



December 4, 2017

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

Re: Notice of *Ex Parte* Presentation, CG Docket No. 02-278

Dear Ms. Dortch:

Please accept the attached comments on the Petition for Declaratory Ruling by the Federal Housing Finance Agency, October 3, 2017.¹ I submit these comments by the National Consumer Law Center on behalf of its low-income clients and the Consumer Federation of America, Consumers Union, National Association of Consumer Advocates, and National Community Stabilization Trust. We are filing these comments as an *ex parte* because we missed, by one business day, the filing deadline established in the Public Notice requesting comments.²

If there are any questions, please contact Margot Saunders at the National Consumer Law Center (NCLC), msaunders@nclc.org (202 452 6252, extension 104).

Thank you very much.

Sincerely,

Margot Saunders

¹ Available at <https://www.fcc.gov/ecfs/filing/1115017146557>.

² Public Notice, Federal Communications Commission, Consumer and Governmental Affairs Bureau Seeking Comment on Federal Housing Finance Agency Petition for Clarification Under the Telephone Consumer Protection Act, DA 17-1121, November 17, 2017, available at, <https://www.fcc.gov/ecfs/filing/1115017146557>.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

<i>In the Matter of</i>)	
)	
Rules and Regulations Implementing the)	CG Docket No. 02-278
Telephone Consumer Protection Act of 1991)	DA 17-1121
)	
Petition for Declaratory Ruling by Federal Housing)	
Finance Agency)	

Comments

**by the National Consumer Law Center
on behalf of its low-income clients**

and

**Consumer Federation of America
Consumers Union
National Association of Consumer Advocates
National Community Stabilization Trust**

Regarding the Petition for Clarification by the Federal Housing Finance Agency

December 4, 2017

I. Introduction.

Pursuant to the Public Notice³ issued by the Consumer and Governmental Affairs Bureau, the **National Consumer Law Center** (NCLC) files these comments on behalf of its low-income clients and **Consumer Federation of America, Consumers Union, National Association of Consumer Advocates, and National Community Stabilization Trust.**⁴ As advocates for consumers and homeowners, we offer specific suggestions for the application of the Telephone

³ Public Notice, Federal Communications Commission, Consumer and Governmental Affairs Bureau Seeking Comment on Federal Housing Finance Agency Petition for Clarification Under the Telephone Consumer Protection Act, DA 17-1121, November 17, 2017, *available at*, <https://www.fcc.gov/ecfs/filing/1115017146557>.

⁴ Descriptions of NCLC and the other national groups signing on to these comments are included at the end of these comments.

Consumer Protection Act⁵ (TCPA) to the emergency communications sought to be made by the servicers governed by the Federal Housing Finance Agency (FHFA) after the recent hurricanes.⁶

We very much appreciate the efforts that the FHFA and its regulated entities (Fannie Mae and Freddie Mac) have undertaken to help homeowners deal with the disasters following the recent hurricanes in Texas, Florida and Puerto Rico. In these comments, we urge the Federal Communications Commission (Commission) to do two things: 1) To clarify—again—the types of calls that mortgage servicers can make to homeowners that are unquestionably within the scope of consent; and 2) To prudently delineate types of calls under the emergency exception in the Telephone Consumer Protection Act (TCPA) that servicers can make after a declared disaster that a) unquestionably impact the health and safety of homeowners, b) are clearly limited in time to immediately after the disaster, c) are only made to homeowners who live within the disaster zones as defined by the federal government, and d) relate specifically and only to emergency issues directly resulting from the disaster situation.

As NCLC has described in a recent publication relating to disaster relief for homeowners in affected areas, servicers governed by the FHFA have made substantial adjustments to the normal practices for servicing and processing mortgage loans securing homes affected by the hurricane

⁵ The TCPA is codified at 47 U.S.C. § 227. The Commission’s implementing rules are codified at 47 CFR § 64.1200. The TCPA prohibits any call, other than a call made for emergency purposes, to a telephone number assigned to a “paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call” using any automatic telephone dialing system or an artificial or prerecorded voice without the prior express consent of the called party. 47 U.S.C. § 227(b)(1)(A)(iii). *See also* 47 CFR § 64.1200(a)(1)-(2). There is also an exception for calls made solely to collect a debt owed to or guaranteed by the United States.

⁶ Petition for Declaratory Ruling by the Federal Housing Finance Agency, October 3, 2017, *available at* <https://www.fcc.gov/ecfs/filing/1115017146557>.

disasters in Texas, Florida and Puerto Rico in 2017.⁷ Included in these concessions are special rules relating to:

- The suspension of credit reports for mortgage payments due for some time after the disaster;
- The suspension and postponement of foreclosure sales and foreclosure evictions;
- Waiver of late charges for borrowers in forbearance or repayment plans;
- Special forbearance programs for borrowers;
- Adjustments to the servicers' obligations for processing property insurance proceeds to facilitate quick and essential repairs to borrowers' homes.⁸

As we describe, calls providing information about these special procedures for disaster victims all fall within the scope of consent for automated calls when the homeowner has provided a telephone number to the mortgage originator or subsequently to the servicer. And, if made within a tight timeframe to specifically affected homeowners, these calls should also qualify as emergency calls that can be made without consent, subject to protections.

II. Calls from Servicers Relating to Disaster Information Are Clearly Within Scope of Consent

The Commission has specifically dealt with the question of what types of calls are within the scope of consent when a subscriber has provided a phone number to the caller. The Commission stated in the Blackboard Declaratory Ruling:⁹

[T]he Commission has stated that “persons who knowingly release their telephone numbers have in effect given their invitation or permission to be called at the number which they have given, absent instructions to the contrary.” (Citations omitted.) In the ACA Declaratory Ruling, the Commission clarified that a party

⁷ National Consumer Law Center, Obtaining Mortgage Relief for Victims of Disasters, October 2017, available at <http://www.nclc.org/images/pdf/pr-reports/report-mortgage-relief-for-victims-of-disasters.pdf>.

⁸ *Id.*

⁹ In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Blackboard, Inc. Petition for Expedited Declaratory Ruling, Edison Electric Institute and American Gas Association Petition for Expedited Declaratory Ruling, released August 4, 2016, (hereinafter Blackboard Ruling), available at <https://ecfsapi.fcc.gov/file/0804720522141/FCC-16-88A1.pdf>. We have expressed concerns that this position treats implied consent as the express consent that the statute requires, but we recognize that this ruling of the Commission is in effect.

who provides his or her wireless number to a creditor as part of a credit application “reasonably evidences prior express consent by the cell phone subscriber to be contacted at the number regarding the debt.”¹⁰

In its request for relief, the FHFA asks for clarification regarding eight types of calls.¹¹ With the exception of the first category (contact information for FEMA and other resources relevant to emergency assistance), all of the other categories appear to us to clearly fit within the Commission’s previously delineated scope of consent. And, we think the calls under the first category would fit within the definition of emergency calls allowed by mortgage servicers to provide impacted homeowners this information immediately after a disaster (*see* section III, below). However, not all of FHFA’s categories of calls should be considered emergency calls.

III. Limited Calls from Servicers Providing Specific Information For Dealing with Insurance Proceeds, Forbearance and Foreclosure Issues Are Emergency Calls

The Commission’s regulations under the TCPA define “emergency purposes” as “calls made necessary in any situation affecting the health and safety of consumers.”¹² Issues relating to mortgage payments, forbearance of those payments, and even threatened or pending foreclosures and evictions—while important—do not generally affect the health of safety of homeowners and their families.

NCLC and the other organizations submitting these comments have been leading the efforts to ensure that information about homeowners’ options regarding alternatives to foreclosure is

¹⁰ *Id.* at ¶ 4.

¹¹ In summary, these types of calls are 1) contact information for emergency services; 2) contact information for events providing information about mortgage assistance; 3) availability of mortgage forbearance plans; 4) the benefits and obligations of a forbearance plan; 5) dealing with the end of forbearance plans; 6) recommendations to contact insurance companies and adjustors, 7) dealing with insurance companies and the disbursement of insurance proceeds; and 8) contact information for the mortgage servicer.

¹² 47 C.F.R. § 64.1200(f)(4).

provided in timely and effective manners to homeowners.¹³ Despite our strong support for these communications and the importance that foreclosure avoidance information is provided to homeowners, we do not believe that automated communications on these subjects generally fit within the definition of emergency under the TCPA.¹⁴

However, when homeowners have been hit with disasters, such as the recent hurricanes in Texas, Florida and Puerto Rico, which potentially have impacted the physical structure of their homes (the mortgaged property), the safety of their homes and the immediate surroundings, the ability of homeowners to get to work, and to repair and reconstruct their homes, some information from mortgage servicers does appear to us to fall within the emergency definition.

Because calls that fall within the emergency exception can be made without consent, and thus could be subject to abuse, and because revocation of consent is not possible as a means to stop the calls, our support for some of the calls in question to be considered emergency calls relies on specific protections that must accompany such a delineation. Most importantly, the calls considered under the emergency rubric should only be those from mortgage servicers provided in the 21 days immediately following a disaster, and only about the specific issues below which—in our view—do

¹³ See, e.g., Comments to the Consumer Financial Protection Bureau regarding 12 CFR Parts 1024 & 1026 [Docket No. CFPB-2014-0033] Amendments to the 2013 Mortgage Rules under the Real Estate Settlement Procedures Act and the Truth in Lending Act by the National Consumer Law Center on behalf of its low-income clients and Americans for Financial Reform, Center for Responsible Lending, National Association of Consumer Advocates, National Association of Consumer Bankruptcy Attorneys, and National Fair Housing Alliance) at 43 (Mar. 16, 2015), available at <http://www.nclc.org/images/pdf/rulemaking/comments-servicing-cfpb-march16-15.pdf>.

¹⁴ See Comments Opposing the Petition for Exemption by the Mortgage Bankers Association, by the National Consumer Law Center, on behalf of its low-income clients, and Americans for Financial Reform, Center for Responsible Lending, Consumer Action, Consumer Federation of America, Consumers Union, Financial Protection Law Center, Legal Services of New Jersey, Indiana Legal Services, Inc., Jacksonville Area Legal Aid, Inc., National Association of Consumer Advocates, National Association of Consumer Bankruptcy Attorneys, and U.S. PIRG, August 26, 2016, hereinafter Comments on Mortgage Bankers Petition *available at* [https://ecfsapi.fcc.gov/file/10826118922507/Comments%20to%20FCC%20Opposing%20MBA%20Petition%20on%20Robocalling%20\(8-26-2016\)-FINAL.pdf](https://ecfsapi.fcc.gov/file/10826118922507/Comments%20to%20FCC%20Opposing%20MBA%20Petition%20on%20Robocalling%20(8-26-2016)-FINAL.pdf).

impact the health and safety of homeowners and their families such that they should be considered calls relating to emergencies. The calls should be limited in number, so as not to be annoying to homeowners, to interfere with their communications with family members and emergency services, or to drain their cell phone batteries (a particularly serious concern in disaster areas where the electric supply may be interrupted). And, these calls should only be made to homeowners who live in specific areas designated by FEMA as disaster areas.

The following areas of information are the only subjects that should be included in the emergency calls from mortgage servicers immediately after a disaster:

1. Information about how to access property insurance, how to deal with the servicers and the insurance companies regarding disbursement of the proceeds, and how to deal with repair contractors;
2. Information about the availability of forbearance programs, treatment of late payments, reports to credit bureaus about late payments and forbearance programs; and
3. Information relating to delays in foreclosure sales and foreclosure evictions.

In the days and weeks immediately following a natural disaster, when homeowners are facing choices about how to shelter and protect their families, how to repair and/or maintain their homes, and whether to spend limited dollars on repairs, mortgage payments or alternative shelters, this critical information from mortgage servicers does rise to the level of emergency communications. However, these communications must be limited to the days immediately following the disaster. Additionally, these emergency calls cannot include debt collection efforts, or sales of other services or products.

We are advocating that these calls be permitted because they provide critical information following a national emergency, which we recognize will necessitate a huge number of calls to be made by a servicer to affected homeowners. This situation is in contrast to the normal order of business for servicers whose job is to collect payments from homeowners, deal with defaults, and provide alternatives to foreclosure. In those non-emergency calls, servicers are required to deliver information specific to the homeowners, and to solicit information from the homeowners to assist

them in avoiding foreclosure, making automated calls less effective, in any event.

The emergency definition that we are supporting in these comments is carefully limited, closely tied to the existence of a federally declared disaster, as well as to the physical danger to homeowners and their families that is often entailed in a disaster. We reiterate our strong opposition to any rule that would permit mortgage servicers to make robocalls without consent—except on these specific topics, during the 21 days immediately following a federally-declared disaster.¹⁵

We would be happy to answer any questions.

Respectfully submitted, this 4th day of December, 2017.

Margot Saunders

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on behalf of NCLC's low income clients, and—

The **Consumer Federation of America** is an association of nearly 300 nonprofit consumer groups that was established in 1968 to advance the consumer interest through research, advocacy and education.

Consumers Union is the public policy and advocacy division of Consumer Reports. Consumers Union works for telecommunications reform, health reform, food and product safety, financial reform, and other consumer issues. Consumer Reports is the world's largest independent product-testing organization. Using its more than 50 labs, auto test center, and survey research center, the nonprofit rates thousands of products and services annually. Founded in 1936, Consumer Reports has over 8 million subscribers to its magazine, website, and other publications.

The **National Association of Consumer Advocates** (NACA) is a nonprofit association of more than 1,500 consumer advocates and attorney members who represent hundreds of thousands of consumers victimized by fraudulent, abusive and predatory business practices. As an organization fully committed to promoting justice for consumers, NACA's members and their clients are actively

¹⁵ We specifically reiterate herein our opposition to the request made by the Mortgage Bankers Association for permission to make these calls without consent. *See* NCLC Comments on Mortgage Bankers Petition.

engaged in promoting a fair and open marketplace that forcefully protects the rights of consumers, particularly those of modest means.

The **National Community Stabilization Trust** is a non-profit organization that works to restore vacant and abandoned properties to productive use and protect neighborhoods from blight.

The **National Consumer Law Center** is a nonprofit corporation founded in 1969 to assist legal services, consumer law attorneys, consumer advocates and public policy makers in using the powerful and complex tools of consumer law for just and fair treatment for all in the economic marketplace.