

# United States Senate

WASHINGTON, DC 20510

December 21, 2015

The Honorable Arne Duncan  
Secretary  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, D.C. 20202

Dear Secretary Duncan:

As you know, Title III of the recently enacted Bipartisan Budget Act of 2015 authorizes “robocalling” cell phones and residential telephone lines without consent to collect debts owed to or guaranteed by the federal government. We write to urge the Department of Education to direct federal student loan servicers, debt collectors, and all other third parties not to use this new authority to collect student loan debt until implementing regulations are issued, and until the Department demonstrates with concrete evidence that robocalling is in the best interest of student loan borrowers and taxpayers. We also write to seek the Department’s interpretation of the scope of Title III.

For years, consumers have benefited from legal protections that shielded them from automated, unsolicited phone calls from debt collectors and others. The Telephone Consumer Protection Act established the important consumer protection that required a caller to have the consent of the called party before using automated dialing equipment or prerecorded messages to robocall or text that person.<sup>1</sup> Title III of the Bipartisan Budget Act eliminates that consumer protection if the caller is attempting to collect a debt owed to or guaranteed by the federal government and the calls are in compliance with the Federal Communication Commission’s (FCC) implementing regulations. It is our understanding that this new provision exempts the Department from robocalling bans that non-federal student loan lenders remain subject to under the Telephone Consumer Protection Act.

We are concerned that this provision will subject student loan borrowers to a barrage of unsolicited calls – and possibly leave them with no refuge to stop the calls. We are especially concerned that this provision will allow debt collectors to call and text borrowers on their cell phones even in instances where the borrower is charged for the call, or in instances that would cause significant financial difficulty to low-income users of Lifeline programs and other cell phone programs with limited usage requirements.<sup>2</sup> We also are concerned that this provision

---

<sup>1</sup> 47 U.S.C. § 227(b).

<sup>2</sup> 47 C.F.R. § 54.409.

could potentially subject parties that are secondarily responsible for the debt to these types of calls and associated fees.

The Department of Education pushed for eliminating this consumer protection, arguing that Congress should “ensure that servicers can contact borrowers using modern technology and help them get into the right repayment plan and avoid the consequences of default or resolve their default.”<sup>3</sup> Yet the Department has offered no evidence that robocalling will achieve these pro-borrower outcomes.

There is also little evidence that the use of this authority will help the federal student loan program by generating meaningful revenue. The Office of Management and Budget estimates that the robocall provision would generate \$12 million per year.<sup>4</sup> However, the Congressional Budget Office projected that this provision would generate no revenue in the next ten years.<sup>5</sup> The Department has an obligation to demonstrate with data that the use of this authority will provide net benefits for both student loan borrowers and taxpayers and will not result in potentially abusive debt collection practices. In the absence of such data, the Department should not direct anyone, including third party debt collectors, to use robocalls to collect student loan debt.

Additionally, we ask that you answer these questions about the scope of the authority in Title III:

1. We believe that Title III does not permit robocalling to collect debts owed to or guaranteed by the federal government until the FCC issues the implementing regulations that Title III requires. Does the Department agree with that interpretation?
2. Some read the authority granted in Title III to permit robocalls not only to student loan borrowers, but also to their relatives or references that may be secondarily responsible for the debt. We would be gravely concerned if the authority was interpreted this broadly. Does the Department agree with this broad interpretation?

We would appreciate a response to our request – along with an explanation of the steps the Department would take to generate data on this issue – and a response to our questions by January 11, 2016. Thank you for your attention to this issue.


---


<sup>3</sup> U.S. Department of Education, Strengthening the Student Loan System to Better Protect All Borrowers (Oct. 1, 2015), at 16, available at <http://www2.ed.gov/documents/press-releases/strengthening-student-loan-system.pdf>.

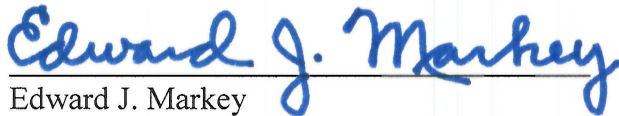
<sup>4</sup> Office of Management and Budget Summary Tables, Table S-9, at 116, available at <https://www.whitehouse.gov/sites/default/files/omb/budget/fy2016/assets/tables.pdf>.


<sup>5</sup> Congressional Budget Office, Estimate of the Budgetary Effects of H.R. 1314, the Bipartisan Budget Act of 2015, available at <https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/costestimate/hr1314.pdf>.

Sincerely,

  
Elizabeth Warren  
United States Senator

  
Michael S. Lee  
United States Senator

  
Edward J. Markey  
United States Senator

  
Orrin G. Hatch  
United States Senator

CC: John B. King, Jr., Senior Advisor Delegated Duties of Deputy Secretary of Education