

**Before the
Federal Communications Commission
Washington, D.C.**

In the Matter of)
)
Rules and Regulations Implementing the) CG Docket No. 02-278
Telephone Consumer Protection Act of 1991)

**COMMENTS OF THE AMERICAN BANKERS ASSOCIATION, AMERICAN
FINANCIAL SERVICES ASSOCIATION, MORTGAGE BANKERS ASSOCIATION,
NATIONAL ASSOCIATION OF FEDERALLY-INSURED CREDIT UNIONS,
NATIONAL COUNCIL OF HIGHER EDUCATION RESOURCES, AND STUDENT
LOAN SERVICING ALLIANCE TO THE NOTICE OF PROPOSED RULEMAKING**

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INTRODUCTION AND SUMMARY

The American Bankers Association, American Financial Services Association, Mortgage Bankers Association, National Association of Federally-Insured Credit Unions, National Council of Higher Education Resources, and Student Loan Servicing Alliance (the Associations) appreciate the opportunity to comment on the Notice of Proposed Rulemaking (Notice) in the above-captioned proceeding.¹ In the Notice, the Federal Communications Commission (Commission) proposes to codify and, in certain respects, expand upon its 2015 ruling that stated consumers who have provided prior express consent under the Telephone Consumer Protection Act (TCPA) to receive autodialed or prerecorded voice calls or text messages may revoke consent through “any reasonable means” (2015 Order).² Specifically, the Commission proposes to codify the following provisions:

- A consumer may revoke consent using “any reasonable method [that] clearly express[es] a desire not to receive further calls or text messages from the caller or sender”;³
- The “sending of ‘STOP’ or a similar text message that reasonably conveys a desire to not receive further messages in reply to an incoming text message creates a presumption that the consumer has revoked consent in a reasonable way;”⁴
- Businesses that call and text consumers “may not designate an exclusive means to request revocation of consent;”⁵
- All requests to revoke consent that are made in a reasonable manner “must be honored in a reasonable time not to exceed 24 hours from receipt” of the request;⁶

¹ Notice of Proposed Rulemaking, *Rules and Regulations Implementing the Tel. Consumer Prot. Act of 1991*, CG Docket No. 02-278 (Jun. 9, 2023) [hereinafter, *Notice*].

² Declaratory Ruling and Order, *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, ¶¶ 2, 47, & 55 (2015) [hereinafter, *2015 Order*].

³ *Notice*, *supra* note 1 (App. A) (to be codified at 47 C.F.R. § 64.1200(a)(10)).

⁴ *Id.* (App. A) (to be codified at 47 C.F.R. § 64.1200(a)(10)).

⁵ *Id.* (App. A) (to be codified at 47 C.F.R. § 64.1200(a)(10)).

⁶ *Id.* (App. A) (to be codified at 47 C.F.R. § 64.1200(a)(10)).

- “[C]onsumers only need to revoke consent once to stop getting all” autodialed or prerecorded voice calls or text messages from a business;⁷ and
- When a consumer who has revoked consent previously consented to receive several categories of autodialed text messages from the sender, the “sender must cease all further texts absent further clarification that the recipient wishes to continue to receive certain text messages.”⁸

In the 2015 Order, the Commission held that a consumer may revoke consent to receive autodialed calls through “any reasonable means,” without clarifying which means are “reasonable.”⁹ The Associations’ members respect and carry out customer requests to opt out of receiving autodialed or prerecorded voice calls or text messages, but our members often confront ambiguous expressions of intent to revoke consent. The broad and ambiguous revocation right established by the 2015 Order has made it difficult for callers to ensure that their customers’ intentions are understood and carried out.

In order to facilitate the accurate and efficient processing of customer revocations, the Commission should provide that a business and its customer may contractually agree to specific and reasonable methods by which the customer may revoke consent to receive autodialed or prerecorded calls or text messages. For occasions where the parties have not contractually agreed upon permissible revocation methods, we urge the Commission to state in the regulatory text that a consumer may revoke consent only if the revocation is sent in direct response to the caller’s communication or is directed to the line of business of the caller that originated the call or text, using the methods provided by the caller or text sender. The Commission should establish and publicize a standardized set of words like “STOP,” “QUIT,” “END,” or “UNSUBSCRIBE” that, if used, would create a presumption that the revocation attempt is reasonable.

⁷ *Id.*, ¶ 8.

⁸ *Id.* (App. A) (to be codified at 47 C.F.R. § 64.1200(a)(11)).

⁹ 2015 Order, *supra* note 2, ¶¶ 2, 47, & 55.

The autodialed and prerecorded voice messages and text messages that consumers agree to receive from legitimate companies are important and often time-sensitive. These messages include fraud alerts, data breach notifications, and low balance and over-limit transaction alerts, among others. Customers may hold several accounts with a financial institution—e.g., a deposit account, mortgage, and credit card—and consent to receive different types of informational messages related to each account. To avoid consumer harm, it is critical that businesses not be compelled to apply a customer’s revocation request to a broader category of messages than the customer intends. We urge the Commission to state in the regulatory text that, absent a clear expression by the consumer to the contrary, a single revocation applies *only* to the type of information in the original call or text message (e.g., past-due notices concerning a specific account).

Under existing TCPA regulations, a business that places telemarketing calls is required to maintain a list of individuals who request not to receive telemarketing calls from that company (a company-specific “do-not-call” list), and the business cannot place calls to those individuals.¹⁰ The Commission proposes to require that, within 24 hours of receipt, callers must honor customers’ revocation requests and requests to be placed on the caller’s company-specific do-not-call list. Financial institutions and other companies may find it infeasible to implement a 24-hour requirement for processing these requests. Companies receive revocation requests through phone numbers, fax numbers, e-mail addresses, secure messaging channels, and mailing addresses. Many of these methods do not allow the company to process the revocation through automated means. In addition, companies may manage customer numbers by line of business, not in a centralized manner. We urge the Commission to adopt a six-business day requirement

¹⁰ 47 C.F.R. § 64.1200(d).

for callers to process revocation requests and requests to be added to the caller's company-specific do-not-call list.

The Commission has proposed widespread changes to its existing rules for processing consumers' revocations of consent and requests to be placed on the caller's company-specific do-not-call list. If the Commission determines to finalize these proposed changes, it should provide at least 18 months for companies to implement the changes.

ARGUMENT

I. THE CURRENT LEGAL STANDARD ALLOWING FOR REVOCATION OF CONSENT UNDER THE TCPA THROUGH "ANY REASONABLE MEANS" FRUSTRATES CALLERS THAT SEEK TO UNDERSTAND AND CARRY OUT THEIR CUSTOMERS' INTENTIONS AND ENCOURAGES PLAINTIFFS' ATTORNEYS TO GENERATE TCPA LAWSUITS

The 2015 Order states that a consumer may revoke consent to receive autodialed calls through "any reasonable means" without clarifying which means are "reasonable."¹¹ The Associations' members want to honor customers' requests to revoke consent to receive autodialed or prerecorded calls or text messages, but our members often confront ambiguous expressions of intent to revoke consent. These expressions can be ambiguous as to whether the customer intends to revoke consent at all. In addition, when the customer is clear that he or she seeks to revoke consent, the scope of the revocation can be unclear. It can be unclear whether a customer wants to revoke consent to receive all calls and texts, to revoke consent to receive a certain type of call or text, or to revoke consent to receive calls and texts relating to a particular account (or phone number on file) with the business.

Moreover, our members report that some plaintiffs' attorneys seek to take advantage of the broad and ambiguous revocation right established by the 2015 Order to generate TCPA

¹¹ 2015 Order, *supra* note 2, ¶¶ 2, 47, & 55.

lawsuits. For example, plaintiffs' firms will coach customers to place a short-duration call to the business (i.e., a call that lasts only a few moments) with an expression of revocation. Because of the very short duration of the call and the customer's quick cadence of speech, the business may not be able to capture the phone number to process the revocation. As another example, a customer will write an expression of revocation on social media, in a manner that prevents the business from conclusively identifying the phone owner and processing the revocation.

In other instances, a plaintiff's attorney will send, on behalf of clients, revocation requests by mail to the business's office or post office box (or by fax to a number belonging to the business) that is not listed as an address or number to which customers should send correspondence. Alternatively, a plaintiff's attorney will coach clients to send a lengthy letter or call to the business, with a short statement of revocation buried in the middle of the letter or phone message.

In all of these examples, the plaintiffs' firms will file suit on the basis of calls subsequently placed by the business to their clients after the purported revocation, alleging the client had revoked consent to received autodialed or prerecorded voice calls. Although a court may ultimately determine that these means of revocation are not reasonable, the Commission's rules lay the groundwork for litigation on the question, causing companies to expend time and resources to litigate and potentially settle cases that do not have merit.

II. THE REGULATION SHOULD STATE THAT PARTIES MAY CONTRACT TO USE SPECIFIC REVOCATION METHODS AND, FOR PARTIES NOT BOUND BY CONTRACT, STATE THAT A CUSTOMER’S EXPRESSION OF REVOCATION MUST USE CERTAIN WORDS AND BE SENT IN DIRECT RESPONSE TO THE CALLER’S COMMUNICATION OR BE DIRECTED TO THE LINE OF BUSINESS THAT ORIGINATED THE CALL OR TEXT MESSAGE

The Associations appreciate the Commission’s recognition that “the scope of a ‘reasonable’ means to revoke consent is not unlimited.”¹² Despite this recognition, the Commission has proposed that a caller or text sender “may not designate an exclusive means to request revocation of consent.”¹³ This approach is misguided. Callers must be able to impose reasonable limits on how customers may revoke consent in order to process revocation requests accurately, efficiently, and in a timely manner and to avoid frivolous lawsuits.

A. THE REGULATION SHOULD STATE THAT PARTIES MAY CONTRACT TO USE SPECIFIC REVOCATION METHODS

In order to facilitate the accurate and efficient processing of customer revocations, the regulations should permit a business and its customer to contractually agree to specific methods by which the customer may revoke consent to receive autodialed or prerecorded calls. The 2015 Order did not address “parties’ ability to agree upon revocation procedures” under the TCPA, as the U.S. Court of Appeals for the District of Columbia Circuit observed during its review of that Order (2018 Opinion).¹⁴ Permitting parties to agree to revocation methods through contract would ensure that financial institutions and other businesses could establish convenient and clearly defined methods by which customers can express revocation. These arrangements also

¹² *Notice, supra* note 1, ¶ 12; *see id.*, ¶ 10 (describing how only certain methods “reasonably convey [the call recipient’s] desire to not receive further messages”).

¹³ *Id.* (App. A) (to be codified at 47 C.F.R. § 64.1200(a)(10)).

¹⁴ *ACA Int’l v. FCC*, 885 F.3d 687, 710 (D.C. Cir. 2018); *accord Reyes v. Lincoln Auto. Fin. Servs.*, 861 F.3d 51, 53 (2nd Cir. 2017) (holding that “the TCPA does not permit a consumer to revoke its consent to be called when that consent forms part of a bargained-for exchange”).

could ensure that customers' revocation requests are made to personnel trained to receive and process the revocation or that they are otherwise directed through systems established by the caller or text sender to process the revocation.¹⁵

B. THE REGULATION SHOULD STATE THAT, FOR PARTIES NOT BOUND BY CONTRACT, A CUSTOMER'S EXPRESSION OF REVOCATION MUST BE SENT IN DIRECT RESPONSE TO THE CALLER'S COMMUNICATION OR BE DIRECTED TO THE LINE OF BUSINESS OF THE CALLER THAT ORIGINATED THE CALL OR TEXT MESSAGE

For occasions where the parties have not contractually agreed upon permissible revocation methods, we recommend the regulations permit a consumer to revoke consent only if the revocation is sent in direct response to the caller's communication (e.g., a "STOP" message sent in response to the sender's text message) or is directed to the line of business of the caller that originated the call or text, using the methods described by the caller or text sender. Financial institutions and other companies can best ensure customers' revocation requests are accurately understood and efficiently processed if the requests are submitted to the line of business that placed the call or text message and to the phone number or mailing address provided by the company for that line of business or orally during a conversation with the business. A customer's expression of revocation that is directed to a separate line of business (or other phone number or address of the caller) should be *per se* unreasonable.¹⁶

Businesses that place several categories of text messages may not manage all categories of messages in a central location, particularly if the institution uses "short codes" (five- or six-digit numbers registered through CTIA's short-code registry that businesses use to send and

¹⁵ See *ACA Int'l*, 885 F.3d at 709 (concluding that callers "have no need to train every retail employee" on how to process a revocation of consent under the TCPA).

¹⁶ *Accord ACA Int'l*, 885 F.3d at 709-10 (concluding that if recipients are afforded "clearly-defined and easy-to-use opt-out methods, . . . any effort to sidestep the available methods in favor of idiosyncratic or imaginative revocation requests might well be seen as unreasonable").

receive text messages).¹⁷ The systems that administer short codes for different lines of business (or for different types of messages sent by the same line of business) typically do not communicate with each other. Institutions that do not use short codes also may manage text messages by individual line of business.

The approach we advocate—that a consumer may revoke consent only if the revocation is sent in direct response to the caller’s communication or is directed to the line of business that originated the call or text—is consistent with the Commission’s proposal that, when a customer sends a “STOP” text message in reply to a company’s text message, it creates a presumption that the consumer has revoked consent in a reasonable way.¹⁸ The customer’s text message creates this presumption precisely because it was sent to the company’s line of business that sent the text – and not to another company number or address that is unconnected to the customer’s account – and uses a standardized word that can be processed through automated means.¹⁹ As the D.C. Circuit suggested in its 2018 Order, a customer should be allowed to revoke consent (within the meaning of the TCPA) only through a “clearly-defined and easy-to-use opt-out method[]” provided by the business.²⁰

The approach we advocate also is consistent with consumer protection regulations governing overdraft protection services for ATM and one-time debit card transactions. These services require the consumer to consent (or “opt in”) to the service before the financial institution can charge the consumer a fee for overdrawing the account. Under the applicable

¹⁷ Short Code Registry, *Frequently Asked Questions*, <https://www.usshortcodes.com/learn-more/faq> (last visited July 31, 2023).

¹⁸ *Notice*, *supra* note 1 (App. A) (to be codified at 47 C.F.R. § 64.1200(a)(10)).

¹⁹ See Part II.C *infra* for discussion of why the regulation should require parties to use certain standardized words to create a presumption that the revocation attempt is reasonable.

²⁰ *ACA Int’l*, 885 F.3d at 710.

regulation, a consumer may revoke consent only “in the manner made available to the consumer for providing consent.”²¹

C. THE REGULATION SHOULD REQUIRE PARTIES TO USE CERTAIN STANDARDIZED WORDS TO CREATE A PRESUMPTION THAT THE REVOCATION ATTEMPT IS REASONABLE

The Commission proposes that the “sending of ‘STOP’ or a similar text message that reasonably conveys a desire to not receive further messages in reply to an incoming text message creates a presumption that the consumer has revoked consent in a reasonable way.”²² This standard—that a consumer may text “‘STOP’ or a similar text message”—may lead consumers to send messages with non-standard text (e.g., “I do not want to receive any more texts”) that cannot be read by automated processes, as a means to revoke consent. This would frustrate consumers—whose revocation requests may not be immediately processed—and text senders, who would need to use non-automated processes to process consumers’ revocations of consent. We urge the Commission to establish and publicize a standardized set of words like “STOP,” “QUIT,” “END,” or “UNSUBSCRIBE” that, if used, would create a presumption that the revocation attempt is reasonable. The Commission should further state that, if these words are not used, the customer’s revocation attempt is presumptively not reasonable.

III. THE REGULATION SHOULD STATE THAT A CUSTOMER’S REVOCATION OF CONSENT APPLIES ONLY TO THE PARTICULAR CATEGORY OF CALL OR TEXT MESSAGE TO WHICH THE REVOCATION WAS DIRECTED

It is critical that financial institutions and other businesses not be compelled to apply a customer’s revocation request to a broader category of messages than the customer intends. The autodialed and prerecorded voice messages and text messages that customers agree to receive are

²¹ 12 C.F.R. § 1005.17(f).

²² *Notice, supra* note 1 (App. A) (to be codified at 47 C.F.R. § 64.1200(a)(10)).

important and often time-sensitive. These messages include fraud alerts, data breach notifications, and low balance and over-limit transaction alerts. Customers face harm if they do not receive these messages because an ambiguous expression of revocation led the financial institution to opt the customer out of all categories of informational calls and text messages. For example, a bank or finance company customer or credit union member may text “stop” to revoke consent to receive future autodialed past-due text messages, but not intend for that action to opt the customer out of fraud, low balance, or over-limit alerts. Similarly, a customer may intend for a revocation to apply only to one phone number and not all of the customer’s numbers on file with the institution. Today, companies allow customers to customize which types of calls and text messages they receive. Customers will be harmed if companies are compelled to interpret a customer’s revocation as revoking consent to receive other categories of calls and messages that the customer previously consented to receive.

Therefore, the regulation should state that a customer’s revocation applies only to the particular category of call or message to which the revocation was directed. For example, a revocation sent in response to a past-due call regarding the customer’s deposit account should apply only to future calls to that phone number (and not to text messages to that number) to provide a past-due notification about the customer’s deposit account. The revocation should not apply to other types of calls or texts regarding the customer’s account, such as fraud alerts, nor should the revocation apply to calls or texts placed by the business to the customer’s other numbers on file with the business or to calls or texts regarding the customer’s other accounts with the business.

The Commission proposes to permit a caller, after receiving a revocation request, to send a text message requesting clarification as to whether the consumer intended the revocation

request to encompass all categories of messages the consumer receives or only a particular category.²³ This approach would not ameliorate harm to consumers. The Commission provides no evidence that consumers—after seeking to revoke their consent to one category of messages—would respond to an additional text from the sender. Instead, the more likely result is that the consumer will ignore the text message seeking clarification and, consequently, the consumer will no longer receive any text messages from the sender.

The cessation of all text messages to the consumer could harm the consumer. For example, Federal financial regulators expect banks and credit unions to use multi-factor authentication (MFA) for customers to access their accounts.²⁴ Text messaging is the preferred method for customers to use MFA to access their account. If the financial institution must interpret a revocation request sent in response to a past-due notice as reflecting the customer’s desire to opt out of *all* text messages from the institution, then the customer may lose online access to their account. This could prevent the customer from paying bills, transferring funds, or making other important account-related transactions.

IV. THE ASSOCIATIONS RECOMMEND THAT BUSINESSES HAVE SIX BUSINESS DAYS FROM RECEIPT OF THE REQUEST TO PROCESS REVOCATIONS OF CONSENT AND REQUESTS TO BE PLACED ON A COMPANY-SPECIFIC “DO NOT CALL” LIST

The Commission proposes to require that, within 24 hours of receipt, callers must honor customers’ revocation requests and requests to be placed on the caller’s company-specific do-

²³ *Id.* (to be codified at 47 C.F.R. § 64.1200(a)(11)).

²⁴ *See* Fed. Fin. Insts. Examination Council, Authentication and Access to Financial Institution Services and Systems, 6-7, <https://www.ffiec.gov/guidance/Authentication-and-Access-to-Financial-Institution-Services-and-Systems.pdf> (last visited July 31, 2023) (describing how multi-factor authentication can provide “layered security [that] can more effectively mitigate risks” of unauthorized access to the customer’s account).

not-call list.²⁵ Financial institutions and other companies cannot feasibly implement a 24-hour requirement for processing revocation requests or requests that the consumer be placed on the institution’s company-specific do-not-call list (collectively, revocation requests) in all instances. We urge the Commission to adopt a requirement that businesses must process an individual’s revocation or request to be added to the caller’s company-specific do-not-call list within six business days of receipt of the request.

A 24-hour requirement for processing revocation requests is infeasible because a business typically must take many steps to collect, track, and distribute each request. Businesses offer consumers a variety ways to contact the business—i.e., phone numbers, fax numbers, e-mail addresses, and mailing addresses (e.g., headquarters and branch addresses)—which a consumer may use to revoke consent. Under the existing standard by which a consumer may revoke consent through “any reasonable means,” the business must monitor all of those channels. The challenge of processing revocation requests received through all of these entry points is exacerbated when the business maintains separate customer records for each line of business, as many do. For example, if a customer with a deposit account with a financial institution sends a revocation request to the institution’s mortgage division, the mortgage division may need to send the request to the deposit account division for it to be processed.

Moreover, the presence of weekends and holidays make a 24-hour requirement infeasible. A customer may submit a revocation request on a Friday night before a three-day weekend. If the institution does not re-open for regular business until the following Tuesday, the revocation may not be processed until that Tuesday. Consequently, the Commission should adopt a time period for mandatory processing of revocations that is in business days, not calendar days.

²⁵ *Notice, supra* note 1, ¶ 13.

A 24-hour requirement is particularly infeasible if the Commission does not require consumers to direct the revocation to the line of business of the caller that originated the call or text message, and does not require customers to use standardized words to express the revocation, as we have urged.

In light of these challenges, we urge the Commission to adopt a six-business-day requirement for companies to process consumers' revocation requests. Typically, it takes one business day for the revocation request to be transmitted into the company's system for processing revocations. It then takes one business day for that system to transmit the revocation to the line of business that has the customer's account that is the subject of the revocation request. Next, it takes one business day for the line of business to remove the customer's number from the company's calling lists. This process can be lengthened by one or more days if the revocation was submitted through regular mail or there are system outages (planned or unplanned) that delay any step of this process.

V. THE COMMISSION SHOULD PROVIDE AN 18-MONTH IMPLEMENTATION PERIOD

The Commission has proposed widespread changes to its existing rules governing how companies must process consumers' revocations of consent and requests to be placed on the caller's company-specific do-not-call list. If the Commission determines to finalize any of these proposed changes, it should provide at least 18 months for companies to implement those changes. Companies may have large software and application projects that run on a yearly timeline, with funding allocated a number of months in advance of the start of the yearly project. An 18-month period would best ensure that businesses have sufficient time to implement the Commission's new revocation rules.

CONCLUSION

In order to provide for the accurate and efficient processing of customer revocations, the Commission should provide that a business and its customer may contractually agree to specific methods by which the customer may revoke consent to receive autodialed or prerecorded calls or text messages. For occasions where the parties have not contractually agreed upon permissible revocation methods, we urge the rules to state that a consumer may revoke consent only if the revocation is sent in direct response to the caller's communication or is directed to the line of business that originated the call or text using the methods provided by the caller or text sender. The Commission should establish and publicize a standardized set of words that, if used, would create a presumption that the revocation attempt is reasonable.

Further, we recommend that the rules state that absent a clear expression by the consumer to the contrary, a single revocation applies only to the category of information in the original call or text message. We also urge the Commission to permit businesses to process revocation requests and requests to be added to the caller's company-specific do-not-call list within six business days of receipt of the revocation request. If the Commission determines to finalize these proposed changes, it should provide at least 18 months for companies to implement the changes.

Respectfully submitted,

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APPENDIX

The American Bankers Association is the voice of the nation's \$23.7 trillion banking industry, which is composed of small, regional and large banks that together employ more than 2.1 million people, safeguard \$18.7 trillion in deposits and extend \$12.2 trillion in loans.

The American Financial Services Association (AFSA) is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with closed-end and open-end credit products including traditional installment loans, mortgages, direct and indirect vehicle financing, payment cards, and retail sales finance.

The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry that works to ensure the continued strength of the nation's residential and commercial real estate markets, to expand homeownership, and to extend access to affordable housing to all Americans.

The National Association of Federally-Insured Credit Unions (NAFCU) advocates for all federally-insured not-for-profit credit unions that, in turn, serve nearly 137 million consumers with personal and small business financial service products. NAFCU provides members with representation, information, education, and assistance to meet the constant challenges that cooperative financial institutions face in today's hyper-regulated market. NAFCU proudly represents many smaller credit unions with limited operations, as well as many of the largest and most sophisticated credit unions in the nation. NAFCU represents 77 percent of total federal credit union assets and 62 percent of all federally-insured credit union assets.

The National Council of Higher Education Resources' mission is to provide superior advocacy, communications, regulatory analysis and engagement, and operational support to its

members so they may effectively help students and families develop, pay for, and achieve their career, training, and postsecondary educational goals.

The Student Loan Servicing Alliance (SLSA) is the nonprofit trade association that focuses exclusively on student loan servicing issues. Our membership is responsible for servicing over 95% of all federal student loans and the vast majority of private loans, and our membership is a mix of companies, state agencies, non-profits and their service partners. Our servicer members and affiliate members provide the full range of student loan servicing operations, repayment support, customer service, payment processing, and claims processing for tens of millions of federal and private loan borrowers across the country.