



3138 10th Street North
Arlington, VA 22201-2149
703.522.4770 | 800.336.4644
f: 703.524.1082
nafcu@nafcu.org | nafcu.org

National Association of Federally-Insured Credit Unions

June 24, 2019

The Honorable Michael Doyle
Chairman
Subcommittee on Communications &
Technology
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Robert Latta
Ranking Member
Subcommittee on Communications &
Technology
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515

Re: Tomorrow's Markup of H.R. 3375, the "Stopping Bad Robocalls Act"

Dear Chairman Doyle and Ranking Member Latta:

I write to you today on behalf of the National Association of Federally-Insured Credit Unions (NAFCU) in conjunction with tomorrow's markup of H.R. 3375, the *Stopping Bad Robocalls Act*. NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve over 117 million consumers with personal and small business financial service products. NAFCU and our members appreciate the Subcommittee's efforts to improve the original draft language so that the bill more narrowly targets unwanted, illegal robocalls. Although this bill is a vast improvement from the original draft, NAFCU and its members remain concerned that some of the bill's language does not go far enough to ensure legitimate, time-sensitive communications are not affected.

NAFCU supports the Subcommittee's appropriately tailored legislation to stop unlawful actors who seek to defraud or commit other unlawful acts against consumers. NAFCU also supports the Federal Communications Commission's (FCC) work to bring enforcement actions against illegal actors; however, we continue to engage the FCC to provide the industry with clarity so that credit unions can place valued and important calls to their customers using modern communications technologies without fear of a lawsuit. Continued uncertainty regarding provisions of the *Telephone Consumer Protection Act* (TCPA) has dramatically increased litigation and caused confusion for callers and consumers alike.

Any language amending the TCPA should clearly recognize the distinction between illegal robocalls and legitimate calls made using an automatic telephone dialing system (ATDS or "autodialer"). Since the FCC issued its problematic 2015 Declaratory Ruling and Order (2015 Order), the risk of facing a costly lawsuit over inadvertent TCPA violations has kept many credit unions from freely communicating with their members. The March 2018 *ACA International v. FCC* decision invalidated the 2015 Order's overly expansive definition of "autodialer" and the FCC's approach to liability for calls to reassigned numbers under the TCPA. Following that decision, courts have taken a variety of approaches in determining what qualifies as an "autodialer" – leading to inconsistent judicial interpretations of Congress's intent and meaning in passing the TCPA. Accordingly, NAFCU appreciates the Subcommittee requiring the FCC to resolve this

issue promptly by imposing a six-month timeline. NAFCU supports a broad definition of “autodialer” that only includes equipment that uses a random or sequential number generator to store or produce numbers and dial those numbers without human intervention.

NAFCU also supports a comprehensive safe harbor from liability for callers using the reassigned numbers database that inadvertently make a call to a reassigned number. As such, NAFCU is concerned that Section 8 of the bill could pose challenges to credit unions’ ability to make legitimate communications to their members. The bill’s narrow safe harbor provision could also expose credit unions to liability even if they have checked the reassigned numbers database. The bill’s definition of “called party” in Section 4 only compounds this issue because credit unions may, through no fault of their own, still reach a reassigned number. Thus, NAFCU urges the Subcommittee to recognize the distinction between legitimate communications and illegal robocalls through a broader safe harbor that protects both accidental calls as the result of an error in the database as well as error on the part of the caller.

The Subcommittee should also consider other measures to help resolve the mislabeling of legitimate communications as illegal robocalls, such as adding a notice requirement for blocked calls in Section 8 of this bill to ensure callers will be notified if their calls have been blocked. Under the current language, necessary and time-sensitive calls and texts would still be significantly delayed or prevented entirely. Consequently, in the event of fraud or a data breach, consumers could be left in the dark for days, exposing their financial accounts to increased risks and theft. Accordingly, NAFCU urges the Subcommittee to include an explicit notification requirement for a caller alerting them that their call was blocked.

We appreciate the Subcommittee’s continued oversight of the FCC and efforts to modernize the TCPA to combat illegal robocalls, while also protecting credit unions’ ability to freely communicate with their members on important issues related to their existing accounts. As the Subcommittee reviews this bill before tomorrow’s markup, we would urge you to ensure that efforts to stop illegal robocalls do not negatively impact the ability of credit unions to contact their members for legitimate business purposes.

On behalf of our nation’s credit unions and their more than 117 million members, we thank you for your attention to this important matter. Should you have any questions or require any additional information please contact me or Max Virkus, NAFCU’s Associate Director of Legislative Affairs, at 703-842-2261 or mvirkus@nafcuh.org.

Sincerely,



Brad Thaler
Vice President of Legislative Affairs

cc: Members of the Subcommittee on Communications & Technology