Coalition of Higher Education Assistance Organizations
1101 Vermont Avenue N.W., Suite 400
Washington, D.C. 20005-3586
(202) 289-3910 Fax (202) 371-0197

Federal Trade Commission
Office of the Secretary
Room H-113 (Annex F)
600 Pennsylvania Avenue NW
Washington, DC 20580

Re: Project No. P114802-- FTC Workshop: Debt Collection 2.0: Protecting Consumers As Technology Changes

Contacts:

Bob Perrin	Harrison Wadsworth	Wes Huffman
President	Executive Director	Legislative Director
803.329.9791	202.289.3910	202.289.3910
bperrin@wfcorp.com	hwadsworth@wpllc.net	whuffman@wpllc.net

EXECUTIVE SUMMARY

The Coalition of Higher Education Assistance Organizations (COHEAO) applauds the Commission for examining "Debt Collection 2.0" and appreciates the opportunity to address issues associated with debt collection and new communication, servicing, and transaction technologies. These comments specifically address the topics discussed at the FTC Debt Collection 2.0 Workshop held on April 28, 2011 in Washington, DC and the information provided by the Commission in a March 15, 2011 *Federal Register* notice.

COHEAO is a diverse association whose membership is comprised of college and university loan administrators and accounts receivable managers as well their commercial partners, such as billing servicers and collection agencies. Collectively, our membership is a partnership of over 300 educational and commercial members who serve a student demographic that demand information and student services in electronic form and are the most likely to influence advancements in communication technology.

The new technologies of the last decade have enabled colleges and universities to better serve their student population by maximizing efficiencies while expediently and effectively communicating important information through electronic means. However, regulatory concerns, particularly those surrounding the Fair Debt Collection Practices Act (FDCPA), can often prevent schools and their commercial partners from making use of communication methods that have become everyday norms. We have identified several specific areas for consideration as attachments to this document, they are listed below:

Attachment A: Cell Phones & Text Messaging
Attachment B: E-Mail & Social Networking Sites
Attachment C: Mobile Banking & Electronic Payments

According to the National Center for Education Statistics (IES), a record 19.1 million students were expected to attend both 2-year and 4-year colleges during 2010. The (IES) also noted that between 2000 and 20009, the 18-24 year old population in the United States rose from approximately 27.3 million to approximately 30.1 million. The realities embraced by these current students as well as those students who graduated during the last decade is the fact that they have lived their life in the world of wireless communication, instantaneous messaging, emails, texting, and smart phones.

During a student's tenure at a college or university, much of the overall interaction and activity that they will experience—tuition payment and receipt of financial aid, selection and enrollment for current semester/quarterly classes, homework, research, direct communication with the professor or college administrator, ordering food, social aspects of campus life, and communication with each other—is done through electronic mechanisms. Electronic and wireless communications as part of the student daily experience have become the norm, and students from the current and recent past generation have a high level of comfort communicating within the technological universe of today (and most likely, tomorrow).

As recent as twenty years ago, the application process was extremely burdensome and slow. Students considering college had to go to their high school libraries and find the shelf that stored volumes of catalogs listing some basic information about the institutions. Letters would be mailed to the admission office to request an application and available brochures. Students would impatiently wait for the arrival of the admissions application via the U.S. mail. The complete process was inundated with hours of efforts by the students as they tried to secure all of the required information from multiple sources (again U.S. Mail) and eventually packaging all items together and mail everything to the college/university of the student's choice.

Imagine the cumbersome and burdensome processes required by the college or university as they tried to assimilate all of the paper forms and documents in order to render a decision and then communicate that to the student. Imagine the hours wasted by the student in securing the information. In today's higher education arena, the entire process is paperless, and communication is immediate.

COHEAO members administer federal, institutional, and private student loan programs as well as additional student account receivables and other programs related to student financial services. Due to budgetary reductions on the college campus aligned with demands by students for 24/7 access to information, the administrators charged with managing federal, private, and institutional loan programs have been forced to streamline their procedures and processes in order to meet mandated requirements that are often time sensitive.

The student loan administrators and servicers who comprise the membership of COHEAO are also charged with the responsibility to manage student receivables, institutional and federal loans. In managing federal and institutional loans and other student receivables, part of

COHEAO members' task is to provide and promote financial literacy to better prepare students of their student debt responsibilities once they either withdraw or graduate from college. The ultimate goal is to prevent default of the debt thereby preserving both institutional and federal loan funds for future generations of college students.

Many of the loan programs enjoyed by current students are awarded electronically versus the traditional mail option. Promissory notes have converted to electronic signatures, and payment of tuition is done either by on-line credit cards or ACH. Educational modules are presented visually via on-line applications and walk students through the requirements, expectations, and responsibilities. There are step by step processes built into these modules that prevent students from advancing to the next level until confirmation has been acknowledged by them as to their understanding of the information.

Should a student fail to pay their federal or student aid debt, the student loan administrators and their servicers (billing and collection agencies) must adhere to specific due diligence requirements to prevent default, or if the borrower has fallen into that category, then obtain repayment of those debts. Early delinquency steps are engaged to return the student's debt to good standing through education, determination of potential deferment/cancellation benefits, and payment of the past due amount. Should these early preventive steps be deemed unsuccessful, collection agencies (those who are well versed in Federal education and collection laws and regulations) are utilized by the colleges/universities, as well as the U.S. Department of Education to locate defaulted student loan borrowers and secure reasonable repayment of their defaulted debts.

However, there is an internal struggle currently experienced by collection agencies and servicers who operate within the higher education community. While trying to utilize practical and efficient electronic and technical products that are available and commonplace in higher education to reach those student borrowers who are sliding or have fallen into default status, these same collection agencies and servicers are faced with, and negatively impacted by, FDCPA regulations that have not been updated to provide guidance on how to integrate these technological products to improve borrower communications in the billing/collecting cycle.

Fundamentally, the majority of FDCPA rules and regulations continue to provide excellent guidance to protect the privacy of debtors, and much of what is currently in the law remains relevant today. However, the FDCPA has failed to keep up with current technology, inhibiting those entities who fall under the Act from communicating with consumers in a more practical and reasonable way. It is our belief that changes can be instituted into the FDCPA that enables creditors, servicers, collection agencies, and consumers to better perform and exercise their duties and responsibilities as charged to them via the ability to utilize those technological advances that are now common in the marketplace.

COHEAO appreciates the Commission's efforts with "Debt Collection 2.0" and its recognition of new developments in collection technology. We look forward to working with the Commission in identifying remedies to the difficult position faced by billing servicers and collection agencies, particularly those in higher education, in their efforts to be fully compliant with current FDCPA regulations yet also provide the services demanded by today's consumer.

ATTACHMENT A: CELL PHONES & TEXT MESSAGING

CELL PHONES

According to an article dated August 13, 2009 in *The Economist*, "Telecommunication companies are losing land line customers at the rate of 700,000 per month. To get a sense of decline in landlines, in the first half of 2005 only 7.3% of households were wireless phone only. At the end of 2008, the percentage of wireless phone only had grown to 20.2% of all households in the United States. Based on that statistic, the last landline in the United States would end sometime in 2025."

The International Association for the Wireless Telecommunication Industry (CTIA) published a report in 2009 that revealed that approximately 285 million Americans are mobile subscribers. That equates to 91% of the overall population of the United States. In addition, that same survey discovered that 50 million of those mobile devices referenced provide wireless data service.

Included in the (CTIA) report were some startling data that illustrates the volume growth of cell phone usage in the United States. During the last half of 2009, mobile phone subscribers used 1.12 trillion minutes of talk time averaging 6.1 billion minutes per day or approximately 21 minutes per person per day. There were over 822 billion text messages, 5 billion per day, during 2009.

, a recent survey by Student Monitor indicated that:

- 90% of students have a cell phone
- 66 % have only a cell and no landline
- 2 % have only a landline and no cell phone.

Considering that the above data is now almost two years old and since that period the iPhone, Google's Android, and other smart phones have been introduced into the marketplace, it would be safe to state that the volume of usage has increased substantially and fewer students have both a cell phone and a landline.

We are no longer in an environment where ownership of cell phones is limited to a small segment of American society. The days are gone where mobile phones were described as bag phones that once required a shoulder harness to carry, and incurred a substantial cost for usage. Mobile devices are now small enough to be concealed in the smallest of pockets, and the billing structure has been revamped over the years because of competition and usage to monthly fixed cost plans that include unlimited minutes and texting.

These statistics make it abundantly clear that the most practical and efficient method to contact and communicate with a student is by calling cell phones. Yet, restrictions currently in force, most recently in the proposed TCPA (Telephone Consumer Protection Act) regulations put forth by the FCC, limit the ability to utilize what has become the nation's primary means of communication. Specifically, the FCC proposal merges protections afforded to consumers under the TCPA from unwanted telemarketers and crosses over those guidelines to protect consumers from receiving calls to cell phones from dialers and automated messaging systems without express consent.

This conflict caused by the proposed interpretation of TCPA presents a host of challenges that in reality negatively impacts both the consumer and agencies when in fact there are existing regulations within the FDCPA that protect the rights of the consumer when being contacted on their cell phones. Section 805(c) of the FDCPA addresses the rights of consumers to direct debt collectors to cease communication with few restrictions.

Upon making a decision that a call from a debt collector to a consumer's cell phone is inconvenient, or if the consumer determines that it is their desire not to be communicated with either through contact from a predictive dialer, or manual call to their cell phone, that consumer can execute their rights under the FDCPA Section 805(c) and place the debt collector on notice not to communicate. Restricting the ability to utilize automated dialer systems has reduced the efficiencies to notify and assist consumers in a timely fashion.

Finally, COHEAO would urge the FTC and other regulatory agencies to consider a bona-fide error defense for contact efforts made based on the residence of the consumer. The combination of a highly mobile population and wireless phones allows individuals to maintain an area code in one region while living in another. Our members are particularly sensitive to this issue as they deal primarily with a population of consumers who are becoming exclusively wireless customers at a highly mobile time period in their lives, after graduation or withdrawal from college. An example of a reasonable step is for the collection agency to compare zip codes of the residence versus area code and assume the more conservative of the two identifiers in defining a reasonable time to call.

<u>TEXT MESSAGING</u>

Text messaging as a means to communicate has experienced tremendous growth over the last few years and has begun to override the use of email, and cell phone conversation. Text messaging provides a quick real time, and brief format to communicate or even imbed a document as part of the communication. Once again, billing servicers and collection agencies find themselves in a difficult situation when their college consumers demand this form for communication, but the regulatory environment inhibits its usage.

Current products provide a consumer with the opportunity to either accept or refuse a text message that is generated via an automated system. It is also important to point out that these electronic communications are derived from a database that is all inclusive and only contains phone numbers that have been obtained and identified as that of the consumer. In other words, these automated systems are not randomly creating a series of numbers to call.

COHEAO encourages the FTC to consider the advantages of using automated messaging as a reasonable method to communicate with consumers while still affording the protections that are currently provided in the FDCPA. SMS text messaging is becoming a principal form of communication for today's students.

ATTACHMENT B: EMAIL & SOCIAL NETWORKING SITES

EMAIL

Email addresses of today are the street addresses of yesteryear. It continues to be the principal means of communication between individuals and organizations and, as with text messaging, is an immediate means to share information. Yet there is not any clarity or guidelines to determine what are appropriate situations that would create permissible use of email as a form of communication with consumers.

Many of today's consumers prefer not to communicate verbally; rather they prefer to have an option to communicate in an electronic format. Email is one of the communication platforms that provide non verbal communication. It remains a zero cost means of communication for a consumer with limited cost for a collection agency or servicer.

It is important to recognize that many consumers request and consent to be communicated with by email. To alleviate potential privacy issues, there are programs available that provide encryption in order to protect personal information if an email communication has sensitive information embedded or attached. When appropriate, there are systems that solicit a confirmation of authentication from the consumer prior to any additional information being pushed to their email address.

There are some challenges to the usage of emails, especially since the evolution of smart phones that need to be resolved through updating those areas of the FDCPA, particularly in its interaction with state regulations. A consumer's primary residence may be in the state of North Carolina that requires state specific language for any communication. That same consumer may be in California on a business trip when he/she accesses the email via a smart phone, iPad, or other electronic systems, and opens up the email. Taking an impractically conservative approach, that communication would also need to meet the state specific requirements of California. Technically speaking, in a scenario such as this, the email would need to include the state specific language of every state to avoid possible legal exposure.

SOCIAL NETWORKING SITES

Social Networking sites are still a new phenomenon, at least in terms of the collection industry. Sites such as Facebook, Linkedin, My Space, have been around for quite some time, but agencies have been somewhat slow to embrace these technologies, in part due to concerns with regulations and/or litigation. These sites provide privacy defaults that allow users determine what information is available to only themselves, a select few, larger networks (i.e. alumni and fellow students), and the general public. The social networking sites of today should be considered improved, modernized versions of the phone books and cross directories of the past—through privacy controls, consumers can provide their information to friends, families, and networks, and remain "unlisted" to the general public. They remain useful tools as a means to access location information that is also available to any individual who accesses those websites. Utilizing these social networking sites for location information is reasonable and appropriate.

ATTACHMENT C: MOBILE BANKING & ELECTRONIC PAYMENTS

MOBILE BANKING & ELECTRONIC PAYMENTS

Asking the average college age consumer to render payment by writing a personal check will likely result in a bewildered stare. As with other processes or communication within the collection industry that is governed by the FTC, an evolution has taken place and consumers according to the Federal Reserve and their study called "2001 Retail Payment Research Project," it was estimated at that time that 42.5 billion checks were written annually in the United States for $39.3 trillion in payments. At that time, there were early signs that consumers were beginning to shift towards electronic payment.

The Federal Reserve did an additional study in 2004 and found that there was a 4.1% drop in checks written (from 44.5 billion to 36.7 billion), and a rise of 13.8 billion in electronic payments. ACH payments had already surpassed credit and debit card usage.

Quoting a similar study done by the Federal Reserve in 2007, the data revealed that electronic payments represented two thirds of all payment types and credit cards and debtor card transaction surpassed the paper checks. As of the last study commissioned in 2010, the annual number of checks written is at an all time low of 27.54 billion items and has dropped to 22% of non-cash payments. Electronic payments now constitute 80% of all payments with 84.6 billion items per year.

What has also changed during this same period are the ways that electronic payments can be negotiated and processed. Consumers now have the ability to do banking transactions utilizing a standard landline phone, access secured websites to enter payment information, and now the smart phone has been introduced as a method to purchase and repay debts either through phone application.

The smart phone and online applications of today have replaced the wallet that consumers used in the past to store cash, and merchant credit cards. As this new technology becomes more commonplace, with college students remaining on the leading edge of the trend, consumers will increasingly to handle all aspects of their finances, including delinquent debts, in a similarly efficient manner. COHEAO encourages the Commission to provide the necessary guidance and modifications on FDCPA regulations to continue to protect consumers, but also allow billing servicers and collection agencies to perform transactions with customers in this environment.