MORTGAGE BANKERS ASSOCIATION

May 4, 2017

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

Re: Possible Revision or Elimination of Rules; CB Docket No. BO 16–251; DA 16–792

The Mortgage Bankers Association (MBA)[1] welcomes the opportunity to comment on the Federal Communication Commission (FCC or the Commission) rules to be reviewed pursuant to section 610 of the Regulatory Flexibility Act (RFA). In particularly, MBA appreciates the opportunity to offer our thoughts and comments on the Commission's Telephone Consumer Protection Act (TCPA) rulemakings.[2]

This mandated review of the Commission's TCPA regulations is well-timed, as increasing numbers of Americans rely on their cellphones as the primary and preferred channel for communication. Despite the growing reliance on cellphone and concomitant decrease in the cost of their everyday usage, FCC regulations have not kept pace with changing technology. Rather, some recent FCC rules have made TCPA compliance more uncertain, with increasing litigation burden and uncertainty.

The result is that businesses must balance the fear of litigation with their desire to provide beneficial information that their customer may want. This situation is due to the fact that the Commission's expansive and ambiguous definition of autodialer captures most modern communications systems that a business would utilize. Once pulled into the ambit of the statute, a business that has previously received consent is still under threat of TCPA litigation due to the open-ended revocation of consent requirements—in contrast to other consumer protection statutes.

One particularly relevant example is that mortgage servicers looking to prevent foreclosures and execute their regulatory responsibilities oftentimes have to choose between doing so or risking liability under the Commission's interpretation of the TCPA. The Federal Housing Finance Agency (FHFA) recognized the dilemma and called for mortgage servicing exemption to the TCPA. MBA filed a petition and Application for Review to that effect. This Application for Review should be granted while the Commission is conducting the broader review of its TCPA regulations.

[1] The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets; to expand homeownership and extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of more than 2,200 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's Web site: www.mba.org.

[2] See Possible Revision or Elimination of Rules, Vol. 82 Fed Reg. No. 22, 9293.

MBA appreciates the opportunity to offer the following comments on the TCPA pursuant to the RFA:

I. Mobile phone usage has increased and with it TCPA regulatory risk for small businesses.

RFA review is intended to promote the periodic review of regulation to consider, among other factors, "the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule."[3] It is reasonable to interpret "technology" to encompass both advancements in capabilities as well as changes in adoption paradigms that might make older, well-intentioned regulations ill-suited to the current state of affairs.

The TCPA, passed in 1991, regulates communications to cellular phones in addition to faxes and certain telemarketing calls to landlines. As such, it governs behavior to one of the most rapidly changing and widely adopted technological innovations of the past 26 years. The Commission has frequently grappled with this challenge, passing a variety of regulations and orders in an attempt to balance their statutory mandate with the rapid technological changes and increasing ubiquity of mobile devices.

A quick review of the developments in mobile phones suggest the pace of change since the passage of the TCPA. Indeed, almost contemporaneously with the passage of the TCPA was the introduction of the first digital hand-size mobile phone by Motorola and the first mass-produced GSM phone by Nokia. The first text (SMS) message was also sent that year.[4]

The growth of cellphone adoption in the United States has been staggering. In 2010, nearly twenty years after the TCPA's passage, 62% of Americans owned a cellphone. By 2016 that number has risen to 95%.[5] Since the TCPA's passage, mobile phones have evolved from an expensive luxury item to a necessity and the *primary* means of communications for many in this country.

This is demonstrated by the growing numbers of people that rely solely on their cellular phone for telephone communication. This population has expanded from a tiny minority to a near majority of the population. Today 55.3% of children and 46.7% of adults live in households that only have wireless service—and that trend has been steadily increasing.[6]

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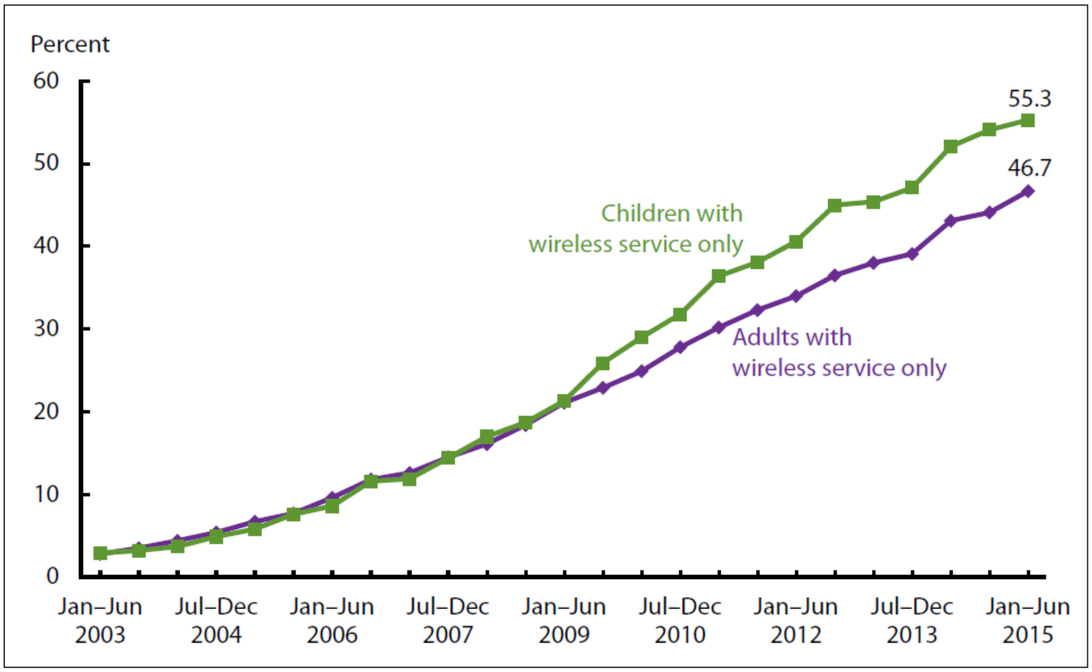
[3] 5 USC 610(b)(5)

[4] Gayomali, Chris. The text message turns 20: A brief history of SMS. *The Week*, December 3, 2012. Available at http://theweek.com/articles/469869/text-message-turns-20-brief-history-sms

[5] Pew Charitable Trust. Demographics of Mobile Device Ownership and Adoption in the United States, January 12, 2017. See http://www.pewinternet.org/fact-sheet/mobile/

[6] Centers for Disease Control and Prevention, National Center for Health Statistics. Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, January–June 2015, December 2015. Available at https://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201512.pdf.

Figure. Percentages of adults and children living in households with only wireless telephone service: United States, 2003–2015

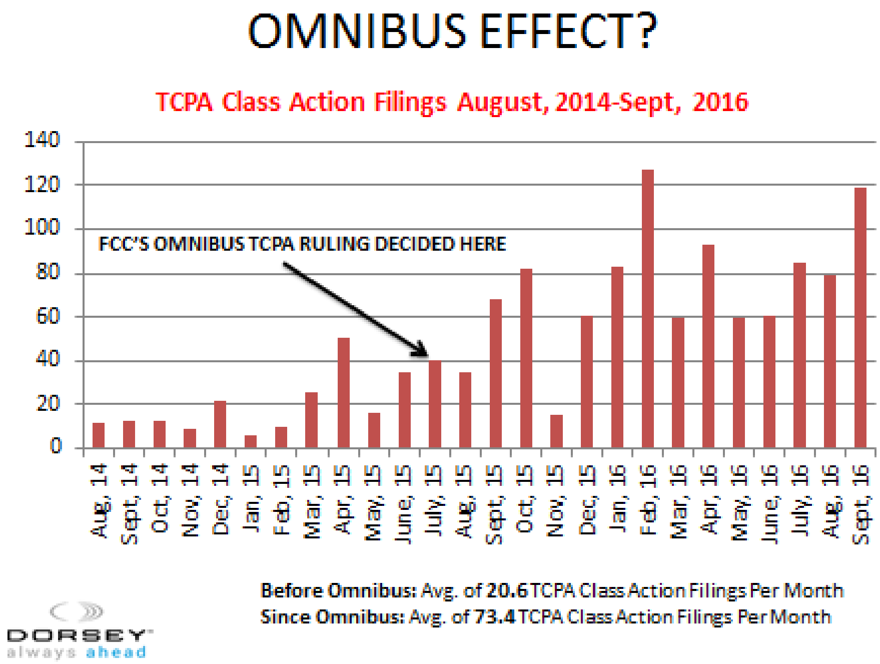


NOTE: Adults are aged 18 and over; children are under age 18.
DATA SOURCE: CDC/NCHS, National Health Interview Survey.

The growth of wireless dependence is likely to continue, as 71.3% of adults aged 25-29 and 67.8% of adults aged 30-34 are in households with wireless telephones only. This population will likely continue to rely on their mobile phone as their primary method of communication with the businesses which they interact with. Unfortunately, the TCPA regulations have not kept pace with the technological transition for cellular phones from an infrequent and expensive luxury mode of communication into a relatively low cost and ubiquitous channel.

The Commission has been called upon to interpret or modify its TCPA regulatory regime throughout the past decade. These regulatory actions, while well-intentioned, have demonstrably not been able to keep up with the advances in outbound calling technology or the expectations of most consumers to be contacted by cellphone. In particular, the Commission's 2015 Omnibus Order has muddied the waters, exposing businesses to greater litigation risk and uncertainty. Analysis by the law firm Dorsey & Whitney demonstrates that TCPA suits have increased dramatically, from 354 in 2010 to over 4,949 in 2016.[7] Even more dramatic is the expansion of class action lawsuits following the passage of the 2015 Omnibus Order.

[7] Troutman, Eric. HAPPY HALLOWEEN!: Nothing Better than Scary TCPA Statistics to Freak You Out This Halloween, October 31, 2016. Available at https://consumerfinancialserviceslaw.us/happy-halloween-nothing-better-than-scary-tcpa-statistics-to-freak-you-out-this-halloween.



The rise in TCPA litigation—often by "professional" plaintiffs who specialize in exploiting the statute[8]—has made the TCPA a brake on innovation and introduced unquantifiable risk for businesses that must contact their consumers. Small businesses are even more threatened by an alleged TCPA violation due to both the widespread adoption of low-cost outbound calling technology and the TCPA's high strict liability statutory penalties for violations. Indeed, as smaller businesses seek more efficient calling technology with enhanced compliance features it can bring them under the ambit of the autodialer definition, causing a dilemma of whether to modernize or take steps to reduce their risk of TCPA liability. Nor do they typically have the cash reserves to weather an adverse judgment or even proceed with the expensive litigation required by such a claim.

FCC Commissioners have recognized that the use of the TPCA has strayed from its intent of preventing unwanted and abusive telemarketing practices:

> "… [t]he TCPA's private right of action and $500 statutory penalty could incentivize plaintiffs to go after the illegal telemarketers, the over-the-phone scam

[8] The United States Chamber of Commerce has discussed this issue extensively before the Commission. *See,* U.S. Chamber Comments on Communication Innovators' Petition for a Declaratory Ruling (filed Nov. 15, 2012 in CG Docket No. 02-278); U.S. Chamber Comments on PACE's Petition for Expedited Declaratory Ruling and/or Expedited Rulemaking (filed Dec. 19, 2013 in CG Docket No. 02-278); U.S. Chamber Comments on United Healthcare's Petition for Expedited Declaratory Ruling (filed Mar. 10, 2014 in CG Docket No. 02-278); U.S. Chamber Comments on ACA International's Petition for Rulemaking (filed Mar. 27, 2014 in CG Docket No. 02-278); U.S. Chamber and Institute of Legal Reform Comments on American Association for Justice's Petition for Waiver of Section 64.1200(a)(4)(iv) of the Commission's Rules (filed Feb. 18, 2015 in CG Docket No. 02-278, CG Docket No. 05-338).

artists, and the foreign fraudsters. But trial lawyers have found legitimate, domestic businesses a much more profitable target."[9]

The RFA process is an excellent vehicle for the Commission to undertake a comprehensive review of its TCPA regulatory regime and the changes that could be made to relieve the regulatory burden it places on small businesses.

II. The TCPA is preventing beneficial calls to consumers and regulatory changes should be made.

As an initial note, MBA understands that the 2015 Omnibus Order is currently under court review.[10] These comments refer to the rules as currently promulgated without any review or modification due to a decision by the D.C. Circuit or potential revision by the Commission.

a. *The autodialer restrictions do not reflect the current technological environment and create risks for businesses.*

It is important to note that the calls that the TCPA covers—and may be preventing—are not limited to the commonly understood "robocalls" or direct and possibly unwanted consumer solicitations. Indeed, the current expansive interpretation of autodialer outlined in the 2015 Omnibus Order applies to the capacity of the system used to place the call, not the caller. As such, it can and often does capture live person-to-person communications. These are not "robocalls" as commonly understood.[11] Rather, as courts have demonstrated, the encompassing autodialer definition instead may implicate any informational call made by a business with modern communications systems.[12]

Given the widespread adoption of cellular phones, it is extremely likely that some of these calls are important to homeowners. Hesitancy to place calls due to possible TCPA risk is also likely to prevent calls to vulnerable populations that are more likely to only have a cellular phone. Over half of adults living in poverty or near-poverty are in households with only a wireless telephone.[13]

Indeed, this Omnibus Order applies to the "potential capacity" of the telephone equipment, not the present configuration or actual use of the equipment, arguably subjecting calls made by manually entering telephone numbers to these requirements and stiff statutory penalties. The only limitation the FCC provided is that "there must be more than a theoretical potential that the equipment could be modified." The concrete example that the FCC provides of a system that would not be captured by its definition is a rotary telephone. Requiring business to call their customers using a rotary telephone to avoid litigation and crippling statutory penalties stifles important communications

[9] See In re Matter of Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991, 30 F.C.C.Rcd. 7961, 8072-73(2015) (Commissioner Pai Dissent)

[10] MBA has filed an amicus brief in this case. See *Brief of Amici Curiae American Financial Services Association, Consumer Mortgage Coalition, and Mortgage Bankers Association in Support of Petitioners* in ACA International, et al. v Federal Communications Commission, et. al,; (filed December 2, 2015).

[11] **"**Robocalls are phone calls with prerecorded messages." See https:// www.verizon.com /support /consumer/consumer-education/robocalls, Accessed March 21, 2017.

[12] *See, e.g., Manuel v. NRA Group, LLC*, 2016 WL 4158797 (Aug. 5, 2016); *Estrella v. LTD Fin. Servs., LP*, No. 8:14-cv-2624-T-27AEP, 2015 WL 6742062 (M.D. Fla. Nov. 2, 2015); *Gaza v. LTD Fin. Servs., LP*, No. 8:14-cv-1012-T-30JSS, 2015 WL 5009741 (M.D. Fla. Aug. 24, 2015); *Bates v. Dollar Loan Center, LLC*, 2014 WL 60472 (D. Nev. Jan. 7, 2014); *Nelson v. Santander Consumer USA, Inc.*, 2013 WL 1141009, at *3 (W.D. Wis. March 8, 2013); *Ploch v. FirstSource Advantage, LLC*, 2012 WL 5384876, at *4 (E.D. Mo. Nov. 1, 2012); *Dobbin v. Wells Fargo Auto Finance, Inc.*, 2011 WL 2446566 (N.D. Ill. Jun. 14, 2012); *Mudgett v. Navy Federal Credit Union*, 2012 WL 870758 (E.D. Wis. Mar. 13, 2012).

[13] Centers for Disease Control and Prevention, National Center for Health Statistics. Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, January–June 2015, December 2015. Available at https://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201512.pdf.

and ultimately hurts consumers. FCC should review its definition of autodialer to better balance the need for modern communications through consumers' preferred channels and the truly unwanted, unsolicited communications TCPA was intended to prevent.

b. *The inability to utilize a defined channel for revocation increases litigation risk for businesses without adding meaningful consumer benefits.*

Even if a mortgage servicer has prior express consent from their customer to contact them on their cellular phone, a servicer is still at risk for violations of the TCPA. As a starting point, the regulations have previously noted that persons who knowingly release their phone numbers have in effect given their invitation or permission to be called at the number which they have given, absent instructions to the contrary. Based on this guidance, creditors and servicers have been providing clear disclosure to credit applicants and borrowers that provision of a telephone number to the creditor or servicer authorizes the creditor or servicer to contact the borrower at any number the borrower provides.[14]

However, under the Order, mortgage servicers are exposed to potential TCPA claims even after the creditor or servicer has obtained "prior express consent," either based on subsequent reassignment of the telephone number or an allegation that consent was revoked prior to the call(s) at issue. The Order provides a caller only one call post-reassignment to a new subscriber before imposing strict liability for calls made to that number, without regard to the caller's knowledge of the reassignment and notwithstanding the consent provided by the prior subscriber. This applies even if the call goes unanswered or the circumstances of the call otherwise could not have provided the caller with actual or constructive knowledge of the reassignment.

As a practical matter, this approach to regulation leaves callers without a meaningful opportunity to comply as many calls to customers go to voicemail and many of these voicemail messages are no more than a synthesized voice repeating the phone number and a generic message. This message provides no notice that the number called does not belong to the consenting customer. Despite this fact, a good faith erroneous call to a reassigned number can only be made once. Finally, the Order is clear that the recipient of the call is under no obligation to disclose the reassignment and, in fact has a strong incentive not to be forthcoming as after that one call, penalties may accrue, starting at $500 per call with no cap on statutory damages. Such damages could be clearly ruinous for a small business that is only seeking to make a good-faith contact with someone that they believe to be their rightful customer who consented to these communications.

The Order also provides that "a called party may revoke consent at any time and through any reasonable means" and prohibits a caller from limiting the manner in which revocation can occur.[15] It also defines "called party" as the current subscriber (or non-subscriber customary user of the phone), rather than the intended recipient of the call.[16]

While well-intentioned on its face, this approach to regulation unnecessarily exposes good faith callers to liability and provides strong incentives to consumers to allege revocation without any factual basis for that claim. This risk is not hypothetical. There have been multiple lawsuits alleging verbal revocation of consent based solely on the plaintiff's testimony uncorroborated by the callers' business records, policies and procedures, call recording and other efforts to detect and document purported attempts to revoke prior express consent. Though some of these lawsuits have

[14] There is a different and higher standard of consent for explicit telemarketing messages.
[15] See FCC July 2015 Omnibus Order, ¶47
[16] Id at ¶72.

been dismissed, they are prohibitively expensive to defend (with some of members spending on average $50,000 to defend a single action). Further, the lack of any formality or required language and the prohibition against identifying a channel or method for revocation (whether by mail, a specific telephone number, website or otherwise) exacerbates the difficulty to develop meaningful methods for compliance. The only stated justification for requiring these extreme efforts to detect possible revocation and to track all consumer contact with an institution is to protect privacy. While this goal is laudable, the result far exceeds the authority Congress granted to the Commission.

The Commission should use this opportunity provided by the RFA to revisit some past decisions considering other regulatory or technology changes and re-examine the impacts that they may have on businesses that seek to communicate with their customers using modern communication equipment. A defined channel for TCPA consent revocation would allow consumers the ability to revoke consent and the certainty that they are in touch with the appropriate party to do so at the business. For businesses, it would remove uncertainty that every phone call could expose them to liability in the future.

Such a defined channel for revocation is entirely consistent with other consumer protection laws. For instance, the mortgage servicing rules promulgated by the CFPB "allow mortgage servicers to establish an address that a borrower must use to submit a written notice of error, request for information or qualified written request."[17] Additionally, other laws such as the Servicemembers Civil Relief Act, Gramm-Leach-Bliley Act, Electronic Fund Transfer Act, Truth in Lending Act, Fair Credit Reporting Act and the Fair Debt Collection Practices Act and their implementing regulations require consumers to exercise rights only in writing and/or through methods designated by the creditor.[18] As these strong consumer protection statutes and regulations demonstrate, providing businesses with a meaningful opportunity to comply with the consumer's request strikes the appropriate balance and protects the interests of consumers.

III. An exemption for mortgage servicing communications should be created.

As the Commission is aware, MBA has previously detailed the challenges that current interpretations of the TCPA introduce for mortgage servicers and how they can act as impediments to the rules promulgated by federal regulators that attempt to leverage lessons learned from the financial crisis about how to best ameliorate delinquencies. As the Commission undergoes a review of its TCPA regulations we urge the Commission to grant this petition to provide relief for mortgage servicers and the customers that they serve.

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[17] *Id.*

[18] 50 USC Appx. § 527(b) (requiring servicemembers to provide to the creditor ***written notice*** and a copy of the military orders in invoke certain protections of the Act); 12 C.F.R. § 1016.7(a)(1); 15 U.S.C. § 1693e(a); 12 C.F.R. §1005.10(c); 12 C.F.R. §§ 1026.15(a)(2); 1026.23(a)(2); 12 C.F.R. § 1026.13(b); 12 C.F.R. §1026.56(c); 12 C.F.R. § 1026.48(c)(1); 12 C.F.R. § 1026.48(d); 15 U.S.C. § 1692c(c) ("If a consumer notifies a debt collector in writing that the consumer refuses to pay a debt or that the consumer wishes the debt collector to cease further communication with the consumer, the debt collector shall not communicate further with the consumer with respect to such debt, except— (1) to advise the consumer that the debt collector's further efforts are being terminated; (2) to notify the consumer that the debt collector or creditor may invoke specified remedies which are ordinarily invoked by such debt collector or creditor; or (3) where applicable, to notify the consumer that the debt collector or creditor intends to invoke a specified remedy. If such notice from the consumer is made by mail, notification shall be complete upon receipt."); 15 U.S.C. § 1681s-2(a)(8)(D) ("A consumer who seeks to dispute the accuracy of information shall provide a dispute notice directly to such person at the address specified by the person for such notices that (i) identifies the specific information that is being disputed; (ii) explains the basis for the dispute; and (iii) includes all supporting documentation required by the furnisher to substantiate the basis of the dispute.").

Indeed, the need for such relief was plainly articulated by the Federal Housing Finance Agency in comments to the Commission: "**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**."[19] For these reasons, FHFA urged the Commission to provide an exemption for mortgage servicing, stating:

> **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.[20]

MBA filed just such a petition before the Commission. As laid out in more detail in MBA's Petition and Application for Review, a primary motivation was that Federal and state mortgage servicing rules require servicers to conduct outreach with delinquent customers in an effort to avoid foreclosure. These rules were promulgated to encourage early and persistent contact attempts to help consumers stay in their homes given that the length of delinquency is one of the most significant factors in the success of a loan modification.[21]

The Consumer Financial Protection (CFPB) Bureau also recognizes the benefit of early intervention. The CFPB mortgage servicing rule requires that a mortgage servicer attempt to make "live" contact with the borrower within 36 days of a delinquency. The CFPB and consumer advocates agree that telephone contact is the most effective means of reaching borrowers to discuss loss mitigation options. Servicers must also perform due diligence efforts to obtain missing documentation when an incomplete loss mitigation application is received. Such efforts may be by phone. The confluence of these requirements and the 2015 Omnibus Order creates a potential double bind for servicers that suggests additional risk for vigorously attempting to contact at-risk borrowers to keep them in their homes.

These outbound contact obligations are not limited to the CFPB. Indeed, they are required by mortgage servicers by multiple government agencies, loan guarantors or state governments. To perform these duties, mortgages servicers must bear an undue potential liability TCPA exposure given the volume of contacts required by loss mitigation rules and good faith efforts to work with distressed borrowers or other authorized parties:

[19] Comment Letter of the Federal Housing Finance Agency to the Proposed Regulation Implementing the Bipartisan Budget Act of 2015, at p. 2 (June 6, 2016) (emphasis added).
[20] Comment Letter of the Federal Housing Finance Agency to the Proposed Regulation Implementing the Bipartisan Budget Act of 2015, at p. 3 (June 6, 2016) (emphasis added).
[21] Only the amount of payment reduction provided by the modification was more significant the length of the pre-modification delinquency. Scott, Walter. "Treatment Effects of Subprime Mortgage Modifications Under the Home Affordable Modification Program." Page 28, March 2015

Federal Agency / State Government	Required Contact
CFPB Mortgage Servicing Rules	Telephone or in-person contact by the 36th day of delinquency[22]
Federal Housing Administration ("FHA")	Telephone contact within 20th day of delinquency; at least 2 times per week until contact established or determine property is vacant or abandoned[23]
Fannie Mae and Freddie Mac	Outbound contact attempts, including text and telephone, by the 36th day of delinquency; every 5 days until contact made, delinquency resolved or certain other events occur[24]
Treasury – Home Affordable Modification Program (HAMP)	Minimum of 4 telephone calls to the last known phone numbers of record, at different times of the day, within 30 day period[25]
VA Mortgage Servicing Rules	Telephone contact no later than the 20th day of delinquency[26]
United States Department of Agriculture and Rural Development ("USDA")	Attempt telephone or written contact before the account becomes 20 days past due; USDA recommends making personal contact with a delinquent borrower until the delinquency is cured[27]
California, Nevada, and Washington State Pre-Foreclosure Rules	Telephone and / or in-person "initial contact" or due diligence required before issuing or recording a Notice of Default.[28]

[22] 12 C.F.R. § 1024.39(a).
[23] Federal Housing Administration ("FHA") Single Family Housing Policy Handbook, 4000.1(III)(A)(2)(h). FHA's programs are designed to extend credit to lower/middle class Americans and first time home buyers, and in many cases, those who would find it difficult to find an alternative means of purchasing a home.
[24] Fannie Mae Servicing Guide, D2-2-02 (12/16/2015); Freddie Mac Servicing Guide, 9101.2 (3/2/2016).
[25] HAMP Handbook, 2.2.1 (01/06/16).
[26] 38 C.F.R. § 36.4278(g).
[27] USDA Single Family Housing Guaranteed Loan Program Technical Handbook at § 18.3.
[28] Cal. Civ. Code § 2923.5(a)(1)(A), (a)(2); Nev. Rev. Stat. § 107.510(1)(b), (2); Wash. Rev. Code § 61.24.031(1)(a)(i-ii), (1)(b). Washington State requires "initial contact" by both telephone and letter. Further, although the Nevada statutes do not explicitly use the phrase "due diligence," the outbound telephone call requirements are the same.

Federal Agency / State Government	Required Contact
	Due diligence requires telephone contact at the primary telephone number on file at least three times at different hours and on different days.[29]

As noted above, the expansive definition of autodialer, lack of a defined channel for consent, and exposure to statutory penalties for reassigned numbers should be addressed by the Commission. MBA understands that aligning these provisions with the intent of the TCPA may not be immediate and may require invoking the rule writing process.

While that review is happening, the Commission should act to benefit both consumers and mortgage servicers by granting the MBA's Application for Review. There is no reason to delay providing this relief. MBA's Petition and Application for Review seek an exemption urged by FHFA based on a multitude of rules and requirements to place outbound calls. These mortgage servicing rules and requirements are intended to benefit consumers, yet the TCPA discourages a primary and most efficient means of providing that benefit. As our collective experience during the financial crisis shows, proactive and real time conversations are the best way to try to head off serious issues before a delinquency becomes too grave. While the TCPA is generally thought of as a pro-consumer regulation, for Americans homeowners that are struggling financially the Commission's regulatory interpretations may make the loss of a home or difficulties in resolving a delinquency *more likely.*

IV. Conclusion

MBA appreciates the opportunity to offer comments under the RFA regarding the TCPA, especially considering the changing technology and regulatory environment. For the reasons outlined above, MBA urges the Commission to, in the short term, grant MBA's Application for Review while it conducts a necessary review of its TCPA regulations. Please direct any questions regarding these comments to Justin Wiseman, Director of Loan Administration Policy at (202) 557-2854 or JWiseman@mba.org.

Sincerely,

Stephen A. O'Connor
Senior Vice President
Public Policy & Industry Relations
Mortgage Bankers Association

[29] Cal. Civ. Code § 2923.5(e)(2)(A); Nev. Rev. Stat. § 107.510(5)(b); Wash. Rev. Code § 61.24.031(5)(b)(i). Washington State requires telephone calls to both the primary and secondary telephone numbers on file. Other states require telephone or in-person contact prior to foreclosure. *See, e.g.*, Conn. Gen. Stat. § 8-265ee(a); D.C. Mun. Regs. tit. 26-C § 2710.18; Idaho Code § 45-1506C(4)(a); R.I. Gen. Laws § 34-27-3.2(f).