced operations in 2011, it has brought more than 25 debt collection cases alleging violations of the FDCPA or alleging UDAAPs in violation of the DFA, including a number of cases involving the calling behavior of debt collectors. In its debt collection cases, the Bureau has ordered over \$100 million in civil penalties, over \$300 million in restitution to consumers, and billions of dollars in debt relief.

In addition, the Bureau has brought actions against bank and nonbank mortgage servicers (as well as their service providers) for violating the Dodd-Frank Act's prohibition on UDAAPs. The Bureau also has the authority to enforce rules governing mortgage servicing that arise under the Real Estate Settlement Procedures Act (RESPA), the Truth in Lending Act (TILA), and related statutes and has brought such cases. Since commencing operations in 2011, the Bureau has brought eight mortgage servicing cases, relying on both its UDAAP authority and its authority under RESPA and TILA. These cases have resulted in over \$30 million in civil penalties and over \$275 million in restitution to consumers.

The Dodd-Frank Act further conferred on the Bureau the authority to issue rules to implement the FDCPA⁹ as well as empowered the Bureau to issue rules prohibiting UDAAPs and mandating disclosures for covered persons collecting debts.¹⁰ The Bureau issued an Advanced Notice of Proposed Rulemaking in November of 2013.¹¹ Among other things, the Bureau sought comment on a range of issues relating to possible standards for how collectors communicate with consumers via newer technologies, such as mobile phones. The Bureau's debt collection rulemaking is ongoing.

The Dodd-Frank Act also generally consolidated in the Bureau the rulemaking authority for TILA and RESPA. In January 2013, the Bureau issued several final rules concerning

⁷ Consumer Financial Protection Bureau, *Student Loan Servicing: Analysis of Public Input and Recommendations for Reform* (Sep. 2015).

⁸ Section 814(d) of the FDCPA, 15 U.S.C. § 1692l(d).

⁹ Section 814(d) of the FDCPA, 15 U.S.C. § 1692l(d).

¹⁰ Sections 1031 and 1032 of the Dodd-Frank Act, 12 U.S.C. §§ 5531 and 5532.

¹¹ Consumer Financial Protection Bureau, *Debt Collection (Regulation F) Advance Notice of Proposed Rulemaking*, 78 Fed. Reg. 67847 (Nov. 12, 2013).

mortgage markets in the United States, pursuant to the Dodd-Frank Act. Two of these rules were (1) the Mortgage Servicing Rules Under the Real Estate Settlement Procedures Act (Regulation X)¹² and (2) the Mortgage Servicing Rules Under the Truth in Lending Act (Regulation Z).¹³ These two rules are referred to herein collectively as the “2013 Mortgage Servicing Final Rules.”

The Bureau clarified and revised the 2013 Mortgage Servicing Final Rules through notice and comment rulemaking during the summer and fall of 2013 in the (1) Amendments to the 2013 Mortgage Rules under RESPA (Regulation X) and TILA (Regulation Z)¹⁴ and (2) Amendments to the 2013 Mortgage Rules under the Equal Credit Opportunity Act (Regulation B), RESPA (Regulation X), and TILA (Regulation Z).¹⁵ In October 2013, the Bureau issued clarified compliance requirements in relation to successors in interest, early intervention requirements, bankruptcy law, and the FDCPA,¹⁶ through an Interim Final Rule¹⁷ and a contemporaneous compliance bulletin.¹⁸ In addition, in October 2014, the Bureau added an alternative definition of small servicer in the Amendments to the 2013 Mortgage Rules under TILA (Regulation Z).¹⁹ The 2013 Mortgage Servicing Final Rules, as amended in 2013 and 2014, are referred to herein as the “Mortgage Servicing Rules.”

The Bureau published several additional proposed amendments to the Mortgage Servicing Rules in December of 2014.²⁰ Among other things, the Bureau sought comment on a range of issues relating to mortgage servicers’ obligations regarding early intervention live contact with borrowers. The Bureau’s mortgage servicing rulemaking is ongoing, with an expected final rule issuance in mid-summer 2016.

Finally, the Bureau uses a wide range of activities to engage and empower consumers who have debts that are being serviced or are in collection. Among other things, the Bureau receives and handles consumer complaints. The Bureau brings these complaints to the attention of companies for a response and a consumer can review a company’s response to his or her complaint. The Bureau began taking consumer complaints about debt collection in July 2013, and it now receives more complaints about debt collection than any other single industry (around 80,000 per year). The Bureau likewise accepts complaints about the servicing of loans, and it receives tens of thousands of consumer complaints about servicing annually. In addition to

¹² 78 FR 10695 (Feb. 14, 2013).

¹³ 78 FR 10901 (Feb. 14, 2013).

¹⁴ 78 FR 44685 (July 24, 2013).

¹⁵ 78 FR 60381 (Oct. 1, 2013).

¹⁶ 15 U.S.C. 1692 *et seq.*

¹⁷ 78 FR 62993 (Oct. 23, 2013).

¹⁸ Consumer Fin. Prot. Bureau, CFPB Bulletin 2013-12, *Implementation Guidance for Certain Mortgage Servicing Rules* (Oct. 15, 2013), available at http://files.consumerfinance.gov/f/201310_cfpb_mortgage-servicing_bulletin.pdf.

¹⁹ 79 FR 65300, 65304 (Nov. 3, 2014).

²⁰ Consumer Financial Protection Bureau, *Amendments to the 2013 Mortgage Rules under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z)*, 79 Fed. Reg. 74175 (Dec. 15, 2014).

empowering consumers whose complaints it handles, the receipt and analysis of consumer complaints provides the Bureau with valuable insights into the activities of debt collectors and servicers, including how they communicate with consumers.

Drawing on the experience and expertise it has acquired through these and other activities relating to debt collection and servicing, the Bureau offers the views below on the FCC's proposed rules implementing the Bipartisan Budget Act of 2015's amendment of the TCPA.

Discussion

I. Relationship of Exception to Bureau Authority (¶19)

The CFPB has a strong interest in ensuring that the FCC's regulations do not interfere with consumer protections that fall under the Bureau's authority, including but not limited to the Bureau's supervisory, enforcement, regulatory, and other authority to protect consumers when their debts are collected or their loans are serviced. The FCC's NPR appropriately does not suggest in any way that Section 301 of the Bipartisan Budget Act of 2015 was intended to weaken consumer financial protections under the Bureau's authority or to limit the Bureau's exercise of its authority. The Bureau believes that it would provide greater certainty to many stakeholders if the FCC in connection with this rulemaking were to state expressly its understanding that Section 301 affects the TCPA and its implementing regulations but does not affect other laws, including specifically those for which the Bureau has responsibility.

II. Scope of Exception to TCPA

A. Coverage of Collection and Servicing Calls (¶8-9)

As discussed above, Section 301 of the Bipartisan Budget Act of 2015 includes an exception from the prior express consent requirement in the TCPA and the FCC's implementing regulations for calls made "solely to collect a debt owed to or guaranteed by the United States." The FCC's proposed regulations address, inter alia: (1) whether covered calls include both debt collection calls and servicing calls on debts owed to or guaranteed by the United States government, and (2) what content in covered calls indicates that they are being made "solely to collect a debt."

Section 301 of the Bipartisan Budget Act of 2015 defines neither the term "collect" nor the term "collection." The FCC NPR proposes to interpret these terms broadly enough to cover both the servicing and collection of debts.²¹ As the FCC notes in its NPR, "debt servicing calls may provide a valuable service by offering information about options and programs designed to keep at-risk debtors from defaulting or becoming delinquent on their loans. Helping a debtor avoid delinquency or default can preserve the person's payment history and credit rating, and

²¹ FCC NPR at 5 Paragraphs 8, 9, and 10.

help maintain eligibility for future loans.”²² Based on its experience and expertise in servicing, the Bureau agrees that servicing calls can be beneficial to consumers, so long as those calls are otherwise in compliance with applicable consumer protection laws. Again, because of the overlap between the TCPA and the statutes and regulations for which the Bureau is responsible, the Bureau recommends that the FCC explicitly clarify that its definition of “collect” and “collection” under the TCPA are not designed to conform to the meaning of these terms in other statutes and regulations or bear on the interpretation of other statutes or regulations.

B. Content of Covered Calls (§12-14)

As discussed above, Section 301 of the Bipartisan Budget Act of 2015 specifies that covered calls must be made “solely” for the purpose of collecting on a debt owed to or guaranteed by the United States. The FCC NPR asks whether the agency should require that covered calls not “include content concerning other debts or matters about which the caller may want to speak with debtor?”²³ The Bureau believes that the express language of Section 301 indicates that the content of the call should be limited to collecting on the debt at issue and that callers generally should not include any other content in such calls, including content related to debts not owed to or guaranteed by the federal government.

The Bureau, however, also believes that the FCC’s regulations should clarify that calls qualify for the Section 301 exception even though collectors and servicers on these calls provide consumers with certain information that might not be considered collection content in itself but that must be provided to consumers to comply with applicable law or to assist consumers in financial distress. Specifically, the Bureau believes that collectors and servicers should be permitted to convey content that is: (1) required by a law or regulation that governs the servicing or collections; or (2) relates to an effort to engage in loss mitigation or offer the consumer an alternate repayment plan. This would include the following examples:

- A debt collector providing the consumer with the information that Section 807(11) of the FDCPA requires be conveyed in communications regarding a debt in collection.
- A servicer or debt collector providing the consumer with certain information in an effort to put the consumer in a new repayment plan, including:
 - efforts to engage in mortgage loss mitigation, as provided in 12 CFR part 1024 (as more fully described below);
 - efforts to describe alternative repayment plans available to borrowers with federal student loans under Title IV the Higher Education Act (20 U.S.C. 1070a *et seq*); and

²² FCC NPR at 5, paragraph 9.

²³ FCC NPR at 6, paragraph 12.

- efforts to describe options to cure defaulted federal student loans provided for under Title IV of the Higher Education Act (20 U.S.C. 1070a *et seq.*).
- A servicer engaged in specific types of communications with borrowers pursuant to the requirements in the Mortgage Servicing Rules, including live contact by telephone with delinquent borrowers.²⁴ These requirements are intended to encourage conversations between servicers and borrowers with the aim, among others, of helping borrowers understand that they may have loss mitigation options available to avoid foreclosure and providing borrowers with information about actions they should take to submit a complete application to be evaluated for those options.²⁵

The Bureau recommends that the FCC consider such required communications to be collection-related content or otherwise permissible under its rules, because these communications are generally beneficial to consumers, they are related to the servicing or collection of loans, and they facilitate compliance with other legal requirements. The Bureau also notes that, as the prevalence of borrowers with landline telephone numbers decreases, collectors and servicers must be able to deliver these required communications to consumers through other methods, including calls made to wireless telephone numbers.

C. Identity of the Party Called (§13)

²⁴ Specifically, under these rules, servicers must:

- “Establish or make good faith efforts to establish live contact with a delinquent borrower not later than the 36th day of the borrower’s delinquency and . . . inform such borrower about the availability of loss mitigation options if appropriate.” (§ 1024.39(a)). Live contact includes contact by telephone or in person, but not leaving a recorded phone message.
- Maintain policies and procedures that are reasonably designed to achieve the objective of “mak[ing] available to a delinquent borrower, via telephone, personnel assigned to the borrower . . . to respond to the borrower’s inquiries, and, as applicable, assist the borrower with available loss mitigation options until the borrower has made . . . two consecutive mortgage payments in accordance with the terms of a permanent loss mitigation agreement.” (§ 1024.40(a)(2)). “If a borrower contacts the personnel assigned to the borrower . . . and does not immediately receive a live response from such personnel, [a servicer’s policies and procedures must] ensure that the servicer can provide a live response in a timely manner.” (§ 1024.39(a)(3)).
- Upon receipt of an incomplete loss mitigation application from a borrower (whether or not delinquent), “exercise reasonable diligence in obtaining documents and information to complete a loss mitigation application.” (§ 1024.41(b)). This reasonable diligence requirement may, in some circumstances, mean that a servicer will try to engage in telephone conversations with the borrower in an effort to complete the application.

²⁵ Under the rule, servicers generally are prohibited from making the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process unless the borrower’s mortgage loan obligation is more than 120 days delinquent. The longer a borrower remains delinquent, the more difficult it can be to avoid foreclosure. The Bureau encourages early borrower-servicer communication, including live contact under certain circumstances, so that borrowers have a reasonable opportunity to avoid foreclosure.

The FCC has proposed that calls to persons other than “the person or persons obligated to pay the debt” (e.g., third parties) will not be covered.²⁶ The Bureau generally supports this approach, which in effect would mean that collectors making calls to third parties, including calls for the acquisition of location information as described in Section 804 of the FDCPA, would not be covered under the FCC’s rules implementing Section 301. In accomplishing this objective, the Bureau believes it would be useful to interpret the persons to whom covered calls may be placed generally to be consistent with those who are permitted to receive communications in the same manner as the alleged debtor. For example, the Bureau recommends that the FCC consult similar provisions from the FDCPA. These sections define the consumer to mean “any natural person obligated or allegedly obligated to pay any debt,”²⁷ whereas the FCC’s proposal does not appear to include those allegedly obligated on the debt. The provisions of the FDCPA relating to communications also define the consumer to include “the consumer’s spouse, parent (if the consumer is a minor), guardian, executor, or administrator,”²⁸ since these parties are generally permitted to receive communications on behalf of the debtor, whereas the FCC’s proposal does not appear to include such parties. Other statutes and regulations, such as the Mortgage Servicing Rules, similarly permit or, in some instances, require servicers and collectors to contact third parties instead of the debtor. The Bureau recommends that the FCC permit covered calls to be made to the same individuals who are otherwise permitted to receive communications on behalf of the debtor.

D. Artificial or Prerecorded Voice (¶18)

Section 301 exempts government debt collectors from the restrictions on use of artificial or prerecorded voice (APV). Paragraph 18 asks whether the FCC should encourage the use of live agents, especially in discussing potential servicing options. The CFPB believes that APV may be effectively used for some functions of servicing and collection, such as payment reminders. However, the Bureau is not convinced that APV is sufficient for other discussions that servicers or collectors often have with consumers, such as describing statutory rights, explaining various repayment plans, or discussing potential settlements or loss mitigation. The CFPB therefore recommends that a covered party’s use of APV be conditioned upon the caller providing consumers with a clear and prominent option early in the call of placing a return call to a toll-free telephone number staffed by a live customer service representative. For example, a prerecorded payment reminder might say, “Hi [consumer name], remember that your payment is due next week on May 1st. If you would like to speak to a live customer service representative, call 888-123-4567.”

III. Proposed Limits on Exceptions

²⁶ FCC NPR at 6, paragraph 13.

²⁷ 15 U.S.C. § 1692a(3).

²⁸ 15 U.S.C. § 1692c(d). Section 805(b) also permits debt collectors to communicate in in connection with the collection of a debt with a consumer’s attorney, consumer reporting agency if otherwise permitted by law, the attorney of the creditor, or the attorney of the debt collector.

As discussed above, Section 301 of the Bipartisan Budget Act of 2015 amended the TCPA to except calls made for the purpose of collecting debts owed to or guaranteed by the United States from the TCPA's requirement that callers obtain prior express consent before placing autodialed, artificial-voice, or prerecorded-voice calls to wireless and residential telephones. The amendments, however, also permit the FCC to "restrict or limit the number and duration of" such autodialed calls made to cellular telephones.

A. Limits on Number of Calls (§18)

The FCC seeks comment on a proposal to limit creditors, servicers, and debt collectors to three covered calls per month per delinquent account.²⁹ For the reasons discussed below, the Bureau supports the FCC's proposal to set a limit on the number of such calls that can be made to consumers as a result of the Bipartisan Budget Act of 2015.

The Bureau believes that providing as much specificity as possible in setting a particular limit on the number of such calls would assist in protecting consumers from the harassment that can result from excessive calls. The Bureau, Federal Trade Commission, and individual consumers have brought numerous actions against debt collectors based on such violations.³⁰ Despite these efforts, consumer complaints about excessive collection calls are one of the most prevalent types of complaint that the Bureau receives. The Bureau received more than 8,000 complaints about excessive calling in 2015 alone.³¹ The complaints reveal that consumer harms from excessive debt collection calls can come in many forms and can include the interruption or inconvenience of such calls, emotional distress, and monetary harms, such as charges to mobile

²⁹ The FCC's NPR proposes to apply the limit to "any initiated calls, even if unanswered by a person, because many consumers may choose not to answer calls from unfamiliar numbers." FCC NPR at 7. The Bureau supports this aspect of the FCC's proposed rule because it will deter servicers and collectors from placing and abandoning calls, and from placing calls that result in dead air, two potential consumer harms from the use of auto dialers.

³⁰ See, e.g., *ACE Cash Express, Inc.*, 2014-CFPB-0008 (2014) (ACE's in-house and third-party debt collectors made an excessive number of calls to consumers' home, work, and cellular telephone numbers); *DriveTime Auto. Group, Inc.*, 2014-CFPB-0017 (2014) (DriveTime made harassing debt collection calls, including by repeatedly calling consumers at work after being asked to stop and making excessive calls to wrong numbers); *U.S. v. Expert Global Solutions, Inc.*, 2013 U.S. Dist. LEXIS 160759 (N.D. Tex. 2013) (defendants called consumers "multiple times per day or frequently over an extended period of time," including calling some consumers three or more times per day); Press Release, U.S. Fed. Trade Comm'n, *Leading Debt Collector Agrees to Pay Record \$2.8 Million to Settle FTC Charges* (Mar. 16 2011), available at <http://www.ftc.gov/news-events/press-releases/2011/03/leading-debt-collector-agrees-pay-record-28-million-settle-ftc> (settling allegations relating to calling consumers multiple times each day, using rude and abusive language on those calls, and ignoring consumers' written demands to cease communication, among other things); *Hoover v. Monarch Recovery Mgmt., Inc.*, 888 F. Supp. 2d 589, 598 (E.D. Pa. 2012) (denying defendant's judgment on the pleadings where the collector contacted the consumer on average, more than ten times per week, for approximately eleven weeks).

³¹ Communication tactics ranked second in debt collection complaints submitted to the Bureau during both 2014 and 2015, and the majority of communications-related complaints during this period (53 and 52 percent, respectively) were about frequent or repeated telephone calls. See the CFPB's Fair Debt Collection Practices Act Annual Report 2016 (Mar. 22, 2016), at 18-19, http://files.consumerfinance.gov/f/201603_cfpb-fair-debt-collection-practices-act.pdf; CFPB's Fair Debt Collection Practices Act Annual Report 2015 (Mar. 26, 2015), at 13, http://files.consumerfinance.gov/f/201503_cfpb-fair-debt-collection-practices-act.pdf.

phone plans.³² The Bureau’s examinations of debt collectors have also revealed excessive calling and consequent consumer harm.³³ The Bureau therefore believes that a regulatory intervention limiting the number of such calls placed to cell phones by auto-dialers would be a beneficial complement to examination and enforcement to protect consumers from excessive calls from collectors (as well as from creditors and servicers). Indeed, as part of its ongoing debt collection rulemaking proceeding, the Bureau also is considering limits on the frequency of collector communications with consumers.³⁴ A careful assessment of the advantages and disadvantages of limits on such calls is needed to determine the optimal limit.

B. Cessation of Covered Calls (¶20-21)

The FCC’s proposed rules provide consumers with the ability to stop covered calls. Consistent with past FCC determinations, the FCC explains that “an ability to stop unwanted calls is critical to the TCPA’s goal of consumer protection,” and “[t]hat right may be more important here, where consumers need not consent to the calls in advance in order for a caller to make the call.”³⁵ The Bureau agrees with the FCC that the ability to cease excepted calls from servicers and debt collectors empowers consumers to protect themselves from unwanted and harassing calls.

The FCC NPR sets forth a framework of rights that consumers can invoke to halt covered calls.³⁶ The FCC proposes that consumers would have the right to stop covered calls at any time during the servicing or collection process. It also proposes that collectors and servicers would be required to inform consumers of their right to request that covered calls cease.

The Bureau supports the FCC’s goal of preventing consumer harassment and believes that a consumer’s ability to stop unwanted calls is an important tool in achieving that goal. The CFPB suggests that the FCC clarify the scope of this right under the TCPA. For example, if a consumer asks the caller during a covered call to stop calling, would that require the caller only to stop making covered calls to the consumer or to stop making any calls to the consumer, including calls placed using manual dialers or placed to landline telephone numbers?

³² A sample of consumer complaints submitted to the Bureau’s consumer complaint database show, for example, a collector calling “every five minutes” on a consumer’s home phone and cell phone, even after being told to stop; collectors calling “constantly” and “repeatedly” throughout the day or *e.g.*, 10 times in one day; and a collector calling “every day, every week, every month” and each time leaving a recording of the same information.

³³ See Consumer Financial Protection Bureau, *Spring 2014 Supervisory Highlights* (Apr. 30, 2014), at 7, http://files.consumerfinance.gov/f/201405_cfpb_supervisory-highlights-spring-2014.pdf (finding that a supervised entity had violated the FDCPA’s restrictions on telephone calling by repeatedly contacting more than one thousand consumers, some as often as 20 times in two days).

³⁴ The restrictions the Bureau is considering would apply to many of the same types of calls as the FCC proposal yet may be different in many respects. For example, the FCC proposal would apply to debts owed to or guaranteed by the United States, while the Bureau also is considering limits on communications for debts generally. The FCC proposal would apply to certain types of calls, specifically autodialed calls to consumer cell phones, while the Bureau also is considering limits on communication generally.

³⁵ FCC NPR at 8, paragraph 20.

³⁶ FCC NPR at 8, paragraphs 20 and 21.

The Bureau emphasizes that consumers have a right under the FDCPA to demand that collectors cease communication with them, including through the use of covered calls. This is an important protection for consumers and one that the Bureau has been active in reviewing in its supervisory actions. For example, in 2015 alone, in one or more examinations, examiners determined that debt collectors failed to honor some consumers' written requests to cease communication.³⁷ Although the coverage of the FDCPA's cease communication requirements differs from the FCC's rules, the Bureau believes that these requirements provide consumers with important rights to protect themselves from harassing calls that would complement any rights in the FCC rules to stop covered calls.

The Bureau supports the FCC's proposed requirement that servicers and collectors disclose to consumers that they have the right to stop covered calls. Requiring that servicers and collectors provide a clear and prominent disclosure to consumers that they have the right to stop covered calls would empower consumers to protect themselves in dealing with harassing servicers and collectors.

C. Limits on Call Duration (¶18)

The FCC has not proposed any specific limits on the duration of covered calls, although it has asked for comment on the maximum duration of covered calls that it should permit in its rules. The FCC also has requested views on whether the limits on covered call duration should be different for prerecorded or artificial voice calls than for autodialed calls with a live caller. It further has asked for comments on whether there should be limits on the length of text messages in its rules.³⁸

The Bureau notes that there are no per se duration limits on debt collection communications under the FDCPA or on servicing communications under the Mortgage Servicing Rules, and the Bureau does not advocate in favor or against any particular limits. Regarding telephone calls, the Bureau believes that any time limit must be long enough to: (1) protect consumers from the harms from call abandonment and dead air, (2) permit any required communications under the laws and regulations within the Bureau's authority, and (3) permit communications necessary to facilitate consumer understanding of loss mitigation options or of alternative repayment arrangements provided for under federal law, including protections provided for federal student loan borrowers under Title IV of the Higher Education Act.³⁹ For example, if the FCC considers any such limits, the Bureau would recommend that the time that it

³⁷ FDCPA Report, March 1, 2016, at 25.

³⁸ FCC NPR at 8, paragraph 18.

³⁹ For example, the Bureau recommends that the FCC consider that the Mortgage Servicing Rules require loss mitigation-related calls between servicers and borrowers. In those calls, servicers are required to explore loss mitigation options with the borrower and explain how the borrower may apply for those options. As a result, such calls can take additional time, above and beyond the time usually needed for a collection or servicing call that does not address loss mitigation options. Unduly short time limits may deprive consumers of the benefits of such loss mitigation calls. Similar considerations may affect student loan servicers' attempts to assist consumers eligible for enrollment in income-driven or other alternative repayment plans.

takes callers to provide any mandated disclosures under the FDCPA not be counted against the limit. This would include, for example, the requirement for a debt collector to disclose that the communication is an attempt to collect a debt or that the communication is from a debt collector.⁴⁰ The Bureau similarly recommends that any limit on the length of text messages should allow for a collector to provide any mandated disclosures under laws within the Bureau's authority.

Conclusion

The Bureau appreciates this opportunity to share its experience and expertise in response to the FCC's NPR to implement Section 301 of the Bipartisan Budget Act of 2015. The Bureau hopes that these views are useful to the FCC in developing final rules that will protect consumers in response to servicer and debt collector covered calls to collect on debt owed to or guaranteed by the United States government.

⁴⁰ Section 807(11) of the FDCPA, 15 U.S.C. § 1692(e)(11).