



June 12, 2017

Michael Carowitz
Chief of the Enforcement Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Request that the FCC initiate enforcement action against Navient Solutions, LLC for massive and continuous violations of the Telephone Consumer Protection Act against student loan debtors

Dear Chief Carowitz:

With this letter, the National Consumer Law Center on behalf of its low-income clients, the Center for Responsible Lending, Consumer Federation of America, Public Citizen, Public Knowledge, and Higher Ed, Not Debt,¹ collectively representing millions of student loan borrowers and other consumers, formally make this request for an enforcement action by the Federal Communications Commission (FCC). We request the FCC to initiate an enforcement action against Navient Solutions, LLC (Navient) for its violations of the Telephone Consumer Protection Act (TCPA) by robocalling student loan debtors and others, repeatedly and abusively, even after multiple requests to stop. We ask that the FCC investigate the charges that we detail below, and then bring an enforcement action against Navient to force it to stop making robocalls to consumers from whom it does not have consent to call, or consumers whose consent has been revoked.

As described in detail below, Navient has deliberately engaged in a campaign of harassing and abusing consumers through the use of repeated, unconsented-to robocalls, calling consumers' cell phones hundreds, and—in some cases—thousands of times *after* being asked to stop. Many of these calls occur multiple times a day, often numerous times a week. These calls are frequently made to consumers while they are at work, even after they have explicitly explained to Navient that they cannot accept personal

¹ Descriptions of these national organizations are included at the end of this letter.

calls at work. Indeed, Navient’s internal policies permit up to eight calls per day in the servicing of student loan debt.²

Many calls are being made to the borrower’s relatives, neighbors, and even complete strangers—all of whom never provided consent. One case alone documents that Navient made *millions* of calls to consumers who had already told Navient that it was calling the wrong number.

It appears that many—perhaps all—of Navient’s violations are the result of a deliberate decision to flout the TCPA. In many of these cases, Navient has argued that, because of the amendments to the TCPA made in the 2015 Budget Act,³ it can call consumers on their cell phones whenever it wants, and that requests to stop can be ignored.⁴ Yet both Congress and the FCC have made clear that the 2015 changes will be effective only after the FCC’s implementing regulations became effective, and those regulations have not yet gone into effect.

To support our request for FCC enforcement of the TCPA against Navient, this letter includes the following sections:

- **Section I** outlines the breadth of these problems by describing the sheer numbers of complaints and lawsuits triggered by Navient’s illegal calling.
- **Section II** provides illustrations of the abusive and deliberate nature of Navient’s behavior through excerpts from complaints to the Consumer Financial Protection Bureau (CFPB) that exemplify the very purposeful nature of these calling patterns.
- **Section III** includes summaries of filed cases against Navient regarding its abusive calling patterns.
- **Section IV** summarizes the legal analysis disputing Navient’s assertion that it can legally make calls to cell phones to collect debts owed to the federal government without consent, and even after requests to stop calling.

I. Summary of Complaints and Lawsuits Against Navient for Unconsented-to Robocalling of Consumers

Complaints to the Consumer Financial Protection Bureau about Navient’s Calling. Since 2014, there have been over 18,389 complaints reported to the CFPB just about Navient’s practices.⁵ Of those complaints, 599 are specifically classified as relating to “Communication Tactics.”⁶ Exhibit 1, attached, is an Excel spreadsheet download of these 599 complaints to the CFPB specifically regarding Navient’s abusive calling patterns. In Section II below, we provide details of a sample 12 of these complaints.

² See, e.g., *McCaskill v. Navient Solutions, Inc.*, 178 F. Supp. 3d 1281, 1286 (M.D. Fla. 2016).

³ Budget Act of 2015, Pub. L. No. 114-74, 129 Stat. 584 § 301 (Nov. 2, 2015) [hereinafter Budget Act].

⁴ See cases cited in Section III, *infra*.

⁵ See Consumer Fin. Prot. Bureau, Dataset of Navient Complaints, *available at* <https://data.consumerfinance.gov/dataset/navient-complaints/xas4-kc2q>.

⁶ *Id.*

Other Complaints Against Navient. Over the last three years, there have been 1,878 complaints reported to the Better Business Bureau (BBB) about Navient, of which 1,306 are classified as relating to “Billing/Collection Issues.”⁷

Complaints Against Navient are Included in FTC-FCC Complaint Records. In 2016, almost four million complaints were made to the Federal Trade Commission (FTC) and the FCC regarding unwanted robocalls.⁸ The FTC and FCC databases do not make public the name of the entities against which these complaints were lodged, yet undoubtedly some of these *millions* of complaints were about unwanted robocalls from Navient. But this request for enforcement of the TCPA against a known perpetrator of calls made in violation of the law is submitted against the backdrop of the escalation in unwanted, automated calls to consumers’ cell phones. Further, as part of this request for enforcement, we ask the FCC to identify the complaints in its database that relate to robocalls from Navient.

II. Selections from Complaints to the CFPB about Navient’s Calling Practices

To illustrate the invasion of privacy, the emotional turmoil, the annoyance, and the extent of harm caused by Navient’s persistent calling of consumers—despite repeated requests and demands to stop calling—excerpts from just 12 of the *thousands* of complaints on the CFPB’s website about Navient’s calling patterns appear below. Each excerpt is taken directly from the website and quotes the consumer’s own words. The markings “XXXX” are inserted by CFPB staff to preserve the consumer’s privacy. The citation to the exact complaint from which the excerpt is taken is in a footnote to each excerpt. More detail about each of these complaints, as well as the other 587 complaints about Navient relating to its communications tactics, are included in the attached Excel file designated as Exhibit 1.

1. “Calling in excess of 12 times per day and refuse to let me consolidate my loans. Use multiple phone numbers to keep calling.”⁹
2. “Constant calls from number entered on form and (XXXX) XXXX. These numbers call on average 4 times a day, sometimes within an hour of each other. Any message left is usually dead air, . . . They were also told numerous times to not call my cell number, especially without leaving a message. The same type of call patterns are done on my house, cell, and spouses cell....”¹⁰

⁷ Better Business Bureau, Navient Reviews & Complaints, *available at* <https://www.bbb.org/delaware/business-reviews/loans/navient-in-wilmington-de-92002017/reviews-and-complaints>.

⁸ Federal Trade Commission, National Do Not Call Registry Data Book for Fiscal Year 2016, *available at* https://www.ftc.gov/system/files/documents/reports/national-do-not-call-registry-data-book-fiscal-year-2016/dnc_data_book_fy_2016_post.pdf; Federal Communications Commission, Open Data, Consumer Complaints – Unwanted Calls (2016), *available at* <https://opendata.fcc.gov/Consumer/Consumer-Complaints-Data-Unwanted-Calls/vakf-fz8e>.

⁹ Exhibit 1, Complaint # 2323295 (received Feb. 1, 2017) (emphasis added).

¹⁰ Exhibit 1, Complaint # 1823151 (received Mar. 8, 2016) (emphasis added).

3. “I have requested 5 times that Navient not call my home or my cell phone. I am receiving at least 10 calls a day at all times on both numbers. When I do answer, it is usually an automated system.”¹¹
4. “Navient is calling my phone repeatedly a minimum of six to eight times a day. I have filed forbearance paperwork with them which they are refusing to acknowledge and have stated they can do whatever they want in order to make me pay. I have asked them to limit their number of calls daily, I have blocked their number and they have used more than XXXX different number and they are harassing me over a debt I was paying regularly prior to becoming unemployed. They have said . . . that they will continue to call me as many times a day as they want until I pay them . . .”¹²
5. “I have revoked authorization for calls multiple times and attempted to set up payment plan with Navient that fits my budget. . . . I have received no less than XXXX5 calls daily from Navient about a past due balance that I have tried repeatedly to rectify by alternative payment options and they refuse.”¹³
6. “I got called from the same number 14 times in a 30 minutes period on XX/XX/2017. I got called 14 times total on XX/XX/2017 and 6 times on and 7 times on XX/XX/2017. . . .”¹⁴
7. “Continued to call during all hours of the night and repeatedly contacted on Sundays all day.”¹⁵
8. “Navient continues to call my phone multiple times daily. Although I am behind on my payments I did contact the company in attempts to set up a payment plan and was told nothing is available to me. The calls have continued and when I asked that the calls end I was told they would continue until a payment plan was arranged. I expressed my frustration with the harassing calls. The company will not work with me on my past due amount but also will not cease the calls. I have XXXX private student loans through the company and have been making payments on XXXX of the XXXX loans because of my current financial situation I am unable to make both loan payments. After speaking to Navient multiple times I have exhausted my options. The phone calls come in at least twice daily.”¹⁶
9. “This company has called past co-workers, childhood friends, and mother in law. Some of these people I haven't spoken to in years nor know their phone numbers myself.”¹⁷
10. “Navient calls me 10+ times a day after only being 1 day late for pmt, if I don't answer then they harass my Mother because she is a cosigner, they call from different numbers every time and even outside of their business hours. If I answer and tell them that I plan to make a payment they still call and harass me every day.”¹⁸
11. “Pioneer Credit Recovery, Inc. [a subsidiary of Navient] contacts our business multiple times every day in reference to a worker 's personal debt despite being advised over and over that this is a business and our workers are not allowed to take personal phone calls on business lines.”

¹¹ Exhibit 1, Complaint # 2258603 (received Dec. 21, 2016) (emphasis added).

¹² Exhibit 1, Complaint # 2259371 (received Dec. 22, 2016) (emphasis added).

¹³ Exhibit 1, Complaint # 2330529 (received Feb. 7, 2017).

¹⁴ Exhibit 1, Complaint # 2365121 (received Feb. 28, 2017) (emphasis added).

¹⁵ Exhibit 1, Complaint # 1734403 (received Jan. 8, 2016) (emphasis added).

¹⁶ Exhibit 1, Complaint # 1727926 (received Jan. 5, 2016) (emphasis added).

¹⁷ Exhibit 1, Complaint # 2026661 (received July 23, 2016) (emphasis added).

¹⁸ Exhibit 1, Complaint # 1868439 (received Apr. 7, 2016) (emphasis added).

These tactics include calling the direct lines of every employee which are listed on our website. The calls usually total more than 10 per day.¹⁹

12. “After I have spoken to them, or my father has spoken to them because they also call his phone about the debt, they still call at least 5 times a day. Even when payments have been made. Even when I personally have discussed payment options with them. No matter what I receive at least 5 phone calls a day, including weekends. If I ignored a particular number, they will call from several different ones and use the alternative numbers to call me 5 times a day. They call my father and demand he pay more than he can or threaten other case action when he doesn't give the response they want. Some agents are very nasty.”²⁰

III. Case Summaries of Litigation Filed Against Navient Relating to Its Calling Practices

Below are summaries of just 22 cases filed (of the many dozens) relating to Navient’s illegal calling practices. All cases are currently pending unless otherwise noted. The cases are separated into three categories of calls:

- A. Calls to the debtor or co-signer;
- B. Calls to the debtor’s family and/or friends; and
- C. Calls made to “wrong numbers,” or people who had no relationship with the debtor who owed the student loan in question.

Cases noted with an asterisk (*) indicate that Navient defended the case by asserting that the 2015 Budget Act permitted these calls to be made without consent.

A. Calls to Debtor or Co-signer

1. ***Hepp v. Navient Solutions, Inc.**, Case No. 2:17-cv-00113-JES-MRM (M.D. Fla. filed Feb. 22, 2017). Plaintiff alleged Navient called the plaintiff’s cell phone over 1,500 times since 2013, including multiple calls after specific requests were made for the calls to stop. Navient’s defense: “Plaintiff’s claim is barred in whole or in part by the Bipartisan Budget Act of 2015, because NSL made calls while servicing federal student loans owned or guaranteed by the United States.”
2. ***Brown v. Navient Solutions, L.L.C.**, Case No. 1:17-cv-00037-MW-GRJ (N.D. Fla. filed Feb. 16, 2017). After plaintiff revoked consent to be called by Navient by stating “Stop calling me, I have auto payment setup,” Navient called the plaintiff’s cell phone approximately 100 times from October 2014 to the filing of the Complaint, including on numerous days when it called as many as four times. Navient’s defense: “Plaintiff’s claim is barred in whole or in part by the Bipartisan Budget Act of 2015, because NSL made calls while servicing federal student loans owned or guaranteed by the United States.”
3. **Craig v. Navient Solutions, Inc.**, Case No. 8:16-cv-02448-SDM-JSS (M.D. Fla. filed Aug. 25, 2016). Plaintiff expressly told Navient’s agent multiple times that he unequivocally revoked any consent to be called and asked for the calls to him and his sister to stop. In March 2016, Navient’s agent responded, “We can call you eight times a day.” All of plaintiff’s requests for the calls to stop

¹⁹ Exhibit 1, Complaint # 1744968 (received Jan. 5, 2016) (emphasis added).

²⁰ Exhibit 1, Complaint # 1765362 (received Jan. 29, 2016) (emphasis added).

were ignored. From February 2013 until the filing of the Complaint, the defendant called the plaintiff's cell phone on a daily basis, sometimes several times in the same hour, resulting in approximately 1,000 calls.

4. ***Triplett v. Navient Solutions, Inc.**, Case No. 1:17-cv-00568 (N.D. Ga. filed Feb. 15, 2017). Navient began calling the plaintiff's cell phone in 2011. “[D]ue to the ceaseless barrage of phone calls,” she made at least seven express demands in total for the calls to her cell phone to stop. Each demand was ignored. From May 2012 until the Complaint was filed, the defendant placed approximately 1,800 calls to the plaintiff's cell phone. Navient's defense: “Plaintiff's claim is barred in whole or in part by the Bipartisan Budget Act of 2015 because NSL made calls while servicing federal student loans owned or guaranteed by the United States.”
5. ***Jackson v. Navient Solutions, Inc.**, Case No. 8:17-cv-00290-SDM-AEP (M.D. Fla. filed Feb. 6, 2017). After receiving multiple calls, Plaintiff told Navient's agent “I'm out of work currently, and this is all that I can afford. I need you to stop calling me please.” Despite this revocation, the calls continued. From October 7, 2016 to the filing of the Complaint, the defendant called the plaintiff's cell phone approximately 200 times, sometimes as often as 10 times per day. Navient's defense: “Plaintiff's claim is barred in whole or in part by the Bipartisan Budget Act of 2015, because NSL made calls while servicing federal student loans owned or guaranteed by the United States.”
6. ***Meidling v. Navient Solutions, Inc.**, Case No. 6:16-cv-02118-ORL-28GJK (M.D. Fla. filed Dec. 9, 2016). The plaintiff began to receive automated calls from Navient to his cell phone in February 2014. Plaintiff demanded at least 10 times that Navient stop making calls to his cell phone. Each demand was ignored. From December 2014 until the Complaint was filed, Navient placed approximately 1,300 calls to the plaintiff's cell phone, often making multiple calls each day and on consecutive days. Navient's defense: “Plaintiff's claim is barred in whole or in part by the Bipartisan Budget Act of 2015, because NSI made calls while servicing federal student loans owned or guaranteed by the United States.”
7. ***Radford v. Navient Solutions, Inc. and Student Assistance Corp.**, Case No. 1:16-cv-04135-MHC (N.D. Ga. filed Nov. 4, 2016). Plaintiff began receiving automated calls from Navient beginning in April 2014, and requested numerous times that Navient stop making calls to his cell phone. However, Navient “continued to bombard” his cell phone with calls. In September 2016, the plaintiff answered a call from defendant Student Assistance Corporation (a subsidiary of Navient).²¹ He told the agent that SAC did not have authorization to call him and demanded that it stop calling his cell phone. The calls continued nonetheless from both defendants. From April 2014 until the filing of the Complaint, Navient and its subsidiary called the plaintiff's cell phone 3,500 times. A call log attached to the Complaint indicates that from September 17 to September 30, 2016 alone, the defendants called the plaintiff's cell phone 69 times. Navient's defense: “Plaintiff's claim is barred in whole or in part by the Bipartisan Budget Act of 2015 because NSI made calls and sent text messages while servicing federal loans owned or guaranteed by the United States.”
8. ***Singleton v. Navient Solutions, Inc.**, Case No. 4:16-cv-00214-DMB-JMV (N.D. Miss. filed Oct. 28, 2016). In January 2106, the plaintiff began to receive automated calls from Navient on her cell

²¹ See <https://www.studentassistcorp.com/sac/about/about.asp> (identifying Navient as SAC's “parent company”).

phone. During this same month, the plaintiff revoked her consent to be called by Navient by speaking with its agents and stating, "Stop calling me!" Despite the plaintiff's revocation, Navient continued making the calls. From February 1, 2016 until the filing of the Complaint, Navient called the plaintiff's cell phone approximately 150 times, often calling her cell phone up to eight times per day. Navient's defense: "Plaintiff's claim is barred in whole or in part by the Bipartisan Budget Act of 2015 because NSI made calls and sent text messages while servicing federal loans owned or guaranteed by the United States."

9. ***Mahurin v. Navient Solutions, Inc. and Student Assistance Corp.**, Case No. 6:16-cv-1766-ORL-18GJK (M.D. Fla. filed Oct. 11, 2016). After automated calls from Navient began in September 2015, the plaintiff asked Navient's agent to "please note on his account that he had spoken with numerous agents, explained that he would pay when he could, and demanded that the defendants cease placing calls to his cell phone." This and other requests to stop calling were ignored. From January 2016 until the filing of the Complaint, Navient made over 300 calls to the plaintiff's cell phone and Navient's subsidiary, Student Assistance Corporation, made over 200 calls to the plaintiff's cell phone. Often Navient made multiple calls per day and on consecutive days. Navient's defense: "Plaintiff's claim is barred in whole or in part by the Bipartisan Budget Act of 2015 because NSI made calls to Plaintiff while servicing student loans that are owned or guaranteed by the United States."
10. ***McAfee v. Navient Solutions, Inc.**, Case No. 2:16-cv-138-KS-MTP (S.D. Miss. filed Sept. 12, 2016). From approximately the middle of 2015 until the filing of the Complaint, Navient placed approximately 1,100 calls to the plaintiff's cell phone despite her repeated demands for the calls to stop. Navient's defense: "Plaintiff's claim is barred in whole or in part by the Bipartisan Budget Act of 2015 to the extent that NSI made calls to Plaintiff in the course of servicing student loans that are guaranteed or owned by the United States."
11. ***Cedeno v. Navient**, Case No. 0:16-cv-61049-UU (S.D. Fla. filed May 17, 2016). The plaintiff said that Navient called him up to six times per day, nearly every day, for 20 months. There is deposition testimony in this case that includes a transcript of a call from Navient to the plaintiff in which the following exchange occurred:

MR. Cedeno: Well, I'm already making payments. Look at -- online. Don't call me anymore. If you call me anymore, I'm going to report you that you're harassing me. I'm at work right now.

NAVIENT REPRESENTATIVE: Well, you can report it.

MR. Cedeno: So don't call me --

NAVIENT REPRESENTATIVE: You can report it.

MR. Cedeno: -- anymore.

NAVIENT REPRESENTATIVE: Well, you gave us permission --

MR. Cedeno: Okay.

NAVIENT REPRESENTATIVE: -- so we'll call you again.

MR. Cedeno: I'm -- I'm making payments, so --

NAVIENT REPRESENTATIVE: All right.

MR. Cedeno: -- don't call me anymore.

NAVIENT REPRESENTATIVE: Talk --

MR. Cedeno: Goodbye.

NAVIENT REPRESENTATIVE: Okay. Talk to you later.²²

Navient and the plaintiff have stipulated that between September 14, 2014 and May 18, 2016, Navient made a total of 756 calls to the plaintiff's cell phone, 525 of which were made after the conversation between the parties on June 18, 2015, during which the plaintiff asked for the calls to stop. In a response filed with the court, Navient said "after enactment of the Budget Act, NSI operated under the understanding that it did not need Cedenó's prior express consent."

12. **Hines v. Navient Solutions, Inc. and Navient Corp.**, Case No. 2:15-cv-00713-JES-MRM (M.D. Fla. filed Nov. 16, 2015). In late 2013, the plaintiff, who was a co-signer on his daughter's loan, began to receive calls from Navient on his cell phone. He made some payments on this loan until he ran out of money in 2014. In June 2014, he told Navient, "I have sent you the last of my money. Do not call me anymore." The plaintiff alleges that during this conversation he revoked any consent that Navient may have claimed to make previous calls. However, the calls persisted, even though the plaintiff made the same request on numerous occasions after June 2014. From June 2014 until the filing of the Complaint, Navient called the plaintiff's cell phone at least 300 times, and up to four times per day. During the period July 31 to September 20, 2015 alone, Navient called the plaintiff's cell phone at least 80 times.
13. **Howell v. Navient Solutions, Inc.**, Case No 3:16-cv-01310-HES-JRK (M.D. Fla. filed Oct. 17, 2016). In June 2013, the plaintiff, who was a co-signer on his daughter's loan, began to receive automated calls from Navient on his cell phone. At this time, the plaintiff asked Navient to stop calling his cell phone. Whenever he spoke with Navient, he told the agent to contact his daughter and that he was unable to pay the loan, and he also reiterated his demand that Navient stop calling him. The plaintiff alleges that the agents became increasingly rude to him. He also alleges that not only did the calls continue, but they increased in frequency. Despite the plaintiff telling agents at least 20 times to stop calling his cell phone, Navient called one to two times per day. From June 2013 until the filing of the Complaint, Navient called the plaintiff's cell phone approximately 200 times. In its Answer (filed Nov. 18, 2016), Navient states that it called the plaintiff's cell phone in the course of servicing a loan for which the plaintiff was a so-signer and engaged in conversations with the plaintiff, but denied all other allegations.
14. **Moger v. SLM Corp.**, Case No. 2:14-cv-08084-BMS (E.D. Pa. filed Dec. 15, 2014). This case involves calls that were made to parents who had co-signed certain of their son's loans. The Complaint states that the defendant "bombarded [the plaintiffs] with dozens of repetitive, ongoing, unwarranted collection calls to their cell phones" and continued to make calls after being told to stop. The defendant ignored both verbal cease requests and written communications. Notably, the plaintiffs allege that they made payments on certain loans and were up to date on the loans that they had co-signed. They allege that after they began to receive "a torrent of calls from Sallie Mae on their cellular phones," they told the agents to stop calling, though many of the calls were prerecorded. The plaintiffs did not give prior express consent for the calls. The plaintiff-wife sent a letter telling the defendant not to call either of their cell phones, and while the calls did stop for a

²² Cedenó v Navient, 0:16-CV-61049-UU (S.D. Fla. filed May 16, 2016). Exhibit 2, attached to this request, includes 1) a joint stipulation from both the consumer and Navient admitting to these calls, and 2) two short transcripts of the conversations in which the consumer specifically requested that Navient stop calling him on that line.

brief period, they started up again soon. Sometimes after a call ended, the defendant would call back immediately. The calls consistently demanded payment on accounts that were current.

B. Calls to Debtor's Family and/or Friends

15. **McCaskill v. Navient Solutions, Inc.**, 178 F. Supp. 3d 1281 (M.D. Fla. 2016). The court found that the defendant placed 249 calls to the cell phone belonging to the plaintiff and to the borrower's mother, and that Navient's contractor placed another 478 calls to the same number. The plaintiff had no obligation to make payments on the loan. The plaintiff's cell phone number was obtained from a public records search. The court stated: "As already noted, Defendants do not otherwise dispute that these 727 calls constitute violations of the TCPA." *Id.* at 1293.
16. ***Travers v. Navient Solutions, Inc.**, Case No. 2:16-cv-00913-SPC-MRM (M.D. Fla. filed Dec. 29, 2016). The plaintiffs in this case are the grandparents of the student loan borrower. While the plaintiff-grandfather was a co-signer of the loan, the plaintiff-grandmother was not. In June 2015, they both began to receive automated calls from Naveint to their cell phones. In July 2016, the plaintiff-grandfather answered a call and was connected to a live agent whom he told, "Call Chelsea, there are her student loans. She is making the payments." He also demanded that Navient stop calling his cell phone. The plaintiff-grandmother explained to Navient's agents "on countless occasions" that the debt belonged to their granddaughter, who would make the payments once she obtained a job. The plaintiff-grandmother demanded that Navient stop calling both of the plaintiffs' cell phones. However, the calls persisted. From approximately June 2015 until the filing of the Complaint, Navient called the plaintiffs' cell phones on a daily basis. From June 2015 until the filing of the Complaint, Navient called the plaintiffs' cell phones approximately 1,000 times. Navient's defense: "Plaintiffs' claims are barred in whole or in part by the Bipartisan Budget Act of 2015, because NSL made calls while servicing federal student loans owned or guaranteed by the United States."
17. **Silverman v. Navient Solutions, Inc.**, Case No. 3:16-cv-00113-RGE-HCA (S.D. Iowa filed Nov. 28, 2016). The class in this lawsuit consists of non-borrowers who were listed as loan references on student loan applications. These plaintiffs did not owe any money on the debts about which they were contacted and alleged that they had never given any prior express consent to be contacted by Navient. They directed Navient not to call their cell phones, but the calls persisted. In its Answer (filed Feb. 1, 2017), Navient states that it placed calls to the cell phones at issue in the course of servicing the loans, but it denies all other allegations.
18. **Greenlee v. Navient Solutions, Inc.**, Case No. 5:15-cv-00917-JGB-SP (C.D. Cal. filed May 10, 2015). The plaintiff, the debtor's wife, received at least 100 calls to her cell phone. She repeatedly told Navient to stop calling, but was met with resistance by Navient's agents, who "insisted that they will continue to call her until her husband specifically asks that her number be removed from his account profile." The plaintiff faxed a letter to Navient demanding that it not call her any more, but Navient placed at least 20 calls after the fax was sent. In its Answer (filed June 16, 2015), Navient asserts that it had "prior express consent" to make the calls at issue. A settlement was reached in this case on February 22, 2016. The terms of the settlement are confidential.
19. *** Bartle v. Sallie Mae, Inc., d/b/a/ Navient Solutions, Inc. and Allied Financial**, Case No. 8:16-cv-00004-RAL-AAS (Fla. Circuit Ct., 5th Judicial District, filed Jan. 4, 2016). Numerous calls

were made to the debtors' home phone and cell phone, as well as the to the debtor-wife's workplace receptionist. Calls were also placed to the debtors' family and friends. The debtor-wife mailed a cease and desist letter to the defendant debt owner, but the calls persisted to the debtors, their family and friends. The defendant debt owner continued to call the debtor-wife's workplace even though she explained that she could lose her job because of the calls. She demanded, both orally and in writing, that these calls stop, but they did not. Navient called the debtor-wife's cell phone three times after the cease and desist letter. The defendant debt collector called her cell phone 17 times and the debtor-husband's cell phone 13 times after the cease and desist letter. In the Answer (filed Jan. 19, 2016), the defendants admit that the calls were made, but deny all other allegations. They claim that prior express consent was provided. They also claim exemption from TCPA liability under 47 U.S.C. §§ 227(d)(1)(B), 227(b)(2)(B) and 47 C.F.R. § 64.1200.

C. Wrong Number Calls

20. ***Williams v. Navient Solutions, Inc.**, Case No. 3:16-cv-01273-TJC-MCR (M.D. Fla. filed Oct. 15, 2016). The plaintiff has never entered into any business relationship with Navient. In January 2016, she received a phone call from Navient on her cell phone seeking to recover a debt from an individual named Mary, who was and is unknown to her. Whenever the plaintiff spoke to Navient, she informed the agent that the call had been made to a wrong number and that she did not know the individual for whom Navient was calling. She also instructed Navient to stop calling. However, the calls continued, and the agents became increasingly rude to her during their conversations. Navient also sent several text messages to the plaintiff's cell phone despite her repeated pleas for it to stop contacting her. The plaintiff alleges that Navient intentionally harassed and abused her on numerous occasions by calling several times in the same hour during one day and on consecutive days. From January 2016 until the filing of the Complaint, Navient called the plaintiff's cell phone approximately 100 times. Navient's defense: "Plaintiff's claim is barred in whole or in part by the Bipartisan Budget Act of 2015 to the extent that NSI made calls to Plaintiff in the course of servicing student loans that are federally guaranteed or owned."
21. **Johnson v. Navient Solutions, Inc.**, Case No. 1:15-cv-0716-LJM-MJD (S.D. Ind. filed May 4, 2015). The named plaintiff in this class action case alleges that after Navient began calling his cell phone, he informed it that he was not "Marie Bottoms," the individual whom Navient was trying to reach. In the Motion for Summary Judgment (filed Sept. 2, 2016), the plaintiff alleges that Navient placed 59 autodialed calls to his cell phone, 55 of which occurred after the plaintiff specifically informed Navient that it was calling the wrong number. The Motion goes on to allege that Navient, with respect to the class, "placed 9,688,533 autodialed calls to 276,874 unique cellular telephone numbers, from May 4, 2011 through May 4, 2015, after its own records included a wrong number designation for each of them. In other words, during a recent four-year period, Navient placed over nine million autodialed calls to over a quarter of a million cellular telephone users or subscribers, each of whom previously informed Navient they did not want to receive calls from it. And during the same time period, Navient used an artificial or prerecorded voice in connection with autodialed calls it placed to 123,371 cellular telephone numbers it earlier labeled as wrong numbers." Plaintiff's Memorandum of Law in Support of His Motion for Summary Judgment at 1. Navient conceded in a deposition that it did not have a business relationship with the named plaintiff, and that it never intended to reach him when it placed the calls to his cell phone. *Id.* at 5-6. Moreover, Navient understood full well that it should not place autodialed calls to wrong numbers, as evidenced by deposition testimony in which the plaintiff's counsel asked "So as I understand it, Navient's policy

is that, if an individual tells an NSI agent that its calling a wrong number, NSI shouldn't call that number anymore?" and Navient's proposed expert responded "Correct." *Id.* at 7.

22. **Toure, et al. v. Navient Solutions, Inc.**, Case No. 1:17-cv-00071-LJM-TAB (N.D. Ill. Aug. 23, 2016). One of the named plaintiffs in this class action alleges that Navient began placing calls to her cell phone. On the occasions that the plaintiff actually spoke with an agent, she informed the agent that she was not the individual for whom Navient was calling, and she told the agent that Navient should stop calling her cell phone. The Complaint alleges that while the agent acknowledged her statements, Navient continued to place calls to her cell phone. The plaintiff was not delinquent on any student debt and had not given Navient prior express consent to call her cell phone. The other named plaintiff in *Toure* alleges that after Navient began calling his cell phone, he informed it that he was not "Shamela Arnold," the individual whom Navient was trying to reach. However, despite the fact that the plaintiff specifically informed Navient that it was calling the wrong number, Navient continued to call his cell phone. The plaintiff did not owe a debt on any federally backed student loan.

IV. The Budget Act Amendment Allowing Calls to Cell Phones Without Consent is Not Yet Effective.

As detailed above, Navient has repeatedly stated to the courts that the prior express consent requirement for robocalls no longer applies because of the amendment to the TCPA in the Budget Act of 2015.²³ Yet, Navient is wrong in this assessment of the law, as is evident from the Budget Act itself, the FCC's own pronouncements on the effective date of the Budget Act amendments and the regulations implementing it, and the Department of Education's instructions to servicers (including Navient) to refrain from making calls without consent until the regulations are effective.

As it had done with the rest of the TCPA,²⁴ Congress expressly required that the FCC must issue regulations to implement the amendment in Section 301(b):

Not later than 9 months after the date of enactment of this Act, the Federal Communications Commission, in consultation with the Department of Treasury, shall prescribe regulations to implement the amendments made by this section.²⁵

This mandate to issue "regulations to implement the amendments" within 9 months would have been completely unnecessary had Congress intended the consent language to be immediately effective.

Moreover, the FCC itself has specifically determined that the language in the Budget Act is not yet effective and will not be until all of the FCC's regulations are in effect. This issue was specifically addressed in the FCC's Order issuing the implementing regulations. In paragraph 60 of that Order, the FCC drew a distinction between the regulations allowing the calls to be made without consent pursuant to the Budget Act, and the regulations imposing consumer protections for those calls:

²³ Budget Act of 2015, Pub. L. No. 114-74, 129 Stat. 584 § 301 (Nov. 2, 2015) [hereinafter Budget Act].

²⁴ *See, e.g.* 47 U.S.C. § 227(b)(2): "The Commission shall prescribe regulations to implement the requirements of this subsection,"

²⁵ Budget Act, § 301(b) (Nov. 2, 2015) (emphasis added).

60. The remaining rules (other than the consumer protection ones) will not become effective until the rules requiring OMB approval become effective. While these remaining rules do not require OMB approval and could become effective immediately upon release of this Order, we determine that the consumer-protection rules regarding stop call requests and conveyance of those requests are so integral to this regulatory scheme that the remaining rules should not become effective until the consumer-protection rules are in place. The rules that could become effective immediately permit a caller to make calls—they specify how many calls may be made, who may make the calls, when the calls can be made, and to which numbers the calls may be made, among other things. These rules give effect to one of the reasonable interpretations we have identified for Congress’ passage of the Budget amendments: to make it easier for owners of debts owed to or guaranteed by the United States and their contractors to make calls to collect debts. But the second reasonable interpretation—to make it easier for consumers to obtain useful information about debt repayment—carries with it a consumer’s prerogative to determine that the debtor does not want the information conveyed in the calls and to ask that the calls stop. The rules that give effect to this interpretation of Congress’ intent are delayed by PRA requirements and OMB approval. We determine that the regulatory scheme we implement today must include both the ability for callers to make calls and the right of debtors to ask that calls stop—and that both portions of the regulatory scheme become effective simultaneously. To do otherwise would be to allow callers to make calls but to leave debtors with no consumer protections until OMB approval is complete. We determine that both portions of the rules must become effective for the regulatory scheme to be effective.²⁶

Finally, the Department of Education has itself stated that the amendment is not yet effective. It issued a number of clear directives to student loan servicers expressly telling them to wait until the FCC’s regulations are in effect. One directive was made in November 2016—after the FCC’s regulations had been issued.²⁷ This directive explicitly instructs: “Servicers should wait to implement the revised TCPA ruling until FSA determines that this [the regulation] has been approved by OMB.”²⁸ The other directive, issued immediately after the statute was amended in 2015, reads:

Servicers,

The Bipartisan Budget Act of 2015 signed by President Obama on November 2, 2015, includes a provision amending the Telephone Consumer Protection Act (TCPA) to allow those pursuing government debts to use an auto-dialer, leave pre-recorded messages, or send SMS/text messages to attempt to contact customers via their mobile phones regardless of whether or not express consent was previously provided by the customer.

²⁶ In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CG Docket No. 02-278, Report and Order, FCC 16-99, ¶ 60 (Rel. Aug. 11, 2016) (emphasis added), available at https://apps.fcc.gov/edocs_public/attachmatch/FCC-16-99A1.pdf.

²⁷ Federal Loan Servicer Steering Meeting Agenda FY 16, Q4 (Sept. 14, 2016), available online as companion material to NCLC’s *Federal Deception Law manual* at https://library.nclc.org/sites/default/files/Navient_TCPA.pdf.

²⁸ *Id.*

FSA is in the process of developing guidance related to this new provision; this guidance will ensure that borrower rights are safeguarded while leveraging the new authority to increase awareness regarding repayment options and other information to help borrowers manage their student loan debts. Until this guidance is issued, please do not implement any changes related to the TCPA provision.²⁹

The TCPA is a consumer protection statute. It was passed only, and explicitly, to protect consumers from the annoyance and expense of too many automated calls.³⁰ In case of any doubt regarding the interpretation of its provisions, it is clear that the balance should be tipped toward protecting consumers.³¹

The potential consequences of allowing robocalls without consent before the FCC's consumer protection rules go into effect are illustrated by Navient's actions recited in this letter, and demonstrate the reasons that both Congress and the FCC are right to implement the amendment only upon the effective date of the FCC's regulations.

Conclusion.

The Consumer Advisory Committee of the FCC recently passed a resolution³² to recommend that the FCC take the following action (among others) to address unwanted robocalls:

With the goal of dramatically reducing the flood of unwanted robocalls to consumers, improving consumer education, and simplifying the complaint filing process, the CAC recommends that the FCC:

1. Initiate and prosecute enforcement actions against known robocallers who are violating the law.³³

²⁹ See [E-mail from Soo Kang, U.S. Dep't of Educ., to Brett Blindquist et al.](#) (Nov. 16, 2015) (emphasis added), available online as companion material to NCLC's *Federal Deception Law manual* at https://library.nclc.org/sites/default/files/Navient_TCPA.pdf.

³⁰ See Pub. L. No. 102-243, 105 Stat. 2394, § 2 (Dec. 20, 1991) (congressional findings). See also *Mims v. Arrow Fin. Servs., L.L.C.*, 565 U.S. 368, 372 (2012).

³¹ See, e.g., *Van Patten v. Vertical Fitness Group*, 847 F.3d 1037, 1047–1049 (9th Cir. 2017); *Leyse v. Bank of Am.*, 804 F.3d 316, 327 (3d Cir. 2015); *Gager v. Dell Fin. Services, L.L.C.*, 727 F.3d 265, 271 (3d Cir. 2013) (“Because the TCPA is a remedial statute, it should be construed to benefit consumers”); *Legg v. Voice Media Group, Inc.*, 990 F. Supp. 2d 1351, 1354 (S.D. Fla. 2014) (“because the TCPA is a consumer protection statute that is remedial in nature, it should be construed liberally in favor of consumers”).

³² Federal Communications Commission, Consumer Advisory Committee Unwanted Calls Recommendation (adopted May 19, 2017), available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0522/DOC-344985A1.pdf.

³³ *Id.* at 2.

We urgently request that you take this enforcement action against Navient, a known and admitted repeat robocaller of consumers in clear violation of the consumer protection provisions of the TCPA. An enforcement action against Navient would bring enormous relief to the millions of consumers who are being abused by Navient.

Thank you very much for your consideration. We would very much appreciate a response.

Sincerely,

Margot Saunders
Senior Counsel

Descriptions of the Requesting Organizations:

[The Center for Responsible Lending \(CRL\)](#) is a not-for-profit, non-partisan research and policy organization dedicated to protecting homeownership and family wealth by working to eliminate abusive financial practices. CRL is an affiliate of Self-Help, which consists of a state-chartered credit union (Self-Help Credit Union (SHCU)), a federally-chartered credit union (Self-Help Federal Credit Union (SHFCU)), and a non-profit loan fund.

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.

[Higher Ed, Not Debt](#) is a multiyear campaign of dozens of organizations dedicated to tackling the crippling and ever-growing issue of student loan debt in America. HEND works to ensure that quality higher education is affordable and accessible to all, without the burden of financial hardship.

[National Consumer Law Center](#) (NCLC) is a non-profit 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. NCLC has expertise in protecting low-income customer access to telecommunications, energy and water services in proceedings at the FCC and state utility commissions and publishes *Access to Utility Service* (5th edition, 2011) as well as NCLC's *Guide to the Rights of Utility Consumers* and *Guide to Surviving Debt*.

[Public Knowledge](#) is a non-profit public interest advocacy organization that focuses on competition, consumer protection, and innovation in the areas of telecommunications, media, technology, and intellectual property. Public Knowledge promotes freedom of expression, an open internet, and access to affordable communications and creative works, and aims to shape public policy on behalf of the public interest.

[Public Citizen](#) is a national non-profit organization with more than 225,000 members and supporters. We represent consumer interests through lobbying, litigation, administrative advocacy, research, and public education on a broad range of issues including consumer rights in the marketplace, product

safety, financial regulation, safe and affordable health care, campaign finance reform and government ethics, fair trade, climate change, and corporate and government accountability.