



June 4, 2019

**VIA ELECTRONIC DELIVERY TO REGULATIONS.GOV**

Comment Intake  
Consumer Financial Protection Bureau  
1700 G Street NW  
Washington, DC 20552

***Re: Notice of Ex Parte Presentation Debt Collection Practices (Regulation F)  
[Docket No. CFPB-2019-0022]***

On June 3, 2019, the following individuals: Leah Dempsey with ACA International; Jonathan Thessin with the American Bankers Association (“ABA”); Mahlet Makonnen and Ann Kossachev with the National Association of Federally-Insured Credit Unions; Celia Winslow with the American Financial Services Association; Elizabeth Kersey with PRA Group; Robert Flock with the Credit Union National Association; Stephen Congdon with the Consumer Bankers Association; Jeff Patchen with the Electronics Transaction Association; Mark W. Brennan of Hogan Lovells US LLP, on behalf of the American Association of Healthcare Administrative Management; and Sheraz Syed with the Mortgage Bankers Association (“the Associations”) met with Bureau of Consumer Financial Protection (“CFPB”) staff members Tom Pahl, Policy Associate Director; John McNamara, Assistant Director of Consumer Lending; Kristin McPartland, Senior Counsel, Office of Regulations; John Tonetti, Debt Collections Program Manager; Gandhi Eswaramoorthy, Program Manager for Debt Collections within the Consumer Lending division; Jennifer Stockett, Deputy Assistant Director, Financial Institutions, External Affairs; Emma Sapat, Financial Analyst; and David Hixson, Senior Counsel.

During the meeting, the Associations expressed support for the Federal Communications Commission’s (“Commission” or “FCC”) goal to reduce illegal automated calls. However, we expressed concern that the draft call-blocking Declaratory Ruling<sup>1</sup> currently scheduled for the vote on June 6, 2019 could harm consumers by resulting in the erroneous blocking of lawful, and often urgent, calls affecting consumer health, safety, and financial well-being. Specifically, the Associations provided examples of data breach notifications, fraud alerts, and other informational calls relating to a consumer’s account that may potentially be blocked under the draft Declaratory Ruling. It was also discussed that financial services companies may for

<sup>1</sup> *Advanced Methods to Target and Eliminate Unlawful Robocalls*, Draft Declaratory Ruling and Third Further Notice of Proposed Rulemaking, CG Docket No. 17-59, WC Docket No. 17-97, FCC-CIRC1906-01 (May 16, 2019).

purposes that are in the best interest of consumers, initiate a large volume of calls in a short period of time. However, this is one analytical factor used by voice service providers and third-party services that could lead to a call being labeled as “Potential Spam”, “Suspected Spam”, “Spam Number”, or “Nuisance Label”, and blocked.

In the meeting, ABA provided examples of three banks that had tested the status with voice service providers of the bank’s phone numbers used to place calls. As described more fully in the attached letter from ABA to the FCC, nearly all of the phone numbers used by the banks to place collections-related calls had been assigned a derogatory label by a voice service provider or mobile “app” deployed by the major wireless carriers.<sup>2</sup> In addition, a majority of ACA members that responded to a recent survey indicated that they were experiencing call-blocking (78%) or having their calls mislabeled (74%); 62% of respondents reported that they were seeing a decrease in right-party contacts.

The Associations noted that, in addition to financial services calls, other types of alerts could also be blocked under the call-blocking authority provided by the Declaratory Ruling, including alerts from a child’s school (e.g., regarding unplanned closures or emergencies); updates about electric utility outages; public safety notifications; healthcare and dosing reminders; service disruption notifications; and urgent vehicle safety recall notifications just to name a few.<sup>3</sup>

Additionally, the Associations provided examples of CFPB and other regulatory policies that require servicers to place calls at certain frequencies. These regulations reflect the well-established public policy goal of initiating conversations with financially distressed borrowers early in the delinquency, in order to prevent foreclosure. However, these communications could be impaired by use of the call-blocking authority provided in the Declaratory Ruling.

- The CFPB’s early intervention requirements in the Mortgage Servicing Rule, which requires institutions to establish live contact or make a good faith effort to establish live contact with customers within 36 days after a mortgage loan becomes delinquent.
- Fannie Mae’s “Quality Right Party Contact” requirement, which establishes a code of conduct for lenders’ interactions with customers with delinquent debt. This code includes a requirement that lenders communicate regularly with those customers and open an ongoing dialogue to attempt to resolve the delinquency. Fannie Mae also requires the institution to send the consumer a foreclosure prevention package and then place follow-up calls to the consumer at least once every three days until resolution of the delinquency.
- The Home Affordable Modification Program, which requires institutions to “proactively solicit” customers for inclusion in the program by making a minimum of four telephone calls to the customer at different times of day.

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<sup>2</sup> *Ex Parte* Letter from Jonathan Thessin, Am. Bankers Ass’n, to Marlene H. Dortch, FCC, CG Docket Nos. 02-278, 17-59, 18-152; WC Docket No. 17-97, at 2 (filed May 31, 2019), <https://www.aba.com/Advocacy/LetterstoCongress/Documents/fcc-ex-parte-053119.pdf>.

<sup>3</sup> In a demonstration of the level of concern across industries with the draft Declaratory Ruling, ten financial, healthcare, and retail trade associations recently wrote to FCC Chairman Ajit Pai to urge the FCC to turn its draft Declaratory Ruling into a Notice of Proposed Rulemaking, on which the FCC would then seek comment. *See Ex Parte* Letter from Am. Bankers Ass’n et al., to Ajit Pai, Chairman, FCC, CG Docket No 17-59; WC Docket No. 17-97 (filed May 30, 2019), <https://www.aba.com/Advocacy/LetterstoCongress/Documents/Ltr-FCC-Draft-Declaratory-Ruling-20190530.pdf>.

- The CFPB’s Notice of Proposed Rulemaking (“CFPB NPRM”) related to debt collection recognizes that borrowers benefit from live communications that allow callers to offer the borrower a loan modification or other alternative that limits negative credit reports. That proposal would clarify that use of text messages to contact a borrower is permissible under the Fair Debt Collection Practices Act. The CFPB NPRM would require a debt collector to include, in emails, text messages, and other electronic communications, an option for the consumer to unsubscribe from future such communications. In the meeting, ACA International also pointed out that creditors may be discouraged from using the communication channels permitted under the NPRM, specifically text messaging (which consumers have shown a preference for) without clarity from the FCC concerning the types of calling equipment encompassed by the definition of an “automatic telephone dialing system” or “autodialer”.

The Associations highlighted that the blocking of lawful calls would harm consumers and be contrary to the public interest. It would also be inconsistent with Congress’ longstanding intent for the Commission to block only illegal calls and not lawful calls from legitimate businesses. When Congress passed the Telephone Consumer Protection Act in 1991, Congress stated that it did not intend for the law to “be a barrier to the normal, expected or desired communications between businesses and their customers.”<sup>4</sup> In May, the Senate passed the TRACED Act.<sup>5</sup> Notably, in the Senate Report accompanying its passage, the Commerce Committee directs the Commission not to “support blocking or mislabeling calls from legitimate businesses” and instructs that the “FCC should require voice service providers to unblock improperly blocked calls in as timely and efficient a manner as reasonable.”<sup>6</sup>

The Associations advised that we have urged the Commission to seek comment on the proposals in the draft Declaratory Ruling by recasting the Declaratory Ruling as a Notice of Proposed Rulemaking. The Commission should also clarify that blocking would apply only to the blocking of illegal—not the overly subjective category of “unwanted”—calls. In addition, the Commission should propose that there be sufficient notice of blocking to the caller and to the call recipient, such as through use of an intercept message when a call is blocked, and propose to provide a mechanism for prompt release of any erroneously blocked numbers.

We urged the CFPB to work with the Commission to ensure that there are “efficient, effective and appropriately tailored”<sup>7</sup> regulations for the benefit of consumers, and to ensure that the FCC facilitates the ability of financial services providers to place valued and important informational calls to customers using modern communications technology.

Sincerely,

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<sup>4</sup> H.R. Rep. No. 102-317, at 17 (1991).

<sup>5</sup> Telephone Robocall Abuse Criminal Enforcement and Deterrence Act, S. 151, 116th Cong. (2019).

<sup>6</sup> S. Rep. No. 116-41, at 15 (2019).

<sup>7</sup> Executive Order 13772.

Leah Dempsey

Leah Dempsey  
Vice President and Senior Counsel, Federal Advocacy  
ACA International  
Phone: 202-810-8901  
[Dempsey@acainternational.org](mailto:Dempsey@acainternational.org)