

Federal Student Loan Collectors May Now Use ATDS to Dial Cell Phones?

Stephanie Eidelman November 4, 2015 (2015-11-04T12:46:12+00:00)

<http://www.insidearm.com/uncategorized/federal-student-loan-collectors-may-now-use-atds-to-dial-cell-phones/>

Last week I wrote about (<http://www.insidearm.com/opinion/budget-deal-includes-autodialer-provision-for-federal-debt-collectors/>) the latest budget deal working through Congress, and its inclusion of a provision to allow those collecting federal student loans to call consumer cell phones using an autodialer (ATDS). That two-year budget has since passed the Senate Friday by a vote of 64 to 35, and was **signed into law** (<http://thehill.com/homenews/administration/258836-obama-signs-budget-deal>) yesterday by President Obama.

According to an article today in **The Consumerist**

(<http://consumerist.com/2015/11/04/senators-introduce-bill-to-close-new-robocall-debt-collector-loop-hole/>), some are determined to get the cell phone provision rolled back. This week, Sen. Ed Markey (D-MA) introduced the Help Americans Never Get Unwanted Phone calls (HANGUP) Act. This bill — co-sponsored by Sen. Ron Wyden (Oregon), Sen. Claire McCaskill (Missouri), and Sen. Bob Menendez (New Jersey), Sen. Richard Blumenthal (Connecticut), Sen. Patrick Leahy (Vermont), Sen. Elizabeth Warren (Massachusetts), Sen. Bernie Sanders (Vermont), and Senators Al Franken and Amy Klobuchar (Minnesota) — would re-amend the Communications Act by removing the language inserted by the budget bill.

The ARM industry should note that the provision in the bill signed earlier this week includes a deadline of “not later than nine months after the date of enactment of the Act, [the FCC] shall prescribe regulations to implement the amendments made by this section.” So you’re not going to want to turn on that autodialer just yet.

I asked a range of industry sources if they’d like to comment on the new law. Here’s what people are saying:

James P. Bergeron, President, National Council of Higher Education Resources:

“There is nearly universal agreement that distressed student loan borrowers need timely and accurate information in order to successfully navigate the often-confusing array of student loan repayment options. The new law, supported by Congress, the Obama Administration, and the financial aid community, will allow servicers and collectors to use

21st Century technology preferred by consumers to reach tens of thousands more student loan borrowers each month, ensuring that these borrowers will not 'time out' and default on their student loans, or languish needlessly in default. We oppose the HANGUP Act because it would remove this important consumer protection for student loan borrowers and discourage effective borrower communication, a priority for all higher education stakeholders. The HANGUP Act would harm the very consumers it purportedly wants to protect."

Troy Ortega, Chief Operations Officer, Account Control Technology, Inc.: "We are optimistic about this legislation. We are aware that this legislation does not give us the freedom to bombard or harass consumers, and we will continue to refrain from such practices. What we are able to do is more effectively contact consumers that are in student loan repayment distress about the numerous financial relief options available under federal law. The hardest part of conveying information about financial relief options is actually getting in contact with the consumers that are in distress. By easing the ability to contact consumers, we can more effectively convey those financial relief options."

Rozanne Andersen, VP & Chief Compliance Officer, Ontario Systems: "This amendment to the TCPA is a huge win for the federal government and seemingly those private organizations that collect student loan and any other debt on behalf of the federal government. Unfortunately in the short run, the amendment creates a very unlevel playing field for the industry and frankly for consumers. For example, millions struggling to pay their student loan debts will be called by the federal government on their cell phones if they fall into arrears. Yet at the same time, these students will have grounds to file a TCPA law suit against any debt collection agency that contacts them on their cell phone [without consent] in connection with a debt *not* owed to the federal government. This is a rather absurd result and likely an unintended consequence. Although the amendment makes clear that not later than nine (9) months after the date of enactment, the FCC, in consultation with the Department of Treasury, shall prescribe regulations to implement the amendments made by this section; only time will tell if and how the amendment will impact private collection agencies that collect government-owed debt. My hope is the amendment serves as the impetus for change to extend the right to call consumers using an ATDS to all who collect consumer debt."

John K. Rossman, Attorney, Moss & Barnett: "Clearly our government recognizes that the TCPA places unreasonable restrictions on communicating with consumer on cell phones. Further, most consumer advocates agree consumers would prefer to be contacted on their cell phones to learn about debts that are in default. It defies common sense for Congress to allow ATDS initiated communications to consumers' cell phones when calls are

made regarding student loans, but require different rules when other types of debt are involved. However, I guarantee that once election season kicks into full gear in 2016, the legislators in Washington will be back again amending the TCPA to exempt political calls from coverage under the TCPA.”

Chris Hodges, Senior Vice President, Noble Systems: “We are certainly pleased with this new development and how it will positively impact those in the ARM industry that collect on Federal Government debt and are hopeful that this is a harbinger for clarity on the rules for the rest of the debt collection industry. Only class action lawyers and their litigants benefit with the current confusion in the marketplace.”

Rob Meck, former CEO of federal student loan debt collection agency: “Today there are so many options available to students having difficulty in repaying their federal student loans. Many are based on the students ability to repay the loan. The key is to be able to contact these borrowers and explain to them how they can benefit from these programs. I think everyone understands that households are dropping landlines in favor of cell service. This transition is even more prevalent in the younger student borrower population. These new regulations should have an immediate positive impact by allowing collection contractors to more effectively reach these students and provide them with available options in resolving their debts.”

Joann Needleman, Attorney, ClarkHill: “On urging from the Obama Administration, the new fiscal budget provided a nice carve out from the FCC’s Order, effectively mandating which debts are important and which are not. As it relates to student loans, the Administration recognized that it was important for debt collectors to communicate with student borrowers to assist them in repaying their debts. Isn’t that what all debt collectors are supposed to do? In three short months, has the desire for “unwanted robo-calls” disappeared just because of who you may make the check payable to? Do student loans now take precedent over car loans and mortgages? Are public debts now the priority for our economy? Self-interest, a powerful motivator for human action, is not discriminatory but in this case it has led to moral hypocrisy.” *(Note: You can read Joann’s full position on this [here](https://www.trendwatchnow.com/trendpoints/158) (https://www.trendwatchnow.com/trendpoints/158).)*

David Sargent, Executive Vice President, DialConnection: “We see the new budget bill as a positive step, and one that will hopefully build momentum to bring greater balance and fairness back to the industry. Both Congress and the President clearly understand the importance of holding those responsible for their debts and the need to leverage cellular technology to reach these millennials. It is the predominant way they communicate. As is the case with debts held by a large and growing percentage of all Americans, engaging

those individuals without using their cell phones is simply not realistic. Any business practice that is carved out for the government should also be afforded to U. S. private sector companies as well.”

Dusty Whitesell, Chief Evangelist and 20+ ARM operation exec, LiveVox: “The recent approval of the budget bill is a prime example of the ongoing changes and variations in the compliance environment. We believe that the key to survival in this rapidly changing environment continues to be flexibility and speed, as laws and regulations continue to evolve, sometimes favorably, sometimes not.”

Another industry source states: “In an age where cell phones are the predominant method of communication for the student borrower demographic, the ability to contact more students, both delinquent and or defaulted, will allow servicers and their agents to better communicate ‘all options’ available to better manage their federal loans. While the Master Promissory Note provides these permissions to some, the new language will permit servicing agents a better opportunity to deliver messaging to all federal student loan borrowers relative to resolving their student loan delinquency and or default without the burden or risk of being non-complaint.”

Additional insideARM Perspective

In the student loan world, this is really a pro-consumer development. In a regulatory environment that is increasingly cutting off communication with consumers, any rules that allow servicers and/or collectors to actually talk with people to resolve their obligations is a good thing. I don’t have to re-hash the statistics about how many consumers no longer have land lines – or ignore their snail mail. What’s clear is that without the ability to have a back and forth conversation, more consumers will likely default on their loans, experience negative credit score consequences, and/or be sued by creditors.

The term “robocall” has a negative connotation that really isn’t fair. The point of using an automated dialer is that – in addition to making the process more efficient (Isn’t that the goal for all businesses? And, by the way, as taxpayers, don’t we all want government agencies to be more efficient too?) – they allow legitimate companies to ensure compliance with dozens of federal and state laws that dictate when/how often consumers can be contacted. To expect thousands of individual collectors to manually comply with the litany of rules is completely impractical. Technology from the 21st century — you know, computers — is the most effective way to ensure compliance. Tying businesses hands — for instance, by making them strip out advanced software capabilities and effectively asking employees to make calls on 1980’s style rotary phones — is not the way forward.

Yes, consumer groups or legislators could (and will) point to examples of abuse, but I would argue that the broader benefit of contact in this case will outweigh the negatives for consumers.

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