September 2, 2016

Commission's Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Mortgage Bankers Association Petition for Exemption from the Prior Express Consent Requirement for Autodialed and Prerecorded Calls to Wireless Numbers (CG Docket No. 02-278)

To whom it may concern:

The American Financial Services Association ("AFSA")[1] supports the Mortgage Bankers Association's ("MBA") petition for an exemption from the prior express consent requirement under the Telephone Consumer Protection Act ("TCPA") for autodialed and prerecorded "mortgage servicing" calls made to wireless numbers that are not charged to the called party and do not contain an advertisement or constitute telemarking (the "Petition").

AFSA agrees with MBA that residential mortgage servicing calls are critical to ensuring that borrowers understand what options are available to avoid foreclosure. Federal agencies, including the Consumer Financial Protection Bureau ("CFPB") and the Department of Housing and Urban Development ("HUD"), have recognized the need for live contact with borrowers. To "promote prompt and effective contact with [Federal Housing Administration ("FHA")] borrowers," and ensure borrowers are able to communicate with their servicers regarding … loss mitigation assistance," HUD has adopted policies that require servicers of FHA loans to commence telephone contact with borrowers within 20 days of delinquency.[2] HUD has also adopted a policy that requires servicers of FHA loans to continue making telephone calls to delinquent borrowers two times a week, at varying days and times, until contact is established or the servicer determines that the property is vacant or abandoned. The CFPB has a mortgage servicing rule that *requires* servicers to contact defaulted borrowers and work with them to explore loss mitigation options. Under the rule, servicers *must* "establish or make good faith efforts to establish live contact with a delinquent borrower…"[3] The CFPB specifies that this may include calling the consumer more than once.

In another example, Fannie Mae and Freddie Mac require servicers of their loans to call delinquent borrowers as part of the servicers' loss mitigation efforts. Under Freddie Mac guidelines, servicers must make, "personal contact with the Borrower as early and as often as necessary to cure the delinquency."[4] The guidelines also require the servicers to continue to contact the borrower if satisfactory arrangements have not been made to cure the delinquency or until the servicer determines that foreclosure is appropriate. Fannie Mae has similar requirements.[5]

[1] Founded in 1916, AFSA is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with many kinds of credit, including traditional installment loans, mortgages, direct and indirect vehicle financing, payment cards, and retail sales finance.
[2] *Methods of Communications with Borrowers*, Mortgagee Letter 2013-39. HUD October 28, 2013.
[3] *Mortgage Servicing Rules Under the Real Estate Settlement Procedures Act (Regulation X)*, 78 Fed. Reg. 10696-01 (Feb. 14, 2013).
[4] Freddie Mac, *Single-Family Seller/Servicer Guide*, vol. 2, ch. 63.2(b). Sept. 15, 2014.
[5] Fannie Mae, *Servicing Guide*, ch. D2-2, at 406-410.

The Freddie Mac guidelines specify that telephonic contact must be the servicer's primary method of contact. Moreover, telephonic contact is mandated at certain times. After a specific event, calls are required every three days and must continue for 36 days until it is clear that the borrower does not want loss mitigation, the delinquency is cured, the borrower returns a response package, or the borrower enters into a repayment plan.[6] Freddie Mac requires servicers to make calls every third day, upon certain triggers.[7] The Petition cites additional requirements for mortgage servicers to call their borrowers by the Veterans Administration, the Treasury Department, the Department of Agriculture, and various states.

The problem is that, as currently interpreted, the TCPA unduly restricts mortgage servicers' ability to reach their borrowers. As the MBA notes, mortgage servicers face large statutory penalties for each call attempt made to comply with other federal regulations and to help borrowers stay in their homes. Because the TCPA is a strict liability statute, one error, such as a call to a number for which the caller had consent but which was reassigned, can result in a violation. The cost for each violation is steep – $500 - $1,500 per call.

According to a recent report from WebRecon, which only covered the credit industry, filings under the TCPA increased by 45 percent in 2015 and reached an all-time high of 3,710.[8] And the settlements are expensive for the companies trying to reach their customers. "Since 2012, the TCPA has been used to extract large settlements from many companies, including Capital One for $75 million; JPMorgan Chase for $34 million; AT&T for $45 million; MetLife for $23 million; Bank of America for $32 million; Papa John's Pizza for $16 million; Walgreen's Pharmacy for $11 million, and the list goes on. For smaller, minority- or community-based businesses, a TCPA claim could mark the end of their existence,"[9] even if they have committed no wrong.

AFSA emphasizes that the Petition only exempts calls that are not charged to the called party. Like the MBA, AFSA understands that the consumers' privacy is paramount. That is why AFSA supports the right of the consumer to request to stop receiving autodialed or prerecorded and artificial voice calls. Should a consumer exercise that right, the servicer must honor that request by manually dialing that consumer in the future. However, it is important to understand that depriving servicers of modern telephone systems makes it difficult to comply with the TCPA and other applicable laws, even when acting in good faith.

By granting this exemption, the Federal Communications Commission will help millions of borrowers. As the Petition states, by the end of 2015, the total amount of residential mortgage debt outstanding approached $10 trillion. It is important to individual borrowers and families, as well as the economy as a whole, that mortgage servicers have all the tools they need to help keep their borrowers in their homes.

Please contact me by phone, 202-466-8616, or e-mail, bhimpler@afsamail.org, with any questions.

Sincerely,

Bill Himpler
Executive Vice President
American Financial Services Association

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[6] *Single-Family Seller/Servicer Guide*, Vol. 2, Ch. 63.2.
[7] *Ibid.*
[8] Hoffman, Adonis. *Does TCPA Stand for 'Total Cash for Plaintiffs' Attorneys'?* The Hill. Feb. 17, 2016. http://thehill.com/blogs/pundits-blog/technology/269656-does-tcpa-stand-for-total-cash-for-plaintiffs-attorneys
[9] *Ibid.*