

Examination Procedures

Debt Collection

These examination procedures apply to larger participants in the consumer debt collection market defined by 12 CFR 1090.105 and other entities within the supervisory authority of the Consumer Financial Protection Bureau (CFPB) to the extent that they seek to collect debt from consumers. The procedures contain a series of modules, grouping similar requirements together. Prior to using these procedures, however, examiners should complete a risk assessment and scope memorandum. Depending on the scope, and in conjunction with the compliance management system review procedures, each examination will cover one or more of the following modules:

1. Entity Business Model
2. Communications in Connection with Debt Collection
3. Information Sharing, Privacy, and Interactions With Consumer Reporting Agencies
4. Consumer Complaints, Dispute Resolution, and Debt Validation
5. Payment Processing and Account Maintenance
6. Equal Credit Opportunity Act
7. Litigation Practices, Repossession, and Time-Barred Debt

Examination Objectives

- To assess the quality of the regulated entity's compliance management systems, including its internal controls and policies and procedures, for its debt collection business.
- To identify acts or practices that materially increase the risk of violations of Federal consumer financial laws in connection with debt collection.
- To gather facts that help to determine whether a regulated entity engages in acts or practices that violate the requirements of Federal consumer financial laws.
- To determine, in accordance with CFPB internal consultation requirements, whether a violation of a Federal consumer financial law has occurred and whether further supervisory or enforcement actions are appropriate.

Background

A variety of entities, including originating creditors, third-party collectors, debt buyers, and collection attorneys, engage in debt collection. Originating creditors may attempt to obtain payment from the consumer, typically by sending letters and making telephone calls to convince

the consumer to pay. Originating creditors also may outsource the collection of debt to third-party collection agencies or attorneys, or sell the debt to debt buyers after an account has been delinquent for a period of time. Third-party collection agencies collect debt on behalf of originating creditors or other debt owners, often on a contingency fee basis. Debt buyers purchase debt, either from the originating creditor or from another debt buyer, usually for a fraction of the balance owed. Debt buyers sometimes use third-party collection agencies or collection attorneys to collect their debt, but many also undertake their own collection efforts. Debt buyers also may decide to sell purchased debt to another debt buyer.

The Dodd-Frank Act gave the CFPB supervisory authority over a variety of institutions that may engage in debt collection, including certain depository institutions and their affiliates, and nonbank entities in the residential mortgage, payday lending, and private education lending markets, as well as their service providers. The Act also gave the CFPB supervisory authority over “larger participants” of markets for consumer debt collection, as the CFPB defines by rule, and their service providers. (12 U.S.C. 5514(a)(1)(B)). On October 24, 2012, the CFPB issued a larger participant regulation in the market of consumer debt collection. The consumer debt collection larger participant rule, which will appear in 12 CFR Part 1090, is effective January 2, 2013. It provides that a nonbank covered person is a larger participant of the consumer debt collection market if the person’s annual receipts resulting from consumer debt collection – as defined in the rule – are more than \$10 million.

As they seek to collect debt from consumers, the entities that the CFPB supervises must comply with various laws to the extent applicable, including:

- The Fair Debt Collection Practices Act (FDCPA) governs collection activities and prohibits deceptive, unfair, and abusive collection practices. The FDCPA applies to entities that constitute “debt collectors” under the Act, which generally includes: (1) third parties such as collection agencies and collection attorneys collecting on behalf of lenders; (2) lenders collecting their own debts using an assumed name; and (3) collection agencies that acquire debt at a time when it is already in default. The FDCPA applies to debts incurred or allegedly incurred primarily for the consumer’s personal, family or household purposes.
- The Fair Credit Reporting Act (FCRA) and its implementing regulation, Regulation V, require that furnishers of information to consumer reporting agencies follow reasonable policies and procedures regarding the accuracy and integrity of data they place in the consumer reporting system. The FCRA and Regulation V require furnishers and consumer reporting agencies to handle disputes and impose other obligations on furnishers, consumer reporting agencies, and users of consumer reports.
- The Gramm-Leach-Bliley Act (GLBA) and its implementing regulation, Regulation P, impose limitations on when financial institutions can share nonpublic personal information with third parties. They also require under certain circumstances that financial institutions disclose their privacy policies and permit customers to opt out of certain sharing practices with unaffiliated entities.

- The Electronic Fund Transfer Act (EFTA) and its implementing regulation, Regulation E, impose requirements if an entity within the statute’s scope of coverage obtains electronic payments from a consumer.
- The Equal Credit Opportunity Act (ECOA) and its implementing regulation, Regulation B, apply to all creditors and prohibit discrimination in any aspect of a credit transaction on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to contract), receipt of public assistance income, or exercise in good faith of any right under the Consumer Credit Protection Act. (12 CFR 1002.2(z), 1002.4(a)). Credit transactions encompass “every aspect of an applicant’s dealings with a creditor regarding an application for credit or an existing extension of credit,” and include “revocation, alteration, or termination of credit” and “collection procedures.” (12 CFR 1002.2(m)).

To carry out the objectives set forth in the Examination Objectives section, the examination process also will include assessing other risks to consumers. These risks may include potentially unfair, deceptive, or abusive acts or practices (UDAAPs). Please refer to the examination procedures regarding UDAAPs for information about the legal standards and the CFPB’s approach to examining for UDAAPs. The particular facts and circumstances in a case are crucial to the determination of UDAAPs. As set out in the Examination Objectives section, examiners should consult with Headquarters to determine whether the applicable legal standards have been met before a UDAAP violation is cited.

General Considerations

Completing the following examination modules will allow examiners to develop a thorough understanding of the regulated entities’ practices and operations. To complete the modules, examiners should obtain and review the following as applicable:

- Organizational charts and process flowcharts;
- Board minutes, annual reports, or the equivalent to the extent available;
- Relevant management reporting;
- Policies and procedures;
- Notes and disclosures;
- Telephone recordings;
- Operating checklists, worksheets, and review documents;
- Monitoring procedures;
- Compensation policies;

- Relevant computer program and system details;
- Consumer files, including original loan documents, and payment records systems;
- Historical examination information;
- Audit and compliance reports, and management responses to findings;
- Training programs and materials;
- Scripts for employee use;
- Third-party contracts and oversight materials, including monitoring reports and findings;
- Written correspondence with consumers;
- Court documents; and
- Consumer complaints and disputes, including those submitted to CFPB Consumer Response Center, Consumer Sentinel, the Better Business Bureau, or other sources as appropriate.

Depending on the scope of the examination, examiners should perform transaction testing using sampling procedures, which may require use of a judgmental or statistical sample. Examiners should also conduct interviews with management and staff to determine whether they understand and consistently follow the policies, procedures, and regulatory requirements applicable to debt collection, and implement effective controls.

Examiners should review relevant consumer complaints in scoping and conducting examinations, as appropriate. In many instances, depending on the nature of the complaints, examiners should interview consumers.

Examination Procedures**Module 1 - Entity Business Model**

This module assesses whether the entity is a “debt collector” under the FDCPA and therefore subject to that Act.¹ In addition, this module addresses other aspects of the entity’s business model, including affiliate and vendor relationships, internal controls, and related account management issues.

NATURE OF OPERATIONS FOR FDCPA PURPOSES

1. Assess whether the entity is a “debt collector” for purposes of the FDCPA. In doing so:
 - a. Determine whether the entity falls within the general definition of “debt collector” by determining whether it:
 - i. Regularly collects, or attempts to collect, consumer debts for another person or institution;
 - ii. Uses interstate commerce or the mail in a business the principal purpose of which is consumer debt collection;
 - iii. Uses a name other than its own when collecting its own consumer debts; or
 - iv. Seeks to collect on a consumer debt it owns that was already in default at the time it acquired it. (15 U.S.C. 1692a(6)).
 - b. If the entity falls within the general definition per step 1a above, determine whether the entity nevertheless falls into an exception from the definition of “debt collector” to the extent that it is:
 - i. Collecting the following while using its own name:
 - A. Debts it originated (15 U.S.C. 1692a(6)(F)(ii));
 - B. Debts that were not in default when they were obtained (15 U.S.C. 1692a(6)(F)(iii));
 - C. Debts that were obtained as security for a commercial credit transaction (15 U.S.C. 1692a(6)(F)(iv));
 - D. Debts incidental to a bona fide fiduciary relationship or escrow arrangement (for example, a debt held in the entity’s trust department or mortgage loan escrow for taxes and insurance) (15 U.S.C. 1692a(6)(F)(i));

¹ The FDCPA applies only to the collection of obligations or alleged obligations of consumers to pay money arising out of transactions in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes. 15 U.S.C. 1692a(3), (5). The FDCPA does not apply to the collection of corporate debt or to debt owed for business or agricultural purposes. These examination procedures should not be used if the debt at issue is corporate debt or debt owed for business or agricultural purposes.

- ii. Using an officer or employee of the creditor to collect debts owed to the creditor in the creditor's own name (15 U.S.C. 1692a(6)(A));
- iii. Collecting debts regularly for other institutions to which it is related by common ownership or corporate control if the entity only does so for persons to whom it is so related or affiliated and the entity's principal business is not the collection of debts (15 U.S.C. 1692a(6)(B));
- iv. An officer or employee of the United States or any State, collecting or attempting to collect debt in the performance of his or her official duties (15 U.S.C. 1692a(6)(C));
- v. Serving legal process or attempting to serve legal process in connection with the judicial enforcement of any debt (15 U.S.C. 1692a(6)(D)); or
- vi. A nonprofit organization which, at the request of consumers, performs bona fide consumer credit counseling and assists consumers in the liquidation of their debts by receiving payments from such consumers and distributing such amounts to creditors (15 U.S.C. 1692a(6)(E)).

AFFILIATES AND THIRD-PARTY RELATIONSHIPS

- 2. Ascertain whether the entity is affiliated with any other entities. If so, determine the identities of the affiliates and the nature of their business activities, including whether any of the affiliates engage in debt collection.
- 3. Determine whether the entity uses any service providers in conducting its debt collection activities. If so:
 - a. Identify who the service providers are, whether they are affiliated with the entity, and what services they perform, and
 - b. Assess whether the entity:
 - i. Requests and reviews the service providers' policies, procedures, internal controls, and training materials to ensure that the service providers conduct appropriate training and oversight of employees or agents that have consumer contact or compliance responsibilities;
 - ii. Includes in its contracts with its service providers clear expectations about compliance with Federal consumer financial laws as well as appropriate and enforceable consequences for violating any compliance-related responsibilities;
 - iii. Establishes internal controls and on-going monitoring to determine whether its service providers are complying with Federal consumer financial law; and
 - iv. Takes prompt action to address fully any problems identified through the monitoring process, including terminating the relationship where appropriate. *See* CFPB Bulletin 2012-03 (April 13, 2012).

INTERNAL STRUCTURE, CONTROLS, AND COMPLIANCE MANAGEMENT

4. Review the organizational chart to determine the reporting structure and the responsibilities of key managers for debt collection activities.
5. Review the qualifications, experience levels, and training programs that the company requires or uses for staff who interact with consumers.
6. Evaluate compensation practices and programs.
 - a. Evaluate the quality and impact of controls on the compensation program.
 - b. To the extent that the entity's compensation program creates incentives for behaviors or practices that result in heightened risk to consumers, determine whether the policy also includes disciplinary procedures such as reductions in compensation or termination if an employee is found to engage in such risky behaviors or practices.
7. Review the entity's general compliance management system using the compliance management review section of the *CFPB Supervision and Examination Manual*.
8. Review the entity's policies and procedures for monitoring both incoming and outgoing communications.
9. Review the entity's policies and procedures for gathering and maintaining underlying information regarding the underlying debt(s).

DEBT OWNERSHIP OR ACCOUNT TRANSFER**Debt Purchases**

10. Determine whether the entity collects on any debt it purchased from another party. If so:
 - a. Review the account information that the entity received regarding the debt when it purchased the debt. Consider in particular whether the entity received information sufficient to determine the consumer's identity, the amount due, whether any fees charged were permitted by contract, and the original creditor.
 - b. Review sale contracts, considering in particular the following items:
 - i. Provisions that describe the nature of the account-level information that is provided by the seller;
 - ii. Any representations or disclaimers made relating to the accuracy of the account-level information that is provided by the seller; and
 - iii. Whether the entity can request additional account-level information upon request, including how long the additional account-level information will be available and how much it will cost.

- c. Determine whether the entity has reason to doubt the accuracy of the account-level information it received from the seller (for example, if there were patterns of disputes, unusual gaps of information, or known problems with account maintenance).
- d. Determine whether the information received is sufficient to substantiate representations made to consumers regarding the debt and the consumer's liability for the debt.

Debt sales

11. Determine whether the entity sells any debt to any debt buyers. If so:
- a. Review the information that the entity provides regarding the debt to the debt buyers. Consider in particular whether the entity provides information sufficient to determine the consumer's identity, the amount due, whether any fees charged were permitted by contract, and the original creditor.
 - b. Review sale contracts, in particular:
 - i. Provisions that describe the nature of the account-level information provided to the debt buyer;
 - ii. Any representations or disclaimers made relating to the accuracy of the account-level information provided to the debt buyer; and
 - iii. Whether the entity agreed to provide additional account-level information upon the buyer's request, including how long the additional account-level information will be available and how much it will cost.
 - c. If the entity sells any debt that has been disputed by the consumer, determine:
 - i. Whether the entity attempts to verify the debt prior to selling it, and
 - ii. Whether the entity provides information about the dispute to the debt buyer.
 - d. Determine whether the entity had reason to doubt the accuracy of the account-level information it provided to the buyer (for example, if there were patterns of disputes, unusual gaps of information, or known problems with account maintenance).

Account Transfers

12. Determine whether the entity transfers consumer accounts to any third parties (including, for example, the original creditor or a service provider) for collection activity or receives any accounts from third parties for collection activity. If so:
- a. Determine the circumstances of the transfer, and
 - b. Review the information provided regarding the debt in connection with the transfer, including:

- i. Whether adequate information is provided for the collection activity that is contemplated;
- ii. Whether information about any consumer disputes is communicated to the third party; and
- iii. If the entity is doing the transfer, whether the information that the entity provides to the third party about the account accurately reflects the information that it has about the account.

Module 2 - Communications in Connection with Debt Collection

This module addresses FDCPA and UDAAP issues that may arise when entities communicate with consumers or third parties as part of their debt collection activities. As noted, the FDCPA only applies if the entity is a “debt collector” under the FDCPA, while the prohibition on unfair, deceptive, or abusive acts and practices applies to all supervised entities. In assessing an entity’s communications, examiners should consider documents and recordings, including hard copies or electronic copies of letters, voice recordings of telephone communications, and notes made during or after telephone calls or personal visits. Examiners should review a sample of records and listen to a sample of collection calls.

FDCPA

If the entity is a “debt collector” (per step 1 of Module 1), follow steps 1 to 16 below; otherwise skip to step 15 below.

Disclosing the Debt Collector’s Identity and the Purpose/Nature of the Communication

1. Determine whether the debt collector places telephone calls without meaningful disclosure of its identity (except for calls placed for the sole purpose of acquiring location information). (15 U.S.C. 1692d(6)).
2. Determine whether the debt collector discloses in its first written communication with the consumer that it is attempting to collect a debt and that any information obtained will be used for that purpose. If the initial communication is oral, determine whether the debt collector also discloses the same information in the initial oral communication. (15 U.S.C. 1692e(11)).
3. Determine whether the debt collector discloses in subsequent communications that the communication is from a debt collector. (15 U.S.C. 1692e(11)).
4. Determine whether the debt collector misrepresents its identity or authorization by:
 - a. Using any business, company, or organization name other than the true name of the debt collector’s business, company, or organization (15 U.S.C. 1692e(14));
 - b. Misrepresenting that it is vouched for, bonded by, or affiliated with the United States or any State, including by using any badge, uniform, or facsimile thereof (15 U.S.C. 1692e(1));
 - c. Falsely representing or implying that an individual debt collector is an attorney or that any communication is from an attorney (15 U.S.C. 1692e(3));
 - d. Falsely representing or implying that it operates or is employed by a consumer reporting agency (15 U.S.C. 1692e(16));

- e. Using or distributing any written communication that creates a false impression as to its source, authorization, or approval, or that simulates or is falsely represented to be a government document (15 U.S.C. 1692e(9)); or
 - f. Using any forms that falsely imply that someone other than the creditor is participating in the collection activities. If so, determine the source of the forms. (15 U.S.C. 1692j).
5. Determine whether the debt collector makes any false representations regarding the nature of the communications, for example by:
- a. Falsely representing or implying that documents are legal process (15 U.S.C. 1692e(13)); or
 - b. Falsely representing that documents are not legal process forms, or that documents do not require action by the consumer (15 U.S.C. 1692e(15)).
6. Determine whether the debt collector sends postcards to communicate with the consumer regarding a debt. (15 U.S.C. 1692f(7)).
7. Determine whether the debt collector refrains from using any language or symbols on envelopes, other than its address and its business name, when communicating with consumers by mail or telegram. If it uses its business name on envelopes, determine whether the name indicates that it is in the debt collection business. (15 U.S.C. 1692f(8)).
8. Determine whether the debt collector causes any person to incur charges for communications by concealing the true purpose of the communications (e.g., by making collect calls or sending telegrams). (15 U.S.C. 1692f(5)).

Time and Place of Communications and Communications with Represented Consumers

9. Determine whether the debt collector communicates with the consumer without obtaining prior consent directly from the consumer or the express permission of a court of competent jurisdiction in any of the following situations. (15 U.S.C. 1692c). For purposes of this step only, “consumer” is defined to include the borrower’s spouse, parent (if the borrower is a minor), guardian, executor or administrator. (15 U.S.C. 1692c(d)).
- a. Determine whether the debt collector communicates with any consumer at an unusual time or place or at a time or place that is known or should be known to be inconvenient. Absent information to the contrary, debt collectors are to assume that calls between 9:00 p.m. and 8:00 a.m. in the consumer’s local time are inconvenient. (15 U.S.C. 1692c(a)(1)).
 - b. Determine whether the debt collector communicates with any consumer at work if the debt collector knows or has reason to know that the consumer’s employer prohibits the consumer from receiving communications of that nature. (15 U.S.C. 1692c(a)(3)).
 - c. Determine whether the debt collector has engaged in any communications with any consumer after learning that the consumer was represented by an attorney with respect to the debt. If so, determine whether the contact was permissible because:

- i. The debt collector did not know the attorney's name and address and could not readily ascertain that information;
- ii. The attorney had failed to respond within a reasonable period of time to a communication from the debt collector; or
- iii. The attorney had consented to the debt collector's direct communication with the consumer. (15 U.S.C. 1692c(a)(2)).

Harassing, Oppressive, or Abusive Communications

10. Determine whether the debt collector engages in any conduct the natural consequence of which is to harass, oppress, or abuse any person. (15 U.S.C. 1692d). This would include:
- a. Using or threatening to use violence to physically harm a person or his or her reputation or property (15 U.S.C. 1692d(1));
 - b. Using obscene or profane language or other language the natural consequence of which is to abuse the hearer or reader (15 U.S.C. 1692d(2));
 - c. Publishing a list of consumers who allegedly refuse to pay debts, except to a consumer reporting agency or to persons meeting the requirements of Section 603(f) or 604(a)(3) of the FCRA (15 U.S.C. 1681a(f) or 1681b(a)(3)) (15 U.S.C. 1692d(3));
 - d. Advertising a debt for sale to coerce payment (15 U.S.C. 1692d(4));
 - e. Causing a person's telephone to ring or engaging any person in telephone conversations repeatedly or continuously with intent to annoy, abuse, or harass (15 U.S.C. 1692d(5)); or
 - f. Communicating with a person in any other harassing, oppressive or abusive manner not identified above. Examiners should consult with Headquarters to assess whether a particular communication is harassing, oppressive, or abusive.

False, Deceptive, or Misleading Communications

11. Determine whether the debt collector uses any false, deceptive or misleading representations in connection with the collection of any debt. (15 U.S.C. 1692e). This would include:
- a. Misrepresenting the character, amount, or legal status of the debt (15 U.S.C. 1692e(2)(A));
 - b. Falsely representing or implying that nonpayment will result in the arrest of any person or the seizure, garnishment, attachment or sale of any person's property or wages, unless such action is lawful and the debt collector intends to take such action (15 U.S.C. 1692e(4));
 - c. Threatening to take any action that cannot legally be taken or that is not intended to be taken, such as threatening to make third-party disclosures about the existence of a debt as prohibited by 15 U.S.C. 1692c(b) or threatening to furnish information to a consumer reporting agency that the debt collector does not actually intend to furnish (15 U.S.C. 1692e(5));

- d. Falsely representing or implying that the sale, referral, or transfer of any interest in the debt will cause the consumer either to lose any claim or defense to payment or become subject to any practice prohibited by the FDCPA (15 U.S.C. 1692e(6));
- e. Falsely representing or implying that the consumer has committed a crime or other conduct to disgrace the consumer (15 U.S.C. 1692e(7));
- f. Threatening to communicate or communicating to any person credit information which is known or which should be known to be false, including not communicating disputed debts as such (15 U.S.C. 1692e(8));
- g. Falsely representing or implying that accounts have been sold to innocent purchasers for value (15 U.S.C. 1692e(12)); or
- h. Using any other false representation or deceptive means to collect or attempt to collect any debt or obtain information concerning a consumer (15 U.S.C. 1692e(10)).

Special Limits on Communications with Third Parties

The FDCPA limits debt collectors' communications with "third parties," which for purposes of these procedures means anyone other than: the consumer, a consumer reporting agency (if otherwise permitted by law), the creditor, the creditor's attorney, the debt collector's attorney, or the consumer's attorney, spouse, parent (if the consumer is a minor), guardian, executor, or administrator. (15 U.S.C. 1692c(b), (d)).

- 12. Assess whether the debt collector has adequate policies and procedures to avoid disclosure of the existence of a debt to third parties.
- 13. Determine whether the debt collector communicates with any third parties to obtain location information, which is defined as the consumer's home address and telephone number or place of employment. If so:
 - a. Determine whether the debt collector refrains from making statements that:
 - i. Reveal the debt collection company's name, unless specifically asked (15 U.S.C. 1692b(1)), or
 - ii. Indicate that the consumer owes a debt (15 U.S.C. 1692b(2)).
 - b. If the debt collector uses the mail to contact third parties, determine whether it refrains from:
 - i. Using language or symbols on the envelopes that indicate that the communication relates to the collection of a debt (15 U.S.C. 1692b(5)); and
 - ii. Sending postcards (15 U.S.C. 1692b(4)).
 - c. Determine whether the debt collector contacts any third parties more than once. If so, determine whether the contact is permissible because:

- i. The third party specifically requested additional contact; or
 - ii. The debt collector reasonably believes that the information from the first contact was wrong or incomplete and that the third party has since received better location information. (15 U.S.C. 1692b(3)).
 - d. Determine whether the debt collector knows the consumer is represented by an attorney and has knowledge of, or can readily ascertain, such attorney's name and address. If so, determine whether the debt collector communicates only with the attorney, unless the attorney fails to respond within a reasonable period of time to a communication from the debt collector. (15 U.S.C. 1692b(6)).
14. Determine if the debt collector communicates with any third party in connection with the collection of any debt for reasons not related to obtaining location information. If so, determine whether the contact is permissible because:
- a. The debt collector received:
 - i. Prior consent directly from the consumer; or
 - ii. Express permission from a court of competent jurisdiction (15 U.S.C. 1692c(b)); or
 - b. The communication was reasonably necessary to effectuate a post-judgment judicial remedy. (15 U.S.C. 1692c(b)).

OTHER RISKS TO CONSUMERS

15. Determine whether the entity makes calls to consumers' mobile phones, sends emails or text messages to consumers, or uses any other newer technology in contacting consumers. If so:
- a. Review the circumstances of such contacts including (to the extent applicable) how the entity identifies itself in making these contacts (e.g., information provided via caller identification or its email address).
 - b. If predictive dialers² are used, determine:
 - i. Whether the entity has any policies and procedures governing the use of predictive dialers, and
 - ii. How frequently such calls:
 - A. Are made to the same number and

² Predictive dialing is a telephone technology that uses statistical algorithms in an attempt to "predict" call completion and to optimize collector productivity. It analyzes connected calls, talk time, no answers, abandoned calls, and busy signals to launch calls so that an agent is or will be available shortly upon a successful call connection. Some predictive dialers can identify answering machines, allowing a choice to either leave messages or disconnect.

- B. Result in hang-ups or dead-air calls. (If collection activities cause a person's telephone to ring repeatedly or continuously, see step 10e above).
16. Using the UDAAP examination procedures, consider whether any of the entity's debt collection communications constitute unfair, deceptive or abusive acts or practices. Conduct that is prohibited under the FDCPA (or that would be, if done by a "debt collector") may, depending on the facts and circumstances, also raise UDAAP concerns. Examiners should consult with Headquarters to determine whether the applicable legal standards have been met before a UDAAP violation is cited.

Module 3 - Information Sharing, Privacy, and Interactions With Consumer Reporting Agencies

This module addresses specific requirements related to information sharing, privacy, and interactions with consumer reporting agencies under the GLBA and Regulation P and the FCRA and Regulation V.

GLBA AND REGULATION P

Under the GLBA, many entities that collect debts including debt collection agencies are “financial institutions.” Certain obligations are triggered at the start of a “customer relationship.” Originating creditors can establish a customer relationship at the time they make a loan.³ A debt buyer can establish a “customer relationship” with a debtor when the debt buyer locates the individual and tries to obtain payments on the debt.⁴

1. Determine whether the entity under examination originated the debt, has purchased the debt, or is collecting on behalf of another party that owns the debt.
2. For debt that the entity under examination originated or has purchased and on which the entity is trying to obtain payments, use the Privacy of Consumer Financial Information examination procedures to assess compliance with the applicable requirements of Sections 502 to 509 of the GLBA (15 U.S.C. 6802-09) and Regulation P (12 CFR Part 1016).
3. For debt that the collector does not own but collects or attempts to collect on behalf of another party, use the Privacy of Consumer Financial Information examination procedures to assess compliance with the “reuse and redisclosure” limitations. (12 CFR 1016.11).

FCRA AND REGULATION V

Users of Consumer Reports

4. Determine if the entity obtains consumer reports from any consumer reporting agency. If so, use the FCRA examination procedures to assess its compliance with the requirements on users of consumer reports, including whether:
 - a. It trains its employees regarding use of consumer reports;
 - b. It has a permissible purpose for all reports obtained and does not use the reports for any impermissible purpose (15 U.S.C. 1681b(f)); and
 - c. It complies with duties of users regarding address discrepancies (15 U.S.C. 1681c(h); 12 CFR 1022.82).

³ See 12 CFR 1016.3(j)(2)(i)(B), 1016.3(j)(3)(i)(B).

⁴ See 12 CFR 1016.3(j)(3)(i)(J). An entity also can establish a “customer relationship” by acquiring ownership of the servicing rights for the loan. See 12 CFR 1016.3(j)(2)(i)(C), 1016.3(j)(3)(i)(L).

Furnishing Information about Consumers

The FCRA imposes obligations on entities that provide information to consumer reporting agencies (this activity is called “furnishing”). If the entity is furnishing, examiners should obtain a sample of items furnished to consumer reporting agencies, a sample of notices of disputes received from consumer reporting agencies and consumers, and the corresponding loan or collection files. Examiners may also conduct interviews of consumers. In doing this review, examiners should become familiar with the entity’s process relating to furnishing information, including the manner in which it furnishes information (e.g., through an electronic system or otherwise), the frequency of the furnishing, and how consumer disputes are communicated to consumer reporting agencies.

The FDCPA also imposes obligations related to furnishing, which are addressed in Module 2. Examiners should refer to step 11(f) of Module 2 if the entity is a “debt collector” for FDCPA purposes and furnishes credit information it knows or should know is false, including if it furnishes information about disputed debts without identifying them as such (15 U.S.C. 1692e(8)).

Regulation V Requirements for Furnishers

5. Determine if the entity is a “furnisher” for purposes of the Furnisher Rule (12 CFR 1022.40-1022.43) because it furnishes information relating to consumers to one or more consumer reporting agencies for inclusion in a consumer report. Note that an entity is not a furnisher when it:
 - a. Provides information to a consumer reporting agency solely to obtain a consumer report in accordance with sections 604(a) and (f) of the FCRA (i.e., uses the consumer report only for the purpose for which the consumer report is authorized to be provided);
 - b. Is acting as a “consumer reporting agency” as defined in section 603(f) of the FCRA;
 - c. Is a consumer to whom the furnished information pertains; or
 - d. Is a neighbor, friend, or associate of the consumer, or another individual with whom the consumer is acquainted or who may have knowledge about the consumer, and who provides information about the consumer’s character, general reputation, personal characteristics, or mode of living in response to a specific request from a consumer reporting agency. (12 CFR 1022.41(c)).

If the entity is not a furnisher, skip to step 13 below.

6. Assess compliance with Regulation V’s requirements relating to accuracy and integrity by determining:
 - a. Whether the furnisher has established and implemented reasonable written policies and procedures regarding the accuracy and integrity of the information relating to consumers that it furnishes to a consumer reporting agency;

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- b. Whether these policies and procedures are appropriate to the nature, size, complexity, and scope of each furnisher's activities;
 - c. Whether the furnisher considered the guidelines in Appendix E of Regulation V in developing its policies and procedures, and incorporated those guidelines that are appropriate; and
 - d. Whether the furnisher reviews its policies and procedures on accuracy and integrity periodically and updates them as necessary to ensure their continued effectiveness. (12 CFR 1022.42).
7. Assess the furnisher's handling of "direct disputes" from consumers, which are disputes submitted by a consumer directly to a furnisher (including a furnisher that is a debt collector) concerning the accuracy of any information contained in a consumer report and pertaining to an account or other relationship that the furnisher has or had with the consumer. (12 CFR 1022.41, 1022.43). In doing so, consider the following:
- a. Determine whether the entity has policies and procedures for properly identifying a direct dispute as such. (12 CFR 1022.41, 1022.43).
 - b. Determine whether the furnisher conducts reasonable investigations of direct disputes from consumers where required, including a review of all relevant information provided by the consumer. (12 CFR 1022.43(a)-(b), (e)(1), (2)).
 - c. Determine whether the furnisher completes the investigation and reports the results to the consumer within the required time frame (12 CFR 1022.43(e)(3)).
 - d. Determine whether the furnisher notifies and provides corrected information to the consumer reporting agencies when the results of its investigation finds that inaccurate information was furnished to the consumer reporting agencies (12 CFR 1022.43(e)(4)).
 - e. If the furnisher declines to investigate a direct dispute on the ground that it is frivolous or irrelevant, determine whether the furnisher:
 - i. Has reasonably determined that the dispute is frivolous or irrelevant. A dispute qualifies as "frivolous or irrelevant" if:
 - A. The consumer did not provide sufficient information to investigate the disputed information;
 - B. The direct dispute is substantially the same as a dispute previously submitted by or on behalf of the consumer, and the dispute is one with respect to which the furnisher already has complied with the statutory or regulatory requirements (provided, however, that a direct dispute would not be "substantially the same" as the one previously submitted if the dispute includes new information required by Regulation V to be provided to the furnisher, but that had not previously been provided to the furnisher); or

- C. The furnisher is not required to investigate the direct dispute because one or more of the exceptions listed in 12 CFR 1022.43(b) is applicable (12 CFR 1022.43(f)(1)).
 - ii. Notifies the consumer within five business days after finding the dispute frivolous or irrelevant (12 CFR 1022.43(f)(2)); and
 - iii. Includes in the consumer notification the reasons for the findings and the information necessary to investigate the disputed information (12 CFR 1022.43(f)(3)).
- 8. Determine if the furnisher has provided an address in a consumer report relating to the consumer or otherwise clearly and conspicuously specified an address for submitting direct disputes in writing or electronically (if the consumer has agreed to the electronic delivery of information from the furnisher).
 - a. If so, determine whether it accepts and investigates all direct disputes submitted to the specified address(es). (12 CFR 1022.43(c)).
 - b. If not, determine whether it accepts and investigates all direct disputes submitted to any of its business addresses. (12 CFR 1022.43(c)).

Disputes Received from Consumer Reporting Agencies

- 9. Determine whether the furnisher complies with its obligation to do the following when it is notified by a consumer reporting agency that a consumer has disputed the accuracy or completeness of information that it previously has furnished:
 - a. Conduct an investigation with respect to the disputed information (15 U.S.C. 1681s-2(b)(1)(A));
 - b. Review all relevant information provided by the consumer reporting agency (15 U.S.C. 1681s-2(b)(1)(B));
 - c. Report the results of the investigation to the consumer reporting agency (15 U.S.C. 1681s-2(b)(1)(C));
 - d. Report the results of the investigation to all other nationwide consumer reporting agencies to which the information was furnished if the investigation finds that the furnished information was inaccurate or incomplete (15 U.S.C. 1681s-2(b)(1)(D));
 - e. Modify, delete, or permanently block the furnishing of information that is found to be inaccurate or incomplete or could not be verified (15 U.S.C. 1681s-2(b)); and
 - f. Complete the required investigations, reviews, and reports within applicable time limits (15 U.S.C. 1681s-2(b)(2)).

Other Furnisher Issues

10. Assess the furnisher's compliance with the other requirements that the FCRA imposes on furnishers using the FCRA examination procedures. Consider in particular whether the entity:
 - a. Does not furnish information relating to a consumer to a consumer reporting agency it knows or has reasonable cause to believe is inaccurate (15 U.S.C. 1681s-2(a)(1)(A));
 - b. Does not furnish information to a consumer reporting agency after receiving notice from the consumer (at the address specified for such notices) that the information was inaccurate when the information is, in fact, inaccurate (15 U.S.C. 1681s-2(a)(1)(B));
 - c. If it regularly and in the ordinary course of business furnishes information and has furnished information that it determines is not accurate or complete,
 - i. Promptly notifies the consumer reporting agency and provides corrections; and
 - ii. Thereafter does not send the consumer reporting agency any of the information that remains incomplete or inaccurate. (15 U.S.C. 1681s-2(a)(2));
 - d. Within 90 days of furnishing information about a delinquent account that is being placed for collection, charged-off, or subjected to any similar action,
 - i. Notifies the consumer reporting agency of the month and year of commencement of a delinquency that immediately preceded the action; and
 - ii. Thereafter does not furnish a different month and year of commencement of the delinquency unless it identifies an error that requires correction (15 U.S.C. 1681s-2(a)(5));
 - e. Furnishes a notice to a consumer reporting agency of a dispute in situations where:
 - i. A consumer has disputed the completeness or accuracy of any information the entity furnished; and
 - ii. The entity continues furnishing the information to a consumer reporting agency. (15 U.S.C. 1681s-2(a)(3)).
11. Determine whether the furnisher has adequate procedures in place to keep track of information that it has determined to be incomplete or inaccurate or that it has been unable to verify in response to a dispute and to prevent re-furnishing of such information as long as it remains incomplete, inaccurate, or unverifiable, consistent with the requirements of 15 U.S.C. 1681s-2(a)(2) and 15 U.S.C. 1681s-2(b).

Identity Theft Issues Including Prevention of Re-Pollution of Consumer Reports

12. If the entity is a furnisher:

- a. Determine whether it has reasonable procedures in place to ensure that items of information blocked because of an alleged identity theft are not re-furnished to a consumer reporting agency after the entity is notified of a block by a consumer reporting agency (15 U.S.C. 1681s-2(a)(6)(A));
 - b. Review a sample of notices from a consumer reporting agency of allegedly fraudulent information due to identity theft furnished by the entity, to determine whether the entity does not re-furnish the item to a consumer reporting agency (15 U.S.C. 1681s-2(a)(6)(A)); and
 - c. Assess whether the furnisher improperly furnishes to any consumer reporting agency any information alleged to result from identity theft after the consumer provides an identity theft report to the entity at the address specified by the entity, unless the furnisher subsequently knows or is informed by the consumer that the information is correct (15 U.S.C. 1681s-2(a)(6)(B)).
13. Determine whether the entity sells, transfers for consideration, or places for collection a debt after being notified by a consumer reporting agency that the debt resulted from identity theft. (15 U.S.C. 1681m(f)).
14. If the entity is a “debt collector” (per step 1 of Module 1), determine if it acts on behalf of one or more third parties that are creditors or other users of a consumer report. If so:
- a. Determine whether the debt collector has policies and procedures in place to use if it is notified that any information relating to the debt it is attempting to collect may be fraudulent or may be the result of identity theft. Consider specifically whether it:
 - i. Notifies the third party for whom it is collecting that the information may be fraudulent or the result of identity theft; and
 - ii. Upon request, provides the consumer to whom the debt purportedly relates all information to which the consumer would otherwise be entitled if the consumer were not a victim of identity theft, but wished to dispute the debt under applicable provisions of law.
 - b. If procedural weaknesses or other risks requiring further investigation are noted, review a sample of instances where consumers have alleged identity theft and requested information related to transactions to determine if all of the appropriate information was provided to the consumer. (15 U.S.C. 1681m(g)).

Information Sharing Among Affiliates

15. If the entity shares information with affiliates, use the FCRA examination procedures for affiliate marketing, to assess compliance with the FCRA affiliate marketing rule (12 CFR 1022.20-1022.27).

Module 4 - Consumer Complaints, Dispute Resolution, and Debt Validation

This module addresses consumer inquiries, complaints, and disputes, as well as the debt verification obligations imposed by the FDCPA (where applicable). This review assesses (1) whether complaints are resolved adequately and in a timely manner, (2) whether they reflect any potential violations of Federal consumer financial law, and (3) whether the entity has a process in place to analyze and address any underlying sources or systemic reasons for any law violations revealed by the complaints.

Examiners should review reports to management and the board of directors (or principals), consumer complaint log(s), performance metrics, and exception/trend reports and should listen to live calls and taped calls. Examiners should consider interviewing consumers who have complained or lodged a dispute, if it appears that the consumers have information that would be useful in making the determinations addressed below.

FDCPA

Validation Notices

If the entity is a “debt collector” (per step 1 of Module 1), follow steps 1 to 14 below; otherwise skip to step 7 below. Any entity that qualifies as a “debt collector” under the FDCPA must provide consumers with certain basic information about each debt it attempts to collect.

1. Determine whether the debt collector provides the following required information to the consumer in writing either in the initial communication or within five days after the initial communication (unless the consumer pays the debt within this time frame):
 - a. The amount of the debt (15 U.S.C. 1692g(a)(1));
 - b. The name of the creditor to whom the debt is owed (15 U.S.C. 1692g(a)(2));
 - c. Notice that unless the consumer, within 30 days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector (15 U.S.C. 1692g(a)(3));
 - d. Notice that if the consumer disputes the debt, or any portion of the debt, in writing within the 30-day period, the debt collector will obtain verification of the debt or a copy of any judgment against the consumer and mail such documentation to the consumer (15 U.S.C. 1692g(a)(4)); and
 - e. A statement that, upon the consumer’s written request within the 30-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor (15 U.S.C. 1692g(a)(5)).
2. Determine whether during this 30-day period, the debt collector’s communications and/or collection activities overshadow or are inconsistent with the disclosure of the consumer’s rights to dispute the debt and to request the name and address of the original creditor. (15

U.S.C. 1692g(b)). This could occur, for example, if a debt collector threatens dire consequences for the consumer if the consumer fails to make an immediate payment or if a debt collector demands immediate payment without noting that the consumer has 30 days to dispute the debt.

3. Determine whether the consumer invokes his or her verification rights by notifying the debt collector in writing within the 30-day period that the consumer disputes the debt or any portion thereof or by requesting the name and address of the original creditor. If so, determine whether the debt collector ceases collection of the debt (or any disputed portion), until the debt collector mails the consumer a copy of verification of the debt, a copy of the judgment, or the name and address of the original creditor. (15 U.S.C. 1692g(b)).

Disputes and Ceasing Communications

4. Determine whether a consumer notified the debt collector in writing that he or she refuses to pay a debt or wishes for the debt collector to cease further communications. If so:
 - a. Determine whether the debt collector continued to communicate with the consumer, the consumer's spouse, parent (if the consumer is a minor), guardian, executor, or administrator with respect to the debt.
 - b. If the debt collector continued to communicate with the consumer per step 4a above, determine whether the communications are permissible because they are limited to:
 - i. Advising the consumer that further collection efforts are being terminated (15 U.S.C. 1692c(c)(1));
 - ii. Notifying the consumer that the debt collector or creditor may invoke specified remedies which are ordinarily invoked by such debt collector or creditor (15 U.S.C. 1692c(c)(2)); or
 - iii. Where applicable, notifying the consumer that the debt collector or creditor intends to invoke a specified remedy (15 U.S.C. 1692c(c)(3)).
5. Assess the debt collector's policies and procedures for handling consumer disputes and the steps the debt collector takes upon learning that a consumer disputes the debt.
6. Evaluate whether the debt collector communicates or threatens to communicate false credit information or information which should be known to be false, including not communicating disputed debts as such. (15 U.S.C. 1692e(8)).

OTHER RISKS TO CONSUMERS

7. Evaluate the comprehensiveness of systems, procedures, and/or flowcharts for capturing, logging, tracking, handling, and reporting disputes and/or complaints and their resolutions.
8. Identify all channels and physical locations the entity provides for receipt of customer disputes, complaints, and inquiries.

9. Assess the effectiveness of any telephone line available for inquiries or complaints, including (a) whether it is toll-free, (b) the ease of accessing a live person, (c) the hold times, and (d) the call abandonment rates. Assess the quality and training of call center personnel.
10. Assess the effectiveness of other means available for disputes, inquiries, or complaints, including written submissions and any online portal.
11. Evaluate the entity's processes and promptness in responding to consumer disputes and complaints.
12. Determine whether consumer complaints are captured, correctly categorized, and are handled appropriately.
13. Determine if staffing levels are sufficient for volume and whether assumptions used for staffing determinations are validated or supported by analysis.
14. Determine whether the entity has a process for analyzing complaints to identify patterns of debt collection practices that violate the law or pose risks to consumers. For example, such analysis might indicate violations by a particular employee or service provider or data integrity problems associated with a particular set of accounts or portfolio. Determine what steps, if any, are taken if patterns are discovered.

Module 5 - Payment Processing and Account Maintenance

This module addresses how consumers' payments are applied to their accounts and other account maintenance issues, including those associated with electronic fund transfers.

Examiners should review the entity's policies, procedures, and practices regarding fees, other charges, and payment allocation and processing to assess whether they are adequate to ensure compliance with the standards set forth below.

FDCPA

If the entity is a "debt collector" (per step 1 of Module 1), follow steps 1 to 13 below; otherwise skip to step 7 below.

1. Determine whether the debt collector applies all payments received as instructed and, where no instruction is given, applies payments only to undisputed debts. (15 U.S.C. 1692h).
2. Determine whether the debt collector collects or attempts to collect any amount (including interest, late fees, service charges, collection charges, attorney fees, or court costs) not expressly authorized by the agreement creating the debt or permitted by law. (15 U.S.C. 1692f(1)).
3. Determine whether the debt collector overstates the balance of the debt. (15 U.S.C. 1692f(1), 1692e(2)(A)).
4. Determine whether the debt collector misrepresents the services it has rendered or the compensation to which it is lawfully entitled. (15 U.S.C. 1692e(2)(B)).
5. If the debt collector accepts or solicits any postdated payment instruments, assess the following:
 - a. If the debt collector accepts a check or other payment instrument that is postdated by more than five days, determine whether the debt collector provides written notice to the consumer of its intention to deposit the check or instrument three to ten business days prior to depositing the check. (15 U.S.C. 1692f(2)).
 - b. Determine whether the debt collector solicits postdated checks or other postdated payment instruments for the purpose of threatening or instituting criminal prosecution. (15 U.S.C. 1692f(3)).
 - c. Determine whether the debt collector deposits or threatens to deposit post-dated checks or other postdated payment instruments prior to the date on the check or instrument. (15 U.S.C. 1692f(4)).
6. Determine whether the debt collector uses any unfair or unconscionable means to collect or attempt to collect any debt not identified above. (15 U.S.C. 1692f).

EFTA/REGULATION E

If the entity receives payment through an electronic fund transfer, it may be required to comply with the requirements of the EFTA and Regulation E. If the entity has established electronic fund transfers from the consumer's account, examiners should use the EFTA examination procedures to review the extent to which the entity is complying with the EFTA.

7. Determine if the consumer agreed to initiate or if the entity initiated an electronic fund transfer subject to the EFTA/Regulation E ("EFT"). Consider if the entity is using methods subject to the EFTA or methods that are not subject to the EFTA such as remotely-created checks.
8. Determine whether the EFT is a single EFT or a preauthorized EFT. To qualify as a preauthorized EFT, the transfer is one that is authorized in advance to recur at substantially regular intervals. (12 CFR 1005.2(k)).
9. If the entity initiates preauthorized EFTs:
 - a. Assess the entity's compliance with the applicable advance authorization, disclosures, and other requirements relating to preauthorized EFTs under the EFTA and Regulation E. (12 CFR 1005.10).
 - b. Determine whether the entity obtains proper written authorization for preauthorized EFTs from a consumer's account and provides a copy of the authorization to the consumer. (12 CFR 1005.10(b)).
10. Determine whether the preauthorized EFTs will vary in amount. If so, determine whether the payee or financial institution, prior to each transfer, provides reasonable advance notice to the consumer, in accordance with applicable regulations, of the amount to be transferred and the scheduled date of transfer. (12 CFR 1005.10(d)).
11. If the entity initiates single EFTs using information from a check, assess whether the entity obtains authorization from the consumer to initiate the EFT and is complying with appropriate notice requirements. (12 CFR 1005.3(b)(2)(ii)).
12. Determine whether the entity is complying with the appropriate disclosure requirements if the entity initiates an EFT to collect a fee for the return of an EFT or a check that is unpaid. (12 CFR 1005.3(b)(3)).

OTHER RISKS TO CONSUMERS

13. Using the UDAAP examination procedures, evaluate whether the entity's practices with respect to payment processing, fees and charges, and other accounting issues raise any potential UDAAP concerns. Examiners should consult with Headquarters to determine whether the applicable legal standards have been met before a UDAAP violation is cited.

Module 6 - Equal Credit Opportunity Act

Under the ECOA and its implementing Regulation B, creditors may not discriminate against an applicant in any aspect of a credit transaction on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to contract), receipt of public assistance income, or exercise in good faith of any right under the Consumer Credit Protection Act. (12 CFR 1002.2(z), 1002.4(a)). Credit transactions encompass “every aspect of an applicant’s dealings with a creditor regarding an application for credit or an existing extension of credit,” and include “revocation, alteration, or termination of credit” and “collection procedures.” (12 CFR 1002.2(m)).

1. Determine whether the entity is a “creditor” for ECOA purposes by determining if the entity is a person who regularly participates in a credit decision, including setting the terms of the credit. A “creditor” includes a creditor’s assignee, transferee, or subrogee who so participates. For purposes of 12 CFR 1002.4(a) and (b), a “creditor” also includes a person who, in the ordinary course of business, regularly refers applicants or prospective applicants to creditors, or selects or offers to select creditors to whom requests for credit may be made. (12 CFR 1002.2(1)).
2. If the entity is a “creditor” per step 1 above, evaluate whether the entity is complying with the requirements of ECOA and Regulation B, as applicable, using the ECOA examination procedures. In conducting this evaluation, pay particular attention to the following:
 - a. The extent of discretion in the entity’s collection procedures and practices, and the extent to which the entity controls and monitors the exercise of that discretion;
 - b. The extent to which the entity’s collection procedures and practices incorporate a prohibited basis under ECOA;
 - c. The extent to which the entity’s compliance management system addresses ECOA and fair lending risks; and
 - d. The extent of fair lending training offered to individuals involved in the entity’s collection activities.

The above factors create conditions under which the risk of fair lending violations may be increased. Whether any particular factor constitutes a fair lending violation requires consideration of the particular facts and circumstances at issue.

Module 7 - Litigation Practices, Repossession, and Time-Barred Debt

This module addresses collection actions in court and potential risks to consumers that may arise in this context. It also addresses repossession and collection of debt that is beyond the applicable statute of limitations for a collection lawsuit.

LITIGATION PRACTICES

Examiners should first determine whether the entity files legal actions to collect debt or exercises any control over such actions. If so, examiners should review court documents filed by the entity, consumer complaints, consumer files, and other relevant materials to ascertain the following:

1. If the entity is a “debt collector” subject to the FDCPA (per step 1 of Module 1), determine whether it brings actions only in forums permitted by the FDCPA by evaluating:
 - a. Whether it brings actions to enforce a security interest in real property securing the consumer’s obligations only in the judicial district or similar legal entity in which such real property is located; and
 - b. Whether it brings all other actions only in the judicial district or similar legal entity in which:
 - i. The consumer signed the contract sued upon; or
 - ii. The consumer resides at the time the action is commenced. (15 U.S.C. 1692i).
2. If the entity is a “debt collector” subject to the FDCPA (per step 1 of Module 1), determine whether its litigation practices involve:
 - a. Unfair or unconscionable means (15 U.S.C. 1692f);
 - b. False, deceptive, or misleading representations or means (15 U.S.C. 1692e); or
 - c. Harassing, oppressive, or abusive conduct in violation of the FDCPA (15 U.S.C. 1692d).
3. Determine whether any of the entity’s litigation practices are unfair, abusive, or deceptive. Refer to the examination procedures regarding UDAAPs for more information about the legal standards and the CFPB’s approach to examining for UDAAPs. Examiners should consult with Headquarters to determine whether the applicable legal standards have been met before a UDAAP violation is cited.

REPOSSESSION

4. Determine whether the entity repossesses, disables, or threatens to repossess or disable property through nonjudicial action under any of the following circumstances:

- a. There is no present right to possession of the property claimed as collateral through an enforceable security interest;
- b. There is no present intention to take possession of the property; or
- c. The property is exempt by law from repossession or disablement.

If the entity takes such action, consult with Headquarters to determine if the entity is subject to 15 U.S.C. 1692f(6) and to assess whether the conduct raises any UDAAP concerns.

TIME-BARRED DEBT

5. Determine whether the entity has policies and procedures related to debt that is older than the applicable statute of limitations (“time-barred debt”), including how the entity identifies such debt and how it collects on such debt (if at all).
6. Determine whether the entity sues or threatens to sue on time-barred debt.
7. If the entity demands payment on time-barred debt other than through litigation, where permissible, determine what representations, if any, the entity makes in its written and oral communications with consumers regarding the time-barred nature of the debt and its ability to sue on the debt.