

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Centers for Medicare & Medicaid Services****42 CFR Parts 482, 483, 484, and 485**

[CMS-3178-CN]

RIN 0938-AO91

**Medicare and Medicaid Programs; Emergency Preparedness Requirements for Medicare and Medicaid Participating Providers and Suppliers; Correction****AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects typographical errors that appeared in the final rule published in the **Federal Register** on September 16, 2016 entitled “Medicare and Medicaid Programs; Emergency Preparedness Requirements for Medicare and Medicaid Participating Providers and Suppliers.”

**DATES:** This correcting document is effective November 15, 2016.

**FOR FURTHER INFORMATION CONTACT:** Ronisha Blackstone, (410) 786-6882.

**SUPPLEMENTARY INFORMATION:****I. Background**

In FR Doc. 2016-21404 which appeared in the September 16, 2016 **Federal Register** (81 FR 63860), entitled “Medicare and Medicaid Programs; Emergency Preparedness Requirements for Medicare and Medicaid Participating Providers and Suppliers”, there were a number of typographical errors that are identified and corrected in the Correction of Errors section below. The provisions in this correction document are effective as if they had been included in the document published September 16, 2016. Accordingly, the corrections are effective November 15, 2016.

**II. Summary of Errors**

On page 64030, we inadvertently omitted a paragraph number (that is, paragraph (xii)) in numbering the paragraphs in § 482.15(h)(1).

On page 64032, we inadvertently omitted a paragraph number (that is, paragraph (xii)) in numbering the paragraphs in § 483.73(g)(1).

On page 64034, we made a typographical error in numbering the paragraphs in § 484.22(d)(1).

On page 64037, we inadvertently omitted a paragraph number (that is, paragraph (xii)) in numbering the paragraphs in § 485.625(g)(1).

**III. Waiver of Proposed Rulemaking**

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). However, we can waive this notice and comment procedure if the Secretary finds, for good cause, that the notice and comment process is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and the reasons therefore in the notice.

Section 553(d) of the APA ordinarily requires a 30-day delay in effective date of final rules after the date of their publication in the **Federal Register**. This 30-day delay in effective date can be waived, however, if an agency finds for good cause that the delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued.

We believe that this correcting document does not constitute a rule that would be subject to the APA notice and comment or delayed effective date requirements. This correcting document corrects typographical errors in the regulations text of the final rule but does not make substantive changes to the policies that were adopted in the final rule. As a result, this correcting document is intended to ensure that the regulations text in the final rule accurately reflect the policies adopted in that final rule.

In addition, even if this were a rule to which the notice and comment procedures and delayed effective date requirements applied, we find that there is good cause to waive such requirements. Undertaking further notice and comment procedures to incorporate the corrections in this document into the final rule or delaying the effective date would be contrary to the public interest because it is in the public’s interest for providers and suppliers to receive the appropriate revisions in as timely a manner as possible, and to ensure that the Emergency Preparedness Requirements for Medicare and Medicaid Participating Providers and Suppliers final rule accurately reflects our policies. Furthermore, such procedures would be unnecessary, as we are not altering our policies, but rather, we are simply implementing correctly the policies that we previously proposed, received comment on, and subsequently finalized. This correcting document is intended solely to ensure that the

Emergency Preparedness Requirements for Medicare and Medicaid Participating Providers and Suppliers final rule accurately reflects these revisions. Therefore, we believe we have good cause to waive the notice and comment and effective date requirements.

**IV. Correction of Errors**

In FR Doc. 2016-21404 of September 16, 2016 (81 FR 63860), make the following corrections:

**§ 482.15 [Corrected]**

■ 1. On page 64030, first column, in § 482.15(h)(1), correctly redesignate paragraph (h)(1)(xiii) as paragraph (h)(1)(xii).

**§ 483.73 [Corrected]**

■ 2. On page 64032, second column, in § 483.73(g)(1), correctly redesignate paragraph (g)(1)(xiii) as paragraph (g)(1)(xii).

**§ 484.22 [Corrected]**

■ 3. On page 64034, second column, in § 484.22(d)(1), correct the paragraph designated “(ii) Demonstrate staff” is to read “(iv) Demonstrate staff”.

**§ 485.625 [Corrected]**

■ 4. On page 64037, third column, in § 485.625(g)(1), correctly redesignate paragraph (g)(1)(xiii) as paragraph (g)(1)(xii).

Dated: November 9, 2016.

**Madhura Valverde,**

*Executive Secretary to the Department, Department of Health and Human Services.*

[FR Doc. 2016-27478 Filed 11-15-16; 8:45 am]

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**FEDERAL COMMUNICATIONS COMMISSION****47 CFR Part 64**

[CG Docket No. 02-278; FCC 16-99]

**Telephone Consumer Protection Act of 1991****AGENCY:** Federal Communications Commission.**ACTION:** Final rule.

**SUMMARY:** In this document, the Commission modifies its rules under the Telephone Consumer Protection Act (TCPA) to implement a provision of the Bipartisan Budget Act of 2015 that exempts from the TCPA’s prior-express-consent requirement autodialed and prerecorded calls “made solely to collect a debt owed to or guaranteed by the United States.” While certain debt servicing calls are permitted under the

exception, the Commission caps the number of permitted calls to wireless numbers at no more than three within a thirty-day period; ensures that consumers have the right to stop such calls at any time; and adopts other consumer protections. These measures implement Congress's mandate to ensure the TCPA does not thwart important calls that can help consumers avoid debt troubles while preserving consumers' ultimate right to determine what calls they wish to receive.

**DATES:** This Order was issued August 11, 2016.

**FOR FURTHER INFORMATION CONTACT:**

Kristi Thornton, Consumer Policy Division, Consumer and Governmental Affairs Bureau, at (202) 418-2467 or email: [Kristi.Thornton@fcc.gov](mailto:Kristi.Thornton@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, document FCC 16-99, adopted on August 2, 2016, and released on August 11, 2016, in CG Docket No. 02-278. The full text of document FCC 16-99 will be available for public inspection and copying via ECFS, and during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY-A257, Washington, DC 20554. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (844) 432-2272 (videophone), or (202) 418-0432 (TTY).

**Synopsis**

1. The Commission adopts rules to implement the Budget Act's amendments to the TCPA, including—based on substantial record support, and in furtherance of the TCPA's consumer-protection goals—restrictions on the number and duration of calls that may be made pursuant to the amendments. Among other things, the Commission determines who may make covered calls, limits the number of federal debt collection calls that may be made, and determines who may be called. The Commission also creates rules to, among other things:

- Permit calls made by debt collectors when the loan is in delinquency, and by debt servicers following a specific, time-sensitive event affecting the amount or timing of payment due, and in the 30 days before such an event.
- Determine that consumers have a right to stop the autodialed, artificial-voice, and prerecorded-voice servicing

and collection calls regarding a federal debt to wireless numbers at any point the consumer wishes.

- Specify that covered calls may be made by the owner of the debt or its contractor, to: (1) The wireless telephone number the debtor provided at the time the debt was incurred; (2) a phone number subsequently provided by the debtor to the owner of the debt or its contractor; and (3) a wireless telephone number the owner of the debt or its contractor has obtained from an independent source, provided that the number actually is the debtor's telephone number.

2. Once information collection requirements of the revised § 64.1200(j)(3), (j)(4) have been approved by the Office of Management and Budget (OMB), the Commission will publish a document in the **Federal Register** (1) revising §§ 64.1200(a)(1)(iii); (a)(3)(iv), (v), and (vi); (f)(17); (i); and (j); and (2) announcing the effective date of these revisions to be set at 60 days after publication of that document in the **Federal Register**.

**Covered Calls**

3. “*Solely to Collect a Debt.*” The Budget Act excepts covered calls from the prior-express-consent requirement when they are “solely to collect a debt owed to or guaranteed by the United States.” The Commission begins by interpreting the statutory phrase “solely to collect a debt” so as to determine whether calls are covered. Because the statutory term “solely to collect a debt” is ambiguous, the Commission has discretion to reasonably interpret that phrase.

4. The Commission rejects a subjective standard of what a caller may intend when determining whether a call is a covered call and instead looks to objective characteristics of the call. The Commission notes that an objective standard is consistent with its approach to other aspects of the TCPA, such as the meaning of “called party” for purposes of reassigned wireless numbers. Furthermore, a subjective standard would be difficult to administer, while an objective standard enables the Commission to look at actual, measurable characteristics of a call.

5. In the *2016 NPRM*, the Commission asked whether covered calls should begin at delinquency or default. Several commenters support the proposal that covered calls begin at delinquency, stating that calls during delinquency can assist a debtor in determining whether alternative payment plans are an option. The FTC staff's comments,

however, promote default as the starting point for covered calls. They argue that the FDCPA uses default as the “touchstone for coverage,” and that those collecting debts that were not in default when their agency obtained them are not considered debt collectors under the act. Because the amended TCPA is not limited to third-party debt collectors, however, this distinction is less important and the reasoning for using default rather than delinquency as an initiating event is likewise less persuasive.

6. The Commission interprets “solely to collect a debt,” and, therefore, calls made pursuant to the exception created in the Budget Act, to be limited to debts that are delinquent at the time the call is made or to debts that are at imminent risk of delinquency as a result of the terms or operation of the loan program itself. As a practical matter, this means that, at the time the call is made, the debt is delinquent or there is an imminent, non-speculative risk of delinquency due to a specific, time-sensitive event that affects the amount or timing of payments due, such as a deadline to recertify eligibility for an alternative repayment plan or the end of a deferment period. Many federal loan programs offer various alternate and income-based repayment options for which a debtor might qualify at various times during the life of the debt, and the amount or timing of payments due can vary significantly following expiration of a deferral period or an alternate payment plan. For example, some income-based repayment plans for student loans allow a debtor to make a monthly payment of zero dollars without being considered delinquent or in default, but higher monthly payments are required automatically if the debtor does not periodically recertify that he continues to qualify for the program. As such, calls regarding changes in the amount or timing of payments are directly related to the collection of the underlying debt in that they can ensure payments that would likely otherwise would not be made.

7. Some commenters argue that the Commission may not limit covered calls to those that are “delinquent” or in “default” because the Budget Act did not include such limiting language. For example, ACA states: “Congress made absolutely no mention of the [exception] being limited to calls made post delinquency or post-default. As a result it would be inappropriate for the Commission to read such a limitation into the amendment.” The Commission disagrees with regard to its discretion to interpret the statutory language, but notes that it is not limiting covered calls

only to those made after default or delinquency. As commenters note, the Supreme Court has confirmed that a person or entity “collects” a debt by attempting to obtain payment on it. Thus, the Commission believes that covered calls must have a reasonable nexus to seeking to obtain payment and that the calls permitted under the Commission’s interpretation of “solely to collect” have such a nexus. In contrast, calls outside the scope of covered calls lack such a nexus because the risk of delinquency would be too speculative and too far removed (*i.e.*, not imminent) from an event affecting the amount or timing of payments due.

8. Other commenters argue that covered calls should begin before delinquency because calls that occur after delinquency or default are “too late to prevent damage to the consumer’s credit profile and fail[] to allow the borrower to receive timely information to choose the repayment plan best suited for the borrower’s unique circumstances.” The Commission agrees. Certain calls to service a debt owed to or guaranteed by the government may be so closely tied to an imminent and non-speculative risk of delinquency as to also be “solely to collect a debt.” These calls pertain to specific, time-sensitive events that affect the amount or timing of payments due. Once these time-sensitive events are sufficiently imminent, calls about these events are no longer just about a debt, but are solely about the collection of a debt. The time-sensitive nature of these calls necessitates that they are “solely to collect a debt” for only a limited time—following the event and in the 30 days before such an event. Any earlier and the calls are too speculative and attenuated for the purpose of the call to be “solely to collect a debt.”

9. The record indicates that these debt servicing calls help a debtor avoid delinquency or default, which can preserve the debtor’s payment history and credit rating, and help maintain eligibility for future loans. The potential value of these servicing calls to debtors by helping them avoid delinquency or default, and the probability that servicing calls will create conditions that allow debts to be more readily collected by the United States, lead the Commission to determine that certain servicing calls should be included in the interpretation of “solely to collect a debt.”

10. A caller, therefore, need not wait until a debtor is delinquent to begin making certain debt servicing calls. Rather a caller may make debt servicing calls following a specific, time-sensitive event that affects the amount or timing

of payments due, such as a recertification deadline or the end of a deferment period, and in the 30 days before such an event. For purposes of the limits on the number of covered calls, no debt servicing calls will be permitted except those regarding an approaching deadline or a change in status (deferment, forbearance, rehabilitation), calls regarding enrollment or reenrollment in income-driven or income-based repayment plans, and calls regarding similar time-sensitive events or deadlines affecting the amount or timing of payments due. While commenters list other pre-delinquency calls they would like the Commission to include in the list of debt servicing calls for purposes of the Budget Act amendments, the Commission declines to do so. This list of calls the Commission is permitting as covered debt servicing calls includes the most-requested debt servicing calls and includes calls both to enroll debtors in consumer-friendly programs and to keep them enrolled in those programs. It also includes calls aimed at alerting debtors when significant events will occur that will change their payment patterns. The list does not include calls regarding routine events, such as reminders about scheduled upcoming payments. The Commission would consider a routine event one that occurs by operation of the contract alone, as contrasted with the events described above, which require affirmative steps by the debtor to take advantage of the provisions of the debt contract. These included calls, which often increase the probability that debts will be more readily collected and that a debtor will avoid delinquency, achieve the desired result of enabling the caller to collect a debt owed to or guaranteed by the United States and simultaneously can benefit the debtor. The Commission’s interpretation of covered calls permit no debt servicing calls unless the call follows one of these specific, time-sensitive events, and in the 30 days before such an event.

11. “Owed to or guaranteed by the United States.” The Commission turns next to the types of debts that are included in the phrase “owed to or guaranteed by the United States.” The Commission determines that, for TCPA purposes, this phrase includes only debts for which the United States is currently the owner or guarantor of the debt. The Budget Act amendments specify that covered calls may be made regarding “debts owed to or guaranteed by the United States.” Because the Commission lacks a developed record on the issue, it does not seek to define or determine with particularity exactly

which debts are included in or excluded from this phrase; like commenter SLSA, the Commission is cognizant of the “variety of types of debts covered by the provision,” and while the Commission does not “believe that the definitions applicable to each specific federal program should be used to [automatically] determine whether debt in that program is considered owed or guaranteed by the United States,” the Commission views such definitions—and any agency or judicial interpretations of them—as highly relevant evidence regarding whether a debt is “owed to or guaranteed by the United States.”

12. The Commission clarifies that the debt must be *currently* owed to or guaranteed by the federal government at the time the call is made. Debts that have been satisfied are not among the covered debts, and debts that have been sold in their entirety by the federal government are, likewise, not covered. In these cases, the debt is no longer “owed to . . . the United States.” The Commission notes that basic contract principles dictate that when an owner sells an item, it no longer belongs to the original owner, but to the purchaser. Likewise, the purchaser of a debt is owed the repayment obligation, not the prior obligee. For example, a debt is not still “owed to . . . the United States” if the right to repayment is transferred in whole to anyone other than the United States, or a collection agency that has acquired ownership of the debt from the federal government collects the funds and then remits to the federal government a percentage of the amount collected. In such circumstances, the debt is no longer owed to the United States and the rules permit no calls under this exception.

13. *Who may be called?* The Commission next turns to the question of who may be called using the exception created by the Budget Act. The Commission determines that, because calls made pursuant to the exception must be made “solely to collect a debt,” the covered calls may only be made to the debtor or another person or entity legally responsible for paying the debt. Calls are not permitted to other persons listed on the debt paperwork, such as references or witnesses, under FCC rules. These persons are not liable for the debt; consequently, calls to these persons cannot be “solely to collect” the debt. Senators and Members of Congress support the decision to limit covered calls in this way, writing: “The regulations should limit the calls to those made just to the debtors” and “[r]estrict the calls and texts to those

made just to debtors—not their family or friends.” Another Senator writes separately, urging: “Calls to persons who are not the borrower should be eliminated.” Consumer groups concur, stating “the only reasonable way to read the phrase ‘solely to collect a debt’ is to exclude all calls to persons who do not owe the debt.” The FTC staff also supports this limitation, stating “FTC staff recommends that covered calls be limited to calls directed at the person or persons obligated to pay the debt.”

14. Other commenters, however, urge the Commission to permit covered calls to persons other than the debtor. Navient, in particular, comments on the need to call the parents, relatives, and references of a borrower in order to locate the borrower. Navient writes: “[C]alling numbers obtained through skip tracing is sometimes the only way to reach a defaulted borrower.” It also notes that the Department of Education requires “lenders to contact every ‘endorser, relative, reference, individual, and entity’ identified in a delinquent borrower’s loan file as part of their due diligence efforts.” Navient fails to note, however, that there is no requirement to make these contacts via robocall. Navient also makes clear in its comments that its purpose in calling relatives and references is to locate the debtor, not to collect the debt. Because the language of the Budget Act authorizes the Commission to limit calls “solely to collect a debt,” the rules permit covered calls only to persons who are responsible for repaying the debt.

15. *Numbers that May be Called.* The Commission’s interpretation of the phrase “solely to collect a debt” permits no covered calls unless the call is made to the debtor or person responsible for paying the debt at one of three categories of wireless telephone numbers. First, calls may be made to the wireless telephone number the debtor provided at the time the debt was incurred, such as on the loan application. Second, covered calls may be made to a wireless phone number subsequently provided by the debtor to the owner of the debt or the owner’s contractor. Because the debtor has provided the phone numbers in these first two categories, the caller risks liability for the call after the first call to the number, if the number has been reassigned from the debtor to a third party. Third, covered calls are permitted to a wireless telephone number the owner of the debt or its contractor has obtained from an independent source, provided that the number actually is the debtor’s telephone number. The Commission’s decision to permit calls to

these three categories of numbers is consistent with its interpretation of the phrase “solely to collect a debt,” and continues to satisfy the TCPA’s consumer protection goals to the extent possible. As the connection between the phone numbers called and the debtor becomes more attenuated, so, too, does the likelihood of reaching the debtor. Beyond these three categories of numbers, persons reached will not likely be the debtor, so calls will not likely result in the collection of a debt owed to or guaranteed by the United States.

16. The Commission notes that the rules it is adopting, which permit calls only if they are to these three categories of numbers, are broader than the proposal in the 2016 NPRM. The Commission has included calls to numbers subsequently provided by the debtor to the owner of the debt or the owner’s contractor, and to numbers the owner of the debt or its contractor has obtained from an independent source, provided that any such number actually is the debtor’s number. These additional categories of numbers should prevent uninvolved consumers from receiving robocalls about debts they do not owe, while mitigating concerns that the phone number provided on the loan application no longer belongs to the debtor when the debt enters repayment.

17. This limitation the Commission is placing on the number of covered calls, which limits covered calls only to these three categories of numbers, is a determination that robocalls to wrong numbers are not covered by the exception created in the Budget Act amendments. Calls to reassigned wireless numbers may not be made pursuant to the exception either. Wrong numbers, as the Commission used the term in the 2015 *Declaratory Ruling and Order*, published at 80 FR 61129, Oct. 9, 2015, are “numbers that are misdialed or entered incorrectly into a dialing system, or that for any other reason result in the caller making a call to a number where the called party is different from the party the caller intended to reach or the party who gave consent to be called.” The Commission determines that covered calls to reassigned wireless numbers, however, are subject to the one-call window the Commission clarified in the 2015 *Declaratory Ruling and Order*. For purposes of this exception, the reassigned wireless number provision would come into play when the caller makes a call to the wireless number provided by the debtor but the number was subsequently reassigned. In this circumstance, the caller would be entitled to the one-call window the

Commission previously clarified if the caller did not know of the reassignment.

18. Numerous parties in the record urge the Commission to apply the same wrong number and reassigned number standards set forth in the 2015 *Declaratory Ruling and Order* to these covered calls. Others ask the Commission to abandon or alter the wrong-number and reassigned-number standard so that covered calls are treated differently from other robocalls, but do not set forth a persuasive argument for why a covered call is different from a typical robocall subject to the one-call window. Several commenters argue for a “reasonable belief” or “actual knowledge” standard. The Commission, however, rejected those standards in the 2015 *Declaratory Ruling and Order*. And while ABA/CBA argues that separate regulations “mandate[] that calls be made to distressed borrowers at their last known phone number of record,” it does not indicate that the regulations require that those calls be made using an autodialer, artificial voice, or prerecorded voice. Consequently, ABA/CBA could comply with these separate regulatory requirements by manually dialing the last known phone number of record.

19. *Who May Make the Calls?* The Commission next considers who may make the covered calls at issue. The Commission finds that a call is made “solely to collect a debt owed to or guaranteed by the United States” only if it is made by the owner of such a debt or its contractor. The record supports this interpretation. A number of commenters urge the Commission to determine that covered calls may be made by “creditors and those calling directly on their behalf,” or “creditors and those calling on their behalf, including their agents.” Two commenters ask the Commission to broaden the universe of those who may make covered calls, asking that “subcontractors [] be permitted to call, even if the subcontractor is not an agent.” The Commission declines to adopt rules that are as broad as “subcontractor,” but limits permitted callers to the owner of the debt or its contractor. As the Commission has noted above, consumers consistently complain to the Commission, the FTC, and CFPB about abusive and persistent debt-collection robocalls. In creating the rules limiting the number of covered calls, the Commission seeks to balance the goals of increasing the likelihood that debts owed to or guaranteed by the United States will be paid by the debtor and of protecting consumers. These rules properly balance these goals by recognizing the practicality that owners

of debts might use the services of contractors to make covered calls in a manner that reduces the potential for abuse or causing debtors undue hardship.

20. *What Constitutes a "Call Made"?* "Call," for this exception, is consistent with the Commission's previous interpretation of "call" for TCPA purposes. A call is any initiated call. The call need not be completed, and need not result in a conversation or voicemail. While many commenters support this interpretation of "call," others argue that the definition for purposes of the exception created by the Budget Act should be "connected calls" or "actual contacts." The Commission finds no statutory basis to deviate from its existing interpretation of "call" and "made," and finds persuasive one commenter's argument that "[e]very time the phone rings can cause anxiety. Whether or not the collector leaves a message on voice mail does not assuage this harassment." Consistent with the text of the TCPA and the Commission's previous clarifications, covered calls may be an autodialed call, a prerecorded- or artificial-voice call, or a text message sent using an autodialer.

21. *Content of the covered calls.* The 2016 NPRM asked how to ensure that covered calls do not include extraneous material that consumers do not want, such as marketing content. The Commission agrees with the many commenters who argue that content that includes marketing, advertising, or selling products or services, and other irrelevant content is not solely for the purpose of collecting a debt owed to or guaranteed by the United States. The Commission has previously found that calls solely for the purpose of debt collection do not constitute telemarketing. Content in these calls that is telemarketing, therefore, transforms the call from one solely for the purpose of debt collection into a telemarketing call.

#### **Limits on Number and Duration of Federal Debt Collection Calls**

22. *Need for restrictions.* In considering the need for restrictions on calls to collect debts owed to or guaranteed by the United States, the Commission notes the volume of consumer complaints, as set forth above. These factors, along with Congress' explicit grant of authority to the Commission to "restrict or limit the number and duration of calls made to a telephone number assigned to a cellular telephone service to collect a debt owed to or guaranteed by the United States," lead the Commission to adopt certain restrictions.

23. *Scope.* Section 301(a)(2) of the Budget Act, which enacts a new statutory provision at 47 U.S.C. 227(b)(2)(H), authorizes the Commission to "restrict or limit the number and duration of calls made to a cellular telephone number to collect a debt owed to or guaranteed by the United States." The scope of this authority is broader than the scope of the exception from the prior-express-consent requirement, because—unlike the exception—it is not limited to calls made "solely" to collect a covered debt. Thus, the rules the Commission promulgates under this authority apply to any autodialed, prerecorded-voice, and artificial-voice calls that reasonably relate to the collection of a covered debt and therefore apply even if the calls are not "calls made solely to collect a debt" under section 227(b)(1) of the Communications Act (the Act): e.g., as noted above, if the calls also contain other content (such as advertising) or precede the specified time period for calls excepted from the consent requirement. Moreover, these number and duration rules apply to calls by the federal government (to the extent it is the owner or guarantor of the debt) and its contractors, as explained in the Jurisdiction section below.

24. *The nature of restrictions, generally.* The Commission determines, based on consumer complaints and on support from the record, that restrictions on the number and duration of federal debt collection calls are appropriate and necessary. In reaching this conclusion, the Commission bears in mind one reasonable interpretation of Congress' action in enacting the amendments: To make it easier for owners of debts owed to or guaranteed by the United States, as well as their contractors, to make calls to collect the debts. The Commission also bears in mind the TCPA's overarching goal to protect the privacy interests of consumers and Congress' express grant of authority to the Commission to place certain restrictions on federal debt collection calls. In seeking to balance these two interests, the Commission limits the number of federal debt collection calls to three in thirty days, with exceptions as noted below; limits the length of calls using an artificial voice or prerecorded voice, and autodialed text messages; and limits the times of day when federal debt collection calls may be made to wireless numbers. As explained more fully below, these limits apply in the aggregate to all calls from a caller to a debtor, regardless of the number of debts of each type the servicer or

collector holds for the debtor. This cap of three calls per thirty days is cumulative for debt servicing calls and debt collection calls. Finally, the Commission limits the number of calls in light of a debtor's right to stop federal debt collection calls and to be notified of this right.

25. *Number of calls.* In the 2016 NPRM, the Commission proposed to limit the number of federal debt collection calls to three per month, per delinquency, only after delinquency. Several commenters support this number. One commenter reminds the Commission, "it is important to keep in mind that the calls made pursuant to this regulation are without consent, and are likely to comprise only a portion of the many other calls and contacts that debt collectors have with the debtors from whom they are collecting." Other commenters, however, argue for higher limits, stating that "it takes significantly more than three contact attempts to reach the borrower and additional contacts to effectively resolve a borrower's delinquency or default." One commenter asserts that it needs 50 calls over several months to reach the right person and have a conversation. Another states that it takes 14.3 attempts to contact a consumer. A third commenter states that it needs approximately 50 follow-up calls, but that those calls are consented-to. Two commenters assert that approximately ten call attempts per month is an appropriate rate at which to contact debtors. A mortgage servicer states: "By making up to five calls in the two weeks prior to a client becoming 60 days delinquent, we saw approximately 50% more clients become current on the loan when compared to those who weren't called."

26. As these comments demonstrate, there is no consensus in the record. The Department of Education states that it "does not believe that allowing loan servicers and [private collection agencies] to make three [federal debt collection calls] per month would measurably increase the likelihood that they would reach a borrower," but that "a higher limit will reasonably allow" them to do so. Consumer groups generally argue that three calls is the appropriate number for calls pursuant to the Budget Act amendments. As commenter Navient notes, however, these commenters often "fail to explain why three calls is an appropriate limit." Additionally, callers filing comments cite statistics and call patterns documenting their perceived need for more calls—but even callers vary widely when advocating for a number on federal debt collection calls. Congress

gave the Commission express authority to limit the number and duration of wireless federal debt collection calls, and the record documents the benefits to consumers of some number of covered calls. The Commission, therefore, must engage in an exercise in line drawing as it balances the competing interests to determine an appropriate limit on the number of federal debt collection calls.

27. The Commission determines, subject to the exception below, that a limit of three federal debt collection calls in a thirty-day period is appropriate. As stated above, a significant number of commenters support this numeric restriction. Furthermore, the overwhelming majority of individual commenters support the Commission imposing a low limit on the number of calls allowed pursuant to the Budget Act amendments. Commenters asking for a higher limit have failed to offer a compelling justification for any of the various limits they support. At the same time, the Commission agrees with consumer groups that have noted that callers may make as many calls as they like—they simply need to obtain the consent of the debtor or contact consumers without making a robocall.

28. The Commission, therefore, concludes that the appropriate limit for the number of federal debt collection calls is three calls within thirty days while the delinquency remains or following a specific, time-sensitive event, with such calls also permitted in the 30 days before such an event (but not before delinquency). The Commission recognizes, however, that some federal agencies, based on their expertise administering their respective statutes and programs, may desire additional calls. Balancing these needs with the TCPA's goal of protecting consumers from unwanted calls, the Commission notes that federal agencies may request a waiver seeking a different limit on the number of autodialed, prerecorded-voice, and artificial-voice calls that may be made without consent of the called party. The Commission delegates to the Consumer and Governmental Affairs Bureau the authority to address any such waivers.

29. The Commission is not persuaded by callers who argue that more calls are needed or that other regulatory or contractual obligations might impose higher limits on the total number of calls. The Commission is not limiting the total number of calls that may be made; instead, the Commission is exercising its statutory authority and discretion to establish a limit on the number of autodialed, prerecorded-

voice, and artificial-voice calls that can be made without the consent of the called party for the limited purpose at issue here. Thus, the Commission sets this limit with the knowledge that callers may make additional autodialed, artificial-voice, and prerecorded-voice calls if they obtain the prior express consent of the called party or if they dial manually. Robocallers are free, of course, to obtain prior express consent for additional calls and the Commission presumes that consumers who find the calls beneficial will provide it.

30. *Consumer ability to stop federal debt collection calls.* The Commission has determined that an ability to stop unwanted calls is critical to the TCPA's goal of consumer protection. That right is likely more important here, where consumers need not consent to the calls in advance in order for a caller to make federal debt collection calls. As one commenter notes, "[r]equiring calls to stop after the consumer so requests constitutes a limit on the number of calls that can be made, and Congress explicitly authorized the Commission to limit the number of calls." The Commission agrees. The Commission has stated that one reasonable interpretation of the statute is that Congress intended to make it easier for consumers to obtain useful information about debt repayment, which may be conveyed in these calls. When a debtor has rejected that presumption and declared that he or she no longer wishes to receive these calls, there is no longer any reason for the calls to continue. The Commission determines, per its authority to limit the number of federal debt collection calls, that consumers have a right to stop the covered autodialed, artificial-voice, and prerecorded-voice servicing and collection calls to wireless numbers at any point the consumer wishes. The debtor may make this request to the caller. Several commenters support this decision and the Commission's ability to make it. If Congress intended these amendments to make it easier for consumers to obtain useful information about debt repayment, then consumers may request that the calls stop if they do not find the calls or the information they contain useful. The Commission's rules, therefore, require that zero federal debt collection calls are permitted once a debtor asks the owner of the debt or its contractor to cease federal debt collection calls. This requirement that callers immediately honor a request to stop calls applies even where the caller has previously obtained prior express consent to make federal debt collection calls.

31. The Commission also understands that debts may be transferred from one servicer or collector to another. This stop-calling request is specific to the debt and the consumer, and transfers with the debt; once the consumer has asked that the number of federal debt collection calls be reduced to zero, only the consumer can alter that number restriction. Consequently, a stop-calling request applies to a subsequent collector or servicer of the same debt. In reaching this determination, the Commission rejects a commenter's proposal that a stop-calling request be limited to a period of time such as a month, but be renewable. Because the stop-calling request for federal debt collection calls applies for the life of the debt, servicers and collectors must ensure that information regarding the request conveys with the other relevant information regarding the debt when it is sold or transferred between servicers or collectors. The requirement that the stop-call request conveys from one servicer or collector to the next implicates the Paperwork Reduction Act, as indicated in the Commission's rules, and in the Final Regulatory Flexibility Act.

32. Granting consumers a right to request calls stop at any point is only useful if consumers know of this right. The Commission agrees with the FTC staff that "[a]n opt-out right [] is only effective if it is well-known" rather than with the commenters who argue that a consumer should be notified of the right only once and in writing, or that notifying consumers of the right within every phone call will "cause a consumer to attach undue significance to such a right." The Commission, therefore, requires callers to inform debtors of their right to make such a request. The disclosure of rights must inform the debtor that he or she has a right to request that no further autodialed, artificial-voice, or prerecorded-voice calls be made to the debtor for the life of the debt, and that such request may be made by any reasonable method. Disclosures must be made in a manner that gives debtors an effective opportunity to stop future calls. Callers must disclose this consumer right within every completed autodialed call with a live caller, whether the caller speaks with the debtor or leaves a voicemail message. Calls using a prerecorded or artificial voice must disclose the right within each message. Covered text messages must disclose the right within each text message or in a separate text message that contains only the disclosure and is sent immediately preceding the first covered text message.

If the disclosure is in a separate text message, that message does not count toward the numeric limits the Commission imposes in document FCC 16–99.

33. The Commission has previously determined that consumers may opt out of calls for which prior consent is required, and that they may do so using any reasonable method, including orally or in response to a text message. Here, where the federal debt collection calls do not require consent, but where consumers may request at any time that calls stop, consumers may also make a stop-calling request using any reasonable method, including orally or in response to a text message. The Commission reaches this conclusion regarding the methods by which a consumer may make a stop-calling request after considering consumer confusion, standard calling practices, and recordkeeping procedures. The Commission anticipates that confusion will be minimized and calling practices will be streamlined if stop-calling methods and opt-out procedures are consistent. For similar reasons, the Commission determines that federal debt collection calls made using a prerecorded or artificial voice must include an automated, interactive voice-and/or key press-activated opt-out mechanism so that debtors who receive these calls may make a stop-calling request during the call by pressing a single key. When a federal debt collection call using an artificial voice or prerecorded voice leaves a voicemail message, that message must also provide a toll-free number that the debtor may call at a later time to connect directly to the automated, interactive voice and/or key press-activated mechanism and automatically record the stop-calling request. Text message disclosures must include brief explanatory instructions for sending a stop-call request by reply text message and provide a toll-free number that enables the debtor to call back later to make a stop-call request. The requirement that the artificial- and prerecorded-voice calls, as well as text messages, include opt-out instructions and features implicates the Paperwork Reduction Act, as indicated in the Commission's rules, and in the Final Regulatory Flexibility Act.

34. *When may federal debt collection calls be made?* In order for a federal debt collection call to produce the intended effect of “collect[ing] a debt owed to or guaranteed by the United States,” it must occur close in time to a key event in the life of the debt. As set forth above, calls “solely to collect a debt” may be collection calls or servicing calls because both increase the

likelihood of a debt being collected. The Commission has interpreted the statutory phrase “solely to collect a debt” to limit debt collection calls to a period when a debt is delinquent, and to limit debt servicing calls to following a specific, time-sensitive event and in the 30 days before such an event. The Commission here uses the authority Congress granted it to limit the number and duration of calls “to collect a debt owed to or guaranteed by the United States.” The rules the Commission enacts today state that zero calls are permitted under the Budget Act amendments unless they occur: (1) During the period of delinquency for debt collection calls; and (2) following an enumerated, specific, time-sensitive event and in the 30 days before such an event for debt servicing calls.

35. *Content of the calls.* As stated above, the Commission's interpretation of the statutory phrase “solely to collect a debt” excludes calls that contain marketing, advertising, or selling products or services. The Commission here uses the authority Congress granted it to limit the number and duration of calls “to collect a debt owed to or guaranteed by the United States.” The rules the Commission enacts today state that zero calls are permitted under the Budget Act amendments if the autodialed, prerecorded-voice, or artificial-voice call contains any marketing, advertising, or selling of products or services. Commenters support this determination. The Commission's determination regarding calls that contain marketing, advertising, or sales also supports the Commission's interpretation of Congress' intent that the calls provide consumers with useful information about repaying their debt, and it is a step in preventing the very real problem that consumers will be subject to fraudulent calls and programs.

36. *Calls only to the debtor.* The Commission also here enacts rules stating that zero calls are permitted under the Budget Act amendments unless the calls are to the debtor or the person responsible for paying the debt, and the call is made to that person at one of the three categories of numbers specified in document FCC 16–99. The Commission's interpretation of the statutory phrase “solely to collect” explains its reasoning for establishing these limits on who may be called and the numbers at which these persons may be called. The Commission finds that the reasoning applies here as well, where Congress has authorized it to limit the number of calls made “to collect a debt.” Calls to persons other than the debtor or other entities

responsible for paying the debt are not directly tied to collecting a debt. In balancing the inconvenience to uninvolved persons against the interests of callers, the Commission determines it is not appropriate to extend federal debt collection calls beyond the debtor and others responsible for paying the debt. Likewise, calls to numbers other than the three categories of telephone numbers the Commission specified above are unlikely to reach the person responsible for repaying the debt, and so are unlikely to result in collection of the debt. The Commission, therefore, limits to zero calls made to persons or telephone numbers other than these.

37. *Call limits are per caller.* Commenters also ask the Commission to “clarify whether the [limited number of federal debt collection calls] is per debtor (e.g., inclusive of all telephone numbers used by the debtor)” per delinquency, or per servicer or collector. One consumer advocate states: “[B]ecause many consumers have multiple loans—often eight to ten student loans for each borrower—we recommend that the number of calls or texts permitted to be made without consent should be limited to three calls per servicer or collector. Without this limitation, consumers who have eight to ten outstanding loans, as many do, could be receiving between twenty-four and thirty robocalls per month to their cell phones.” Because the Commission has set the federal debt collection call limit at three calls per thirty days, that number could rise to twenty-four to thirty robocalls per month if the Commission were to determine that the call limit applied per loan. In light of the record, and to prevent an excessive number of calls to individual debtors, the Commission determines that the call limit on federal debt collection calls to wireless numbers applies for each servicer or collector. If the servicer or collector has contracts with the United States for more than one type of debt—for example to collect or service student loans and Department of Agriculture loans—the servicer may utilize a three-call in thirty day limit for each type of loan the servicer or collector manages for the debtor.

38. *Length of federal debt collection calls.* In the 2016 NPRM, the Commission sought comment on the maximum duration of a voice call, and whether it should adopt different duration limits for prerecorded- or artificial-voice calls than for autodialed calls with a live caller. Commenters generally support the idea of a maximum length for artificial-voice and prerecorded-voice calls, but not a maximum length for autodialed calls

with a live caller because this could impinge on a potentially lengthy conversation between a servicer and a debtor. Commenters who support a maximum length for artificial- and prerecorded-voice calls suggest caps of 30 or 60 seconds. Some commenters suggest that the time limit include time for any required disclosures, while others ask that required disclosures be outside of any time cap the Commission sets. In light of the record, the Commission determines that artificial-voice and prerecorded-voice calls may not exceed 60 seconds, exclusive of any required disclosures. The Commission does not place any cap on the duration of live-caller, autodialed calls made pursuant to the Budget Act exception.

39. The Commission also asked in the 2016 NPRM whether it should impose a limit on the length of text messages, and what that limit should be. Commenters note that senders of text messages generally keep the messages short because “[a] long text message would get split up into multiple texts and could confuse the borrower.” Other commenters ask that any cap on the length of a text message account for required disclosures. Text messages are generally limited to 160 characters. As stated above, any required disclosures may be included within this 160-character limit for a single text message or may be sent as a separate text message that does not count toward the numeric limits the Commission imposes herein.

40. *Time of day restrictions.* The Commission imposes an additional restriction on the number of federal debt collection calls or texts allowed, and determines that no federal debt collection calls or texts are permitted outside the hours of 8:00 a.m. to 9:00 p.m. (local time at the called party’s location), which is identical to the rule for telemarketing calls. Congress stated that federal debt collection calls are intended “to collect a debt,” and during these times consumers are likely available to answer calls and receptive to receiving information from callers. The record supports the Commission’s determination that consumers are generally comfortable with receiving calls during these times. Furthermore, FTC staff notes that the FDCPA and the Telemarketing Sales Rule “similarly limit debt collection and telemarketing calls to this same timeframe.” Adding a new category of calls to this generally accepted timeframe will cause less inconvenience and confusion to consumers than if the Commission were to impose a different schedule or no schedule for these calls. Likewise, call centers that contract with businesses to

make calls on their behalf are familiar with these time-of-day restrictions; this restriction should not impose a burden on callers or their contractors making federal debt collection calls.

41. *Multiple sets of regulations.* The Commission acknowledges that other statutes and regulations impact debt collection calls, yet it recognizes that Congress assigned to the Commission responsibility for crafting rules for autodialed, artificial-voice, and prerecorded-voice debt collection calls where the debt is owed to or guaranteed by the United States. Because Congress specifically gave the Commission certain authority over these federal debt collection calls, the Commission assumes that callers will follow the most restrictive rules for the call being made. Which rules apply will vary based on a number of factors, such as whether the caller is a debt collector or a debt servicer, the nature of the debt, and the length of delinquency. Where multiple rules apply to the same call and one of the rules is enacted by the Commission to implement the TCPA, a caller must comply with the most restrictive requirements regarding factors such as frequency, time of day, and so on. Section 301 of the Budget Act affects the TCPA and its implementing regulations but does not affect other laws, including specifically those for which the CFPB or the FTC have responsibility.

#### Other Implementation Issues

42. *Covered Calls to Residential Lines.* The Commission notes that under the current rules, artificial- or prerecorded-voice calls to residential lines that are made for the purpose of collecting a debt are currently not subject to the prior express consent requirement. Although the TCPA allows for broad coverage of the prior express consent requirement to all non-emergency artificial- and prerecorded-voice calls to residential lines, the Commission has exercised its statutory exemption authority so as to apply the consent requirement only to calls that include or introduce an advertisement or constitute telemarketing. The Commission has also found that debt collection calls do not constitute telemarketing.

43. Congress, in authorizing the Commission to enact rules implementing the Budget Act’s amendments, stated that the Commission could “restrict or limit the number and duration of calls made to a telephone number assigned to a cellular telephone service.” Congress, by omission, did not authorize the Commission to enact rules to limit the number and duration of calls made to a

telephone number assigned to a residential telephone line. Commenters support this understanding of the Budget Act amendment with regard to calls to numbers assigned to residential lines, stating: “Congress did not grant the Commission the authority to restrict or limit” these calls. Consequently, the Commission’s current rules regarding non-telemarketing autodialed, prerecorded-voice, and artificial-voice calls to residential numbers are not altered by the Budget Act amendments. The Commission is not imposing restrictions on these calls. Callers may, however, be subject to restrictions under other applicable statutes and regulations, such as the Fair Debt Collection Practices Act.

44. *Restrictions on Calls to Cellular Telephone Service.* Congress authorized the Commission to “restrict or limit the number and duration of calls made to a telephone number assigned to a cellular telephone service to collect a debt owed to or guaranteed by the United States.” Yet, the amendment to the TCPA, authorizing calls made to collect a debt owed to or guaranteed by the United States, is broader, applying to “any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call.” Considering the identical language in the prior delegation of authority in section 227(b)(2)(C) of the Act, the Commission concludes that Congress delegated the Commission authority to limit the number and duration of all calls made pursuant to the debt collection exception in section 227(b)(1)(A)(iii) of the Act.

45. Congress, in granting the Commission authority to limit the number and duration of calls, used identical language to the language it used in the separate delegation of authority in section 227(b)(2)(C) of the Act. The identical language in these two delegations of authority indicates that Congress intended the two provisions to apply to the same services.

46. The Commission has interpreted section 227(b)(2)(C) of the Act to apply to all services mentioned in section 227(b)(1)(A)(iii) of the Act. In so doing, it has interpreted “cellular telephone service” by asking whether services are functionally equivalent from the consumer perspective rather than on technical or regulatory differences, such as which spectrum block is used to provide the service. This avoids, for example, consumers receiving wireless voice service from being treated differently depending on which

spectrum block their carriers use and callers having to determine which spectrum block is used for a particular consumer's service in order to know which requirements apply.

47. Applying the canon of statutory construction that Congress knows the law, including relevant agency interpretations, at the time it adopts a statute, the Commission presumes that Congress knew of the Commission's interpretation of this key language. Congress used the same language in the recent delegation of authority without taking any action to alter the Commission's interpretation of identical language elsewhere in the same statute. The Commission therefore concludes that the authority delegated to it in the new section 227(b)(2)(H) of the Act added by the Budget Act applies to all services to which amended section 227(b)(1)(A)(iii) of the Act applies.

48. *Application of Other TCPA Restrictions to Covered Calls.* The Commission believes the most reasonable interpretation of the Budget Act amendments is that they except covered calls from the requirement to obtain the consent of the called party, and that calls must in every other respect comply with the TCPA unless compliance with a requirement of the TCPA is prohibited by a separate regulation pertaining to debt collection calls generally. The Budget Act amendments apply to the consent requirement of section (b)(1) of the Act, but other sections of the TCPA are left unaffected. For example, the identification requirements of § 64.1200(b)(1) through (2) of the Commission's rules apply to both excepted calls and other calls made using an autodialer, a prerecorded voice, and an artificial voice. The exception Congress created in the Budget Act amendments is not an exception to compliance with the TCPA as a whole, but only with the requirement to obtain the consent of the called party to make the call. The Commission will resolve conflicts on a case-by-case basis.

49. *Other Issues.* Commenters in the record raise other arguments for the Commission's consideration in enacting rules for the Budget Act amendments. For example, one commenter asks the Commission to state that "no debt collection calls [may be made to] people receiving Supplemental Security Income (SSI) benefits on the basis of old age or disability, and that Treasury not pass along information on debts owed by SSI recipients to debt collectors." Another commenter asks the Commission to develop "a separate set of rules to assist federal student loan

borrowers." A separate commenter asks the Commission to create a certification system that authorizes callers to use autodialers for purposes of making covered calls and only renews the certification if the caller's yearly performance meets standards established by the Commission and the Department of Education. The Commission declines to address these and other ancillary issues and arguments raised in the record as they are outside the scope of this proceeding. Moreover, these issues are not fully developed in the record and the Commission would need more facts to meaningfully and cogently address these issues.

#### Severability

50. All of the rules that are adopted in document FCC 16–99 are designed to ensure a caller's ability to make calls pursuant to the Budget Act amendments and a debtor's ability to control the calls he or she receives. Each of the determinations the Commission undertakes in document FCC 16–99 serve a particular function toward this goal. Therefore, it is the Commission's intent that each of the rules and regulations adopted herein shall be severable. The Commission believes that debtors will benefit from the information they may receive from callers and will also benefit from the ability to ask that calls be stopped. If any of the rules or regulations, or portions thereof, are declared invalid or unenforceable for any reason, it is the Commission's intent that the remaining rules shall be in full force and effect.

#### Effective Date

51. As noted in the discussion above, two portions of the Commission's rules implicate the Paperwork Reduction Act (PRA). These portions involve the rules for the recording of a debtor's request to stop receiving autodialed, artificial-voice, and prerecorded-voice calls to collect a debt owed to or guaranteed by the United States, and rules for the conveyance of that stop-call request from one servicer or collector to another. Because these portions of the rules implicate the PRA, they will not become effective until 60 days after the Commission publishes a Notice in the **Federal Register** indicating approval of the information collection by OMB.

52. The remaining rules 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 document FCC 16–99, the Commission determines 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 the Commission has 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. The Commission determines that the regulatory scheme it implements 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. The Commission determines that both portions of the rules must become effective for the regulatory scheme to be effective.

53. The notice of OMB's approval of the information collections, the announcement of the effective date for the rule changes adopted on August 2, 2016, and released on August 11, 2016, and the appropriate amendatory language, will be contained in a document published in the **Federal Register** at a later date.

#### Language of Rule Changes To Implement Regulatory Scheme

54. The amendments to §§ 64.1200(j)(3) and (j)(4) require OMB approval under the Paperwork Reduction Act (PRA) and will not go into effect until 60 days after we publish a notice in the **Federal Register** announcing OMB's approval and the effective date, and containing the formal amendatory language for the rules. The complete text of the rule changes may be found in the appendix to the Commission's decision, available on the

agency Web site. The subsection (j)(3) and (j)(4) rule changes are summarized as follows:

- *Required Disclosures.* Prerecorded-voice, artificial-voice, or autodialed calls to collect a debt owed to or guaranteed by the United States must include a disclosure that the debtor has a right to request that no further calls of this type be made to the debtor for the life of the debt and that such requests may be made by any reasonable method. Disclosures must be made in a manner that gives debtors an effective opportunity to stop future calls. For voice telephone calls, the disclosure must be made within each telephone call. For autodialed text messages, the disclosure must be within each text message or in a separate text message that contains only the disclosure and that is sent immediately preceding the first text message permitted, but the text message containing the disclosure does not count toward the character limit contained elsewhere in the rules.

- *Requests for no more calls.* A debtor may request to the owner of the debt or its contractor that no further telephone calls be made to the debtor for the life of the debt by any reasonable method, including orally and by reply text message. No autodialed, prerecorded-voice, or artificial-voice federal debt collection calls are permitted after the stop-call request. Telephone calls using an artificial or prerecorded voice must include an automated, interactive voice-and/or key press-activated opt-out mechanism that enables the debtor to make a stop-calling request prior to terminating the call, including brief explanatory instructions on how to use such mechanism. When a debtor elects to make a stop-calling request using such mechanism, it must automatically record the request and immediately terminate the call. When a telephone call using an artificial or prerecorded voice leaves a message on an answering machine or a voice mail service, the message must also include a toll free number that the debtor may call later to connect directly to the automated, interactive voice- and/or key press-activated opt-out mechanism and automatically record the stop-calling request. Text messages containing the disclosure required elsewhere in the rules must include brief explanatory instructions for sending a stop-calling request by reply text message and provide a toll free number that enables the debtor to call back later to make a stop-calling request.

55. The Commission determined that the amendments to §§ 64.1200(a)(1)(iii); (a)(3)(iv), (v), and (vi); (f)(17); (i), and (j)(1)–(2), (5)–(9), which do not require

OMB approval, nonetheless will not go into effect until 60 days after we publish a notice of OMB approval of § 64.1200(j)(3) and (j)(4), the effective date for all the rule changes, and the amendatory language for the rules. The complete text of the rule changes may be found in the appendix to the Commission's decision, available on the agency Web site. These other rule changes are summarized as follows:

- *No consent required for calls solely to collect a debt owed to or guaranteed by the United States.* The prior express consent of the called party is not needed when: A call is made to a telephone number assigned to a cellular telephone service, among others; the call is made solely to collect a debt owed to or guaranteed by the federal government of the United States; and the call is made using an automatic telephone dialing system or an artificial or prerecorded voice. The prior express written consent of the called party is not needed when a call is made to a telephone number assigned to a residential line when the call is made pursuant to the collection of a debt owed to or guaranteed by the federal government of the United States and the call is made using an artificial or prerecorded voice.

- *Debtor defined.* Debtor is defined as the debtor; a co-signor or other person or entity legally obligated to pay the debt; and an executor, guardian, administrator, receiver, trustee, or similar legal representative of the debtor or of another person or entity legally obligated to pay the debt.

- *When a call is made solely to collect a debt owed to or guaranteed by the United States.* To be considered a call made solely to collect a debt owed to or guaranteed by the United States, the telephone call must exclusively concern a debt that, at the time of the call, is owed to or guaranteed by the federal government of the United States and must contain no marketing, advertising, or sales information. The call must also be made by the owner of the debt, or its contractor, to the debtor. The entire content of the call must be directly and reasonably related either to collecting payment of a delinquent amount in order to cure such delinquency or to resolving the debt either by obtaining payment of such delinquent amount or by entering into an alternative payment arrangement that will cure such delinquency or resolve the debt, during a time period when a delinquency exists, or providing information about changes to the amount or timing of payments following the end of, or in the 30 days before: a grace, deferment, or forbearance period; expiration of an alternative payment

arrangement; or occurrence of a similar time-sensitive event or deadline affecting the amount or timing of payments due. The call must be made to the debtor at the wireless telephone number the debtor provided at the time the debt was incurred, or subsequently provided by the debtor to the owner of the debt or the owner's contractor, or a wireless telephone number obtained from an independent source, provided that the number actually is the debtor's telephone number.

- *Number and duration limits on calls made to collect a debt owed to or guaranteed by the United States.* Telephone calls made using an autodialer or a prerecorded or artificial voice to collect a debt owed to or guaranteed by the United States are limited to three calls to a debtor within a 30-day period but zero calls if a debtor requests no further calls. These limits apply whether the calls are made by the owner of the debt or by a contractor of the owner(s) of the debt. For purposes of determining the number of calls permitted, multiple debts owed by one debtor shall be considered one debt if the agent or contractor is servicing or collecting those debts on behalf of the same owner under the same contractual or agency relationship. The limit of zero calls if a debtor requests no further calls applies for the life of the debt; the limit of three calls in a 30-day period applies during each time period in which telephone calls may be made pursuant to paragraph (i)(2) of the rules.

- *Length of federal debt collection calls.* Artificial- and prerecorded-voice telephone calls may not exceed 60 seconds in length, excluding any required disclosures and stop-calling instructions. Text messages are limited to 160 characters in length.

- *Other restrictions on calls made to collect a debt owed to or guaranteed by the United States.* No telephone calls can be made before 8 a.m. or after 9 p.m. local time at the debtor's location. No calls are permitted if the call contains marketing, advertising, or sales information. No calls are permitted except to the debtor at the wireless telephone number the debtor provided at the time the debt was incurred, a wireless telephone number subsequently provided by the debtor to the owner of the debt or the owner's contractor, or a wireless telephone number the owner of the debt or its contractor has obtained from an independent source, provided that the number actually is the debtor's telephone number. No calls are permitted except during a time period when a delinquency exists, or following, or in the 30 days before: The end of a

grace, deferment, or forbearance period; expiration of an alternative payment arrangement; or occurrence of a similar time-sensitive event or deadline affecting the amount or timing of payments due.

*Who must comply with the restrictions.* Notwithstanding anything to the contrary, the number and duration rules for calls to collect a debt owed to or guaranteed by the United States apply to all autodialed, artificial-voice, or prerecorded-voice calls made to a wireless number including, for example, calls by any governmental entity or its agent.

#### Final Regulatory Flexibility Analysis

56. As required by the Regulatory Flexibility Act of 1980 (RFA), as amended, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the 2016 *NRPM*. The Commission sought written public comment on the proposals in the 2016 *NRPM*, including comment on the IRFA. The comments received are discussed below. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

#### Need for, and Objectives of, the Order

57. Document FCC 16–99 promulgates rules to implement section 301 of the Bipartisan Budget Act of 2015, which amends the Telephone Consumer Protection Act by excepting from that Act’s consent requirement robocalls to wireless numbers “made solely to collect a debt owed to or guaranteed by the United States” and authorizing the Commission to adopt rules to “restrict or limit the number and duration” of any calls to wireless numbers “to collect a debt owed to or guaranteed by the United States.” The Budget Act requires the Commission, in consultation with the Department of the Treasury, to “prescribe regulations to implement the amendments made” by section 301 of the Budget Act within nine months of enactment. In implementing these provisions, the Commission recognizes and seeks to balance the importance of collecting debt owed to or guaranteed by the United States and the consumer protections inherent in the TCPA. In adopting these rules today, the Commission fulfills the statutory requirement to prescribe rules to implement the amendments to the TCPA.

58. *Covered Calls.* The Commission interprets “solely to collect a debt” and, therefore, calls made pursuant to the exception created by section 301 of the Budget Act, to be limited to 1) debts that are delinquent at the time the calls are made, and 2) debts for which there is an imminent, non-speculative risk of

delinquency due to a specific, time-sensitive event that affects the amount or timing of payments due, such as a deadline to recertify eligibility for an alternative payment plan or the end of a deferment period. The Commission interprets “owed to or guaranteed by the United States” to include only debts that are owed to or guaranteed by the federal government at the time the call is made.

59. The Commission determines that, because calls made pursuant to the exception must be made “solely to collect a debt,” the covered calls may only be made to the debtor or another person or entity legally responsible for paying the debt. The Commission further determines that covered calls may only be made to the wireless telephone number the debtor provided at the time the debt was incurred, such as on the loan application; to a wireless phone number subsequently provided by the debtor; or to a wireless number that the owner of the debt or its contractor has obtained from an independent source, provided that the number actually is the debtor’s telephone number.

60. The Commission determines that robocalls to wrong numbers are not covered by the exception created in the Budget Act amendments. Calls to reassigned wireless numbers may not be made pursuant to the amendment either, but they are subject to the 1-call window the Commission clarified in the 2015 *Declaratory Ruling and Order*.

61. The Commission limits eligible callers to the owner of the debt or its contractor. The Commission determines that a “call,” for this exception, includes any initiated call, including a text message. The Commission determines that the excepted calls are limited in content to debt collection and servicing; they may not include any marketing, advertising, or selling products or services, or other irrelevant content.

62. *Limits on Number and Duration of Federal Debt Collection Calls.* The Commission limits the number of federal debt collection calls to three calls within a thirty-day period while the delinquency remains or following a specific, time-sensitive event, and in the 30 days before such an event. The Commission determines that consumers have a right to stop autodialed, artificial-voice, and prerecorded-voice servicing and collection calls to wireless numbers at any point the consumer wishes. Callers must inform debtors of their right to make such a request. The Commission limits federal debt collection calls so that zero calls are permitted unless they occur: (1) During

the period of delinquency for debt collection calls; and (2) following an enumerated, specific, time-sensitive event for debt servicing calls, and in the 30 days before such an event.

63. The Commission determines that artificial-voice and prerecorded-voice calls may not exceed 60 seconds, excluding any required disclosures. The Commission does not place any cap on the duration of live-caller, autodialed calls. The Commission limits text messages to 160 characters. Any required disclosures may be included within these 160 characters or may be sent as a separate text message that does not count toward the numeric limits. The Commission determines that no federal debt collection calls or texts are permitted outside the hours of 8:00 a.m. to 9:00 p.m. (local time at the called party’s location). The Commission determines that if multiple rules apply to the same call and one of the rules is enacted by the Commission to implement the TCPA, a caller must comply with the most restrictive requirements regarding factors such as frequency, time of day, and so on.

64. *Other Implementation Issues.* The Commission interprets section 227(b)(2)(C) of the Act to apply to all services mentioned in section 227(b)(1)(A)(iii) of the Act, which excludes residential lines.

#### Summary of Significant Issues Raised by Public Comments in Response to the IRFA

65. In document FCC 16–99, the Commission solicited comments on how to minimize the economic impact of the proposals on small businesses. The Commission received three comments directly addressing the IRFA. Two of the comments addressed the area of duplicate, overlapping, or conflicting rules, and one addressed coordination with the ongoing Consumer Financial Protection Bureau (CFPB) rulemaking. In addition, the Commission received six consumer comments that were against robocalls where the filer mentioned being the owner of a small business. None of the comments pointed out any areas where small businesses would incur a particular hardship in complying with the rules.

66. *Duplicate, Overlapping, or Conflicting Rules.* Both CMC and NSC claim that the Commission failed to identify rules that “duplicate, overlap or conflict with the proposed rule” as required by the Regulatory Flexibility Act. The Commission acknowledges that other statutes and regulations impact debt collection calls. The TCPA regulates autodialed, prerecorded-voice, and artificial-voice calls. The rules the

Commission adopted are concerned only with regulating that subset of autodialed, artificial-voice, and prerecorded-voice calls that are made to wireless numbers and to collect a debt that is owed to or guaranteed by the United States. The TCPA amendments and these implementing rules change only the specific conditions under which a caller can use an autodialer, prerecorded voice, and artificial voice to make calls to a wireless number without the prior express consent of the called party and the limitations that apply to autodialed, prerecorded-voice, or artificial-voice calls to a wireless number made to collect a debt owed to or guaranteed by the United States.

67. CMC suggests that the rules conflict with “longstanding federal and state foreclosure prevention efforts and policies”; “several federal requirements to call mortgage borrowers by telephone to try to prevent foreclosures”; “any new FCC rule permitting consumers to block calls”; “[t]he FDCPA prohibit[ion of] unfair practices by debt collectors in attempting to collect a debt”; and “[t]he Dodd-Frank Act prohibit[ion of] unfair, deceptive, or abusive acts or practices by covered persons or service providers, including consumer mortgage servicers.” However, none of the rules cited by CMC require that calls to wireless numbers be autodialed, artificial-voice, or prerecorded-voice calls. The TCPA, with or without the amendments, does not regulate whether or when a debt collector can make a debt collection call, nor does it in any way prohibit a mortgage servicer from making a call in compliance with foreclosure requirements. Debt collectors and mortgage servicers continue to be free to make calls in compliance with non-TCPA law. The rules the Commission adopted apply only to autodialed, prerecorded-voice, and artificial-voice calls. Therefore the rules cited by CMC do not “duplicate, overlap or conflict with” the proposed rule.

68. *Coordination with the CFPB.* ACA notes that the CFPB “will convene one or more panels under the Small Business Regulatory Enforcement Fairness Act to assess the potential impact of its debt collection proposals under consideration on affected small business, including by obtaining feedback from small entity representatives.” ACA suggests that the Commission wait for the results of the CFPB’s analysis, particularly since “the substantial majority of collection agencies are ‘small’ under the Small Business Administration’s size standard.” The Commission declines to do so for two reasons. First, the deadline

of August 2nd imposed by Congress prohibits the delay of this rulemaking. Second, the CFPB is analyzing overall debt collection rules and policies, a much wider scope than the narrow area covered by these rules, which are limited to regulating autodialed, artificial-voice, and prerecorded-voice calls to wireless numbers to collect a debt owed to or guaranteed by the United States. It is unlikely that the CFPB panels will provide more information than that which has already been received through the notice and comment process that began with the 2016 NPRM.

69. *Cost Analysis.* CMC recommends that the Commission “consider the costs of mortgage delinquencies and foreclosures and mortgage ‘rescue’ scams that telephone calls could have prevented or mitigated” as part of the cost analysis. The Commission has considered comments asserting the potential benefits to debtors of receiving the autodialed, pre-recorded voice, and artificial-voice calls at issue in developing the rules, including in balancing the importance of collecting debt owed to or guaranteed by the United States and the consumer protections inherent in the TCPA. Such costs as CMC mentions would not be incurred by regulated entities and, in this context, would be both hypothetical and highly speculative. As a result, the Commission does not attempt to quantify the costs raised by CMC in the Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities section below.

#### **Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration**

70. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

#### **Description and Estimate of the Number of Small Entities To Which Rules Will Apply**

71. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term “small entity” as having the same meaning as

the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small-business concern” under the Small Business Act. A “small-business concern” is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

72. The Commission’s rules restricting autodialed, artificial-voice, and prerecorded-voice calls to wireless numbers apply to all entities that make such calls or texts to wireless telephone numbers to collect debts owed to or guaranteed by the United States. Thus, the rules set forth in this proceeding are likely to have an impact on a substantial number of small entities in several categories.

73. *Collection Agencies.* This industry comprises establishments primarily engaged in collecting payments for claims and remitting payments collected to their clients. The SBA has determined that Collection Agencies with \$15 million or less in annual receipts qualify as small businesses. Census data for 2012 indicate that 3,361 firms in this category operated throughout that year. Of those, 3,166 firms operated with annual receipts of less than \$10 million. The Commission concludes that a substantial majority of businesses in this category are small under the SBA standard.

74. *Telemarketing Bureaus and Other Contact Centers.* This U.S. industry comprises establishments primarily engaged in operating call centers that initiate or receive communications for others—via telephone, facsimile, email, or other communication modes—for purposes such as (1) promoting clients products or services, (2) taking orders for clients, (3) soliciting contributions for a client, and (4) providing information or assistance regarding a client’s products or services. These establishments do not own the product or provide the services they are representing on behalf of clients. The SBA has determined that Telemarketing Bureaus and other Contact Centers with \$15 million or less in annual receipts qualify as small businesses. U.S. Census data for 2012 indicate that 2,251 firms in this category operated throughout that year. Of those, 2,014 operated with annual receipts of less than \$10 million. The Commission concludes that a substantial majority of businesses in this category are small under the SBA standard.

75. *Commercial Banks and Savings Institutions.* Commercial banks are establishments primarily engaged in

accepting demand and other deposits and making commercial, industrial, and consumer loans. Commercial banks and branches of foreign banks are included in this industry. Savings institutions are establishments primarily engaged in accepting time deposits, making mortgage and real estate loans, and investing in high-grade securities. Savings and loan associations and savings banks are included in this industry. The SBA has determined that Commercial Banks and Savings Institutions with \$500 million or less in assets qualify as small businesses. December 2013 Call Report data compiled by SNL Financial indicate that 6,877 firms in this category operated throughout that year. Of those, 5,533 qualify as small entities. Based on this data, the Commission concludes that a substantial number of businesses in this category are small under the SBA standard.

76. *Credit Unions*. This industry comprises establishments primarily engaged in accepting members' share deposits in cooperatives that are organized to offer consumer loans to their members. The SBA has determined that Credit Unions with \$550 million or less in assets qualify as small businesses. The December 2013 National Credit Union Administration Call Report data indicate that 6,687 firms in this category operated throughout that year. Of those, 6,252 qualify as small entities. Based on this data, the Commission concludes that a substantial number of businesses in this category are small under the SBA standard.

77. *Other Depository Credit Intermediation*. This industry comprises establishments primarily engaged in accepting deposits and lending funds (except commercial banking, savings institutions, and credit unions). Establishments known as industrial banks or Morris Plans and primarily engaged in accepting deposits, and private banks (*i.e.*, unincorporated banks) are included in this industry. The SBA has determined that Other Depository Credit Intermediation entities with \$550 million or less in assets qualify as small businesses. Census data for 2012 indicate that 6 firms in this category operated throughout that year. Due to the nature of this category, the Commission concludes that a substantial number of businesses in this category are small under the SBA standard.

78. *Sales Financing*. This industry comprises establishments primarily engaged in sales financing or sales financing in combination with leasing. Sales financing establishments are

primarily engaged in lending money for the purpose of providing collateralized sales agreement, either directly from or through arrangements with dealers. The SBA has determined that Sales Financing entities with \$38.5 million or less in annual receipts qualify as small businesses. Census data for 2012 indicate that 2,093 firms in this category operated throughout that year. Of those, 1,950 operated with annual receipts of less than \$25 million. The Commission concludes that a substantial majority of businesses in this category are small under the SBA standard.

79. *Consumer Lending*. This U.S. industry comprises establishments primarily engaged in making unsecured cash loans to consumers. The SBA has determined that Consumer Lending entities with \$38.5 million or less in annual receipts qualify as small businesses. Census data for 2012 indicate that 2,768 firms in this category operated throughout that year. Of those, 2,702 operated with annual receipts of less than \$25 million. The Commission concludes that a substantial majority of businesses in this category are small under the SBA standard.

80. *Real Estate Credit*. This U.S. industry comprises establishments primarily engaged in lending funds with real estate as collateral. The SBA has determined that Real Estate Credit entities with \$38.5 million or less in annual receipts qualify as small businesses. Census data for 2012 indicate that 2,535 firms in this category operated throughout that year. Of those, 2,223 operated with annual receipts of less than \$25 million. The Commission concludes that a substantial majority of businesses in this category are small under the SBA standard.

81. *International Trade Financing*. This U.S. industry comprises establishments primarily engaged in providing one or more of the following: (1) Working capital funds to U.S. exporters; (2) lending funds to foreign buyers of U.S. goods; and/or (3) lending funds to domestic buyers of imported goods. The SBA has determined that International Trade Financing entities with \$38.5 million or less in annual receipts qualify as small businesses. Census data for 2012 indicate that 126 firms in this category operated throughout that year. Of those, 120 operated with annual receipts of less than \$25 million. The Commission concludes that a substantial majority of businesses in this category are small under the SBA standard.

82. *Secondary Market Financing*. This U.S. industry comprises establishments primarily engaged in buying, pooling,

and repackaging loans for sale to others on the secondary market. The SBA has determined that Secondary Market Financing entities with \$38.5 million or less in annual receipts qualify as small businesses. Census data for 2012 indicate that 89 firms in this category operated throughout that year. Of those, 78 operated with annual receipts of less than \$25 million. The Commission concludes that a substantial majority of businesses in this category are small under the SBA standard.

83. *All Other Nondepository Credit Intermediation*. This U.S. industry comprises establishments primarily engaged in providing nondepository credit (except credit card issuing, sales financing, consumer lending, real estate credit, international trade financing, and secondary market financing). Examples of types of lending in this industry are: Short-term inventory credit, agricultural lending (except real estate and sales financing), and consumer cash lending secured by personal property. The SBA has determined that All Other Nondepository Credit Intermediation entities with \$38.5 million or less in annual receipts qualify as small businesses. Census data for 2012 indicate that 4,960 firms in this category operated throughout that year. Of those, 4,872 operated with annual receipts of less than \$25 million. The Commission concludes that a substantial majority of businesses in this category are small under the SBA standard.

84. *Mortgage and Nonmortgage Loan Brokers*. This industry comprises establishments primarily engaged in arranging loans by bringing borrowers and lenders together on a commission or fee basis. The SBA has determined that Mortgage and Nonmortgage Loan Brokers with \$7.5 million or less in annual receipts qualify as small businesses. Census data for 2012 indicate that 6,157 firms in this category operated throughout that year. Of those, 5,939 operated with annual receipts of less than \$5 million. The Commission concludes that a substantial majority of businesses in this category are small under the SBA standard.

85. *Other Activities Related to Credit Intermediation*. This industry comprises establishments primarily engaged in facilitating credit intermediation (except mortgage and loan brokerage; and financial transactions processing, reserve, and clearinghouse activities). The SBA has determined that Other Activities Related to Credit Intermediation entities with \$20.5 million or less in annual receipts qualify as small businesses. Census data for 2012 indicate that 3,989 firms in this category operated throughout that year.

Of those, 3,860 operated with annual receipts of less than \$20.5 million. The Commission concludes that a substantial majority of businesses in this category are small under the SBA standard.

#### **Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities**

86. Document FCC 16–99 amends the Commission’s rules implementing the TCPA to align them with the amended statutory language of the TCPA enacted by Congress in the 2015 Budget Act, creating an exception that allows the use of an autodialer, prerecorded-voice, and artificial-voice when making calls to wireless telephone numbers without the prior express consent of the called party when such calls are made solely to collect a debt owed to or guaranteed by the United States, and imposing limitations on autodialed, prerecorded-voice, and artificial-voice calls to collect a debt owed to or guaranteed by the United States. Document FCC 16–99 will likely impose a one-time cost on some entities to set up new recordkeeping and other compliance requirements. These changes affect small and large companies equally, and apply equally to all of the classes of regulated entities identified above.

87. To comply with the right of the consumer to stop autodialed, artificial-voice, and prerecorded-voice federal debt collection calls to wireless numbers without consent, regulated entities must keep a record of any request made by a consumer for the cessation of the calls, and must pass that information to any subsequent collector or servicer of the debt if the debt is transferred. This rule obligates callers to retain records of consumers opting out of receiving these autodialed or prerecorded federal debt collection messages. Because autodialed, artificial-voice, and prerecorded-voice federal debt collection calls to wireless numbers required consent prior to these amendments, the Commission assumes calling entities have systems and procedures already in place to record consent and that the current way of doing business will be sufficient for tracking revocation of consent and will not impose new costs. However, the requirement to inform subsequent collectors or servicers of the revocation of consent might be new for some calling entities, and could impose a small initial cost to modify systems or procedures. This provision does not impose a significant economic impact on small businesses. The Commission did not receive any comments stating that this rule would cause a significant

economic impact on small businesses. The Commission does not require a particular form or format to be used in conveying the revocation of consent to subsequent collectors or servicers when a debt is transferred.

88. Federal debt collection calls made using a prerecorded or artificial voice must include an automated, interactive voice- and/or key press-activated opt-out mechanism so that debtors who receive these calls may make a stop-calling request during the call by pressing a single key. When a federal debt collection call using an artificial voice or prerecorded voice leaves a voicemail message, that message must also provide a toll-free number that the debtor may call at a later time to connect directly to the automated, interactive voice and/or key press-activated mechanism and automatically record the stop-calling request. Text message disclosures must include brief explanatory instructions for sending a stop-call request by reply text message and provide a toll-free number that enables the debtor to call back later to make a stop-call request. This rule obligates callers to modify their systems to produce the message, maintain toll-free numbers, and record any stop-call requests. Such records should demonstrate the caller’s compliance with the provision and utilization of the automated, interactive opt-out feature. The Commission allows the calling entities the flexibility to determine how to implement the mechanism. The Commission does not require a particular form or format evidencing this mechanism or its implementation. This provision does not impose a significant economic impact on small businesses. The Commission did not receive any comments stating that this rule would cause a significant economic impact on small businesses.

#### **Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

89. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its approach, which may include the following four alternatives, among others: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from

coverage of the rule, or any part thereof, for small entities.

90. The amendments to the rules change the specific conditions under which a caller can use an autodialer, prerecorded voice, and artificial voice to make calls to a wireless number without the prior express consent of the called party and the limitations that apply to autodialed, prerecorded-voice, and artificial-voice calls to a wireless number made to collect a debt owed to or guaranteed by the United States. The limitations balance the importance of collecting debt owed to the United States and the consumer protections inherent in the TCPA. The Commission interprets the amendments as allowing such calls to be made by the federal government, owners of debt guaranteed by the federal government, and by their respective contractors. The amendments therefore benefit the federal government, owners of debt guaranteed by the federal government, and their respective contractors. Although the federal government is not a small business, many of the owners of debt guaranteed by the federal government and the contractors who make these calls are small businesses. Thus, the Commission considered the needs of small businesses in reaching its approach.

91. Automated dialers and artificial-voice, and prerecorded-voice calling systems can be used to make thousands of calls without requiring commensurate staffing. By automating the process of making calls and texts, small businesses can make as many calls as large businesses. The volume of calls is not limited by the size of the business. Therefore limitations designed to protect consumer interests must apply to both large and small calling entities to be effective. The Commission believes that any economic burden these proposed rules may have on callers is outweighed by the benefits to consumers.

92. *Feedback.* The Commission considered feedback from the 2016 NPRM in crafting the final order. Although none of the comments offered suggestions of ways to make the rules more friendly to small businesses, there were many comments from regulated callers with suggestions to make compliance easier for all, large and small. The Commission evaluated the comments in light of balancing the need to collect the debt with the need to protect consumer interests, and modified the proposed rules in several ways. For example, the Commission expanded the definition of the types of calls permitted to include debt servicing calls made following a specific, time-

sensitive events such as a recertification deadline or the end of a deferment period, and in the 30 days before such an event, rather than limiting the exception to calls made when the debt is delinquent or in default. Similarly, the Commission expanded the reach of the exception by allowing covered calls to be made to a phone number subsequently provided by the debtor to the servicer or owner of the debt, or a number obtained from an independent source, rather than limiting calls to the number provided on the loan application. These changes benefit regulated entities of all sizes.

93. *Timetables.* The Commission does not see a need to establish a special timetable for small entities to reach compliance with the modification to the rules. No small business has asked for a delay in implementing the rules.

94. *Reporting requirements; performance standards.* Since the rule does not impose reporting requirements, there is no need to establish less burdensome reporting requirements for small businesses. Similarly, there are no design standards or performance standards to consider in this rulemaking.

95. *Exemption.* The Commission does not see a need to consider an exemption for small businesses from the modified rules. No small business has asked for such an exemption.

#### Congressional Review Act

The Commission will send a copy of document FCC 16–99 to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

#### Final Paperwork Reduction Act of 1995 Analysis

Document FCC 16–99 contains modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, will invite the general public to comment on the information collection requirements contained in document FCC 16–99 as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. In addition, the Commission notes that, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, 44 U.S.C. 3506(c)(4), the Commission previously sought comment on how the Commission might “further reduce the information burden for small business concerns with fewer than 25 employees.” See Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Notice of Proposed Rulemaking, published at 81 FR 31889, May 20, 2016 (2016 NPRM).

#### List of Subjects in 47 CFR Part 64

Claims, Communications common carriers, Credit, Reporting and

recordkeeping requirements, Telecommunications, and Telephone.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 2016–24745 Filed 11–15–16; 8:45 am]

**BILLING CODE 6712–01–P**

## DEPARTMENT OF THE TREASURY

### 48 CFR Parts 1032 and 1052

#### Department of the Treasury Acquisition Regulations; Incremental Funding of Fixed-Price, Time-and-Material or Labor-Hour Contracts During a Continuing Resolution

**AGENCY:** Department of the Treasury.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the Department of Treasury Acquisition Regulation (DTAR) for the purposes of providing acquisition policy for incremental funding of Fixed-Price, Time-and-Material or Labor-Hour contracts during a continuing resolution.

**DATES:** *Effective date:* December 16, 2016.

**FOR FURTHER INFORMATION CONTACT:** Thomas O’Linn, Procurement Analyst, Office of the Procurement Executive, at (202) 622–2092.

#### SUPPLEMENTARY INFORMATION:

#### Background

The DTAR, which supplements the Federal Acquisition Regulation (FAR), is codified at 48 CFR Chapter 10.

The Anti-Deficiency Act, 31 U.S.C. 1341 and the FAR section 32.702, state that no officer or employee of the government may create or authorize an obligation in excess of the funds available, or in advance of appropriations unless otherwise authorized by law. A continuing resolution (CR) provides funding for continuing projects or activities that were conducted in the prior fiscal year for which appropriations, funds, or other authority was previously made available.

Each CR is governed by its specific terms. However, amounts available under a CR are frequently insufficient to fully fund contract actions that may be required during its term. No existing contract clause permits partial funding of a contract action awarded during a CR. While other strategies are available to address the need to take contract actions during a CR, these strategies— for example short-term awards—are

inefficient and may have other disadvantages.

On July 12, 2016, the Department issued a proposed rule (81 FR 45118) that would establish policies and procedures in order to facilitate successful, timely, and economical execution of Treasury contractual actions during a CR. Specifically, the proposed rule would set forth procedures for using incremental funding for fixed-price, time-and-material and labor-hour contracts during a period in which funds are provided to Treasury Departmental Offices or Bureaus under a CR. Heads of contracting activities may develop necessary supplemental internal procedures as well as guidance to advise potential offerors, offerors and contractors of these policies and procedures.

The comment period for the proposed rule closed on September 12, 2016. No public comments were received. Accordingly, the Department is adopting the proposed rule without substantive change.

#### Regulatory Planning and Review

This rule is not a significant regulatory action as defined in section 3(f) of Executive Order 12866. Therefore a regulatory assessment is not required.

#### Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. chapter 6) generally requires agencies to conduct an initial regulatory flexibility analysis and a final regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

It is hereby certified that this rule will not have a significant economic impact on a substantial number of small entities. The rule is intended to make changes to the DTAR that would allow for improvements in continuity when Treasury funding is operating under a CR and should not have significant economic impacts on small entities.

#### List of Subjects in 48 CFR Parts 1032 and 1052

Government procurement.

Accordingly, the Department of the Treasury amends 48 CFR Chapter 10 as follows:

#### PART 1032—CONTRACT FINANCING

■ 1. The authority citation for part 1032 continues to read as follows:

**Authority:** 41 U.S.C. 1707.