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SMALL BUSINESS REVIEW PANEL FOR DEBT COLLECTOR AND DEBT BUYER RULEMAKING

OUTLINE OF PROPOSALS UNDER CONSIDERATION AND ALTERNATIVES CONSIDERED

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I. Introduction

A. Background

Debt collection is a critical part of the consumer credit market infrastructure. Collection of consumer debts reduces the costs that creditors incur through their lending activities. Collection efforts directly recover some amounts owed to debt owners and may indirectly support responsible borrowing by underscoring consumers' obligations to repay their debts and providing them with an incentive to do so. The reductions in creditors' costs, in turn, may allow creditors to extend more credit at lower prices.

While debt collection may benefit consumers at large by reducing the price and increasing the availability of credit, in the debt collection market, collectors' incentives generally are to recover as much money as they can from each consumer subject to collection efforts by any lawful means. Collectors generally are paid based on how much they collect. Consumer choice provides little, if any, constraint on the behavior of collectors. Consumers generally choose between creditors based on factors such as the creditor's identity and the credit terms offered, not who might collect on the debt for these creditors—or how they might collect—if the consumer later defaults on the loan. And when a consumer does default, that consumer has no alternative but to deal with whatever collector the debt owner has chosen. With consumers unable to "vote with their feet," collectors have only limited incentive to collect debts in a manner that consumers would prefer.

In 1977, Congress enacted the Fair Debt Collection Practices Act (FDCPA) to "eliminate abusive debt collection practices by debt collectors" and "to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged."[1] The FDCPA imposes a range of restrictions and disclosure requirements on collectors' conduct. The FDCPA generally covers the collection activities of debt collectors collecting on others' debts and debt buyers (collectively "debt collectors" in this Outline unless otherwise specified) but not the collection activities of first-party debt collectors (*i.e.*, creditors collecting on debts owed to them). Many states also have enacted laws similar to the FDCPA to regulate the conduct of debt collectors.[2]

Even with these laws in place, debt collection remains a major source of consumer complaints, lawsuits, and enforcement actions. Since the Consumer Financial Protection Bureau (Bureau) commenced operations in 2011, it has brought more than 25 debt collection cases against first- and third-party collectors alleging FDCPA violations or unfair, deceptive, and abusive debt collection acts and practices in violation of the Dodd-Frank Act. In these cases, the Bureau has ordered over $100 million in civil penalties, over $300 million in restitution to consumers, and billions of dollars in debt relief to consumers. During this same five-year period, the Federal Trade Commission (FTC) has brought more than 40 debt collection cases alleging FDCPA violations or unfair or deceptive acts and practices in violation of the FTC Act, and states have brought numerous additional actions against debt collectors for violating state debt collection and consumer protection laws. In its supervisory work, the Bureau similarly has identified many violations of the FDCPA through its examinations of debt collectors, as well as violations

[1] 15 U.S.C. 1692(e).

[2] To the extent that some of these state laws are interpreted consistently with the FDCPA, it is possible that clarifying the FDCPA's application would provide greater guidance for collectors regarding some state laws as well.

of the Dodd-Frank Act by first-party debt collectors.

Notwithstanding these governmental enforcement and supervisory efforts, consumers for many years have submitted more complaints to the FTC about debt collectors than any other single industry,[3] and that trend is continuing at the Bureau.[4] Indeed, since the Bureau began accepting debt collection complaints in July 2013, the Bureau has received more than 200,000 consumer complaints regarding debt collection practices.[5] The leading reason for debt collection complaints to the Bureau in 2015 was consumers being contacted for debts they report they do not owe.[6] Consumers also commonly complain that collectors harass them or make false or misleading statements, take or threaten to take illegal actions, fail to send required notices, or improperly contact or share information with third parties.[7]

In addition to submitting complaints, consumers continue to file thousands of private actions each year against debt collectors that allegedly have violated the FDCPA. Over the past five years alone, consumers have brought more than 50,000 federal actions alleging that debt collectors have violated the FDCPA, with nearly 12,000 such lawsuits being filed in 2015.[8] While these cases may bring redress for those involved, differing court decisions or decisions in different jurisdictions have created some splits in the FDCPA's interpretation. These decisions can create uncertainty for consumers and industry alike.

To protect consumers more effectively, the Bureau has decided to consider issuing debt collection regulations that implement the FDCPA and other statutory authorities and that cover the activities of debt collectors and debt buyers. Until the creation of the Bureau, no federal agency was authorized to issue comprehensive regulations to implement the FDCPA, a statute passed in 1977.[9] The Dodd-Frank Act also empowered the Bureau to issue regulations

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[3] Between 2010 and 2012, for example, the FTC received more than 400,000 total complaints about debt collection, representing between 24 and 27 percent of all complaints received by the FTC during those years. Bureau of Consumer Fin. Prot., *Fair Debt Collection Practices Act: CFPB Annual Report 2013*, at 14 (2013), *available at* http://files.consumerfinance.gov/f/201303_cfpb_March_FDCPA_Report1.pdf; Bureau of Consumer Fin. Prot., *Fair Debt Collection Practices Act: CFPB Annual Report 2012*, at 6 (2012), *available at* http://files.consumerfinance.gov/f/201203_cfpb_FDCPA_annual_report.pdf.

[4] During 2015 alone, the Bureau handled over 85,000 debt collection complaints—more than about any other consumer financial product or service that the Bureau's complaint system monitors. Bureau of Consumer Fin. Prot., *Fair Debt Collection Practices Act: CFPB Annual Report 2016*, at 18 (2016) (hereinafter 2016 FDCPA Annual Report), *available at* http://files.consumerfinance.gov/f/201603_cfpb-fair-debt-collection-practices-act.pdf. (This number reflects aggregate debt collection complaints for 2015, regardless of whether the debt collector was subject to the FDCPA.)

[5] *See* 2016 FDCPA Annual Report, at 19; Bureau of Consumer Fin. Prot., *Fair Debt Collection Practices Act: CFPB Annual Report 2014*, at 2 (2014), *available at* http://files.consumerfinance.gov/f/201403_cfpb_fair-debt-collection-practices-act.pdf.

[6] *See* 2016 FDCPA Annual Report, at 17-19. Of the 85,200 total complaints, the most common debt collection complaint is about continued attempts to collect a debt that the consumer reports is not owed (this accounts for 40 percent of total complaints). Of the complaints within this category, the vast majority of consumers report that the debt is not their debt (63 percent) or that the debt was paid (26 percent), while the remaining consumers report that the debt resulted from identity theft (six percent) or was discharged in bankruptcy (four percent).

[7] *Id.* at 18-20.

[8] *See id.* at 15.

[9] 15 U.S.C. 1692*l*(d).

prohibiting covered persons from engaging in unfair, deceptive, and abusive acts and practices and requiring disclosures to permit consumers to understand the costs, benefits, and risks associated with consumer financial products and services, including debt collection.[10] (The FDCPA and excerpts of the Dodd-Frank Act are attached as Appendix A.) Covered persons under the Dodd-Frank Act include not only debt collectors covered by the FDCPA, but also creditors who are collecting or attempting to collect on debts that relate to a consumer financial product or service.[11]

The Bureau issued an Advanced Notice of Proposed Rulemaking (ANPR) for debt collection in November of 2013.[12] The ANPR sought information about both first- and third-party collection issues including, among other things, the conduct of collectors in interacting with consumers in trying to recover on debts through the collection process; the quantity and quality of information in the debt collection system; debt collection litigation; and recordkeeping, monitoring, and compliance issues. With regard to the FDCPA specifically, the ANPR also sought comment about interpreting the nearly forty-year old statute to address contemporary debt collection challenges, including questions such as how collectors apply the FDCPA to technology such as cell phones, text messages, and email. The FDCPA has not been significantly amended to address such challenges, and reliance on case law alone has created uncertainty for stakeholders. The Bureau's rulemaking seeks to decrease such uncertainty.[13]

The Bureau received more than 23,500 comments in response to the ANPR. In developing this Outline of Proposals Under Consideration and Alternatives Considered (Outline), the Bureau has considered those comments, engaged in extensive consultation with both industry and consumer stakeholders, and conducted its own research and analysis.

In particular, the Bureau has been engaged in three major debt collection research projects to assist in making decisions in the rulemaking. First, the Bureau has conducted a Survey of Consumer Views on Debt that examines the debt collection experiences and preferences of a nationally representative sample of consumers with credit records.[14] Second, the Bureau has conducted and continues to conduct extensive consumer testing of model validation notices and other disclosures. Third, the Bureau has conducted an industry survey to obtain a better sense of current collector practices and procedures, so that the Bureau will be able to make informed decisions about the potential costs associated with various rulemaking policy options.[15]

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[10] Sections 1031(b) and 1032 of the Dodd-Frank Act, 12 U.S.C. 5531(b) and 5532.

[11] *See* 12 U.S.C. 5481(5), (6), (15)(A)(x).

[12] 78 FR 67848 (Nov. 12, 2013).

[13] This Outline has been prepared in preparation for a notice of proposed rulemaking, so the Bureau's statements herein regarding proposed interpretations of the FDCPA or Dodd-Frank Act do not represent final Bureau interpretations. The Bureau is not, in this Outline, finding that conduct either violates or is permissible under the FDCPA or Dodd-Frank Act.

[14] A summary of preliminary results is attached at Appendix B; a full report on survey results will be published in the future.

[15] *See* Bureau of Consumer Fin. Prot., *Study of Third-Party Debt Collection Operations* (July 2016) (hereinafter Operations Study), *available at* http://www.consumerfinance.gov/data-research/research-reports/study-third-party-debt-collection-operations.

B. Scope of proposals under consideration

Debt collection is a multi-billion dollar industry composed of debt owners, debt collection companies, law firms, and a wide variety of related service providers. Debt owners include original creditors as well as debt buyers who purchase debts from original creditors or from other debt buyers. Debt owners either use their own collectors (*e.g.*, an in-house collection department) to recover in their own names on defaulted debts, place the debts with debt collection companies or law firms that specialize in the collection of these debts, sell the debts to debt buyers who may collect using their own collectors or using debt collection companies, hold but not actively collect on the debt, or some combination of these measures. Most debt collection firms are small, with over 75 percent of firms employing fewer than 20 people each. However, most revenue is generated by larger firms, with about two-thirds of industry revenue generated by collection firms with at least 100 employees.

The proposals under consideration discussed below would apply to small entities in the following categories for debts acquired in default: collection agencies, debt buyers, collection law firms, and loan servicers. While not all of the proposals under consideration will affect every small entity in every line of business, the majority of proposals under consideration are likely to affect most of the small entities invited to participate regardless of business type. For that reason, the Outline first covers the substantive proposals before turning to potential impacts on the various categories of small entities.

Further, this Small Business Regulatory Enforcement Fairness Act (SBREFA) consultation process applies to "debt collectors" that are subject to the FDCPA (and, in many cases, also subject to the Dodd-Frank Act).[16] The Bureau expects to convene a second proceeding in the next several months for creditors and others engaged in collection activity who are covered persons under the Dodd-Frank Act but who may not be "debt collectors" under the FDCPA. The Bureau believes that holding separate SBREFA consultation processes is the most efficient way to proceed, particularly because it will enable participants to provide more focused and specific insights.

As discussed in this Outline, the Bureau is considering proposals to address many aspects of the debt collection lifecycle. Part III focuses on proposals under consideration that affect debt collectors' compliance obligations relating to the integrity of information. This part summarizes proposals under consideration related to the acquisition and transfer of collection accounts, as well as the proposed processes for obtaining information and conducting reviews at various stages of the debt collection process, such as after a consumer dispute or prior to filing collection-related litigation. Part III also outlines proposals under consideration for transferring information obtained during the collection process when debt is returned to a creditor or debt buyer or sent to another collection agency. Finally, part III discusses proposals under consideration relating to the validation notice and a consumer Statement of Rights.

Part IV focuses on proposals under consideration for providing information to consumers in collection, in addition to the initial disclosures discussed in part III. Specifically, part IV discusses other consumer disclosures that may be made throughout the debt collection process, including when initiating or threatening to initiate a lawsuit, and disclosures and other

[16] For purposes of considering the proposals under consideration summarized in this Outline, SERs should assume that "debt collector" and other terms used have the same meaning as under the FDCPA, unless the Outline sets forth a specific, different meaning.

restrictions under consideration when collecting on time-barred debt.

Part V focuses on proposals under consideration relating to communications with consumers in general, and part VI discusses two additional proposals relating to transfer of debts and recordkeeping. After summarizing the proposals that are under consideration, the Outline explains the Bureau's initial analysis of the potential impacts of the proposals under consideration on small entities in parts VII and VIII.

II. The SBREFA Process

Pursuant to the consultation process prescribed in the SBREFA, the Bureau is seeking input about the FDCPA rulemaking proposals it is considering. The SBREFA consultation process provides a mechanism for the Bureau to obtain input directly from small debt collectors early in the rulemaking process. SBREFA directs the Bureau to convene a Panel when it is considering a proposed rule that could have a significant economic impact on a substantial number of small entities. The Panel includes representatives from the Bureau, the U.S. Small Business Administration (SBA), and the Office of Management and Budget (OMB). SBREFA requires the Panel to meet with a selected group of Small Entity Representatives (SERs) that are likely to be subject to the rules that the Bureau may issue. The industries the proposals under consideration would cover are discussed in part VII.A.

During the Panel outreach meeting, SERs will provide the Panel with important feedback on the potential economic impacts of complying with proposed regulations. They may also provide feedback on the impacts of the regulatory options under consideration and regulatory alternatives to minimize these impacts. In addition, the Dodd-Frank Act directs the Bureau to collect the advice and recommendations of SERs concerning whether the proposals under consideration might increase the cost of credit for small businesses and alternatives to minimize any such increase.

Within 60 days of convening, the Panel is required to complete a report on the input received from the SERs during the Panel process. The Bureau will consider the SERs' feedback and the Panel's report as it prepares the proposed rule. Once the proposed rule is published, the Panel's final report will be placed in the rulemaking record. The Bureau also welcomes further feedback from the SERs during the public comment period on the proposed rule.

The Bureau has prepared this Outline to provide background to the SERs and to facilitate the Panel process. However, the Panel process is only one step in the rulemaking process. No debt collectors will be required to comply with new regulatory requirements before a proposed rule is published, public comment is received and reviewed by the Bureau, a final rule is issued, and the period designated in the final rule for firms to conform their practices to the final rule expires. One of the specific questions on which the Bureau will seek input during the SBREFA process is how long small entities would need to conform their practices to the proposals under consideration.

The Bureau is also conferring with other federal agencies including the FTC, the Federal Communications Commission (FCC), the Office of the Comptroller of the Currency (OCC), and other prudential regulators, and it is seeking feedback from a wide range of other stakeholders on the proposals under consideration.

III. Information Integrity and Related Concerns

In recent years, the most common debt collection complaint received by the Bureau concerns

collectors seeking to recover from the wrong consumer or in the wrong amount. The Bureau believes that such problems arise in significant part from two sources. First, there are often substantial deficiencies in the quality and quantity of information collectors receive at placement or sale of the debt that frequently result in collectors contacting the wrong consumers, for the wrong amount, or for debts that the collector is not entitled to collect. Second, the Bureau is concerned that the information that consumers receive in initial notices required under the FDCPA lack critical elements that would help consumers recognize whether the debt is in fact theirs, which may lead to more consumer complaints, a lack of response by consumers, or both.

The Bureau believes that these two problems combine to substantially harm consumers and to increase downstream costs to debt collectors, frequently rendering the debt collection process inefficient and frustrating for all participants. As discussed below, the Bureau believes poor information transfer may also contribute to other debt collection problems addressed in other parts of this Outline. Accordingly, the Bureau is considering three major interventions to address these two sets of problems:

- A requirement that debt collectors "substantiate," or possess a reasonable basis for, claims that a particular consumer owes a particular debt. This general requirement would likely be combined with provisions describing more specific steps that collectors can take to satisfy in part their obligation to substantiate claims of indebtedness made initially, during the course of collections, and before filing litigation.

- A requirement that certain information that the consumer provides in the course of collections with one collector be passed on and reviewed by downstream collectors.

- Provision of an improved FDCPA validation notice and a Statement of Rights to provide consumers with the most critical information needed to determine whether they owe a particular debt and to navigate the debt collection process more generally.

Each potential intervention is summarized below, with supplemental information provided in Appendices C through G. The Bureau believes that these changes would reshape numerous aspects of the debt collection process by ensuring that collectors are acting on the basis of reasonably reliable information. While these proposals under consideration may lead to higher up-front costs, the Bureau believes that they would facilitate interactions between collectors and consumers that are more efficient for collectors and less stressful for consumers. The Bureau is seeking SERs' input on both the advantages and disadvantages of the interventions and on their potential consequences for other parts of the debt collection life cycle.

A. Proposals under consideration to prohibit unsubstantiated claims of indebtedness

1. Why is the Bureau considering proposals to require debt collectors to substantiate claims of indebtedness?

As discussed above, data integrity is a major concern in the debt collection process. Creditors generate much of the underlying information in the debt collection system, but they may not convey their full files to a third-party debt collector or debt buyer because transferring so much information between systems can be technically complicated and expensive. Instead, some level of basic information is typically conveyed electronically to collectors when the debt is transferred for collection. The quality of the information that creditors convey varies based on

many factors, such as the identity of the creditor, the type of debt, and the age of the debt. In some cases, debt owners may charge debt collectors fees to obtain some or certain underlying account-level documents.

In addition to these initial quality concerns, the quality and accuracy of the information may degrade as debts are worked and transferred among creditors and debt collectors downstream. As discussed further below in part III.B, information obtained by one collector from the consumer may not be transmitted to subsequent collectors. Conversely, incorrect information may be transferred downstream, for instance when payments made by the consumer are not appropriately applied to the debt or fees and finance charges are inaccurately added to the debt.

When debt collectors rely on poor-quality information to make claims of indebtedness to consumers, the Bureau is concerned that a variety of harms can result. Consumers may pay debts they do not owe, pay the wrong amount, or pay collectors that lack the legal right to collect. Even if consumers do not pay, they may incur costs or harms in dealing with such claims. For example, consumers may incur financial costs, loss of time, or other burdens in disputing the debt, providing information to the collector, retaining counsel, or complaining to government agencies.

The data quality problems also have substantial consequences for industry participants. While the initial transfer of debt may be cheaper and faster when data transfers are limited, inaccurate or incomplete information can mean that debt collectors have to make more effort to find the right consumer and convince him or her that the debt is in fact legitimate. However, in light of prevailing industry practice, the Bureau believes that individual firms may not have the ability or incentives to establish higher standards for the transfer of information.

2. What proposals are under consideration?

When a collector seeks to have a specific consumer pay a specific debt, the collector is at least implicitly claiming that the collector has reasonable support for its claims that the individual owes that debt or amount and that the collector is legally entitled to collect the debt. To help ensure that consumers are not deceived or treated unfairly, the Bureau is considering whether to specify how debt collectors can possess reasonable support for making such collection attempts at different times during the collection process.

In considering the details of how collectors may have a reasonable basis for claims of indebtedness, the Bureau intends to provide flexibility to accommodate different approaches to substantiation that different collectors may take. Depending on the type of debt or the context surrounding collection, there may be alternative sets of information that could provide a collector with a reasonable basis to make collection claims. An overly prescriptive approach risks requiring collectors to undertake steps or obtain information that may be inapplicable to certain types of debt or unnecessary to substantiate claims of indebtedness.

At the same time, the Bureau understands that collectors may benefit from additional clarity regarding when a claim of indebtedness is supported by a reasonable basis. In combination with articulating the general substantiation requirement, the Bureau is also considering specifying some elements to provide additional guidance. For example, the Bureau is considering identifying certain fundamental information that collectors can obtain and review that, along with a representation of accuracy from the creditor and a review for warning signs (an illustrative list of such warning signs is provided below), would establish reasonable support for claims of indebtedness. Even collectors that are unable to obtain this specific list of fundamental information may be able to use such details to compare to the information they do

possess and evaluate whether such departures still permit them to establish a reasonable basis for their claims.

3. Initial claims of indebtedness

To support initial claims of indebtedness, the proposals under consideration would articulate a specific list of fundamental information that a collector could obtain and review to look for "warning signs"—or indications that the information associated with the debt is inaccurate or inadequate—before commencing collections activity. The proposal under consideration would further allow collectors to in part establish reasonable support for claims of indebtedness by obtaining a representation from the debt owner (*i.e.*, creditor at the time of default or debt buyer) that its information is accurate.

The list of fundamental information would provide core information about the identity of the consumer, the nature and amount of the debt, and the chain of title that provides the collector's right to collect. The information could still be conveyed in a spreadsheet, as is done typically today, without transferring the full underlying records. However, the list of fundamental information may be more extensive than some industry participants transfer today; a list of the items that the Bureau is considering is provided in Appendix C. A collector could acquire a reasonable basis without obtaining each specific element on the list from the debt owner, for example, by substituting some or all of the information identified by the proposal with additional or alternative information. However, the collector would bear the burden of justifying its alternative approach.

As noted above, the proposals under consideration would also state that, to help form a reasonable basis, debt collectors can obtain a written representation from the debt owner that it has adopted and implemented reasonable written policies and procedures to ensure the accuracy of transferred information and that the transferred information is identical to the information in the debt owner's records. The Bureau believes that this representation of accuracy would help ensure that debt collectors have the information they need to support claims of indebtedness. It would also effectively address attempts to shift responsibility for the accuracy of information about debts in portfolios from debt owners to collectors. As with the fundamental information, collectors need not obtain the representation of accuracy in order to possess a reasonable basis for claims of indebtedness, but they would have to justify an alternative approach.

The proposals under consideration would require collectors to review the information obtained from the debt owner to look for warning signs that may raise questions as to the adequacy or accuracy of the information with respect to a particular consumer or with respect to the portfolio information in general. The Bureau believes that many collectors currently conduct a limited review of the information they receive from debt owners for certain purposes, including estimating the likelihood of repayment by the consumer. Some collectors may conduct a review to check for the adequacy and accuracy of the information provided. The Bureau is considering requiring collectors to look for warning signs that might appear within an individual account or across an entire portfolio, which may include the following examples:

- Information for an individual debt is not in a clearly understandable form;
- Information for an individual debt is facially implausible or contradictory;
- A significant percentage of debt in the portfolio has missing or implausible information,

either in absolute terms or relative to portfolios with comparable types of accounts; or

- A significant percentage of debt in the portfolio has unresolved disputes, either in absolute terms or relative to portfolios with comparable types of accounts.

A collector who has each of the specific elements on the list in Appendix C, a representation of accuracy, and no warning signs of problems would have a reasonable basis for claims of indebtedness. If the collector discovers warning signs during its initial review, however, the collector would be required to take further steps before it would be able to support and lawfully make claims of indebtedness regarding the account or the portfolio, as applicable. These steps may consist of obtaining and reviewing supplemental information from the original creditor or prior collectors. They also could include obtaining and reviewing information from other sources, such as data vendors that provide consumer contact information (also known in the industry as skip tracers). Establishing support for claims of indebtedness made for accounts from a portfolio after a warning sign arises may require obtaining and reviewing documentation for a representative sample of accounts—or in some cases, for all accounts—in the portfolio. Collectors would be responsible for taking steps in response to warning signs that they detect or should have detected. This standard would not require collectors to confirm all of the information they receive, but it also would not permit collectors to ignore potential problems.[17]

- Alternatives considered. The Bureau considered an alternative proposal that would have required collectors, before commencing collection activity, to obtain and review copies of original account-level documentation such as, for example, the account agreement (where one exists) and one or more statements sent to the consumer. The Bureau believes, however, that if creditors and debt buyers attest to the accuracy of the information they are providing, and that information reveals no initial warning signs, it is a reasonable approach not to require collectors in all cases to double-check the information against underlying documentation associated with the debt to support claims of indebtedness. The Bureau is concerned that requiring collectors to obtain or access and review underlying documentation for all claims of indebtedness for all debts in all circumstances may be overbroad and therefore unduly burdensome.[18]

4. Claims of indebtedness following the appearance of a warning sign during the course of collections

The Bureau is considering whether to require that debt collectors look for warning signs that may arise during the course of collection activity, and to obtain additional support prior to making any subsequent claims of indebtedness following the appearance of any such warning

[17] The Bureau understands that the ability of collectors to support claims of indebtedness often will depend on receiving documents or information from debt owners. If debt owners fail to transfer accurate and adequate information when placing or selling a debt, or fail to make available documentation sufficient to resolve warning signs, then debt collectors may not have the support they would need to make such claims of indebtedness. As discussed below, the Bureau thus is considering in this SBREFA proceeding requiring debt collectors subject to the FDCPA (including debt buyers) to transfer certain information when they sell or transfer debt. The Bureau intends to consider comparable information transfer obligations for creditors and others subject to the Dodd-Frank Act, but not necessarily the FDCPA, in the future.

[18] Note that the proposal under consideration would not prohibit collectors from obtaining underlying documentation as a means of establishing a reasonable basis to support initial claims of indebtedness, if they choose to do so.

sign. Effectively, the proposals under consideration would require that debt collectors analyze and integrate information received throughout the collection process.

In contrast to the initial review, the ongoing review would involve warning signs that arise during the collections process rather than from reviewing the underlying information regarding the debt (*e.g.*, a missing field in a spreadsheet). For example, warning signs that arise during the course of collections could include the following:

- A dispute filed by a consumer with respect to an individual debt;
- The inability to obtain underlying documents in response to a dispute; or
- Receipt of disputes for a significant percentage of debt in the portfolio, either in absolute terms or relative to portfolios with comparable types of accounts.

In response to warning signs, collectors would have to take additional steps such as obtaining and reviewing documentation necessary to provide reasonable support before proceeding with continued claims of indebtedness. As with the initial review, the ongoing review requirement would hold collectors responsible only for responding to warning signs that they detect or should have detected.

5. Claims of indebtedness following a dispute

The Bureau believes that if a consumer disputes a debt, orally or in writing, by asserting that he or she does not owe the debt or the amount being claimed, then that dispute calls into question the collector's basis for claiming that the collector is pursuing the right person or the right amount. The Bureau is therefore considering a proposal to require collectors to obtain additional support before proceeding with further claims of indebtedness following receipt of such a dispute.

The Bureau is also considering specifying that collectors may resume making claims of indebtedness after receiving a dispute if they review documentation responsive to the type of dispute submitted by the consumer, as described in Appendix D, and conclude that it provides a reasonable basis for further claims of indebtedness. For example, if a consumer disputed only the amount being claimed, the collector could resume collection communications if it reviewed documentation that reasonably established the amount claimed as set forth in Appendix D. Collectors could also support claims of indebtedness in other ways, such as by reviewing other documentation, but they would bear the burden of justifying any alternative approach.[19]

Although the proposal under consideration would prohibit debt collectors from making unsubstantiated claims of indebtedness following a dispute, the Bureau also is considering clarifying that debt collectors are permitted to contact consumers while a dispute is pending to request clarification of a dispute submitted by the consumer, as long as the content of their communication is strictly limited to achieving this purpose and does not also include, for example, a request for payment.

- Definition of dispute. The proposal under consideration would clarify that communications

[19] Note, however, that to have reasonable support for their claims of indebtedness, collectors would not have to mail consumers the documentation on which they are relying to support those claims.

from consumers constitute disputes if they take the form of a question or challenge related to the validity of the debt (*e.g.*, the amount of the debt or the identity of the alleged debtor) or the legal right of the collector to seek payment on the debt. Questions unrelated to the validity of the debt or the collector's right to collect the debt would not constitute disputes. The proposed definition would not require consumers to use specific words to have a communication treated as a dispute. However, the requirements under consideration would not apply in the case of a duplicative dispute, *i.e.*, a dispute that is the same as a dispute that the consumer previously had submitted to the debt collector, that does not offer new and material information to support the dispute, and for which the collector has fulfilled its obligations under the proposal under consideration.

- Subsequent collectors. The requirement to reasonably support claims of indebtedness before resuming collection activity would apply to subsequent collectors. The Bureau understands that some collectors have a policy of returning disputed debt to the debt owner or may otherwise return disputed debts. Thus, if a consumer had disputed a debt in any of the ways described above but the collector had not taken steps to address the dispute, then under the proposal under consideration, the fact that dispute had been filed would be required to be transferred to the new collector, and the subsequent collector could not make claims of indebtedness until it had addressed the dispute.[20]

The Bureau is also considering proposals to provide greater clarity regarding certain FDCPA requirements where a consumer submits a written dispute within 30 days of the validation notice. Specifically, in such cases the FDCPA requires the collector to "obtain[] verification of the debt" and provide a copy of the verification to the consumer.[21] But the FDCPA provides no explanation of these requirements, and courts have interpreted them in various ways. As a result, debt collectors vary in the level of documentation they obtain and provide to consumers to verify a debt, with many collectors currently not reviewing or providing copies of underlying account documentation in response to disputes.

- Written disputes within 30 days of validation notice. The Bureau is considering clarifying that the types of information listed in Appendix D would satisfy the verification requirement under the FDCPA for the various categories of disputes. The Bureau is also considering clarifying that the fact that a timely written dispute had been filed would be required to be transferred to the new collector and the account could not be collected upon until that collector addressed the dispute.

- Duplicative disputes. If a collector decided against responding to a dispute submitted in writing within thirty days of the validation notice because it determined that the dispute was duplicative of a prior dispute, the proposal under consideration would require the collector to notify the consumer of this fact. This notice could be made using standard language and would not require a consumer-specific explanation for the reason that the dispute was considered duplicative.

- Oral disputes within 30 days of validation notice. The Bureau is considering whether to require collectors to inform consumers of the right to obtain verification of the debt by

[20] To support this possible requirement, as explained in part III.B.2, the Bureau is considering a proposal to require subsequent collectors to obtain (and prior collectors to transfer): (1) information about the dispute status of a debt, and (2) the details of any unresolved dispute.

[21] 15 U.S.C. 1692g(b).

submitting a timely written dispute, if applicable, unless the collector provides copies of verification in response to oral disputes as well. The Bureau is considering providing model language that could be used to make the disclosure.

6. Claims of indebtedness made in complaints filed in litigation

Debt collectors may attempt to collect debt by filing lawsuits against consumers. The Bureau believes that consumers face a higher risk of harm during litigation than during other points in the collection process. Many consumers fail to defend in litigation, making it easier for collectors to obtain judgments against the wrong consumer, for the wrong amount, or where the collector had no legal right to collect.[22] Consumers who do defend may bear significant costs, including the cost of legal counsel or the cost of appearing in court. And consumers against whom judgments are entered may be subject to collection methods, such as garnishment, which are more severe than those they would otherwise encounter during the pre-litigation collection process. Because of the higher risk of consumer harm from claims of indebtedness made without reasonable support in complaints filed in litigation, the Bureau believes that a higher level of support is needed to make claims in litigation than in most initial collection activity.

The proposal under consideration would require debt collectors, before making such claims in a litigation filing, to have reasonable support for claims that the consumer being sued owes the amount claimed and that the collector has a legal right to make the claim. Specifically, the proposals under consideration would specify that collectors could satisfy their reasonable support obligations for claims of indebtedness in complaints filed in litigation by obtaining and reviewing all of the documentation specified in Appendix D. Collectors that do not review the documentation specified for all types of disputes could acquire a reasonable basis consistent with this level of support through alternative means, but they would bear the burden of justifying any alternative approach.

Table 1: Summary of substantiation requirements under consideration

When	Actor(s)	Action(s)
Prior to making initial claim of indebtedness	Collector	• Review information sufficient to substantiate claims of indebtedness ○ May obtain list of fundamental information and representation of accuracy from debt owner • Determine whether there are warning signs • Obtain and review additional information or documentation as needed to address any warning signs discovered during initial review

[22] *See* U.S. Fed. Trade Comm'n, *Repairing a Broken System: Protecting Consumers in Debt Collection Litigation and Arbitration*, at 7 (July 2010), *available at* https://www.ftc.gov/sites/default/files/documents/reports/structure-and-practices-debt-buying-industry/debtbuyingreport.pdf.

When	Actor(s)	Action(s)
During the course of collections generally	Collector	• Look for warning signs that may arise during the course of collections • Cease claims of indebtedness to the consumer until collector obtains and reviews information or documentation as needed to address any warning signs discovered during ongoing review
After a dispute generally	Collector + subsequent collector, if applicable	• Cease claims of indebtedness to the consumer until collector reviews documentation as needed to address the dispute submitted by the consumer o May obtain and review documentation for relevant dispute category, as specified in Appendix D • Collector that receives dispute must note dispute status when transferring debt • If collector has not responded to dispute, subsequent collector must review documentation as needed to address the dispute submitted by the consumer before making initial claims of indebtedness to the consumer
After a written dispute within 30 days of the validation notice	Collector + subsequent collector, if applicable	• General dispute requirements described above, plus collector must provide consumer copy of verification responsive to consumer's dispute (or subsequent collector, if applicable, must address dispute)
After an oral dispute within 30 days of the validation notice	Collector + subsequent collector, if applicable	• General dispute requirements described above, plus either notify consumer of right to receive verification in response to written disputes within 30 days of the validation notice or simply provide verification in response to timely oral disputes
Prior to making claim of indebtedness in litigation	Collector	• Review documentation sufficient to substantiate claims of indebtedness • May obtain and review all of the documentation specified in Appendix D

B. Proposal under consideration to require review and transfer of certain information

1. Why is the Bureau considering a proposal to require collectors to review and transfer certain information?

As discussed above, the subsequent placement or sale of debt to new debt collectors may exacerbate informational problems because information the consumer provided to the prior collector may not be transferred along with the debt. When subsequent collectors do not receive updated or new information resulting from prior collection activity, consumers have little practical alternative but to provide the same information again. The Bureau understands that consumers may not resubmit information to each collector seeking to recover on a debt because it may be inconvenient or frustrating to do so, yet the failure to resubmit this information each time that the debt is transferred can have significant consequences for the consumer.

Additionally, several federal laws other than the FDCPA regulate the conduct of collectors during the debt collection process. If subsequent collectors lack certain information prior collectors had, subsequent collectors may engage in collection activity that contravenes these laws or undermines their protections.

Finally, even after a collector is no longer seeking to collect a debt and has sold it or returned it to the debt owner, the collector may receive information from or on behalf of the consumer that could indicate that all or part of the debt could be uncollectible or is likely to lack sufficient support. Debt buyers likewise may receive such information after they sell a debt to another debt buyer. For example, after it no longer has a debt, a collector may receive a notice that the debt has been discharged in bankruptcy, an identity theft report, or a dispute. Similarly, the collector may receive a misdirected payment from the consumer which would affect the amount that the consumer owes. Failing to convey this information to downstream entities increases the chances of exposing the consumer to further collection efforts regarding debt that may be uncollectible, in whole or in part, may be directed at the wrong consumer, or may seek the wrong amount.

2. Requirement to transfer and review certain information

To address these issues, the Bureau is considering a proposal to ensure that, prior to initiating collection activity, subsequent collectors obtain and review certain information arising from past collection activity. Specifically, the proposal under consideration would require subsequent collectors to obtain and review certain information that could either affect the subsequent collectors' obligations to comply with the FDCPA and other federal consumer protection laws or facilitate collector behavior that may be beneficial to consumers. The proposal under consideration would obligate prior collectors to transfer this information if the consumer provided it to them in the course of collection activity, but it generally would not require collectors to attempt affirmatively to obtain the information. Prior collectors would be required to provide this information when returning a debt to the creditor, or, if the prior collectors are debt buyers, when selling the debt to a subsequent debt buyer. Additional details about this proposal under consideration are provided in Appendix E.[23]

3. Requirement to forward certain information after returning or selling a debt

The Bureau is considering a proposal to require debt collectors to forward certain information that they may receive from consumers after they have returned the debt to the debt owner or sold it to a subsequent debt buyer.

The proposal under consideration would require collectors to forward to the entity to which the debt collector has already transferred the debt (*i.e.*, the owner of the debt or a subsequent debt buyer) information that could indicate that all or part of the debt could be uncollectible or is likely to lack sufficient support. For example, a debt collector receiving an identity theft report from a consumer would forward the report to the owner of the debt to which the collector had previously returned it. The Bureau is considering requiring collectors to forward the following information: (1) payments submitted by the consumer; (2) bankruptcy discharge notices;

[23] As with information related to the support for claims of indebtedness, the Bureau understands that the ability of collectors to obtain information arising from prior collection activity depends on the conduct of debt owners. The Bureau intends to consider in the future comparable proposals for debt owners not subject to this proposal under consideration.

(3) identity theft reports; (4) disputes; and (5) any assertion or implication by the consumer that his or her income and assets are exempt under federal or state laws from a judgment creditor seeking garnishment.[24]

C. Validation notice and statement of rights

1. Why is the Bureau considering proposals relating to the validation notice and a statement of rights?

As noted above, the Bureau believes that a second major factor driving complaints about collectors seeking to recover from the wrong consumer or in the wrong amount is that the notices currently provided at the outset of collections lack certain information that would help consumers recognize past obligations. For example, debt collectors do not typically provide information beyond the current amount due in the validation notice; rather, consumers must take affirmative action to obtain this information. The Bureau believes that this is inefficient for consumers and collectors alike and tends to increase the need for downstream interactions. The Bureau is also concerned that initial materials currently provided may not give consumers sufficient information to navigate the collections process and understand their rights under the FDCPA and other federal law more generally.

Specifically, once a debt collector begins collecting a debt, section 809(a) of the FDCPA, 15 U.S.C. 1692g(a), generally requires it to send the consumer, within five days of the initial communication, a written notice containing: (1) the amount of the debt; (2) the name of the creditor to whom the debt is owed; (3) a description of the consumer's right to dispute the debt and obtain the name and address of the original creditor; and (4) a statement that unless the consumer disputes the debt, the collector will assume it to be valid. This written notice is typically referred to as a "validation notice" or "g notice." Congress enacted section 809(a) in response to "the recurring problem of debt collectors dunning the wrong person or attempting to collect debts which the consumer has already paid."[25]

The Bureau's complaint data[26] and consumer testing suggest that the validation notices in use today often do not result in consumers being able to tell if the debt is theirs and if the amount stated as due is correct. The current notices also may not clearly inform consumers of their FDCPA rights and how to exercise them.[27] The Bureau believes that consumers who know their

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[24] To assess the most cost-effective way of conveying this information, the Bureau will solicit feedback from SERs regarding whether creditor and collector systems have sufficient compatibility for transferring such information and the costs of applying such transfer requirements. For payments submitted by the consumer, the Bureau is considering also allowing debt collectors to either forward the payment to the owner of the debt or return the payment to the consumer with information concerning to whom the consumer should direct the payment.

[25] S. REP. NO. 95-382, at 4 (1977).

[26] For example, during calendar year 2015, 40 percent of the debt collection complaints received by the Bureau related to continued attempts to collect debt not owed. *See* Bureau of Consumer Fin. Prot., *Consumer Response Annual Report: January 1 – December 31, 2015*, at 16 (Apr. 2016), *available at* http://files.consumerfinance.gov/f/201604_cfpb_consumer-response-annual-report-2015.pdf. The Bureau believes that some of these complaints may be attributable to consumers' lack of information about the debt itself.

rights (and related legal restrictions on debt collectors) are better able to protect themselves from collection practices that violate the FDCPA and other consumer protection laws.

2. Content requirements

The proposals under consideration would require validation notices to contain enhanced and clarified information about the debt and the consumer's rights, along with an action-item "tear-off" to facilitate exercise of the dispute and original-creditor-information rights. Appendix F contains a list of information that the proposals under consideration would require to be included in the validation notice. In addition to the validation notice, the proposals under consideration would require debt collectors to provide consumers with a one-page statement of rights document (Statement of Rights). Appendix G contains a list of information that the proposals under consideration would require to be included in the Statement of Rights.

To simplify compliance, the Bureau is considering issuing a model validation notice and Statement of Rights. A debt collector would be free to use either the Bureau's models or forms that the collector developed, but using the Bureau's models would satisfy the relevant content requirements. Although the Bureau continues to test and refine both models, Appendices F and G include examples of what such documents might look like.

3. Delivery requirements

As noted above, under FDCPA section 809(a), a debt collector generally must send the consumer a validation notice within five days of the initial communication. The proposals under consideration would require debt collectors to provide a written copy of the Statement of Rights in the same mailing as the validation notice.

To ensure that consumers have this information throughout the debt collection process, the Bureau is considering a proposal to require that debt collectors offer, in the first communication made more than 180 days after the consumer received the validation notice and accompanying Statement of Rights, an additional copy of the Statement of Rights. The Bureau does not anticipate providing model language for this offer, because it would be relatively short and straightforward. Where the first post-180-day communication is written, debt collectors would be permitted to comply with the requirement by including the Statement of Rights together with that written communication rather than offering to provide it to consumers.

4. Non-English language requirements

Disclosures are not useful if consumers do not understand them, and the Bureau is concerned that consumers with limited English proficiency (LEP consumers) may have difficulty understanding disclosures rendered only in English.

The LEP population in the United States is large and growing. According to the Census Bureau, approximately 25.6 million individuals speak English "less than very well."[28] A majority of these

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[27] *See* U.S. Fed. Trade Comm'n, *Collecting Consumer Debts: The Challenges of Change – A Workshop Report*, at v (Feb. 2009) (hereinafter FTC Collecting Consumer Debts Report), *available at* https://www.ftc.gov/sites/default/files/documents/reports/collecting-consumer-debts-challenges-change-federal-trade-commission-workshop-report/dcwr.pdf.

[28] U.S. Census Bureau, 2014 American Community Survey 1-Year Estimates, Selected Social Characteristics in the United States, *available at*

individuals—approximately 16.4 million people—are Spanish speakers.[29] Given the overall number of consumers who speak English "less than very well," the Bureau believes that a substantial number of consumers would benefit from receiving translated versions of the validation notice and Statement of Rights.

The Bureau is considering whether to adopt one of two alternative proposals related to the use of translated validation notices and Statements of Rights. Under both alternatives, the Bureau would develop model translations and refine their contents and design based on consumer testing.

- First alternative under consideration. The first alternative under consideration would require debt collectors beginning collection on an account to send translated versions of the validation notice and Statement of Rights to a consumer if: (1) the debt collector's initial communication with the consumer took place predominantly in a language other than English or the debt collector received information from the creditor or a prior collector indicating that the consumer prefers to communicate in a language other than English; and (2) the Bureau has published in the Federal Register versions of the validation notice and Statement of Rights in the relevant non-English language. The Bureau anticipates that it would start by developing Spanish-language forms, but it might develop versions in other languages over time.

- Second alternative under consideration. The second alternative under consideration would require debt collectors beginning collection on an account to include a Spanish translation on the reverse of every validation notice and Statement of Rights.

The Bureau is interested in SERs' thoughts on the costs and other tradeoffs between the two alternatives.

5. Credit reporting requirements

Debt collectors may furnish information to consumer reporting agencies for inclusion in consumer reports. Although collectors often contact consumers about their debts before furnishing such information, some collectors furnish such information without first contacting consumers. Collectors often engage in such "passive collection" (sometimes referred to by consumer advocates as "debt parking") if the cost of actively attempting to reach consumers exceeds the expected return from engaging in such collections.

The Bureau is concerned about the harm to consumers caused by passive collection. Some collectors furnish information to consumer reporting agencies for debts about which the original debt owner did not furnish, for debts that the consumer believes have been settled, or for debts that have been mistakenly attributed to the consumer. If collectors do not contact consumers prior to furnishing credit reporting information, consumers may be unaware they have a debt in collection unless they request and review their credit report. Often, consumers learn that the debt is in collection only when applying for credit, housing, employment, or another good or service—circumstances in which companies may pull their consumer reports. At this point, a consumer may feel pressure to pay the item merely to have it removed from the report or as a

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http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_14_1YR_DP02&prodType=table.

[29] *Id.*

condition of obtaining the product or service for which the company pulled the report, even if the consumer would have disputed the debt had he or she learned of it earlier.

To address this harm, the Bureau is considering a proposal that would prohibit debt collectors from furnishing information about a debt to a consumer reporting agency unless the collector has communicated directly about the debt to the consumer, which usually would occur by the collector sending a validation notice.

IV. Other Consumer Understanding Initiatives

In addition to proposals under consideration to provide a revamped FDCPA validation notice and Statement of Rights at the outset of the collections process, the Bureau is considering two other sets of interventions designed to address issues in the debt collection process that the Bureau believes many consumers may not understand. The first such potential intervention is to require a brief disclosure regarding the possibility of litigation. The second is to require disclosures and impose certain restrictions in connection with older debts that are beyond the applicable statute of limitations or generally barred from appearing on credit reports.

A. Litigation disclosure

1. Why is the Bureau considering a proposal to require a litigation disclosure?

Debt collectors often seek to recover on consumer debt through litigation. The FTC has concluded that "[t]he majority of cases on many state court dockets on a given day often are debt collection matters."[30] But few consumers who are sued for allegedly unpaid debts actually contest those allegations in court. Indeed, participants in a series of 2009 roundtables convened by the FTC estimated that between 60 and 95 percent of consumer debt collection lawsuits result in default judgments.[31] Some consumers against whom default judgments are entered may have had valid defenses had they appeared to defend themselves in court.[32]

The Bureau believes that some consumers fail to defend because they lack familiarity with court processes, do not understand the consequences of not defending, and do not know where to find an attorney they can afford. These consumers would benefit from additional information about debt collection litigation.

2. Requirement to provide a litigation disclosure

The proposals under consideration would require debt collectors to provide a brief "litigation disclosure" in all written and oral communications in which they represent, expressly or by implication, their intent to sue. The disclosure would inform the consumer that the debt collector intends to sue; that a court could rule against the consumer if he or she fails to defend a lawsuit; and that additional information about debt collection litigation, including contact information for others' legal services programs, is available on the Bureau's website and through

[30] FTC Collecting Consumer Debts Report, at 55.

[31] U.S. Fed. Trade Comm'n, *Repairing a Broken System: Protecting Consumers in Debt Collection Litigation and Arbitration*, at 7 (July 2010), *available at* https://www.ftc.gov/sites/default/files/documents/reports/structure-and-practices-debt-buying-industry/debtbuyingreport.pdf.

[32] *Id.* at iii.

calling the Bureau's toll-free telephone number. Under the proposal under consideration, debt collectors would provide the disclosure at the same time as—and using the same medium in which—they represent that they intend to sue. The Bureau does not anticipate providing model language at this time but is interested in receiving feedback from the SERs about the usefulness of model language.

B. Time-barred debt and obsolete debt

1. Why is the Bureau considering proposals related to time-barred debt and obsolete debt?

Time-barred debt, sometimes referred to as "out of statute debt," is debt as to which the statute of limitations has expired. In a few states, collectors are affirmatively prohibited from bringing suit on time-barred debt under state law, but the more common rule is that courts will dismiss lawsuits filed on such debt if the consumer proves the statute of limitations as an affirmative defense. Most statutes of limitation fall in the three-to-six-year range, although in some jurisdictions they may extend to fifteen years for certain types of debt.[33]

One of the reasons states impose statutes of limitations on lawsuits to recover debt is because of a concern that evidence may become less reliable over time, making it more difficult for the parties and the courts to resolve the matter. Because the risk of a lawsuit may play a major role in how consumers choose to respond to a demand for payment, consumer understanding regarding the nature and implications of time-barred debt is important. Concepts related to statutes of limitations are challenging for consumers to understand, especially the fact that in some jurisdictions consumers may "revive" a debt and reset the statute of limitations by making a partial payment or acknowledging the debt in writing.

A related issue is obsolete debt, which is debt that, because of its age, is generally barred from appearing on credit reports under the Fair Credit Reporting Act. This typically occurs approximately seven years after the delinquency began. Again, because the risk of negative information appearing on a credit report may play a role in how consumers choose to respond to a collector's demand for payment, the Bureau believes that consumer understanding regarding the nature and implications of obsolete debt is important.

2. Proposal under consideration to prohibit suit and threats of suit on time-barred debt

The Bureau is concerned that some debt collectors sue or threaten to sue on time-barred debt. The consumer protection risks associated with these practices are plain. Few consumers know that a statute of limitations can be used to defend against legal claims—much less whether their own debts are time-barred. Debt collectors that sue on time-barred debt may secure judgments on claims against which consumers have viable defenses based on the statute of limitations. Similarly, debt collectors that threaten suit on time-barred debt take advantage of this lack of understanding by representing, expressly or by implication, that they are legally entitled to

[33] The statute of limitations applicable to a particular debt generally depends on state law and the type of debt. The statutory period usually starts to run from the date of delinquency or the date of last payment. *See* U.S. Fed. Trade Comm'n, *The Structure and Practices of the Debt Buying Industry*, at 42 (Jan. 2013) (hereinafter FTC Debt Buying Industry Report), *available at* https://www.ftc.gov/sites/default/files/documents/reports/structure-and-practices-debt-buying-industry/debtbuyingreport.pdf.

enforce the debt in court, thereby inducing consumers to pay debts they would not otherwise have paid (including debts they do not actually owe). The proposals under consideration would prohibit suit and threats of suit on time-barred debt.

3. Proposal under consideration to require disclosures, and to waive revival, in connection with the collection of time-barred debt and obsolete debt

Consumer protection concerns exist even when a debt collector attempts to collect time-barred debt without suing or threatening suit. Again, this is because few consumers know the statute of limitations applicable to any particular debt or whether the limitations period has run. Consumers may take away from an attempt to collect a debt the implied claim that the debt is enforceable in court if they do not pay—a claim that is false for time-barred debts. Further, a consumer who does not know that the statute of limitations has run on a particular debt may pay or prioritize a debt, including one the consumer does not owe, over a different obligation.

These concerns are heightened in jurisdictions with so-called revival statutes. In these jurisdictions, the statute of limitations "revives"—that is, it starts anew—when the borrower makes a payment or acknowledges the debt in writing. The Bureau believes that most consumers are unaware of the potential legal consequences of making a payment or acknowledging a debt in writing. Indeed, many consumers may find it counterintuitive that making a payment—which they believe ought to have positive consequences for them—may actually have negative consequences.

The proposals under consideration would require disclosures whenever a debt collector seeks payment on time-barred debt and limit the collection of debts that can be revived. The purpose is to help ensure that consumers are neither deceived nor treated unfairly in connection with the collection of time-barred debt.

- Time-barred debt disclosure. The Bureau is considering a proposal that would require a debt collector to provide a time-barred debt disclosure when it seeks to collect a time-barred debt. The Bureau is considering whether a collector should be required to make this disclosure only if the collector knew or should have known that the debt was time-barred, or whether a collector should be strictly liable (*i.e.*, liability would attach regardless of the collector's state of knowledge).[34] The Bureau would develop a disclosure and refine its contents and design based on consumer testing.

  The disclosure itself would consist of a brief, plain-language statement informing the consumer that, because of the age of the debt, the debt collector cannot sue to recover it. The proposal under consideration would require debt collectors to include such a statement in the validation notice and in the first oral communication in which they request payment.[35] The Bureau is also considering whether debt collectors should provide the disclosure at additional intervals, including possibly in each communication in which they seek payment.

[34] As with other provisions of the proposed rule, the bona fide error defense under FDCPA section 813(c), 15 U.S.C. 1692k(c), would be available to debt collectors.

[35] Where a debt becomes time-barred during collections, debt collectors would be required to provide the disclosure in the first communication in which they seek payment after the statute of limitations has expired. If the first communication is oral, then the time-barred debt disclosure would also have to be provided in the first subsequent written communication. The Bureau is also considering whether to require the disclosure at additional intervals.

- Binding later collectors. Given the frequency with which debts are transferred between collectors, the Bureau is concerned that a consumer might rely on one debt collector's representation that a debt is time-barred only for a subsequent collector to sue the consumer after making a different determination about the same debt. To avoid this concern, the proposal under consideration would prohibit a subsequent collector from suing on a debt as to which an earlier collector provided a time-barred debt disclosure. The proposal under consideration would also require the later collector to provide a time-barred debt disclosure in the validation notice and the first oral communication in which it requests payment, and possibly at additional intervals. Earlier collectors would have to indicate when they transfer the debt to others if they have given the time-barred debt disclosure to the consumer.

- Obsolescence disclosure. The Bureau is concerned that consumers may make erroneous assumptions about credit reporting on debts that they are told cannot be sued on, and that these assumptions may lead them to take action they would not have taken otherwise. Therefore, the Bureau is considering whether to require a disclosure that would inform the consumer whether a particular time-barred debt generally can or cannot appear on a credit report. The Bureau would develop a disclosure and refine its contents and design based on consumer testing. The proposal under consideration would require that the disclosure appear on the validation notice, although the Bureau is also considering whether to require it at additional intervals. The Bureau seeks information from SERs about the frequency with which debt collectors furnish information to consumer reporting agencies on debts that are both time-barred and obsolete and the challenges of providing disclosures to consumers relating to obsolescence.

- Waiver of revival. Consumers may revive a time-barred debt under state law if they make a payment on it or acknowledge that the debt is theirs. Consumers may believe that these actions would be beneficial to them. To try to correct this impression, collectors could attempt to disclose that these actions in fact could permit collectors to subsequently file a lawsuit because the debt has been revived. However, the Bureau's testing to date suggests that consumers may not fully understand such a disclosure, because it seems counter-intuitive to them. Consequently, the Bureau is considering whether to prohibit collectors from collecting on time-barred debt that can be revived under state law unless they waive the right to sue on the debt. In other words, even if a consumer makes a payment or acknowledges the debt in writing, the rule would prohibit a debt collector from suing because the collector, by operation of the Bureau's rules, would have waived any right to sue by collecting on the debt.

- Alternatives considered. The Bureau has considered two alternative proposals, one to ban the sale of time-barred debt and one to ban the collection of time-barred debt. The Bureau is not currently planning to propose these alternatives because the other proposals under consideration described in this Outline may adequately address the risks to consumers posed by the sale and collection of time-barred debt. The Bureau also notes that banning the sale or collection of time-barred debt could have unintended consequences for consumers. For example, if collectors cannot sell or collect time-barred debt, they may have more incentive to sue consumers in advance of the expiration of the statute of limitations, a result which often is not in the interest of consumers who would prefer not to be sued or collectors who may incur costs related to litigation.

4. Proposal under consideration to require consumer acknowledgement before accepting payment on debt that is both time-barred and obsolete

If consumers cannot be subject to either lawsuits or credit reporting, the Bureau believes that it is especially important for them to know about their rights to ensure they do not pay as a result of a debt collector's unlawful conduct. The Bureau therefore is considering a proposal to prohibit a debt collector from accepting payment on such a debt until the collector obtains the consumer's written acknowledgement of having received a time-barred debt disclosure and an obsolescence disclosure. Debt collectors would be free to include, as a separate document that accompanies the validation notice, a form that consumers may use to acknowledge receipt. The Bureau does not anticipate providing a model form for this purpose.

V. Collector Communication Practices

The second largest source of Bureau complaints about debt collection focuses on communication practices. Although the FDCPA has established multiple protections and requirements regarding debt collection communications throughout the debt collection lifecycle, consumers consistently complain about frequent or repeated collections telephone calls, disclosures of debts to third parties, and other concerns related to debt collection communications.[36] Communications-related conduct also drives a substantial number of FDCPA lawsuits.

Communications are also a major source of frustration and inefficiency for debt collectors, who often feel caught between different sets of FDCPA requirements, such as those requiring collectors to identify themselves as collectors and those prohibiting revealing the existence of a debt to third parties. In particular, many collectors feel that it is too legally risky for them to leave messages for consumers because of the risk that a third party might hear or see the message containing the required FDCPA content and thus learn of the debt. Thus, some collectors call consumers repeatedly without leaving messages, which in turn can leave consumers feeling frustrated and harassed.

The Bureau believes that improving the quality of information in the debt collection system and providing consumers with the initial disclosures discussed in part III might decrease the amount of time and effort that collectors spend trying to locate and initiate contact with consumers. Nevertheless, the Bureau is considering several other potential proposals to give consumers more control over the rhythm and channels of communications and to provide greater regulatory certainty for all parties. The most significant interventions under consideration include:

- Regulations to govern contact frequency and the leaving of messages;
- Regulations to govern the time, place, and manner of collector contacts; and

[36] Communication tactics ranked second in debt collection complaints submitted to the Bureau during 2015, and the majority of complaints in this category—52 percent, or almost 8,000 complaints during 2015—were about frequent or repeated telephone calls. *See* 2016 FDCPA Annual Report, *supra* note 4, at 19.

- Regulations relating to situations in which the consumer alleged to owe the debt dies (decedent debt).

Each of these categories of interventions is summarized below, along with proposals the Bureau is considering related to consumer consent to communications that, without consent, would otherwise violate the FDCPA or implementing regulations. In addition, Appendix H lists certain collector practices that the Bureau is considering specifying violate the FDCPA. Again, the Bureau believes that the proposals under consideration regarding communications would have both benefits and costs for small entities. The Bureau seeks the SERs' input on how the combined impacts would affect their businesses and the broader debt collection industry, particularly in light of the information integrity measures discussed above.

A. Proposals under consideration regarding contact frequency and the leaving of messages

1. Why is the Bureau considering proposals relating to contact frequency and the leaving of messages with consumers and with third parties?

As noted, consumers often complain that the frequency with which debt collectors contact them is harassing.[37] Collectors, on the other hand, observe that multiple contact attempts are necessary, particularly when trying initially to locate and establish contact with a particular consumer who owes a particular debt.

In addition, uncertainty over the intersection of certain FDCPA requirements substantially complicates the communication process. As mentioned above, many collectors believe that, under the FDCPA, they may not be able to leave voicemails or other messages for consumers because the FDCPA requires them to leave information identifying themselves as a collector and provide certain warnings to the consumer. If such content is seen or heard by a third party, however, that would risk violating FDCPA prohibitions against revealing debts to third parties.[38] As a result, when consumers do not answer collections calls, some debt collectors simply hang up and call back, repeating this process until the consumer picks up the call. This may result in consumers receiving many more collection calls than they presumably would if debt collectors could leave a simple message.

The Bureau believes that setting forth clear standards regarding both permissible contact

[37] Section 806(5) of the FDCPA prohibits collectors from "causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person," and section 806 more generally prohibits conduct by debt collectors that has the natural consequence of harassing, oppressing, or abusing any person.

[38] The intersection between the two FDCPA requirements was raised in the 2006 decision in *Foti v. NCO Financial Systems*, 424 F. Supp. 2d 643 (S.D.N.Y. 2006) and is commonly referred to as the *Foti* dilemma. Under the *Foti* line of cases, a voicemail message that includes the collection company's name, states that the call is about an important business matter, and provides a toll-free call-back number has been considered a "communication" under the FDCPA. Debt collectors that have left such voicemails without providing the required warnings—*i.e.*, a statement that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose, or a statement that the communication is from a debt collector—have faced liability under FDCPA section 807(11). Because such warnings, also known as the "mini-Miranda" warning, necessarily contain information about a consumer's debt, however, debt collectors leaving messages with the mini-Miranda also could face liability under FDCPA section 805(b) if a third-party were to overhear the message.

frequency and how collectors may leave messages for consumers could benefit both consumers and industry by reducing contact frequency while maintaining or enhancing debt collectors' ability to communicate with consumers.

2. Permitting certain limited-content voicemails and other messages

The Bureau is considering a proposal that would provide that no information regarding a debt is conveyed—and no FDCPA "communication"[39] occurs—when collectors convey **only**: (1) the individual debt collector's name, (2) the consumer's name, and (3) a toll-free method that the consumer can use to reply to the collector. For example, a voicemail could state, "This is John Smith calling for David Jones. David, please contact me at 1-800-555-1212." This would allow collectors to leave such limited-content messages in a voicemail message, with a third-party in a live conversation, or through another method of communication (*e.g.*, in a text message or an email), without triggering the requirement to provide the FDCPA warnings.[40] If the collector succeeds in reaching the consumer or if the consumer contacts the collector after receiving the message, these FDCPA requirements would apply immediately.

The Bureau is seeking feedback on whether permitting limited-content messages is an appropriate and practical way to cut down on repeat contacts without messages, protect against third-party disclosures, and ensure that consumers understand the nature of the communication as soon as there is direct contact with the collector. To ensure that such communications do not become an avenue for evading FDCPA requirements, the Bureau also is considering specifying that debt collectors engage in harassing or abusive conduct in violation of FDCPA section 806 if they use the limited-content voicemails or other messages to engage in contacts that would be prohibited if they were FDCPA "communications." For example, a debt collector who used limited-content voicemails to continue to contact consumers after receiving a written cease communications request[41] would violate FDCPA section 806 and the Bureau's rules implementing that section.

3. Restricting debt collection contacts with consumers

In combination with solving the current uncertainty over leaving messages, the Bureau is considering proposing regulations limiting the frequency with which debt collectors may contact, or attempt to contact, consumers. As discussed further in part VII, the Bureau believes that current collector practices vary widely with regard to frequency of contact but that some debt collectors do not call frequently enough to be affected by the caps under consideration. Smaller respondents to the Bureau's industry survey on current collector practices and procedures, in particular, reported that they are unlikely to call consumers more than one to two

[39] FDCPA section 803(2) defines the term "communication" to mean "the conveying of information regarding a debt directly or indirectly to any person through any medium."

[40] As discussed in Appendix F, the proposals under consideration would also prohibit debt collectors from including information in the "from" and "subject" lines of emails and from using telephone numbers such as "1-800-PAYDEBT" that that would convey that the message is from a debt collector.

[41] Consumers may ask collectors orally to stop communicating with them about a debt. Although the proposals under consideration would not necessarily make it a violation for a collector not to honor an oral cease communication request, the Bureau notes that a debt collector that continues to contact a consumer after receiving such an oral request to cease communications may be engaging in harassing conduct in violation of FDCPA section 806.

times per week and generally would not speak to a consumer more than one time per week.[42]

In considering proposals to restrict contact frequency, the Bureau believes that it would make sense to establish different numerical restrictions depending on whether the collector has successfully established contact with the consumer who is alleged to owe the particular debt. The Bureau believes such an approach may be appropriate because prior to such "confirmed consumer contact," the collector may attempt to reach the consumer through different phone numbers or different media and may not know how best to reach the consumer. Once the collector has reached the consumer and confirmed that certain contact information is effective, the collector will know how best to reach the consumer and need not attempt to initiate contact as frequently.[43]

The Bureau is considering a rule that would provide that "confirmed consumer contact" exists once any collector—*i.e.*, whether the current collector or a prior one—has communicated with the consumer about the debt, and the consumer has answered when contacted that he or she is the debtor or alleged debtor. Confirmed consumer contact would not exist either: (1) prior to the consumer answering that he or she is the person whom the collector sought to contact, or (2) if the collector reasonably believes that previously confirmed contact information for the consumer has become inaccurate. In general, confirmed consumer contact would pass from collector to collector.

The contact caps under consideration would limit both successful and attempted contacts. For instance, a contact attempt that ends with the collector leaving a limited-content message as described above would count toward the cap.

The Bureau also is considering whether to apply the contact caps equally to all communication channels (*e.g.*, telephone, mail, email, text messages, and other newer technologies), and whether to create separate limits per unique phone number or address as well as for total contacts per week. Because collectors may have or obtain several phone numbers as well as potentially one or more email and mailing addresses for a consumer, the Bureau believes that it would be excessive for a debt collector to make contact attempts through any one of these points of contact more than a certain number of times per week. The Bureau also believes that overall contact attempts by a given debt collector through different points of contact can have the same harassing consequence.

The Bureau is considering whether to structure the caps as "hard" bright-line limits or to provide more flexibility. For instance, one option would be to establish a general bright-line rule but with some specific exceptions. Another option would be to establish a rebuttable presumption that contacts or attempted contacts above the threshold constitute harassing, oppressive, or abusive conduct, and contacts or contact attempts at or below the thresholds do

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[42] Operations Study, *supra* note 15, at sec. 5.2.

[43] The Bureau continues to consider whether confirmed consumer contact status should be established only after the collector communicates with the consumer obligated or allegedly obligated to pay the debt (and not, *e.g.*, to the consumer's spouse). The Bureau is contemplating that collectors would not be limited to the stricter contact caps associated with confirmed consumer contact status until they have communicated with the debtor or alleged debtor, because a successful contact with a section 805(d) consumer (*e.g.*, a spouse) would not necessarily mean that the collector has located the alleged debtor. In the case of decedent debt, confirmed consumer contact could be established when the collector has communicated with an executor, administrator, or personal representative of the estate.

not. Under such an approach, if the collector knew or had reason to know that a contact or contact attempt in excess of the cap would not result in harassing, oppressive, or abusive conduct for a particular consumer, the collector would not violate the regulation by contacting or attempting to contact the consumer more often than the thresholds otherwise would allow. On the other hand, if the collector knew or should have known that a contact or contact attempt below the threshold would be harassing, the collector would violate the regulation by contacting or attempting to contact the consumer at that frequency.

When analyzing contact frequencies, the Bureau is weighing the competing interests of debt collectors in being able to make the repeated contact attempts often necessary to establish confirmed consumer contact and collect debts, and the interests of consumers in minimizing the number of debt collection calls they receive.[44] The Bureau believes that the caps under consideration may appropriately balance the risks to consumers of being annoyed, harassed, oppressed, or abused by too-frequent contacts or contact attempts via multiple points of contact with the risks to collectors from being unable to communicate sufficiently with consumers. The Bureau further believes that—particularly when taken together with the Bureau's proposed approach to leaving messages discussed above—these caps would significantly reduce the number of contacts and contact attempts that consumers experience, while simultaneously allowing collections to continue without undue burden.

Specifically, the proposals under consideration would set the limits in Table 2 below. Note that, when confirmed consumer contact exists, the Bureau is considering whether to provide that more than one live conversation per week would be generally prohibited. Except under a strict hard cap approach, a consumer could consent to greater frequency than reflected in the caps for confirmed consumer contact status, for example, by agreeing during the first conversation about a particular account that week that the collector could call the consumer back at a specific date and time later in the week. To be effective, the consent would need to meet the minimum requirements described later in part V.D.

Table 2: Permissible Consumer Contacts (or Contact Attempts) Per Account Per Week

Collector Activity	Collector Does Not Have Confirmed Consumer Contact	Collector Has Confirmed Consumer Contact
Attempts per unique address or phone number	3	2
Total contact attempts	6	3
Live communications	N/A	1

- Alternatives considered. The Bureau considered applying the caps on a per-consumer, rather than on a per-account, basis for all types of debts. In rejecting this approach, the Bureau considered that: (1) a collector working on multiple accounts for multiple creditors

[44] The Bureau considered consumer complaints about—and anecdotal evidence of consumer harm from—too-frequent contacts or contact attempts by collectors, feedback from consumers in response to the Bureau's *Survey of Consumer Views on Debt* (preliminary results attached at Appendix B), anecdotal data from collectors about call frequency required by debt owners, and relevant case law and states' laws.

might not be able to work on each account if the collector could only communicate with the consumer one time per week; (2) creditors might seek to place their accounts with collectors who exclusively work their accounts, or work only a certain type of debt, which might make collection activity less efficient; and (3) it could be impracticable or otherwise problematic for collectors to merge information across different creditors' accounts for purposes of counting contacts or contact attempts. The Bureau recognizes that the proposal under consideration would permit a higher number of contacts and contact attempts to consumers with multiple accounts in collection. However, the disadvantages of a per-consumer cap structure and the other measures that the Bureau is considering to increase consumer awareness of, and ability to limit, communications suggest that a per-account approach may be most appropriate. The Bureau continues to consider whether a per-consumer, rather than a per-account, contact cap may be preferable for particular categories of debt, such as student loan or medical debt, where one collector likely may be collecting on multiple accounts for the same consumer simultaneously.

4. Location contacts and frequency of general third-party contacts

Section 804 of the FDCPA permits debt collectors to contact persons other than the person (or persons) who owes or allegedly owes the debt to acquire location information for that individual. It also prescribes requirements regarding such location communications. The Bureau understands that there are concerns about consumer harms from debt collectors using location contacts improperly by, for example, repeatedly contacting or attempting to contact third parties, asking or encouraging third parties to pay the debt, or enlisting third parties to pressure consumers to contact collectors.

The Bureau is considering a set of contact caps that would allow collectors to make a limited number of location contacts (or attempted location contacts) with third parties when the collector does not have confirmed consumer contact. Like the consumer contact caps under consideration, the contact caps being considered for location communications would: (1) apply to all contact channels; (2) restrict both attempts per unique address or phone number and total attempts per week; and (3) apply per account, rather than per consumer. Similarly, the Bureau is considering whether to establish a hard cap, a general cap with limited exceptions, or a rebuttable presumption structure.

The proposals under consideration would set the limits in Table 3 below. As with consumer contacts, attempts to contact a third party would count toward the cap; for instance, a contact that ends with the collector leaving a message for a third party would count as a contact attempt. Consistent with the FDCPA, the caps would prohibit a collector from initiating a contact with any particular third party that the collector already had contacted to obtain location information, unless specifically requested to do so by the third party, or unless the collector reasonably believed that the location information that it had received from the third party was incorrect or incomplete. However, the caps would not restrict the total location attempts made to all third parties per account per week absent harassment or other conduct that would violate FDCPA section 806, since attempts to one third party generally are not likely to harass another third party.

Table 3: Permissible Number of Location Contacts (or Contact Attempts) to a Third Party Per Account Per Week

Collector Activity	Collector Does Not Have Confirmed Consumer Contact	Collector Has Confirmed Consumer Contact
Attempts per unique address or phone number per third party	3	0
Total contact attempts per third party	6	0
Total contact attempts across all third parties	No specific limit	0
Live communications per third party (total, not weekly)	1	0

When the debt collector has confirmed consumer contact, the caps would bar all further location communications. A collector who has reached the consumer obligated or allegedly obligated to pay the debt may no longer need to obtain location information for the consumer. Therefore, future purported location contacts likely may be made for a purpose other than to obtain the consumer's location information. As noted in part V.A.3, above, if the collector reasonably believes that previously confirmed contact information for the consumer has become inaccurate, confirmed consumer contact would be deemed not to exist, and the collector would be permitted to resume contacting third parties to obtain location information.

B. General time, place, manner restrictions

FDCPA section 805(a) limits the times and places at which collectors may communicate with consumers in connection with the collection of debts. For example, it generally prohibits debt collectors from communicating with consumers about a debt at any unusual time or place, or at a time or place that the collector knows or should know is inconvenient for the consumer, unless the collector has received consent directly from the consumer. The statute further specifies that, in the absence of knowledge of circumstances to the contrary, debt collectors shall assume that the convenient time for contacting consumers is after 8:00 a.m. and before 9:00 p.m. in the consumer's location.

Notwithstanding section 805(a)'s protections, consumers have complained that debt collectors contact them at inconvenient times and places, and that they have not been able to prevent such contacts. At the same time, debt collectors may face uncertainty about whether and how section 805(a) applies to communications via newer technologies such as email.

The Bureau believes that this rulemaking presents an opportunity to clarify FDCPA section 805(a) for consumers and collectors alike. Importantly, the proposals under consideration would underscore that collectors must abide by section 805(a)'s protections unless they receive consent to do otherwise directly from consumers. Under the proposal under consideration, collectors would not be able to rely on the consumer consent provided to the original creditor or a prior collector. *See also* part V.D regarding consent, below.

1. Clarifications regarding inconvenient times

The Bureau is considering a proposal to clarify the FDCPA's limitations on contacting consumers at inconvenient times. Under section 805(a)(1), the consumer's location affects the presumptively convenient times that a collector may contact the consumer. The Bureau is considering a proposal that would specify how a debt collector determines a consumer's location when the debt collector has conflicting location information for the consumer. For example, when a consumer has a mobile phone number in one time zone and a street address in another, a debt collector may be unsure which time zone reflects the consumer's actual location when a call is placed.[45] The proposals under consideration would provide that, in this situation, and in the absence of knowledge of circumstances to the contrary, a debt collector knows or should know that it is convenient to communicate with a consumer if it would be convenient in all of the locations in which the collector's information indicates the consumer might be. The Bureau understands that some collectors may already have adopted this practice for determining the convenient time to contact consumers when the collector has conflicting location information.

The proposals under consideration would also clarify how the presumptively convenient time restrictions in section 805(a)(1) apply to newer technologies. They would provide that whether a communication is sent at an unusual or inconvenient time is determined by the time at which the message generally is available for the consumer to receive it. Because an email or text message is generally available for consumer's receipt when the debt collector sends it, the time of sending will be the determining factor—not, for example, when the consumer sees or opens it. Using the time the message is sent also will provide greater certainty to collectors in determining if they are communicating at a presumptively inconvenient time.

2. Clarifications regarding inconvenient places

a. General clarifications

FDCPA section 805(a)(1) prohibits collectors from communicating with consumers at any place that the collector knows or should know is inconvenient for the consumer. The proposals under consideration would specify certain locations that trigger the FDCPA presumption and thus a collector would not be able to continue the communication, absent affirmative consumer consent as discussed below. Under the proposal under consideration, a consumer would not have to state that the communication is inconvenient; simply stating that the consumer is in one of the four specified presumptively inconvenient places would be sufficient to trigger the FDCPA's restriction.

The Bureau is considering stating that the following four categories of places are presumptively inconvenient for consumers: (1) medical facilities, including hospitals, emergency rooms, hospices, or other places of treatment of serious medical conditions; (2) places of worship, including churches, synagogues, mosques, temples; (3) places of burial or grieving, including

[45] The Bureau also is considering a related proposal that would provide that a collector who contacts a consumer outside the presumptively convenient time would not violate the law if the contact was permissible according to the contact information the collector has about the consumer and the collector did not know, or should not have known, that the consumer was receiving the communication at a presumptively inconvenient time. A collector could lack such knowledge where, for example, the consumer had traveled to a different time zone with his or her mobile phone, or was receiving phone calls automatically forwarded from a landline phone in a different time zone.

funeral homes and cemeteries; and (4) daycare or childcare centers or facilities.[46] The Bureau believes that it is highly unlikely for it to be convenient for consumers to receive debt collection communications (or communication attempts) while consumers are physically located at one of these places. In addition, most consumers are not at these locations permanently, and collectors will be able to resume communications with these consumers once they are no longer at these places.

As noted, the presumption would apply only if the collector knows or should know that the consumer is at one of the places. Under this standard, collectors would not be required to investigate a consumer's whereabouts before attempting to communicate. However, collectors would be prohibited from ignoring information that they may have received about a consumer's location, for example in prior communications with the consumer, in order to contact the consumer at one of the places.

Conversely, a collector who contacted a consumer who was at one of the listed places would not violate the regulation if the collector did not know, and had no reason to know, that the consumer was at the presumptively inconvenient place. This should accommodate inadvertent contacts by mobile phone or other portable technologies in which it is difficult for collectors to determine where a consumer physically is at the time that the collector initiates a contact. However, if the collector learned during the communication that the consumer was at such a place, the collector would be required to discontinue the communication. The collector could not use the opportunity to seek the consumer's consent for a debt collection communication or to ask the consumer to pay the debt. Rather, to consent to a communication at a presumptively inconvenient place, the consumer would have to affirmatively express an interest in and consent to discussing the debt at the place without prompting from the collector.

The Bureau is considering providing that the general principle would apply to communications with the consumer at the place, regardless of the communication method used.[47] Thus, for example, if a collector knows or should know that a consumer is in the hospital, and the consumer has both a landline telephone in the hospital room and a mobile phone, the collector presumptively would be prohibited from calling or texting the consumer at either of those numbers. By contrast, the collector would not be prohibited, for example, from calling a landline telephone at, or from mailing a letter to, the consumer's home address while the consumer is at the hospital (though other restrictions, such as discussing the debt with a third-party, would still apply). The Bureau continues to consider how the presumption would apply to other, newer technologies such as email.

b. Servicemember inconvenient places

The Bureau understands that it often may be inconvenient for servicemembers to receive debt collection communications in military combat zones and similar areas. The Bureau also recognizes, however, that it may be in servicemembers' interests to know that a debt is in

[46] The proposals under consideration would limit attempts to communicate, as well as actual communications. The Bureau believes that, when a consumer is at one of the presumptively inconvenient places and does not wish to speak to a collector, the consumer would be inconvenienced by repeatedly receiving, for example, phone calls from the collector that the consumer must then ignore.

[47] But note that a collector could contact a consumer whom the collector knows or should know is at one of these places (*e.g.*, a hospital) if the consumer was employed at the place (*e.g.*, a doctor) and was not a customer or a client of the place (*e.g.*, a hospital patient) or visiting such a person.

collections and to seek to resolve debts during sometimes lengthy deployments. The Bureau is seeking feedback about the advantages and disadvantages to servicemembers and collectors of including military combat zones or qualified hazardous duty postings in the list of presumptively inconvenient places.

c. Alternatives considered

The Bureau is not currently contemplating proposing the consumer's workplace as a presumptively inconvenient place. While such an approach would help to protect consumers from the risks of workplace communications—*e.g.*, the risks of third-party disclosures—it could also result in only permitting contact attempts during relatively brief periods before and after work at consumers' homes. Many consumers may prefer not to get such contacts at home or at such times. Such a narrow window to contact consumers could significantly decrease collectors' ability to reach consumers, which in turn could increase collections litigation and increase substantially the costs of collection.

3. Clarifications regarding inconvenient communication methods

a. General clarifications

The Bureau is considering a proposal that would provide that a collector is prohibited from communicating (or attempting to communicate) with a consumer using a communication method that the collector knows or should know is inconvenient. The proposals under consideration would specify that collectors know or should know that a particular communication method is inconvenient if the consumer indicates, either expressly or by implication, that the method is inconvenient.

The proposals under consideration would provide that a consumer need not utter any "magic words," such as the word "inconvenient," to provide a collector with the requisite knowledge that a time, place, or communication method is inconvenient. The Bureau believes that a "magic words" approach would be too burdensome on consumers. At the same time, the Bureau recognizes that collectors may need to ask clarifying questions if a consumer makes an ambiguous statement. Accordingly, if a consumer stated "I cannot talk on the phone about this," the collector could ask the consumer to clarify if a different time or phone number would be acceptable. In the absence of such information, however, the collector thereafter would be limited to contacting the consumer using methods other than calls.

b. Specific clarifications regarding work email addresses

The Bureau is also considering proposals that would generally prohibit collectors from using an email address that they know or should know is the consumer's workplace email for debt collection communications. The Bureau is concerned that workplace communications run a particularly high risk of violating the FDCPA's prohibition against disclosing consumer debt to third parties because many consumers' employers have a legal right to review employees' emails on their workplace accounts. This creates a risk that employers would read emails from collectors sent to the work email addresses of consumers.

The proposal under consideration would allow collectors to use a consumer's work email address for collections communications if the consumer specifically consented to being contacted at his or her work email. The consumer could provide consent directly to the debt collector, or could identify a workplace email address in a communication with the collector as a place to which to send return emails. For example, if a consumer emailed a collector from a

certain email address, that could constitute consent to use that email address for future communications so long as the content of the email did not convey otherwise. Consistent with the minimum requirements for consent discussed in part V.D, however, collectors could not rely on consumer consent provided to the original creditor or to a prior collector.

C. Issues concerning decedent debt

Section 805(b) of the FDCPA generally provides that a collector may not communicate with anyone other than the consumer about the collection of the consumer's debt. Section 805(d) of the Act defines "consumer" to include the consumer's spouse, the parent or guardian of a minor consumer, and the executor or administrator of a deceased consumer's estate.[48] Thus, collectors can generally communicate with "section 805(d) consumers" without violating the FDCPA. However, in situations in which a consumer who is alleged to owe a debt dies, a number of interpretive issues can arise with regard to how the FDCPA communications restrictions apply.

The Bureau is considering a number of proposals to clarify these issues. Specifically, the proposals under consideration include clarifying that it is generally permissible for collectors to contact surviving spouses, parents of deceased minors, and individuals who are designated as personal representatives of an estate under state law. However, the proposals would establish a 30-day pause after the consumer's death before such contacts could begin.

1. Status of surviving spouses, parents, and personal representatives

First, the proposals under consideration would clarify that the Bureau interprets the terms "spouse" and "parent" as used in section 805(d) to include surviving spouses and parents of deceased minor consumers, so that they could continue to speak to collectors about the decedent's debts, subject to certain restrictions discussed below.

The proposals also would interpret section 805(d) generally to apply to personal representatives of a deceased consumer's estate. Since the FDCPA's adoption, state law and practice regarding probate processes have evolved, and a number of states now refer to a "personal representative" as part of, in addition to, or instead of the labels of executor or administrator.[49] For many consumers, the use of personal representatives and more informal probate processes to resolve estates may be more efficient and less expensive, and cost often is a particularly important consideration for individuals of limited means. The Bureau thus is considering a proposal to interpret section 805(d) to include personal representatives of deceased consumers' estates.

The Bureau is considering defining "personal representatives" as those individuals who have been recognized under state probate or estate laws as having responsibilities to perform many of the same functions as executors and administrators. Limiting "personal representatives" to those defined in accordance with state law[50]—and not, for example, to include all individuals

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[48] Collectors can communicate with section 805(d) consumers about a consumer's debt without violating section 805(b)'s prohibition against disclosing debts to third parties; such communications, however, are subject to all other FDCPA communications restrictions.

[49] *See, e.g.*, UPC § 1-201(35) (defining "personal representative" to include, among others, an executor or administrator).

[50] The Bureau is considering specifying that debt collectors would not engage in unlawful third-party disclosure if they rely on state-approved documentation to determine that an individual they contact is a personal representative.

who merely describe themselves as personal representatives—should limit collector contacts to particular, identifiable individuals who have the legal status of "personal representative."[51] The Bureau, however, is interested in receiving feedback about the advantages and disadvantages of defining "personal representative" more broadly, to include, for example, any person with the authority to pay the decedent's debts out of the assets of the decedent's estate.

2. Waiting period for decedent debt

As discussed, the proposals under consideration would permit debt collection communications between collectors and surviving spouses and (for minor consumers) surviving parents of deceased debtors. While these communications may enable such individuals to resolve their loved ones' debts, the Bureau is concerned about the potential for consumer harm from debt collection communications during the vulnerable time after a loss. The Bureau is concerned, for example, about the possibility that a surviving spouse who is not responsible for the deceased consumer's estate nor otherwise obligated to pay the debt could, if contacted by a collector shortly after the consumer's death, be vulnerable to paying collection requests without full consideration.

To address this concern, the proposals under consideration would specify a 30-day waiting period during which collectors would generally be prohibited from communicating with section 805(d) consumers after the consumer alleged to owe a debt has died. Specifically, if a debt collector knows or should know that the consumer has died, the proposals under consideration would prohibit the debt collector from communicating or attempting to communicate with any section 805(d) consumer (*e.g.*, a surviving spouse) about the debt for 30 days following the date of death. The waiting period would apply regardless of the communication method the collector used (*e.g.*, phone, email, mail, text message).

The Bureau believes that a 30-day waiting period could prevent such consumers from receiving inconvenient communications during the early stages of the grieving process, while also protecting their interests in the prompt resolution of estates and in not being deprived of information that they may want from collectors. The Bureau also believes that its proposal under consideration is in line with the practice of a number of specialty collectors of decedent debt that already observe a pause for debt collection communications during the period immediately after a consumer dies. The Bureau, however, is interested in feedback from SERs about a 60-day waiting period as an alternative.

The Bureau is considering specifying that the debt collector could communicate with a section 805(d) consumer (*e.g.*, a surviving spouse) during the waiting period if the consumer consented directly to the debt collector. Collectors, however, would not be permitted to contact a section 805(d) consumer during the waiting period to request consent. Instead, the section 805(d) consumer would have to contact the collector during the waiting period to express an interest in, and consent to, discussing the decedent's debt.

The Bureau also is considering specifying that a collector who contacts a section 805(d) consumer during the 30-day waiting period without knowing or having reason to know that the consumer obligated or allegedly obligated on the debt had died would not violate the regulation.

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[51] The definition being considered would encompass a more limited set of individuals than are covered under the FTC's 2011 *Statement of Policy Regarding Communications in Connection with the Collection of Decedents' Debts*. 76 FR 44915, 44918-23 (July 27, 2011).

However, upon learning of the consumer's death, the collector would be required either to terminate the communication or to seek solely location information for the decedent's executor, administrator, or personal representative.[52] As noted above, the collector could not use the opportunity to seek the section 805(d) consumer's consent for a debt collection communication or to ask the consumer to pay the debt.

The proposal under consideration would not prohibit debt collectors from initiating or engaging in location contacts with section 805(d) consumers during the decedent debt waiting period, such as contacting a surviving spouse solely to get the contact information of the executor of an estate. The Bureau is, however, interested in feedback from the SERs about the costs and benefits to consumers and collectors of such a prohibition, including whether such costs and benefits would vary depending on the communication method used (*e.g.*, written versus oral).

D. Consumer consent

Various FDCPA restrictions on communications can be waived by consumer consent. The Bureau is considering proposals to clarify the parameters of obtaining consent from consumers. Most importantly, consistent with FDCPA section 805—which provides that the consumer must give consent directly to the debt collector—the Bureau is considering including in its proposed rules the requirement that each collector, to obtain consent, must obtain it *directly* from the consumer (whether orally or in writing). Thus, for example, each debt collector who obtains a debt following a sale or placement would be required to obtain consent anew rather than being able to rely on the consent provided to the creditor or to a prior collector. Not only is such a requirement consistent with the section 805(b) of the FDCPA, but it also would protect consumers by giving them an opportunity to reassess and re-set communication parameters for each collector with which they interact.[53]

In addition, the Bureau also is considering requiring collectors to clearly and prominently disclose to the consumer—either orally or in writing—what the consumer is consenting to (*e.g.*, that the consumer consents to communications at a specific date and time, or to the debt collector revealing information about a debt to a third party). The Bureau is continuing to consider how to implement this requirement, for example, whether to specify when and how collectors should make such a disclosure, and how specific the disclosure must be.

The Bureau also is considering requiring collectors to memorialize consent. The Bureau is considering specifying that, if a consumer provides consent orally, the debt collector may memorialize consent by recording the conversation or by noting the consumer's consent in the account file. If the communication occurs in writing, then the collector could memorialize consent by maintaining records of it in the account file. The Bureau is interested in receiving feedback about the most effective and least burdensome methods for memorializing consent.

Finally, the Bureau is considering specifying that consumers may revoke consent previously provided to the collector. The Bureau is continuing to consider how to implement such a

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[52] The Bureau is considering proposing that location information would include email addresses and cell phone numbers, as well as contact information for the executor, administrator, or personal representative of a deceased consumer's estate.

[53] In particular, this requirement would protect servicemembers by underscoring that a debt collector may not rely on consent provided to the original creditor to communicate with a servicemember's commanding officer about a debt.

proposal and is interested in receiving feedback about the most effective and least burdensome methods for both consumers and collectors.

- Alternatives considered. The Bureau considered two other proposals regarding the minimum requirements for consent. First, the Bureau considered a proposal to require that consumers provide consent in writing, rather than orally. Second, the Bureau considered a proposal to establish separate requirements for consent by specific groups of consumers, such as surviving spouses handling decedent debt collection communications. The Bureau is not contemplating proposing these alternatives, however, because the elements of effective consent outlined above appear to contain safeguards sufficient to protect consumers.

VI. Additional Proposals

A. Prohibition on transferring debt to certain entities or in certain circumstances

The proposals under consideration described above are designed to address longstanding problems in the debt collection market. However, the Bureau recognizes that, even after a debt-collection rule takes effect, certain collectors may try to operate unlawfully. To supplement the proposals under consideration described above, the Bureau is considering an additional proposal to prohibit debt buyers from placing debt with, or selling debt to: (1) those subject to a judgment, order, or similar restriction prohibiting them from purchasing or collecting debt in the state in which the consumer resides; or (2) those that lack any license required to purchase or collect debt, as applicable, in the state in which the consumer resides.

The purpose of the proposal under consideration is to keep debt out of the hands of those who cannot collect on debts lawfully. The Bureau seeks input from the SERs about the costs associated with prohibiting transfers to these two categories of entities. The Bureau also seeks input whether the two categories described above should be expanded or contracted, or whether additional categories should be added.

Additionally, the Bureau is considering a proposal to prohibit the sale or placement for collection of debt when the debt buyer knows or should know that the debt was paid or settled, discharged in bankruptcy, or the result of identity theft.

B. Recordkeeping

The Bureau is considering a proposal to require a debt collector to retain records documenting the actions it took with respect to a debt for three years after its last communication or attempted communication (including communication in litigation) with the consumer about the debt. This retention requirement would encompass all records the debt collector relied upon for the information in the validation notice and to support claims of indebtedness, for example, the information the debt collector obtained before beginning to collect, the representations the debt collector received from the creditor before beginning to collect, and the records the debt collector relied upon in responding to a dispute. It also would encompass all records related to the debt collector's interactions with the consumer, for example, written communications to and from the consumer, oral communications to and from the consumer, and individual collector notes.

The Bureau notes that while this recordkeeping requirement would apply to recorded telephone calls, entities that do not record telephone calls would not be required to begin doing so.

VII. Potential Impacts on Small Entities

This section summarizes both the Bureau's preliminary assessments of the potential impacts on small entities of the proposals under consideration and the methods used to derive the assessments. It is meant to provide context for a discussion of how the requirements under consideration can be improved for small entities, while still achieving their purposes. The Bureau encourages contributions of data and other factual information that will help it to understand better the potential compliance burdens of small entities and to develop a proposed rule that achieves appropriate goals, including those discussed in this Outline.

A. Entities subject to the proposals under consideration

The proposals under consideration would apply to "debt collectors," as defined in the FDCPA. The Bureau has identified several categories of small entities that meet this definition using definitions for small entities that are set by the SBA in other contexts: collection agencies with $15.0 million or less in annual receipts; debt buyers with $38.5 million or less in annual receipts; collections law firms with $11.0 million or less in annual receipts; and small entity loan servicers that acquire accounts in "default," which generally are either depository institutions with $550 million or less in assets or non-depositories with $20.5 million or less in annual receipts.

- *Collection agencies*. The Census Bureau defines "collection agencies" (NAICS code 561440) as "establishments primarily engaged in collecting payments for claims and remitting payments collected to their clients."[54] In 2012, according to the Census Bureau, there were 4,000 collection agencies with paid employees in the United States.[55] Of these, the Bureau estimates that 3,800 collection agencies have $15.0 million or less in annual receipts and are therefore small entities.[56] Census Bureau estimates indicate that in 2012 there were also more than 5,000 collection agencies without employees, all of which are presumably small entities.

- *Debt buyers*. Debt buyers purchase delinquent accounts and attempt to collect amounts owed, either themselves or through agents. The Bureau estimates that there are approximately 330 debt buyers in the United States, and that a substantial majority of these are small entities.[57] Many debt buyers—particularly those that are small entities—also collect debt on behalf of other debt owners.[58]

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[54] As defined by the Census Bureau, collection agencies include entities that collect only commercial debt, and the proposals under consideration apply only to collectors of consumer debt. However, the Bureau understands that relatively few collection agencies collect only commercial debt.

[55] Census Bureau estimates indicate that in 2012 there were also more than 5,000 collection agencies without employees, all of which are presumably small entities.

[56] The Census Bureau estimates average annual receipts of $95,000 per employee for collection agencies. Given this, the Bureau assumes that all firms with fewer than 100 employees and approximately half of the firms with 100 to 499 employees are small entities, which implies approximately 3,800 firms.

[57] DBA International, the largest trade group for this industry segment, states that it has approximately 300 debt buyer members and believes that 90 percent of debt buyers are current members.

[58] The Bureau expects that debt buyers that are not collection agencies would be classified by the Census Bureau under "all other nondepository credit intermediation" (NAICS Code 522298).

- *Collection law firms.* The Bureau estimates that there are 1,000 law firms in the United States that either have as their principal purpose the collection of consumer debt or regularly collect consumer debt owed to others, so that the proposals under consideration would apply to them. The Bureau estimates that 95 percent of such law firms are small entities.[59]

- *Loan servicers.* Loan servicers would be covered by the proposals under consideration if they acquire servicing of loans already in default.[60] The Bureau believes that this is most likely to occur with regard to companies that service mortgage loans or student loans. The Bureau estimates that approximately 200 such mortgage servicers may be small entities and that few, if any, student loan servicers that would be covered by the proposals under consideration are small.[61]

B. Bureau review of debt collection processes and costs

The Bureau has collected information about the effect that the proposals under consideration might have on debt collectors, including those that are small entities.

As noted, in 2013 the Bureau published an ANPR that asked for information related to potential rules for debt collection and how they might affect industry. A number of responses addressed the likely impacts on collectors of rules similar to the proposals under consideration. However, few of the responses included specific data needed to estimate impacts on small entities.

Between January and March 2015, the Bureau surveyed a nationally representative sample of consumers to obtain comprehensive data on their debt collection experiences. The survey provided the Bureau information relevant to the potential effects of the proposals under consideration, such as how often consumers are contacted by debt collectors, the methods collectors use to make contact, and why and how often consumers dispute the validity of debts.

The Bureau conducted a qualitative study of debt collection firms during the summer and fall of 2015 that included a written questionnaire, which was completed by 58 debt collectors, and phone interviews of 19 debt collectors and 15 vendors to the collections industry, most of which were small entities.[62] The study sought information on a range of topics related to collectors' operations costs, including employees, types of debt collected, clients, vendors, software, policies and procedures for consumer interaction, disputes, furnishing data to credit bureaus,

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[59] The primary trade association for collection attorneys, the National Creditors Bar Association (NARCA), states that it has approximately 600 law firm members, 95 percent of which are small entities. The Bureau estimates that approximately 60 percent of law firms that collect debt are NARCA members and that a similar fraction of non-member law firms are small entities.

[60] The Bureau expects that loan servicers are generally classified under NAICS code 522390, "Other Activities Related to Credit Intermediation." Some depository institutions (NAICS codes 522110, 522120, and 522130) also service loans for others and may be covered by the proposals under consideration.

[61] Based on December 2015 Call Report data as compiled by SNL Financial (with respect to insured depositories) and December 2015 data from the Nationwide Mortgage Licensing System and Registry (with respect to non-depositories), the Bureau estimates that there are approximately 9,000 small entities engaged in mortgage servicing, of which approximately 100 service more than 5,000 loans. The Bureau's estimate is based on the assumption that all those servicing more than 5,000 loans may acquire servicing of loans when loans are in default and that at most 100 of those servicing 5,000 loans or fewer acquire servicing of loans when loans are in default.

[62] *See generally* Operations Study, *supra* note 15.

litigation, and compliance. The Bureau also held a number of meetings with stakeholders and engaged in other outreach to discuss the debt collection industry and potential regulations. Stakeholders included consumer advocacy groups, industry groups, vendors to the debt collection industry, and debt collectors. This outreach provided the Bureau with helpful information related to the costs of operating a debt collection business and potential impacts of the proposals under consideration. The Bureau also has obtained information through supervision and enforcement activities, market monitoring, and related rulemaking activities that intersect with debt collection. For example, in preparing its 2015 Consumer Credit Card Market Report, the Bureau surveyed a number of large credit card issuers regarding several topics, including credit card debt collection, recovery, and debt sales.[63]

C. Activities of debt collectors and impact of recent regulatory changes

This section summarizes the Bureau's understanding of certain activities of debt collectors that could be affected by the proposals under consideration and discusses the effect recent regulatory changes have had on debt collectors. To establish a baseline for understanding the impacts of the proposals under consideration, this section describes the Bureau's understanding of practices of collectors that seek to comply with the FDCPA and follow industry best practices such as those outlined in DBA International's (DBA) certification program and ACA International's Code of Ethics.

1. Debt collection activities

In general, collecting debt involves obtaining data on accounts, contacting consumers to request payment, responding to consumer disputes, furnishing information to credit reporting agencies, and suing consumers. Many of these steps could be affected by the proposals under consideration. For example, disclosure requirements and limits on how frequently debt collectors can attempt to contact consumers would affect the process of contacting consumers, and information flow requirements may affect what data must be tracked and how it is used. This subsection provides background on debt collector operations that the Bureau believes is important to understanding the proposals under consideration. The next subsection describes the Bureau's analysis of the likely impact of the proposals under consideration on these activities.

a. Creditor agreements

The nature of the arrangement between the creditor and the debt collector varies across collection agencies, debt buyers, collection law firms, and loan servicers.

Collection agencies. Most debt collection firms work on a contingency basis; that is, a creditor "places" accounts with a debt collector that retains a share of the funds it collects from consumers. The agreement between a creditor and a collection agency also addresses factors such as settlement authority, the length of placement, contact limits, audits, litigation, and furnishing information to credit reporting agencies. As described below, some terms tend to vary based on the size of the creditor or the type of debt collected.

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[63] Bureau of Consumer Fin. Prot., *Consumer Credit Card Market Report*, at 256 (Dec. 2015) (hereinafter Card Market Report), *available at* http://files.consumerfinance.gov/f/201512_cfpb_report-the-consumer-credit-card-market.pdf.

- *Length of placement*. Many large creditors place debt with collection agencies for a specified time, after which any uncollected accounts are returned to the creditor (at which point they may be placed with another collection agency, referred for litigation, sold, or warehoused). Placements can last from three months or less to more than a year, depending on the type of debt and the extent of delinquency. Other creditors, in particular smaller creditors or health care providers, typically place accounts indefinitely with no return date specified.

- *Contact limits*. Some creditors (particularly larger creditors) limit how often collectors can call consumers, and they may specify voicemail policies or impose other restrictions on consumer contacts.[64] Collectors may also be required to make a minimum number of contact attempts for each consumer, although the Bureau understands that this practice is becoming less common.

- *Client audits*. Many creditors retain the right to audit their collectors' performance, including compliance with federal and state laws.[65] These audits may be on site or remote and may involve listening to calls or call recordings, reviewing dispute records, and otherwise analyzing collector procedures and practices. The frequency of audits depends on the size of the collection agency. Larger collection agencies, which tend to work for larger clients, are more likely than smaller collection agencies to report that they are audited frequently by their clients, often facing more than one audit per year.[66]

- *Litigation*. Many creditors rely on collection agencies to manage litigation, though creditor approval is generally required to initiate a lawsuit. On the other hand, many collection agencies never litigate accounts, with creditors that own the accounts either choosing not to litigate at all or placing accounts they choose to litigate with other debt collectors.

- *Credit reporting*. While some creditors require their collectors to furnish data to the credit bureaus, others prohibit them from doing so or leave the decision to the collector.[67]

- *Settlement*. Contracts between creditors and collectors often specify terms and conditions whereby the collector may accept less than the balance owed to settle the account in full.

Debt buyer purchase and sale agreements. The contracts governing the sale of accounts to debt buyers generally include representations and warranties by the seller about the accounts sold. The contract also describes business conduct prior to and following the sale, such as how the account information will be transferred, the debt buyer's ability to resell the debt, what documentation the debt seller will provide along with the accounts, what rights the debt buyer has to retrieve additional account documents, and conditions under which the debt buyer can sue consumers. These agreements may also provide for post-sale audits of the debt buyer's

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[64] Twenty-five of the 58 respondents to the Operations Study reported that their clients sometimes limit how frequently the collector can call consumers. Operations Study, at Table 9.

[65] Forty-four of the 58 respondents to the Operations Study reported having clients that audit the collector's compliance with federal and state law. *Id.* at sec. 3.7.

[66] Of 16 respondents to the Operations Study with 19 or fewer employees, only two said that their clients frequently conduct audits, and nine said that their clients never conduct audits. Of 29 respondents with at least 100 employees, 22 said that they face frequent audits. *Id.* at Table 7.

[67] Seventeen of the 58 respondents to the Operations Study reported that the client always or often left the choice of furnishing to the collector. *Id.* at Table 6.

collection activities by the seller.

Law firm agreements. Collection law firms generally only receive accounts intended for litigation and retain those accounts until they are resolved. The Bureau understands that collection law firms are frequently subject to creditor audits and generally do not furnish information to consumer reporting agencies. Collection law firms may be compensated on a contingency basis or with fixed fees.

Servicing agreements and servicing guidelines. Loan servicers work on behalf of creditors to send statements to consumers, accept payments, and otherwise interact with consumers regarding their loans. Servicing agreements may specify what options servicers can offer consumers who are having trouble making payments and how servicers are compensated for the costs of managing delinquencies and litigation, including foreclosure. Servicers of federal student loans or of mortgages owned or guaranteed by Fannie Mae, Freddie Mac, or Ginnie Mae must adhere to servicing guidelines that may specify steps servicers must take when loans become delinquent, options for modifying delinquent loans, and procedures for pursuing foreclosure.

b. Obtaining and tracking account information

Before they can begin collecting, debt collectors must obtain information from creditors about each account and make that information available to their collection staff. Debt collectors generally track account information using a software platform referred to as a "collection management system." The collection management system is the core infrastructure of a debt collection firm. It maintains account-level information about debts in collection; makes the information available to individual collectors; and tracks the status of accounts in collections, including, for example, calls made, letters sent, the outcome of discussions with consumers, and payments made. Most collection agencies and debt buyers use collection management systems provided by one of several software vendors that cater to the debt collection industry. These vendors generally provide some level of software support and provide periodic software updates under a subscription or licensing agreement. A minority of collectors, both large and small, use "proprietary" systems developed in-house.[68]

The information received by collection agencies and debt buyers typically includes consumer identifying information and details about the account, such as account number, amount owed, and last payment date. Creditors generally provide this information to debt collectors in an electronic format, often via a secure FTP site. Creditors may also provide electronic versions of underlying account documentation, such as account statements or account agreements, either transferring electronic versions of these documents to collectors or providing collectors with remote access to documents retained on the creditor's system.

Collectors frequently adjust or update their collection management systems, often to incorporate creditor requirements and sometimes to accommodate changes to state law or other regulatory considerations. For vendor-provided systems, updates to incorporate new legal requirements are generally provided by the vendors at no additional charge as part of periodic or one-time software updates, although collectors may bear some programming costs where

[68] One vendor estimated approximately 10 to 15 percent of collection firms use a proprietary collection management system. This is roughly consistent with what the Bureau found in the Operations Study, in which eight of 58 respondents indicated that they use a proprietary system. *Id.* at sec. 4.3.

they have customized a vendor's system. For some such updates, collectors may bear other expenses to test and validate changes or to train employees.

Collection law firms generally use collection management systems that are tailored to the needs of litigation. The Bureau understands that these systems may be more costly to adjust than those used by collection agencies and debt buyers.

Loan servicers that receive a transfer of servicing rights typically receive complete documentation about each account transferred, including the loan agreement, complete payment history, underwriting information, and other information needed to generate periodic statements and other notices that are generally provided to consumers. Most servicers use software platforms provided by large software vendors, which generally provide software updates incorporating legal or regulatory changes.

c. Updating account information

After receiving new accounts, debt collectors typically work with one or more data vendors to supplement the account data by appending new or updated contact information and identifying consumers who may be deceased or have filed for bankruptcy (often referred to as a "scrub" of the data). Some collectors also use this process to identify consumers who may be protected by the Servicemembers Civil Relief Act as well as consumers who have filed lawsuits or other complaints against collectors. These scrubs often include a "recovery score" designed to inform the collector about the likelihood the consumer will repay. This process is generally automated and takes place during the first night after the accounts are received from the creditor. The Bureau understands that the total cost to conduct these scrubs is approximately $0.40 to $1.00 per account depending on, among other things, the information requested and the volume of requests from the debt collector.[69] Vendors may charge only for accounts that generate a "hit" (such as a report that a consumer has filed for bankruptcy), in which case the average cost of account scrubs may be lower, but the cost for those accounts that generate a hit may be higher.

Debt collectors also use data vendors to locate or confirm valid consumer contact information when the available account information appears to be inadequate or out of date. These efforts may include purchasing specialized reports from data vendors, which the Bureau understands may cost approximately $0.25 to $1.00 per account, and can also include more manual efforts by collectors' staff to locate consumers, including calls to relatives, former employers, current and former landlords, or others to ask for current location information.

Debt collectors update the account information in their collection management system to incorporate information from data vendors and from the consumer (such as payments made, disputes, or cease communications requests). Information provided by the consumer may be captured in defined fields or as free-form collector notes. Collection agencies may provide this information to creditors on an ongoing basis or at the end of placements. Similarly, collectors that are debt buyers may provide this information to subsequent debt buyers when portfolios are sold. The Bureau understands that whether particular information fields are passed on depends on the preferences of the creditor or debt buyer. In particular, if a creditor wants its collection agency to collect particular information, the collection agency will typically track that information in a defined field so that it can be passed back to the creditor and incorporated into the creditor's system. Other information may be captured in collector notes that may not be

[69] *Id.* at sec. 4.1.

provided to the creditor and, even when they are provided, are unlikely to be incorporated into the creditor's information system in any systematic way.

d. Contacting the consumer

The Bureau understands that most debt collectors mail a validation notice to the consumer before initiating any other contact attempts, whereas a minority of debt collectors wait to send a validation notice until after they have established contact with the consumer.[70] The validation notice is generally a one-page mailing that identifies the amount owed and the creditor to whom the debt is owed, provides dispute-related disclosures, and often includes state-mandated disclosures as well (generally printed on the back of the validation notice). Most debt collectors use third-party vendors to mail validation notices and other written communications.[71] The Bureau understands that such vendors charge approximately $0.50 to $0.80 to send a one-page 8.5" by 11" letter and a return envelope; these prices are driven largely by postage costs and generally decrease with the volume of business. Vendors charge approximately $0.05 to $0.10 per mailing to add an additional one-page insert.

For most debt collectors, calling consumers to request payment is a core business activity. Collection staff, whose principal job is to speak with consumers by phone, frequently are the majority of employees at collection agencies and debt buyers.[72] Debt collectors often use technology, such as predictive dialing systems linked to the collection management system, in order to reduce the cost of attempting to reach large numbers of consumers by phone. As discussed below, recent interpretations of the Telephone Consumer Protection Act have increased the perceived legal risk of using predictive dialing equipment, so that the technology used for dialing is somewhat in flux.

For many debt collectors, the frequency with which they attempt to call consumers is limited either by creditor policies or by internal policies.[73] Many collection firms keep track of calling limits through their collection management system, and they often use system restrictions to prevent a phone number from being called more frequently than permitted under client or internal guidelines.

When consumers do not answer the phone, collectors may elect to leave a message either with a voicemail system or with a third party that answers the phone.[74] However, as described above and further in the next section, there is legal uncertainty about the conditions under which a

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[70] Fifty-three of the 58 respondents to the Operations Study indicated that they send a validation notice shortly after receiving a new placement, and two said that they send a validation notice after speaking with the consumer. *Id.* at sec. 5.1.

[71] Fifty of the 58 respondents to the Bureau's survey stated that they use a vendor for written communications. *Id.* at Table 10.

[72] Based on responses to the Operations Study, collection firms generally attempted to collect on an average of between 1,000 and 3,000 accounts for each collector employed. *Id.* at sec. 3.4.

[73] Twenty-five of 58 respondents to the Operations Study reported having consumer calling limits that were set by their clients; most interview respondents reported having internal policies that were often more stringent than client requirements, with client call limits of one to six calls per day and internal limits of two to three calls per day. *Id.* at Table 9.

[74] Forty-two of the 58 respondents to the Bureau's survey stated that they leave a voicemail under at least some conditions. *Id.* at sec. 5.2.

message can be left in compliance with the FDCPA, and this is an area of active consumer litigation. Thus, some collectors choose to not leave messages in order to minimize legal risk. Debt collectors that do leave messages often have policies restricting the conditions under which a message can be left. For example, some collectors leave voicemail messages only if the collector has previously spoken to the consumer at a particular number or if an outgoing voicemail recording includes the name of the (correct) consumer.

e. Call recording and call monitoring

Most debt collectors record all calls and keep the recordings for at least a year, although very small debt collectors are less likely to record all calls.[75] Calls may be recorded to satisfy client requirements, to facilitate internal compliance monitoring, or to help defend against potential lawsuits. Collectors and their clients often monitor calls by listening to a random sample of recordings to identify potential FDCPA violations and other breaches of policy. Some collectors monitor calls by listening to live conversations. A growing number of debt collectors use voice analytics software that is able to screen large numbers of conversations to identify those that potentially reflect rule violations, although today such software is generally used only by collectors with more than 100 employees.

f. Consumer disputes

Consumers may seek to dispute debts in writing or orally. Respondents to the Bureau's Operations Study that provided more specific estimates of their dispute rates (derived from their collection management system) estimated that dispute rates were between three and four percent of all accounts.[76]

Consumers appear to submit a large share of their disputes orally or more than 30 days after receipt of a validation notice, ways that are not specified in FDCPA section 809(b). Nevertheless, most debt collectors report that they follow the same process of verifying the debt for these disputes as they do for disputes filed as specified in FDCPA section 809(b). Other collectors follow a different process—for example, some may ask consumers who file oral disputes or disputes more than 30 days after receipt of a validation notice to provide additional evidence of the validity of their disputes. According to some debt collectors, many consumers express disagreement about the debt when first contacted by phone (some respondents to the Operations Study reported that this occurs 50 percent of the time or more), but many of these disagreements are resolved after a discussion with the collector and, if resolved in this way, are not considered disputes.

Respondents to the Bureau's Operations Study described a fairly standardized process of sending consumer documents in response to a dispute. These debt collectors said they cease

[75] Forty-eight of the 58 respondents to the Bureau's survey record all calls made to consumers, and two others record at least some calls. Of those respondents that record calls, all but three retain the recordings for a year or more, and the majority keeps them for two years or more. Eight of 16 respondents with fewer than 20 employees reported recording calls. *Id.* at sec. 6.1.3, Table 10.

[76] The Bureau's *Survey of Consumer Views on Debt*, an overview of which is attached at Appendix B, found that approximately 26 percent of consumers who had been contacted about one or more debts in the past year disputed at least one of those debts. A study conducted by the FTC of accounts held by large debt buyers found that consumers disputed 3.2 percent of accounts that the debt buyers attempted to collect themselves. FTC Debt Buying Industry Report, *supra* note 33, at iv.

activity on the account, obtain account documentation from the creditor (if the collector does not have it already), and forward the information to the consumer. In terms of staff hours, respondents estimated that, on average, it took between five minutes and one hour of staff time to resolve each dispute, with most respondents reporting 15 to 30 minutes of staff time per dispute (note that this does not include time or resources the creditor must devote to obtaining documents or otherwise addressing a dispute). The information that collectors send to the consumer is not standardized and is based on the information the collector or the creditor deems necessary to verify the dispute.

Some creditors have a policy of dealing with all disputes themselves, so that the collector simply returns any disputed accounts to the creditor and ceases collection on the accounts, meaning that the dispute-related provisions of the proposals under consideration would not affect these accounts. However, the Bureau understands that all or nearly all debt collectors address disputes on behalf of at least some of their clients.

g. Litigation

Collectors or creditors often sue consumers to compel repayment. Creditors follow different practices with respect to litigation. Some hire law firms directly, whereas others rely on collection agencies to make determinations about whether a lawsuit is appropriate and to manage the litigation process. Partly as a result of these different approaches, some collection agencies do not litigate as part of their business practices.[77]

Collectors may send a letter or attempt to call the consumer (or both) before litigation to give the consumer the notice of intent to sue and attempt to settle the debt before litigation begins. Following this, collectors send the account to a law firm to start the litigation process. It appears that a minority of consumers respond to attempts to settle the debt prior to or during litigation; moreover, most court filings result in default judgments, with collector estimates of default judgment rates ranging from 60 percent to 90 percent, depending on the jurisdiction.

Most collection law firms report that they review account documentation before filing a lawsuit, which may include reviewing the written account application, account statements, and the charge-off statement.

The costs associated with litigation vary greatly, depending largely on jurisdiction, with estimates of court costs ranging from $35 to $499 per consumer sued, in addition to other costs such as service of process.[78] Court costs may be paid by creditors or by debt collectors. Collection law firms are generally paid on a contingency basis. When court costs are paid by debt collectors, debt collectors are generally entitled to recover those costs first from monies collected from any judgment against the consumer; however, in many cases collectors are ultimately unable to collect on judgments.

For mortgage servicers, litigation is generally focused on foreclosure on the home rather than obtaining a monetary judgment. Servicers may seek deficiency judgments from consumers after the foreclosure process has been completed, in some states and circumstances, but in such cases are likely to use third-party collection agencies. During the foreclosure process there are

[77] Sixteen of the 58 respondents to the Bureau's survey do not litigate. Operations Study, *supra* note 15, at sec. 3.5.

[78] *Id.* at sec. 6.2.

required notices and other protections for homeowners under state and federal law, and in some states the foreclosure process can be long and expensive for mortgage servicers, often taking multiple years.

h. Furnishing data to credit reporting agencies

When accounts are placed with a collection agency, the creditors may require the agency to furnish data to credit reporting agencies or leave that choice up to the agency.[79] Some collection agencies and debt buyers have a policy of furnishing data on all accounts, while others may furnish data only on accounts that are above a certain account balance or that are actively collected upon. The Bureau understands that utility, wireless, and medical providers are more likely to require debt collectors to furnish. On the other hand, financial institutions may not permit collectors to furnish because frequently they are already furnishing information about their accounts. Similarly, debt sales contracts may specify whether the debt buyer is permitted to furnish information about purchased accounts.

i. Summary of differences across types of debt collector

Table 4 below summarizes some of the key differences among categories of debt collectors that are relevant to how the proposals under consideration would affect small entities.

Table 4: Selected characteristics by collector type

Note: These statements are generalizations and may not apply to all collectors of a given type.

	Collection agencies and debt buyers working debt owed to large creditors	Collection agencies and debt buyers working debt owed to smaller creditors	Collection law firms	Loan servicers
Length of account placement and age of debt at placement	Have accounts placed with them for a set period of time (from a few months to over a year); often receive accounts that have been previously worked by another collection firm.	Have accounts placed with them for the life of the account; generally are the first and only collection firm to work the accounts.	Have accounts for length of judgment; accounts have generally been worked by another collection firm prior to placement for litigation.	Generally have accounts indefinitely.
Litigation	Many never litigate	Generally do litigate	Litigate	Pursue foreclosure in mortgage context
Furnish to credit bureaus	Clients often prohibit them from furnishing	Generally furnish	Generally do not furnish	Generally furnish
Call restrictions	Often have client call restrictions	Usually do not have client call	Often have client call restrictions	Servicing guidelines may prescribe

[79] Forty-five of the 58 respondents to the Bureau's survey furnished information to the credit bureaus. *Id.* at sec. 3.6.

	Collection agencies and debt buyers working debt owed to large creditors	Collection agencies and debt buyers working debt owed to smaller creditors	Collection law firms	Loan servicers
		restrictions		minimum call frequency
Client audits	Frequent client audits for compliance with state and federal law	Few if any client audits for compliance with state and federal law	Frequent client audits for compliance with state and federal law	Some face audits by government or government-sponsored investors or guarantors
Non-collector personnel	Have dedicated IT and compliance staff	Few or no dedicated IT or compliance staff	Larger firms may have IT staff and dedicated compliance staff	Generally have in-house IT and compliance staff

2. Regulatory developments affecting the debt collection industry

Recent changes in the regulatory environment facing debt collectors may affect how the proposals under consideration would affect small entities.

a. TCPA developments

The Telephone Consumer Protection Act (TCPA) protects consumers from unwanted calls to their cellular phones. Among other things, the TCPA prohibits the use of an automatic telephone dialing system (ATDS) to contact any telephone number assigned to a cellular telephone service without prior express consent. Because the damages awarded in TCPA litigation can be quite large, complying with the TCPA is very important to debt collectors.

On July 10, 2015, the FCC issued a declaratory ruling interpreting the TCPA in ways that many collectors believe increases the risk of TCPA liability. The FCC defined an ATDS as any equipment with the "capacity to store or produce, and dial random or sequential numbers even if it is not presently used for that purpose," and made a number of other new interpretations.[80] These interpretations are perceived by debt collectors to have increased the risk of TCPA liability for them, and a number of collection firms have switched to manual dialing systems. Some debt collectors have also indicated in their responses that increased TCPA risk is causing them to invest more in obtaining updated data on consumer phone numbers, so that they can make fewer calls to numbers more likely to yield contact with the consumer.

b. OCC debt sales bulletin

Recent actions by the OCC have had a large impact on the sale of defaulted debt originated by national banks, including credit card accounts. These actions seem to have curtailed the debt

[80] Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, 30 FCC Rcd. 7961, 7971-72 (July 10, 2015). In addition, the FCC created a "one-call" exemption for reassigned numbers, determined that the TCPA does not allow callers to define the manner in which "prior express consent" may be revoked, and interpreted the term "called party" as the current subscriber of the phone instead of the intended recipient of the call. *Id.* at 8009.

sales market for credit card debt, which has long been the most important category of debt purchased by debt buyers.

Specifically, in 2014, the OCC issued Bulletin 2014-37 providing guidance to national banks and federal savings associations engaged in debt sales.[81] The bulletin described supervisory expectations for information exchange in debt sales, categories of debt that should not be sold, and due diligence practices for debt buyers, among other measures. These provisions help protect consumers whose accounts are sold by national banks, and at the same time, collectors have reported that they may impose new costs on banks and debt buyers. In light of the Bulletin, many credit-card-issuing banks report that they have reevaluated their debt sales practices, with some banks ceasing the sale of delinquent credit card portfolios at least in the short term. Other banks have continued to sell, but have generally restricted resale of accounts and reduced the number of debt buyers they are willing to sell to.[82] As a result, credit card debt offered for sale has declined considerably, and many debt buyers report that they are unable to obtain accounts or may be focusing on other categories of debt to which the Bulletin does not apply.

c. The Dodd-Frank Act

The Dodd-Frank Act created the Bureau and generally brought greater supervisory and enforcement focus on collection practices, both by debt collectors and creditors. This has increased the stakes for many creditors and debt collectors in ensuring that their collection practices comply with applicable laws.

Some industry participants have told the Bureau that increased regulatory scrutiny is driving consolidation in the collection market, by causing creditors to reduce the number of debt collectors they work with. Half of the credit card issuers surveyed as part of the Bureau's Card Market Report reduced the size of their third-party contingency networks since 2012, with most of those issuers reducing their networks by approximately 50 percent.[83] Issuers are reducing the size of their networks to make them easier to supervise and monitor; at the same time, this reduces market opportunities, particularly for smaller debt collectors.

D. Impacts on debt collectors of the proposals under consideration

All small-entity debt collectors would bear one-time costs to ensure that they can comply with the proposals under consideration. Management and, in some cases, legal and compliance personnel would need to review new regulations and determine whether current policies and procedures are in compliance and, if not, take steps to bring them into compliance. Many of the provisions under consideration also would impose ongoing operational costs on covered small entities and could reduce revenue by limiting debt collectors' ability to collect in some cases. This section outlines the Bureau's current analysis of the potential impacts on small entities that are collection agencies, debt buyers, collection law firms, and loan servicers.

As discussed above in the sections explaining the proposals under consideration, the Bureau believes that some interventions also could potentially eliminate some sources of cost,

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[81] Office of the Comptroller of the Currency, *Risk Management Guidance* (Aug. 2013), *available at* http://www.occ.gov/news-issuances/bulletins/2014/bulletin-2014-37.html.

[82] Card Market Report, *supra* note 63, at 256.

[83] *See id.*

uncertainty, and frustration for debt collectors. For example, the Bureau believes that the improved validation notice and other information integrity interventions could save debt collectors substantial time and expenditure trying to locate the correct consumer and helping the consumer recognize the debt. While the Bureau has focused the following discussion primarily on the cost impacts of the proposals under consideration, the Bureau is particularly interested in input from the SERs about the extent to which some interventions also may have positive impacts on industry.

Some parts of the proposals under consideration may require debt collectors to make significant changes to their systems or may increase the operational costs of collecting certain types of accounts. On the other hand, the Bureau expects that some of the proposals under consideration would have relatively small impacts on most collectors' operational costs because they are consistent with existing interpretations of the FDCPA and reflected in existing practices. A few of the proposals under consideration could reduce collector revenue, for example by limiting certain collection practices.

The Bureau expects that the largest impacts of the proposals under consideration for most debt collectors would be in the following areas:

- *Obtaining and tracking additional information*. The proposals under consideration would require collectors to obtain and track certain types of information and, in some cases, documents. There would be costs associated with adjusting systems to track this information, although the Bureau expects that in many cases software vendors would make changes and provide them to collectors as part of standard updates. Costs could be larger where fundamental information specified in the proposal under consideration is not available from creditors and debt collectors need to use other information to establish a reasonable basis for collection claims.

- *Assessing and responding to warning signs*. Under the proposal under consideration, debt collectors would need to identify warning signs that would raise concerns about data's reliability and determine procedures for investigating and responding to such warning signs. After identifying warning signs, collectors would be unable to collect on the account and/or portfolio until obtaining further substantiation.

- *Validation notice and Statement of Rights*. Debt collectors would incur costs to expand the information provided in validation notices and include an additional one-page Statement of Rights in some mailings to consumers.

- *Limits on contact frequency*. Many debt collectors would need to establish systems to track the number of contacts and contact attempts made and ensure that contacts and contact attempts do not exceed the proposed limits. For some debt collectors, the limits on contact attempts might diminish the ability to establish contact with consumers.

- *Restrictions on collection of time-barred debt*. The proposals under consideration could require collectors to make new investments to identify accounts that are time-barred. Many debt collectors do not generally attempt to collect debt that is time-barred, but for those that do, proposed disclosures could make it more difficult to collect time-barred debt. For debt that is both time-barred and obsolete, the requirement to obtain an acknowledgement from the consumer before accepting payment would impose printing and mailing costs and could mean consumers are less likely to pay such debt.

Table 5 below summarizes the Bureau's current assessment of the likely impacts of the proposals under consideration, including the items discussed immediately above and other elements of this Outline. Where feasible, Table 5 classifies impacts as:

- "Minimal," meaning that there would be some costs to understand regulations and confirm compliance but no meaningful operational changes or new expenditures;
- "Small," meaning that there would be new expenditures or operational changes but those impacts would not be outside the normal course of business; or
- "Moderate," meaning that there would be new expenditures or operational impacts that would be outside the normal course of business but would not alter the basic business model.

Each of the proposals under consideration in Table 5 is then discussed in more detail below. For those parts of the proposals under consideration that are not specifically mentioned in Table 5, the Bureau expects that debt collectors would incur some one-time costs to review the provisions and ensure that they are incorporated into their policies and procedures, but does not expect meaningful changes relative to current operations. The Bureau seeks input on whether there are parts of the proposals under consideration that would likely be more costly than those specifically addressed herein.

Table 5: Overview of likely impacts of proposals under consideration

Proposal under consideration	Collection agencies and debt buyers	Collection law firms	Loan servicers covered by the FDCPA
Transfer of information prior to collection and information review	Small one-time costs to ensure systems track the required information (likely less than $1,000 for programming) and establish warning sign system (perhaps $1,200 to $2,800 for programming). Moderate ongoing costs to substantiate in cases where fundamental information is missing and to review for and respond to warning signs. Moderate ongoing costs of ceasing collections until substantiation is completed.	Moderate one-time costs to ensure systems track the required information and establish warning sign system (perhaps $3,000 to $7,000 for programming). Moderate ongoing costs to substantiate in cases where fundamental information is missing and to review for and respond to warning signs.	Minimal costs; servicers generally have full file and account history for all consumers and perform accuracy checks post-transfer.
Substantiation of debt prior to filing suit, such as by review of documents	For collectors that sue, possibly some costs to ensure documents are provided to counsel up front. May reduce the ability of some firms to	Collection law firms generally appear already to undertake such review, but some may incur new costs to review documents (perhaps 30	Servicers are likely already to undertake such review prior to litigation. Minimal incremental costs to monitor and demonstrate compliance.

Proposal under consideration	Collection agencies and debt buyers	Collection law firms	Loan servicers covered by the FDCPA
	collect on some debts via litigation.	to 45 minutes of staff time per account). Minimal incremental costs to monitor and demonstrate compliance. May reduce the ability of some firms to sue on some debts.	
Transfer of certain information at and after subsequent debt placement	For collectors working for larger clients and for debt buyers that resell accounts, moderate one-time costs may be required to ensure data and dispute documentation is maintained in a way that can be transferred; small ongoing costs. Minimal impact on agencies working for smaller clients because they are unlikely to transfer accounts once received.	Small one-time impact to ensure required information can be received; collection law firms generally do not transfer accounts once received.	Minimal costs; servicers generally have and transfer full file and account history for all consumers.
Validation notice	Small one-time costs to set up new validation notice format and small one-time programming costs (likely less than $1,000) to ensure systems track required information. Potential ongoing costs if creditors cannot provide required data fields. Possible increase in dispute-related costs if consumers are more likely to dispute debts.	Small one-time costs to set up new validation notice format and ensure systems track required information. Possible increase in dispute-related costs if consumers are more likely to dispute debts.	Small one-time costs to set up new validation notice format and ensure systems track required information.
Statement of Rights	About $0.05-$0.10 per account to add a page to the validation notice mailing; some additional mailing costs when consumers request additional copies. Possible increased costs from consumers' increased exercise of rights.	About $0.05-$0.10 per account to add a page to the validation notice mailing; some additional mailing costs when consumers request additional copies. Possible increased costs from consumers' increased exercise of rights.	About $0.05-$0.10 per account to add a page to the validation notice mailing.

Proposal under consideration	Collection agencies and debt buyers	Collection law firms	Loan servicers covered by the FDCPA
Foreign languages – trigger based option	Minimal cost for most collectors because they would not be subject to the requirements unless triggered; some training costs to ensure that collectors comply when the requirements are triggered.	Minimal cost for most collectors because they would not be subject to the requirements unless triggered; some training costs to ensure that collectors comply when the requirements are triggered.	Minimal cost for most collectors because they would not be subject to the requirements unless triggered; some training costs to ensure that collectors comply when the requirements are triggered.
Foreign languages – Spanish-language backer option	Where collectors already provide information on the back of the validation notice, may require one extra page in each validation notice mailing; approx. $0.05-$0.10 per account.	Where collectors already provide information on the back of the validation notice, may require one extra page in each validation notice mailing; approx. $0.05-$0.10 per account.	Where collectors already provide information on the back of the validation notice, may require one extra page in each validation notice mailing; approx. $0.05-$0.10 per account.
Communication prior to credit reporting	Minimal impact on most debt collectors because they already send a validation notice prior to furnishing. Some debt collectors would incur the moderate cost of sending validation notices where they would not have otherwise (approximately $0.50-$0.80 per notice).	Minimal/no impact because collection law firms generally do not furnish.	Minimal/no impact because mortgage servicers generally send validation notices upon transfer.
Litigation disclosure	For collectors that litigate, small one-time costs to establish policies and procedures; minimal cost to provide written disclosures and small cost to make oral disclosures (perhaps $0.09-$0.12 per call). Possible increase in litigation costs from consumers' increased defense of suits.	Small one-time costs to establish policies and procedures; minimal cost to provide written disclosures and small cost to make oral disclosures (perhaps $0.09-$0.12 per call). Possible increase in litigation costs from consumers' increased defense of suits.	Small one-time costs to establish policies and procedures; minimal cost to provide written disclosures and small cost to make oral disclosures (perhaps $0.09-$0.12 per call).
Time-barred debt requirements	Moderate one-time costs to set up system to determine when disclosure is required; ongoing costs small (perhaps $0.09 per call regarding time-barred debt). Some reduction	No additional cost; do not believe collection law firms are collecting on time-barred debt.	Minimal additional cost; do not believe loan servicers are collecting meaningful amounts of time-barred debt.

Proposal under consideration	Collection agencies and debt buyers	Collection law firms	Loan servicers covered by the FDCPA
	in collections of time-barred debt.		
Consumer written acknowledgement before collecting debt that is time-barred and obsolete	Small costs to set up system to determine when acknowledgement is required. Likely requires one extra page in each validation notice mailing; approx. $0.05-$0.10 per account. Potentially large reduction in collections of debt that is both time-barred and obsolete.	No additional cost; do not believe collection law firms are collecting on time-barred debt.	No additional cost; do not believe loan servicers are collecting debt that is both time-barred and obsolete.
Contact caps	Moderate one-time and ongoing costs to review systems and monitor compliance. Little or no impact on calling practices for collectors working for smaller clients as they generally do not exceed proposed caps. Calling practices would be affected for some entities that have larger clients and call more frequently; CCC may be delayed in some instances and may reduce collections in some cases.	Moderate one-time and ongoing costs to review systems and monitor compliance. Little or no impact on calling practices as collection law firms generally do not exceed proposed caps. May benefit if creditors believe the policy makes non-litigation collection channels less effective.	Moderate one-time and ongoing costs to review systems and monitor compliance. Calling practices impacted in some cases; could delay early intervention in some cases which could affect servicer revenue.
Leaving messages	Moderate reduction in legal costs and in the cost of establishing contact with consumers, particularly for those collectors most reliant on phone calls.	Small reduction in legal costs, and reduction in the cost of establishing contact with consumers.	Minimal impact on mortgage servicers.
Dispute requirements	Some collectors would face increased ongoing costs for investigating disputes that are not timely and written (perhaps 15 to 30 minutes of staff time per dispute) and ceasing collections in the meantime. Collectors would generally benefit	Minimal costs, as collection law firms' current practices may already be sufficient to satisfy the proposals under consideration.	Minimal costs, as servicers' current practices may already be sufficient to satisfy the proposals under consideration.

Proposal under consideration	Collection agencies and debt buyers	Collection law firms	Loan servicers covered by the FDCPA
	from greater clarity as to what is required, and particularly from clarification regarding repeat disputes.		

1. Transfer of information at debt placement, information review and follow up

The Bureau is considering three proposals related to the information collectors must have before attempting to collect. These proposals would: (1) establish a list of fundamental information that a collector could obtain and review as part of its obligation to establish a reasonable basis for claims of indebtedness; (2) further allow collectors to in part establish reasonable support for claims of indebtedness by obtaining a representation from the debt owner; and (3) require that debt collectors review account information for "warning signs."

a. Collection agencies and debt buyers

To comply with the proposals under consideration, collection agencies and debt buyers might need to: (1) ensure systems are designed to track fundamental information; (2) establish an alternative basis for collection claims when fundamental information is not available; (3) obtain representations from creditors or debt sellers; and (4) review accounts for "warning signs."

Adjusting systems to track fundamental information

If the proposals under consideration were adopted, the Bureau anticipates that all collectors would ensure that their collection management systems were capable of tracking the data fields that would be required. Evidence examined thus far indicates that, while collectors can generally track most of these fields, many systems are currently unable to track payments or credits that took place after default but before the collector obtained the account.[84] Thus, many collectors might have to adjust their collection management systems to track some additional information.

For collectors using vendor-provided systems, the Bureau anticipates based on its outreach that vendors would update their software to track the fields specified in the Bureau's regulations. This would limit the cost to collectors of accommodating the new data fields. Many collectors might, however, incur costs to customize vendor-provided solutions or to test the software changes to ensure they permit compliance with the rule to their and their clients' satisfaction.

Collectors using proprietary systems that do not track all of the fields specified in the proposal under consideration would need to reprogram these systems. In interviews, collectors suggested that adding new fields is common and relatively inexpensive, generally done using in-house resources, and costs less than $1,000.

[84] All respondents to the Operations Study indicated that they at least sometimes receive the full name, last known address, phone number, and debt balance at charge off, implying that these respondents' collection management systems must be capable of tracking this information. Fifty of 58 respondents indicated that they at least sometimes receive a breakdown of post-charge off interest and fees, and 45 of 58 indicated that they at least sometimes receive account agreement documentation. Operations Study, *supra* note 15, at Table 8.

Some recent developments, including state law changes and DBA's certification standards, may have led some entities, but by no means all, to have already taken steps that would comply with the proposals being considered.[85] In addition, these developments mean that providers of collection management system software are more likely to include the capability of tracking these fields as part of standard software updates.

Costs arising when the creditor does not provide fundamental information

So long as creditors provide the fundamental information specified in the proposal under consideration, the Bureau expects minimal ongoing costs to debt collectors from obtaining that information. However, some creditors may not have the fundamental information for all accounts or may be unable to readily provide it.[86] This would impact debt collectors because they would need either to obtain alternative support for their claims of indebtedness or to forego collections on such accounts.

The Bureau believes that creditors are generally able to provide the specified fields to collection agencies and debt buyers in most, but not all, cases.

- *Name, address, phone number, and account number with original creditor.* The Bureau understands that debt collectors receive the consumer's full name, last known address, and account number with the original creditor for all but a small fraction of accounts.[87] Debt collectors generally receive phone numbers but phone numbers are more likely to be missing than full name or address information.[88] Many debt collectors receive other identifying information, such as a Social Security number or date of birth, which may be useful for substantiating the debtor's identity if certain fundamental information is

[85] The Debt Buyer Association's certification standards require certified entities to use commercially reasonable efforts to obtain 13 specific data elements when acquiring a portfolio. DBA International, *Receivables Management Certification Program: Program Overview* (Nov. 2015), *available at* http://www.dbainternational.org/certification/. Examples of state law changes include changes to New York's debt collection regulations, effective August 30, 2015, requiring debt collectors to provide consumers with an itemization of post charge-off charges and credits, and California's Fair Debt Collection Practices Act, effective January 1, 2014, requiring debt buyers to obtain a complete chain of title when obtaining new accounts.

[86] The Bureau intends to consider in the future whether to impose certain obligations on creditors to transfer fundamental information or other information that supplies a reasonable basis when engaging a debt collector or selling debt.

[87] The FTC's Debt Buyer Report says that, for the debt buyer files obtained by the FTC in 2009, 100 percent of debt accounts included consumer name, 99 percent of accounts included street address, and 100 percent of accounts included the original creditor's account number. In the Operations Study, most collectors said that they always receive the consumer's full name and last known address, but some respondents said that they only "often" receive full name (eight of 56 respondents) or last known address (18 of 56 respondents). Operations Study, *supra* note 15, at Table 8.

[88] The FTC's Debt Buyer Report says that, for the debt buyer files reviewed by the FTC, 70 percent of accounts included a home phone number, and 47 percent and 15 percent included work and mobile telephone numbers, respectively. In the Operations Study, of 58 respondents, 10 said they "always" receive a phone number, 46 said that they "often" receive a phone number, and two said that they "sometimes" receive a phone number. *Id.*

missing.[89]

- *Date of default and amount owed at default*. The Bureau expects that creditors would be able to provide this information for every account once creditor and collector systems are capable of receiving and maintaining this information.

- *Details of post-default interest and/or fees, contract terms supporting post-default interest and/or fees, and date and amount of each payment or credit after default*. The Bureau understands that details of charges and credits to accounts after default are sometimes provided to debt collectors, but that many creditors do not provide this information. The Bureau expects that creditors would make this information available to debt collectors. However, the Bureau understands that this may require systems changes for many creditors, and until such changes are made, these creditors may be less able to use third-party collectors.

- *Full chain of title information*. Debt buyers purchasing accounts from another debt buyer (and collection agencies working on behalf of debt buyers) would need full chain of title information. The Bureau understands that this is not always provided when a portfolio is sold, but that its inclusion has become more common and that many debt buyers will not purchase accounts without full chain of title information. Moreover, the California Fair Debt Buying Practices Act, which became effective January 1, 2014, generally requires a full chain of title before collections can begin.[90]

When creditors lack fundamental information because they did not obtain it from the consumer, collectors would need to find other ways to support any claims of indebtedness made to consumers. This would likely involve ongoing costs. For example, a collector that does not receive a consumer's full first name, but does receive an address, phone number, and Social Security number, might need to confirm with a third-party data provider that the contact information matches the Social Security number before contacting the consumer about the debt. Alternatively, debt collectors might need to manually check underlying account documentation or cease collection on the account.

*Obtaining representations from clients or sellers of deb*t

The Bureau is considering articulating that debt collectors may, as part of their obligation to have reasonable support for claims of indebtedness, obtain a written representation from the debt owner that: (1) the debt owner has adopted and implemented reasonable written policies and procedures to ensure the accuracy of transferred information; and (2) the transferred information is identical to the information in the debt owner's records. Debt collectors would incur one-time costs to establish systems to ensure that they receive the representations when accepting new accounts for collection.

The Bureau expects that creditors would generally be willing to make the proposed representations, although in some cases creditors might choose to undertake additional review

[89] The FTC's Debt Buyer Report says that, for the debt buyer files reviewed by the FTC, 98 percent of accounts included a Social Security number and 65 percent included a birth date. In the Operations Study, of 56 respondents, 53 said that they "often" or "always" receive a Social Security number and 53 said they "often" or "always" receive a birth date. *Id.*

[90] Fair Debt Buying Practices Act, CAL. CIV. CODE § 1788.50 *et seq*.

and analysis before doing so.[91] To the extent that such review is costly, it could reduce the rate collection agencies can charge or increase the price at which creditors are willing to sell debt, which could impose ongoing costs on debt collectors. However, the Bureau expects that the requirement would have no more than a small effect on creditors' willingness to engage collection agencies or sell debt to debt buyers.

Reviewing accounts for "warning signs"

Under the proposal under consideration, collectors would need to design and implement procedures to review information about debts, at the account and portfolio level, including responding to warning signs that undermine the collector's reasonable basis to make claims of indebtedness.

The Bureau understands that most debt collectors review new accounts before they begin collecting. However, this review is generally not aimed at determining the adequacy of the information on which collectors would rely for claims of indebtedness. Instead, it is used to obtain and standardize contact information and to determine whether consumers have certain characteristics, including whether they have died, filed for bankruptcy, changed addresses, are service members, or have sued debt collectors in the past. Most debt collectors that the Bureau has spoken with indicate that collection activity on new accounts begins as soon as these initial scrubs are performed, without any further attempt to ascertain the reliability of the data. A minority of collection agencies manually review data files to determine data reliability. Debt buyers generally review purchased accounts to determine whether they accord with information about the portfolio provided before purchase, which may include a review of data quality.[92]

The Bureau anticipates that collectors would comply with the proposal under consideration to review accounts for warning signs by implementing automated processes that are supplemented with manual review when warning signs are identified. The Bureau expects that vendors of collection management systems would make updates to facilitate this review. However, the review would need to be tailored to the specifics of each collector's client base and therefore some custom programming would likely be needed. A useful analog might be system adjustments that collection agencies currently make to accommodate client demands to report data in a certain way. In interviews, some collectors estimated that customization to accommodate client requirements costs between $1,200 and $2,800.

Even if most reviews were automated, there would be some ongoing costs associated with reviewing accounts for reliability. When a collection agency begins work for a new creditor or a debt buyer purchases debt from a new source, it would need to determine the standards and processes for identifying warning signs specific to that creditor's accounts. For all accounts, staff would need to investigate and respond to warning signs identified as part of either the initial or the ongoing review process. Some accounts or portfolios may not be able to be collected upon if the warning signs reveal underlying problems with the account or portfolio.

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[91] The Bureau intends to consider in the future whether to propose requirements that creditors make such representations when placing or selling debt.

[92] DBA's certification standards include the requirement that debt buyers "maintain adequate time to evaluate and review portfolio information for accuracy, completeness, and reasonableness and to discuss and resolve with the seller any questions prior to purchasing the portfolio." DBA International, *Receivables Management Certification Program: Program Overview* (Nov. 2015), *available at* http://www.dbainternational.org/certification/.

The Bureau does not have data that could be used to evaluate how often warning signs are likely to arise. For account-level warning signs, responding to the warning sign could be similar to processing a dispute related to a particular account, which the Bureau estimates to take 15 to 30 minutes. For portfolio-level warning signs, another process would be required; for example, a collector might identify a random sample of accounts from a portfolio and perform a manual review akin to processing a dispute for each account in the sample.

b. Collection law firms

As with other debt collectors, collection law firms would need to ensure that their systems are capable of tracking the fundamental information, which might involve one-time costs for some collection law firms. Collection law firms would also need to take extra steps to substantiate the debt in those cases where the owner of the debt is unable to provide all of the fundamental information.

Based on what the Bureau has learned in outreach, collection law firms may be more likely than other debt collectors to review new account information to identify potential problems. Nonetheless, collection law firms would also need to review their processes to determine whether they comply with the rule and would need to identify warning signs and establish procedures for responding to warning signs they identify. This would likely involve changing their collection management systems to provide reports or other output that could identify warning signs. The Bureau understands that it may be more costly for collection law firms to adjust their systems than it is for other collectors to make similar changes. Some collection law firms reported that system changes to accommodate client requirements cost between $3,000 and $7,000.

c. Loan servicers subject to the FDCPA

Loan servicers subject to the FDCPA would need to ensure that their procedures comply with the proposals under consideration. The Bureau anticipates that, at least with respect to mortgage servicing, many servicers would not need to change their procedures.[93] Servicers generally receive full documentation for every loan when transferred, and transferee mortgage servicers typically perform checks of the data received for accuracy and integrity, often including examining a sample of loans to confirm that data in the computer system matches underlying documentation. As a result, the Bureau anticipates that the substantiation requirements under consideration would impose minimal one-time and ongoing compliance costs on the mortgage servicers likely to be covered.

2. Substantiation of debt before litigation filing, such as by review of documentation

The Bureau is considering a requirement that, before filing a claim in court to collect a debt, collectors must have reasonable support for claims in litigation complaints that a consumer owes a debt. The proposal under consideration would identify documentation that a debt collector could review to establish this reasonable basis.

[93] As noted above, the Bureau does not expect that servicers of other types of loans, such as student loans, would be small entities affected by the proposals under consideration.

a. Collection agencies and debt buyers

The Bureau expects that collection agencies and debt buyers would generally rely on collection law firms to comply with the proposal under consideration. However, these collectors might take steps to obtain appropriate documentation before referring accounts to law firms. They might also need to establish systems for ensuring that their law firms comply with the requirement and standards or procedures for cases in which the documentation specified in the proposal under consideration is unavailable.

b. Collection law firms

Based on industry outreach, the Bureau understands that most collection law firms review account documentation prior to filing a lawsuit, though some firms review documents only if the consumer contests the suit. The Bureau is also aware of evidence, including findings from enforcement actions brought by the Bureau, indicating that many lawsuits are brought by attorneys without any account documentation.

The Bureau expects that debt collectors engaging in litigation would seek to review the documents identified in a Bureau rule before filing suit. Collection law firms that currently review documentation before filing a lawsuit might incur one-time costs to review their policies and procedures to ensure their review satisfies the approach specified in the proposal under consideration and, if necessary, to make any necessary changes. The Bureau does not anticipate an increase in ongoing costs for these firms.

For debt collectors that do not already review original documentation prior to filing, the proposal under consideration generally would require them to acquire and review documentation prior to each suit. The Bureau expects that the time required to review the documentation should be comparable to the time required to respond to a dispute, although somewhat longer given that the information that must be assessed is generally more extensive. The Bureau estimates that for these debt collectors, pre-litigation review might require 30 to 45 minutes for each account.

All collection law firms may encounter cases in which the creditor cannot provide all of the documentation that the Bureau specifies. In such cases, the debt collector would need to find an alternative means to establish that the identity of the defendant is supported by a reasonable basis. This might require additional staff time to conduct research or review other documentation, require using outside vendors to assess account information, or cause the firm to choose not to pursue litigation on the account.

c. Loan servicers subject to the FDCPA

The Bureau understands that mortgage servicers receive full documentation when servicing is transferred. The Bureau anticipates that mortgage servicers' current litigation practices are generally sufficient to comply with the requirements under consideration to support claims of indebtedness, so they would impose relatively small one-time and ongoing compliance costs. Given that the documentation required to obtain a mortgage loan is more extensive than for other credit products, the Bureau expects that servicers already would have or have access to the data fields specified in the proposal under consideration.

3. Transfer of information at and after subsequent debt placement

The proposals under consideration would require that subsequent collectors have (and prior collectors transfer) certain information that prior collectors obtain in the course of collecting a debt, including, for example, information about times or communication channels that are inconvenient for the consumer and details about dispute status.

a. Collection agencies and debt buyers

The Bureau understands that collection agencies and debt buyers currently capture the required information when provided by consumers, but not necessarily in a format that is easily transferred to other systems. For example, information may be captured as text in collector notes that often do not transfer to creditors or subsequent debt collectors with the accounts. Even when they do, the information may not be captured in a usable way on the recipient's system. Transferring this information would require collectors to update their systems to add new data fields and to train their staff to use them. As discussed above, the Bureau expects that vendors would update their software to include the specified fields. While collectors using proprietary systems would bear any upgrade costs, the Bureau understands that these costs would be relatively low.

The Bureau expects that these requirements would have minimal impact on collectors that receive accounts directly from creditors and do not transfer accounts for further collections. Many collection agencies that work for small, local creditors may fall into this category.

Creditors placing accounts with multiple debt collectors would have to update their systems to enable them to receive the required information from some debt collectors and pass it on to others.[94] If some creditors are unwilling to make these changes, then debt collectors may not be able to accept accounts from them.

The Bureau is also considering requirements that debt collectors forward payments, bankruptcy notices, identity theft reports, certain information about exempt income and assets, and disputes to the entity to which they transferred the debt, such as the creditor or debt buyer. The Bureau understands that this is already common practice with respect to payments, bankruptcy notices, and identity theft reports. The Bureau is not aware of practices regarding consumer disputes directed to debt collectors that no longer have the account, but expects that this is a rare occurrence.

b. Collection law firms

Collection law firms would need to ensure that their systems are capable of capturing the required information when accounts are transferred from other debt collectors, and that they review the required information. Compliance costs from the proposal under consideration would likely be lower for collection law firms because they generally do not transfer accounts once received and, therefore, might not need to capture information from the consumer in a way that ensures it can be passed on to a subsequent collector.

[94] The Bureau intends to consider in the future proposals that would apply to creditors and that might directly require creditors to receive and pass on such information.

c. Loan servicers subject to the FDCPA

The Bureau does not expect that loan servicers would have to change their procedures as a result of the proposal under consideration, because the specified information is generally already provided when transferring accounts.

4. Validation notice

The requirements under consideration would expand the information provided on validation notices. This would require that collectors track certain data fields and incorporate them into the new notices. The Bureau expects that any one-time costs to collectors of reformatting the validation notice would be minimal, particularly for collectors that rely on vendors, because the Bureau expects that vendors would provide an updated notice at no additional cost.[95] The Bureau expects that most costs would arise from ensuring that the data required to be in the validation notice is available and from any changes in consumer behavior resulting from the new notice.

As discussed in subsection 1 above, the Bureau believes that the large majority of collectors are already tracking most data fields included in the proposed validation notice. However, some respondents to the Operations Study reported that they do not receive information on post-default interest and fees from the creditor.[96] These collectors would have to update their systems to track these fields. As discussed previously, the Bureau understands that such updates are relatively inexpensive, generally costing less than $1,000.

Once collectors adjust their systems to produce the new validation notices, the Bureau does not expect there would be an increase in the ongoing costs of printing and sending validation notices.

However, there could be ongoing effects if the required data is not always available. The Bureau understands that some creditors do not currently track post-default charges and credits in a way that can be readily transferred to debt collectors. Under the proposal under consideration, debt collectors would be unable to send validation notices—and therefore unable to collect—when creditors do not provide this information.[97] Some debt collectors might lose revenue as a result of not being able to collect accounts from creditors that do not adjust their systems.

Changes to the validation notice could affect how consumers respond, particularly whether they dispute the debt. Because the proposed validation notice would include more detail, consumers might be more likely to recognize the debt and less likely to mistakenly dispute debts that they owe. On the other hand, the new tear-off form would likely make it easier to dispute debts or request the name of the original creditor. Together with the additional information about consumer rights that would be provided, this could increase the number of consumers who dispute or request original creditor information. The overall impact on dispute rates is unclear.

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[95] The Bureau understands that currently letter vendors generally do not charge clients to change the format of the validation notice.

[96] Fifty-two of 58 respondents reported receiving itemization of post-charge-off fees on at least some of their accounts. Operations Study, *supra* note 15, at Table 8.

[97] For example, the Bureau understands that, sometime after New York began requiring itemization of post-charge-off fees and credits, some creditors continue to be unable to provide this information and are therefore not placing New York accounts for collection.

The Bureau does not believe that changes in dispute rates would affect revenue, because consumers who are inclined to dispute the debt are unlikely to otherwise pay. However, if the form were to cause some consumers to take advantage of FDCPA rights that they would otherwise have not exercised, debt collectors could bear additional costs to respond to these consumers.

5. Statement of Rights

The Bureau is considering a requirement that debt collectors provide consumers with a Statement of Rights that discloses certain legal protections relevant to debt collection.

The Bureau anticipates that debt collectors would generally include a Statement of Rights in the same mailing as the validation notice, which generally is sent once for each new account that a debt collector obtains. Collectors would need to update their policies and procedures to include a Statement of Rights when the validation notice is sent. Since the Bureau would provide the language and format for the model Statement of Rights, debt collectors would not incur costs to design the disclosure, but they would need to print and deliver it. For collectors that use a letter vendor, the Bureau anticipates that vendors would include the Statement of Rights as part of their standard offering to debt collectors, and that the one-time cost to collectors of ensuring compliance with this requirement would be minimal. Collectors that do not use a letter vendor would need to revise procedures to ensure that the Statement of Rights is printed and included with each validation notice; the Bureau anticipates that the cost of making these changes would be small.

The Bureau understands that the cost of printing a one-page insert and mailing it with a validation notice is approximately $0.05 to $0.10 per mailing for debt collectors using third-party vendors and anticipates similar costs for collectors that mail their own validation notices.

The Bureau is also considering a requirement to offer to send an additional Statement of Rights in the first communication that takes place at least 180 days after the validation notice. To comply, debt collectors would need to establish procedures to ensure that the first communication after 180 days includes such an offer, and would bear additional printing and mailing costs when consumers request additional disclosures.

The disclosures in a Statement of Rights could change how consumers respond to collection attempts in ways that affect debt collector costs. For example, consumers might be more likely to exercise cease communication rights or to identify times that are inconvenient for them to speak. The Bureau does not have information that would permit it to estimate these impacts.

6. Non-English languages

The Bureau is considering two alternative proposals related to the use of translated validation notices and Statements of Rights.

Option 1—trigger-based approach

The first alternative would require debt collectors to send translated versions of the validation notice and Statement of Rights if two conditions are satisfied: (1) the debt collector's initial communication with the consumer took place predominantly in a language other than English, or the debt collector has received information from the creditor or a prior collector indicating that the consumer prefers to communicate in a language other than English; and (2) the Bureau has published in the Federal Register versions of the validation notice template and Statement

of Rights in the language of the initial communication. The Bureau is also considering whether Statements of Rights should inform consumers that they can obtain Spanish-language copies of the Statement of Rights and the validation notice template from the Bureau's website or the debt collector.

The Bureau understands that for most debt collectors, the initial communication with the consumer is the validation notice. Such debt collectors would not be required to send additional notices unless the consumer requests a Spanish-language notice. The Bureau believes that few debt collectors communicate initially in languages other than English. Those that do, and those that receive information from the creditor or a prior collector indicating that the consumer prefers to communicate in a language other than English, would be required to ensure that consumers receive the required disclosures in the same language, if the relevant translation has been published by the Bureau. The Bureau expects that providing Bureau-translated versions of these disclosures would cost no more than providing the disclosures in English. Any increase in ongoing costs is likely to arise from printing and mailing a second notice in Spanish to consumers upon request.

Option 2—Spanish-language backer

The second alternative would require debt collectors to include a Spanish translation on the back of every validation notice and Statement of Rights.

The Bureau anticipates that including a Spanish-language translation would require many collectors to include a second additional page with every validation notice, because many debt collectors currently use the back of the validation notice to comply with state disclosure requirements. These collectors would have to make state disclosures on a separate page if Spanish translations are required on the back of the validation notice and Statement of Rights, respectively. The Bureau understands that including an extra page in a validation notice costs $0.05 to $0.10 per notice.

7. Communication with consumers before credit reporting

The Bureau is considering a requirement that debt collectors not furnish information to credit reporting agencies without first communicating with consumers.

The Bureau understands that most debt collectors mail validation notices to consumers shortly after they receive the accounts for collections, and so they already would be in compliance with such a requirement.[98] These collectors would likely need to review their policies to ensure that validation notices are always mailed prior to reporting on the account, which the Bureau expects would involve a small one-time cost.

Debt collectors that furnish information to credit reporting agencies but only provide validation notices after they have been in contact with the consumer could face increased costs as a result of the proposal under consideration. Because these collectors are required to provide validation notices to consumers they communicate with, the Bureau expects that they already have systems in place for mailing notices and would not face one-time compliance costs greater than those of other collectors. However, these collectors would face on-going costs from mailing validation

[98] In the Operations Study, 53 of 58 respondents said that they send a validation notice shortly after account placement. Operations Study, *supra* note 15, at Table 8.

notices to more consumers than they would otherwise, at an estimated cost of $0.50 to $0.80 per account. Alternatively, collectors could cease furnishing information to credit reporting agencies, which could impact the effectiveness of their collection efforts.

Because collection law firms generally do not report to consumer reporting agencies, the Bureau expects that the proposal under consideration would not impact collection law firms.

The Bureau understands that loan servicers generally send validation notices shortly after obtaining an account that is covered by the FDCPA. In addition, mortgage servicers generally may not furnish negative account information until 60 days after the transfer date. For these reasons, the Bureau does not expect that loan servicers would face new costs to comply with the proposal under consideration.

8. Litigation disclosure

The Bureau is considering a proposal to require that debt collectors provide, in all communications in which they represent their intent to sue, a "litigation disclosure" that includes certain defined statements.

Collection agencies and debt buyers that litigate generally tell consumers that they intend to sue before referring the account to a law firm. For collection law firms, a large fraction of communications with consumers likely conveys the threat of litigation. Such debt collectors would bear one-time costs of establishing policies and procedures to ensure that the required disclosures are made whenever an intent to litigate is represented, and ongoing costs from including the disclosure with each communication. For written disclosures, the Bureau anticipates that the ongoing costs would be minimal, as the disclosure can be automatically added to any letter that threatens suit. For oral disclosures, the Bureau anticipates each call in which litigation is discussed might be lengthened by 15 to 20 seconds on average, which, assuming fully loaded collector wages of $22 per hour, would cost approximately $0.09 to $0.12 per call.[99]

With the additional information, consumers might be more likely to respond to a complaint and defend themselves in debt collection litigation. This could increase the cost to debt collectors of litigation, as it generally costs more to pursue a case that is actively defended and such cases are less likely to be successful. The Bureau does not have data with which to estimate how many additional consumers would defend against debt collection lawsuits as a result of the disclosure that the Bureau is considering.

9. Time-barred debt requirements

The Bureau is considering a requirement that debt collectors collecting time-barred debt provide a disclosure in the validation notice and in the first oral communication seeking payment. The Bureau is also considering prohibiting lawsuits or threats of lawsuits to collect time-barred debt and requiring that collectors waive their right to sue when attempting to collect time-barred debt that can be revived through partial payment or acknowledgment under state law.

[99] This estimate assumes a collector wage of $15 per hour, divided by 67.5% to obtain fully-loaded rates. In the Operations Study, interview respondents described collector wages ranging from $10 to $20 per hour. *Id.* at sec. 3.4.

a. Collection agencies and debt buyers

The Bureau understands that many debt collectors do not collect time-barred accounts. Among those debt collectors that do, the Bureau understands that some currently disclose to consumers that they cannot sue to collect the debt. Moreover, in certain jurisdictions, such as California and New York, all debt collectors must make such disclosures in at least some circumstances.

To comply with the proposal under consideration, collectors that collect time-barred debt would need to determine which accounts are time-barred and, for those that are, provide written disclosures in validation notices and oral disclosures when requesting payment by phone.

The Bureau understands that determining whether an account is time-barred is not always straightforward. Different states have different statutes of limitations for different types of debt. Which statute applies depends on questions such as where the consumer resides and the nature of the credit contract, as well as which state's law a court applies to a given case. Many collectors already must make this determination to determine whether a lawsuit is permissible or, in certain states, whether particular disclosures are required. Even for these debt collectors, however, the requirements under consideration would increase the importance of making the correct determination. Collectors may be able to reduce the costs of determining whether a debt is time-barred by erring on the side of treating a debt as time-barred when the question is close. A collector who errs on the side of treating debts as time-barred in close cases, however, would be required to provide the time-barred debt disclosure in the next collection attempt for those accounts. The collector's determination of the debt's time-barred status and the provision of the disclosure, in turn, would effectively bind all subsequent collectors. The proposal under consideration thus creates certain incentives for collectors not to be over-inclusive in treating debts as time-barred. The Bureau anticipates that some collection agencies and debt buyers would incur legal and programming costs to develop a system to identify time-barred accounts and incorporate the determination into the collection management system. The Bureau does not anticipate that meaningful ongoing costs would be incurred to provide the proposed time-barred debt disclosure, because required disclosures could be automatically included on written materials.

For oral communications, the Bureau anticipates collection management systems would be adjusted to identify disclosures that must be made. The required disclosure would increase the length of each conversation about a time-barred debt by perhaps 5 to 10 seconds, though if consumers have questions about the disclosure, this could lengthen some calls considerably. If the disclosure lengthens calls to collect a time-barred debt by 15 seconds on average, given an assumed average fully loaded collector wage of $22 per hour, this would cost approximately $0.09 per call.

Costs may also increase if debt collectors and creditors increase monitoring of calls regarding time-barred debt to ensure compliance.

Consumers who receive the required disclosure may be less likely to repay debts that they owe. The Bureau believes that many consumers are unaware of the statute of limitations or may not know whether it has expired for their debt. Some consumers might not repay a debt if they know they cannot be sued, although others may repay regardless. As noted above, however, some collectors already provide time-barred debt disclosures; some do so voluntarily, while others are required by state law or a consent order to do so. Their experiences have been varied and thus, while the disclosure under consideration may reduce the amount of time-barred debt that is collected, the Bureau does not have the data needed to estimate the magnitude of this effect.

Most courts that have decided the issue have held suits and threats of suit on time-barred debt to be violations of the FDCPA. The Bureau understands that collection agencies and debt buyers generally do not sue or threaten to sue consumers for accounts that are time-barred. Likewise, they do not treat time-barred debts as "revived" as a result of a partial payment or acknowledgement. Therefore, the Bureau anticipates that these aspects of the proposal under consideration would not impose costs on most collection agencies and debt buyers.

b. Collection law firms

The Bureau understands that debt collectors generally do not sue or threaten to sue consumers for accounts that are time-barred. This implies that collection law firms may be less likely to be involved in collecting time-barred debt. Collection law firms that do collect time-barred debt would likely face costs similar to those of collection agencies.

c. Loan servicers subject to the FDCPA

The Bureau understands that mortgage servicers typically initiate foreclosure proceedings within the first year of delinquency and well before the applicable statute of limitations has run. Therefore, the Bureau does not anticipate that the proposal under consideration would impose new costs on loan mortgage servicers.

10. Consumer acknowledgment for debt that is time-barred and obsolete

For debt that is both time-barred and obsolete, the Bureau is considering a requirement that consumers acknowledge in writing that they have received disclosures describing its status before a debt collector can accept payment on the debt.

The Bureau understands that some collection agencies and debt buyers attempt to collect debt that is both time-barred and obsolete. Such collection agencies would incur one-time costs to ensure that their systems identify accounts for which a consumer acknowledgement is required. The Bureau anticipates that such adjustments would be made by software vendors and, for debt collectors that use proprietary systems, that this would be a relatively straightforward system adjustment. Such collection agencies would also need to print and mail acknowledgement forms to consumers, likely to be included with validation notices. As discussed elsewhere, the Bureau estimates that adding an additional page to the validation notice mailing would add costs of approximately $0.05 to $0.10 per affected account.

Some consumers who would otherwise pay a time-barred and obsolete debt might not return the signed acknowledgement. While the Bureau has no data to indicate how frequently this might happen, this could reduce the revenue earned from collecting time-barred and obsolete debt. Debt collectors might be able to mitigate this cost by increasing collections efforts before an account becomes both time-barred and obsolete.[100]

11. Contact frequency

The Bureau is considering proposals that would clarify that contacts and contact attempts above certain limits are prohibited, with stricter limits for contacts and contact attempts made after

[100] Note, however, that the proposals under consideration to limit contact frequency could limit collectors' ability to increase collections efforts.

confirmed consumer contact (CCC). Although the Bureau has suggested above that the cap may be a presumption and not a complete prohibition on more frequent contacts, the Bureau expects that in most cases debt collectors would restrict contacts to within the specified limits.

a. Collection agencies and debt buyers

One-time costs

Collection agencies and debt buyers would incur one-time costs to revise their systems to incorporate the contact frequency caps under consideration. For larger debt collectors, which generally already implement system limits on call frequency, this might mean revising existing calling restrictions to ensure that they comply with the caps and adjusting systems to implement these revised restrictions. Larger collection agencies might also need to respond to creditor requests for additional reports and audit items to verify that they comply with the caps, which could require these agencies to make systems changes to alter the reports and data they produce for their clients to review (although the Bureau does not expect that the overall number of audits conducted would increase as a result of a cap).

Smaller debt collectors would also incur one-time costs to establish policies and procedures to implement contact frequency caps. In some cases, these costs might be larger given that smaller debt collectors are less likely to have formal systems in place to restrict call frequency. On the other hand, many smaller debt collectors report attempting one or two calls per week and generally not speaking to a consumer more than one time per week, suggesting that their practices are already within the limits under consideration. For such debt collectors, existing policies may be sufficient to ensure compliance with this aspect of the proposal under consideration.

Ongoing costs

Of the three types of contact frequency caps the Bureau is considering—pre-CCC, post-CCC, and location contacts—the Bureau expects that the pre-CCC caps would have the largest impact. The Bureau would not expect post-CCC limits to affect debt collectors' ability to communicate with consumers in most cases.[101] Similarly, the Bureau expects that collection agencies would be largely unaffected by proposed limits on location contacts with third parties, because the Bureau understands that while location calls may be made to several numbers, they do not generally involve frequently calling each number.

The pre-CCC contact frequency caps under consideration would cause many debt collectors to attempt contact less frequently than they currently do. This could impose ongoing costs on such debt collectors by increasing the time it takes to establish contact with consumers. Most collectors rely heavily on phone calls as a means of establishing contact with consumers. While collection agencies and debt buyers generally send letters in addition to calling, they report that response rates to letters are generally quite low. In some cases, contact caps might prevent CCC entirely, if collectors are unable to reach the consumer with the permitted number of contacts during the time they are permitted to work the account.

[101] The impact might be greater if consumers could not consent to more frequent contact. For example, if a collector reached a consumer on the phone and the consumer said it was not a good time to speak, then the proposal under consideration would permit the collector and consumer to agree to speak again at a specified time within less than one week.

Some debt collectors do not call frequently enough to be affected by the caps under consideration. While many collectors regularly call consumers two to three times per day or more, others have told the Bureau that they seldom attempt to call more than once or twice per week. These differences may reflect different account types and collection strategies. For example, smaller debt collectors frequently retain accounts indefinitely, and they may face less pressure to reach consumers quickly than collectors that collect accounts for a limited period. Debt collectors that focus on litigation may also place less emphasis on making phone contact with consumers.

For debt collectors that currently attempt to contact consumers more frequently, the caps under consideration could impact the rate at which they establish contact with consumers. The Bureau does not have representative data that would permit it to estimate how particular contact caps might impact how long it takes to establish CCC or if contact is established at all.

However, the Bureau has reviewed data obtained from a few large collection agencies that help illustrate the potential impact of the proposed caps. The data indicate that 50 percent or more of consumers that ultimately are reached by some large collection agencies are reached within the first seven calls, though other collection agencies have indicated that it takes 15 to 21 calls to reach 50 percent of such consumers. The data also indicate that reaching 95 percent of those consumers may take between 50 and 60 calls, meaning that five percent of consumers reached are only contacted after more than 50 or 60 calls. These numbers do not speak directly to how contact caps would affect collectors' ability to reach consumers, in part because establishing contact depends on factors other than the number of calls made and in part because collectors subject to caps might change their contact behavior in ways that permit them to reach a given number of consumers with fewer calls, as discussed further below. In addition, the proposal under consideration that would reduce the cost to collectors of leaving messages for consumers could make it easier to reach consumers with a smaller number of calls. However, the numbers may be helpful in assessing the potential impact of particular contact caps.

The impact of the caps under consideration depends in part on the number of phone numbers available to the debt collector. If a consumer can be reached at only one phone number, the proposal under consideration would permit at most three calls per week to that number; if a debt collector has two numbers, it could make up to six attempts per week.[102] With one phone number available and a limit of three calls per week, the numbers above suggest that, even if the number of calls was the only driver of consumer contact, most consumers could be reached within two to five weeks, and 95 percent of consumers could be reached within approximately 17 to 20 weeks. With two or more phone numbers, the numbers suggest that most consumers could be reached within one to three weeks, and 95 percent of consumers could be reached within eight to ten weeks. Of course, other factors beyond call frequency are likely to affect the time it takes for collectors to reach consumers.

The data discussed above may not be representative, meaning that some debt collectors might experience larger or smaller impacts. Overall, however, the available data suggest that the caps under consideration could reduce somewhat the ability of collection agencies to reach consumers within a few months, but that the reduction is likely to be limited to a relatively small

[102] Data made available to the Bureau from a few large collectors indicates that, on average, collectors have access to between two and three phone numbers, but there is substantial variation across accounts. In these data, a small percentage of accounts do not have a phone number, as many as 24 percent have only one phone number, and more than 10 percent of accounts have five or more numbers.

fraction of accounts. This could affect debt collectors that receive placements of accounts for four to six months and do not engage in litigation. Such collectors could lose revenue if the caps prevent them from establishing contact with consumers or if collections based on phone calls become less effective and, as a result, creditors place accounts with debt collectors specializing in litigation.

Debt collectors could take steps to reduce the number of calls necessary to establish CCC. The Bureau understands that this can be facilitated by purchasing higher-quality contact information from data vendors. Similarly, when multiple phone numbers are available, debt collectors might reduce their calls to numbers that they can identify as being less likely to yield a successful contact. The Bureau is also considering proposals that could reduce the legal risks associated with other means of communication, such as voicemail or email, that may enable collectors to reach consumers more effectively with fewer contact attempts, potentially mitigating the impact of contact caps. In addition, collectors that are unable to reach consumers as a result of contact caps might still pursue such accounts through litigation.

b. Collection law firms

Collection law firms would also incur some one-time costs to revise their systems or procedures to incorporate the contact frequency caps under consideration. However, the Bureau understands that collection law firms generally call consumers less frequently, meaning that they may not need sophisticated systems or incur other new costs to ensure compliance with the caps under consideration. Moreover, if placing accounts with collection agencies becomes less effective because of the contact caps, collection law firms may benefit from an increase in the number of accounts referred for litigation.

c. Loan servicers covered by the FDCPA

Because loan servicers typically have ongoing contact with the consumer to provide periodic statements and other correspondence related to the loan, they would generally have established confirmed consumer contact when attempting to contact consumers about delinquent accounts.

The limits under consideration when there is confirmed consumer contact could prove restrictive to many mortgage servicers. In addition to the servicer's own incentives, servicing guidelines and federal regulation require servicers to engage in "early intervention" efforts to inform consumers about loss mitigation options. Servicers may also be required by investors or guarantors to engage in specific amounts of outreach to delinquent borrowers. The Bureau understands that some servicers may currently attempt to contact delinquent borrowers more than three times per week, or more than twice per week at a particular number. The Bureau does not have the data needed to estimate how the caps under consideration would affect servicers' efforts to contact delinquent borrowers whose loans are covered by the FDCPA. However, the caps could delay loss mitigation efforts. The Bureau is considering whether presumptive contact restrictions should apply to mortgage servicers engaging in early intervention.

12. Leaving messages

The Bureau is considering clarifying that no information regarding a debt is conveyed—and no FDCPA "communication" occurs—when collectors convey only: (1) the individual debt collector's name, (2) the consumer's name, and (3) a toll-free method that the consumer can use to reply to the collector. This could reduce legal risks borne by collectors when leaving a message by eliminating ambiguity regarding whether the initial debt collection disclosure

required by FDCPA section 807(11) (sometimes referred to as the "mini-Miranda") must be made in connection with such messages.

a. Collection agencies and debt buyers

Most debt collectors sometimes leave messages for consumers when consumers do not answer the phone; however, others leave messages only under limited circumstances or not at all because of the legal risk associated with leaving a message that omits the mini-Miranda language or that risks disclosing the existence of a debt to a third party hearing the message.[103] The proposal under consideration would reduce both direct and indirect costs to small entities subject to the FDCPA by reducing legal risks associated with messages. Because the proposal under consideration would not require any collectors to change their policies regarding messages, it would impose no new costs on collectors.

Clarifying when messages may be left may benefit collection agencies indirectly by making it easier to establish contact with consumers. Currently, many debt collectors limit or avoid leaving messages for fear of FDCPA liability. Leaving messages may be a more efficient way of reaching consumers than repeating call attempts without leaving messages. For example, consumers who do not answer calls from callers they do not recognize might return a voicemail message. If so, the proposal under consideration could permit collectors to reach such consumers more efficiently, particularly smaller collectors that may be less likely to use sophisticated dialing systems.

The proposal under consideration would also reduce the direct costs of voicemail-related litigation, which can be large.[104] While the Bureau does not have data on the costs of defending such suits, anecdotal evidence suggests that resolving an individual suit typically costs $5,000 to $10,000, and resolving a class action could cost much more. Moreover, the large majority of threatened lawsuits are settled before the suit is filed, so the frequency of filed lawsuits substantially understates how often debt collectors bear costs from claimed FDCPA violations.[105] The Bureau anticipates that the clarification of "communication" under consideration would remove any legal risk to collectors of leaving limited-content messages that conform to the parameters and other restrictions.

b. Collection law firms

The proposal under consideration would have some of the same benefits for collection law firms as for collection agencies and debt buyers. However, collection law firms are less dependent on phones to reach consumers, suggesting that the benefits from reduced legal risk and expanded use of limited-content messages would be smaller for collection law firms.

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[103] In the Bureau's Operations Study, 42 of 58 respondents reported leaving voicemails. Of those that do leave voicemails, many reported leaving them only under certain specific circumstances. Operations Study, *supra* note 15, at sec. 5.2.

[104] WebRecon data show that there were at least 162 voicemail-related lawsuits filed in 2015 under section 805(b) of the FDCPA, which prohibits third-party disclosures, of which 11 cases were class actions. In addition, at least 125 voicemail-related lawsuits were pursued under section 807(11), which prohibits communicating with a consumer without providing the mini-Miranda disclosure, of which 49 cases were class actions.

[105] Some collectors have reported that they receive approximately ten demand letters for every lawsuit filed, and that FDCPA claims are typically settled for $1,000 to $3,000.

c. Loan servicers covered by the FDCPA

The Bureau understands that legal risks related to leaving messages have not generally posed a concern for loan servicers. As with other debt collectors, the proposal under consideration would not require any change to policies regarding messages but would clarify legal obligations in particular circumstances.

13. Consumer disputes

The Bureau is considering clarifying debt collectors' obligations when responding to a consumer dispute, including reviewing certain documentation relevant to the basis for the consumer's dispute and clarifying the limits of collectors' responsibilities when they receive duplicative disputes from the same consumer.

a. Collection agencies and debt buyers

Collection agencies and debt buyers would need to revise their dispute policies and procedures to account for the proposed rules. Some collectors, particularly those using proprietary collection management systems, would bear costs to adjust their systems for tracking dispute information and for demonstrating compliance to their clients.

The FDCPA has specific requirements for responding to timely written disputes by verifying the debt.[106] The Bureau understands that collection agencies and debt buyers generally obtain documentation from the creditor in response to timely written disputes. The requirement under consideration for account review after receiving a dispute would not appear to be more burdensome in general than the reviews most collectors currently undertake for timely written disputes. The proposal under consideration would clarify the level of investigation that is necessary to meet the collector's responsibilities. In some cases this may require reviewing more or different documentation than collectors currently review before being able to resume collection. But, based on the Bureau's understanding of current practice, the proposal under consideration would not impose large new burdens with respect to timely written disputes.

Most disputes are made orally or more than 30 days after receipt of the validation notice. The Bureau understands that many collection agencies and debt buyers follow the same process when responding to timely written disputes and other disputes, but that others use different procedures for non-timely or oral disputes. Under the proposal under consideration, debt collectors might be required to conduct a more thorough investigation into each non-timely or oral dispute than they currently do. This includes ensuring that all non-timely or oral disputes are identified as such and that they are addressed in compliance with the proposed requirements. The Bureau's current estimate of the cost of investigating a dispute by reviewing the specified information is 15 to 30 minutes of staff time. This would represent an upper bound on the additional burden of investigating non-timely or oral disputes under the proposal being considered, since it would be incremental to the cost of procedures that debt collectors are currently following. Additionally, collectors would not be able to collect while a dispute is pending.

The proposal under consideration would also clarify that duplicative disputes to the same collector do not require further investigation. This clarification would benefit some collectors

[106] *See* 15 U.S.C. 1692g.

that currently follow a policy of investigating and responding to repeat disputes because they are uncertain about their legal obligations.

The Bureau understands that some creditors require collection agencies to refer all disputes back to the creditor for investigation and resolution and to cease activity on disputed accounts. Some debt buyers may also return certain categories of disputed accounts to the seller of the debt. In such cases, collectors would not bear additional costs as a result of the dispute requirements under consideration.

b. Collection law firms

For collection law firms, the Bureau understands based on its industry outreach to date that current practice for responding to disputes is at least as rigorous as what would be required by the proposal under consideration. A firm that is litigating or preparing to litigate a case would have incentives to obtain documents and determine whether a dispute is valid in order to determine whether to proceed with litigation. The Bureau does not expect that the proposal under consideration would impose new costs on collection law firms beyond reviewing policies and procedures to ensure compliance.

c. Loan servicers subject to the FDCPA

Loan servicers generally maintain all documentation that would need to be reviewed in response to a dispute. Servicers also may be subject to rules (such as those in RESPA) requiring them to investigate and respond to written disputes and to maintain accurate records. Servicers would incur one-time costs to ensure that their dispute procedures comply with the proposal under consideration; however, the Bureau anticipates that the proposal under consideration would not require loan servicers to follow more costly dispute procedures than they already employ.

VIII. Cost of Credit to Small Entities

Section 603(d) of the Regulatory Flexibility Act (RFA) requires the Bureau to consult with small entities regarding the potential impact of the proposals under consideration on the cost of credit for small entities and related matters. The proposals under consideration would apply to collection of debts that are incurred primarily for personal, family, or household purposes. They would not apply to debts incurred primarily for business purposes.

In principle, the proposals under consideration could have some limited impact on the availability of credit to small entities. Since some small entities use consumer credit products as a source of credit, they may be affected if consumer credit became more expensive or less available as a result of the proposals under consideration. However, the Bureau does not anticipate that the proposals under consideration would impose large enough costs on the collections process to have a measureable impact on the cost of consumer credit and, therefore, does not anticipate a measurable impact on the cost or availability of credit products for small entities.

Appendix A

THE FAIR DEBT COLLECTION PRACTICES ACT

As amended by Pub. L. 111-203, title X, 124 Stat. 2092 (2010)

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§ 801. Short Title

This subchapter may be cited as the "Fair Debt Collection Practices Act."

15 USC 1692

§ 802. Congressional findings and declaration of purpose

(a) Abusive practices

There is abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors. Abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy.

(b) Inadequacy of laws

Existing laws and procedures for redressing these injuries are inadequate to protect consumers.

(c) Available non-abusive collection methods

Means other than misrepresentation or other abusive debt collection practices are available for the effective collection of debts.

(d) Interstate commerce

Abusive debt collection practices are carried on to a substantial extent in interstate commerce and through means and instrumentalities of such commerce. Even where abusive debt collection practices are purely intrastate in character, they nevertheless directly affect interstate commerce.

(e) Purposes

It is the purpose of this subchapter to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses.

§ 803. Definitions

15 USC 1692a

As used in this subchapter—

(1) The term "Bureau" means the Bureau of Consumer Financial Protection.

(2) The term "communication" means the conveying of information regarding a debt directly or indirectly to any person through any medium.

(3) The term "consumer" means any natural person obligated or allegedly obligated to pay any debt.

(4) The term "creditor" means any person who offers or extends credit creating a debt or to whom a debt is owed, but such term does not include any person to the extent that he receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another.

(5) The term "debt" means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.

(6) The term "debt collector" means any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. Notwithstanding the exclusion provided by clause (F) of the last sentence of this paragraph, the term includes any creditor who, in the process of collecting his own debts, uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts. For the purpose of section 1692f(6) of this title, such term also includes any person who uses any instrumentality of interstate commerce or the mails in any business the principal pur-

pose of which is the enforcement of security interests. The term does not include—

(A) any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor;

(B) any person while acting as a debt collector for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a debt collector does so only for persons to whom it is so related or affiliated and if the principal business of such person is not the collection of debts;

(C) any officer or employee of the United States or any State to the extent that collecting or attempting to collect any debt is in the performance of his official duties;

(D) any person while serving or attempting to serve legal process on any other person in connection with the judicial enforcement of any debt;

(E) any 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; and

(F) any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent such activity

(i) is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement;

(ii) concerns a debt which was originated by such person;

(iii) concerns a debt which was not in default at the time it was obtained by such person; or

(iv) concerns a debt obtained by such person as a secured party in a commercial credit transaction involving the creditor.

(7) The term "location information" means a consumer's place of abode and his telephone number at such place, or his place of employment.

(8) The term "State" means any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision of any of the foregoing.

§ 804. Acquisition of location information

15 USC 1692b

Any debt collector communicating with any person other than the consumer for the purpose of acquiring location information about the consumer shall—

(1) identify himself, state that he is confirming or correcting location information concerning the consumer, and, only if expressly requested, identify his employer;

(2) not state that such consumer owes any debt;

(3) not communicate with any such person more than once unless requested to do so by such person or unless the debt collector reasonably believes that the earlier response of such person is erroneous or incomplete and that such person now has correct or complete location information;

(4) not communicate by post card;

(5) not use any language or symbol on any envelope or in the contents of any communication effected by the mails or telegram that indicates that the debt collector is in the debt collection business or that the communication relates to the collection of a debt; and

(6) after the debt collector knows the consumer is represented by an attorney with regard to the subject debt and has knowledge of, or can readily ascertain, such attorney's name and address, not communicate with any person other than that attorney, unless the attorney fails to respond within a reasonable period of time to communication from the debt collector.

§ 805. Communication in connection with debt collection

(a) Communication with the consumer generally

Without the prior consent of the consumer given directly to the debt collector or the express permission of a court of competent jurisdiction, a debt collector may not communicate with a consumer in connection with the collection of any debt—

(1) at any unusual time or place or a time or place known or which should be known to be inconvenient to the consumer. In the absence of knowledge of circumstances to the contrary, a debt collector shall assume that the convenient time for communicating with a consumer is after 8 o'clock antemeridian and before 9 o'clock postmeridian, local time at the consumer's location;

(2) if the debt collector knows the consumer is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address, unless the attorney fails to respond within a reasonable period of time to a communication from the debt collector or unless the attorney consents to direct communication with the consumer; or

(3) at the consumer's place of employment if the debt collector knows or has reason to know that the consumer's employer prohibits the consumer from receiving such communication.

(b) Communication with third parties

Except as provided in section 1692b of this title, without the prior consent of the consumer given directly to the debt collector, or the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a postjudgment judicial remedy, a debt collector may not communicate, in connection with the collection of any debt, with any person other than the consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector.

(c) Ceasing communication

If a consumer notifies a debt collector in writing that the consumer refuses to pay a debt or that the consumer wishes the debt collector to cease further communication with the consumer, the debt collector shall not communicate further with the consumer with respect to such debt, except—

(1) to advise the consumer that the debt collector's further efforts are being terminated;

(2) to notify the consumer that the debt collector or creditor may invoke specified remedies which are ordinarily invoked by such debt collector or creditor; or

(3) where applicable, to notify the consumer that the debt collector or creditor intends to invoke a specified remedy.

If such notice from the consumer is made by mail, notification shall be complete upon receipt.

(d) "Consumer" defined

For the purpose of this section, the term "consumer" includes the consumer's spouse, parent (if the consumer is a minor), guardian, executor, or administrator.

§ 806. Harassment or abuse

15 USC 1692d

A debt collector may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(1) The use or threat of use of violence or other criminal means to harm the physical person, reputation, or property of any person.

(2) The use of obscene or profane language or language the natural consequence of which is to abuse the hearer or reader.

(3) The publication of a list of consumers who allegedly refuse to pay debts, except to a consumer reporting agency or to persons meeting the requirements of sec-

tion 1681a(f) or 1681b(3)[1] of this title.

(4) The advertisement for sale of any debt to coerce payment of the debt.

(5) Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number.

(6) Except as provided in section 1692b of this title, the placement of telephone calls without meaningful disclosure of the caller's identity.

15 USC 1692e

§ 807. False or misleading representations

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(1) The false representation or implication that the debt collector is vouched for, bonded by, or affiliated with the United States or any State, including the use of any badge, uniform, or facsimile thereof.

(2) The false representation of—

(A) the character, amount, or legal status of any debt; or

(B) any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt.

(3) The false representation or implication that any individual is an attorney or that any communication is from an attorney.

(4) The representation or implication that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages of any person unless such action is lawful and the debt collector or creditor intends to take such action.

1. Section 604(3) has been renumbered as Section 604(a)(3).

(5) The threat to take any action that cannot legally be taken or that is not intended to be taken.

(6) The false representation or implication that a sale, referral, or other transfer of any interest in a debt shall cause the consumer to—

(A) lose any claim or defense to payment of the debt; or

(B) become subject to any practice prohibited by this subchapter.

(7) The false representation or implication that the consumer committed any crime or other conduct in order to disgrace the consumer.

(8) Communicating or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed.

(9) The use or distribution of any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by any court, official, or agency of the United States or any State, or which creates a false impression as to its source, authorization, or approval.

(10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.

(11) The failure to disclose in the initial written communication with the consumer and, in addition, if the initial communication with the consumer is oral, in that initial oral communication, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose, and the failure to disclose in subsequent communications that the communication is from a debt collector, except that this paragraph shall not apply to a formal pleading made in connection with a legal action.

(12) The false representation or implication that accounts have been turned over to innocent purchasers for value.

(13) The false representation or implication that documents are legal process.

(14) The use of any business, company, or organization name other than the true name of the debt collector's business, company, or organization.

(15) The false representation or implication that documents are not legal process forms or do not require action by the consumer.

(16) The false representation or implication that a debt collector operates or is employed by a consumer reporting agency as defined by section 1681a(f) of this title.

15 USC 1692f

§ 808. Unfair practices

A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(1) The collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.

(2) The acceptance by a debt collector from any person of a check or other payment instrument postdated by more than five days unless such person is notified in writing of the debt collector's intent to deposit such check or instrument not more than ten nor less than three business days prior to such deposit.

(3) The solicitation by a debt collector of any postdated check or other postdated payment instrument for the purpose of threatening or instituting criminal prosecution.

(4) Depositing or threatening to deposit any postdated check or other postdated payment instrument prior to the date on such check or instrument.

(5) Causing charges to be made to any person for communications by concealment of the true propose of the communication. Such charges include, but are not limited to, collect telephone calls and telegram fees.

(6) Taking or threatening to take any nonjudicial action to effect dispossession or disablement of property if—

(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 such dispossession or disablement.

(7) Communicating with a consumer regarding a debt by post card.

(8) Using any language or symbol, other than the debt collector's address, on any envelope when communicating with a consumer by use of the mails or by telegram, except that a debt collector may use his business name if such name does not indicate that he is in the debt collection business.

§ 809. Validation of debts

15 USC 1692g

(a) Notice of debt; contents

Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing—

(1) the amount of the debt;

(2) the name of the creditor to whom the debt is owed;

(3) a statement that unless the consumer, within thirty 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;

(4) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such

verification or judgment will be mailed to the consumer by the debt collector; and

(5) a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

(b) Disputed debts

If the consumer notifies the debt collector in writing within the thirty-day period described in subsection (a) of this section that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt or a copy of a judgment, or the name and address of the original creditor, and a copy of such verification or judgment, or name and address of the original creditor, is mailed to the consumer by the debt collector. Collection activities and communications that do not otherwise violate this subchapter may continue during the 30-day period referred to in subsection (a) unless the consumer has notified the debt collector in writing that the debt, or any portion of the debt, is disputed or that the consumer requests the name and address of the original creditor. Any collection activities and communication during the 30-day period may not overshadow or be inconsistent with the disclosure of the consumer's right to dispute the debt or request the name and address of the original creditor.

(c) Admission of liability

The failure of a consumer to dispute the validity of a debt under this section may not be construed by any court as an admission of liability by the consumer.

(d) Legal pleadings

A communication in the form of a formal pleading in a civil action shall not be treated as an initial communication for purposes of subsection (a).

(e) Notice provisions

The sending or delivery of any form or notice which does not relate to the collection of a debt and is expressly required by title 26, title V of Gramm-Leach-Bliley Act [15 U.S.C. 6801 et seq.], or any provision of Federal or State law relating to notice of data security breach or privacy, or any regulation prescribed under any such provision of law, shall not be treated as an initial communication in connection with debt collection for purposes of this section.

§ 810. Multiple debts

15 USC 1692h

If any consumer owes multiple debts and makes any single payment to any debt collector with respect to such debts, such debt collector may not apply such payment to any debt which is disputed by the consumer and, where applicable, shall apply such payment in accordance with the consumer's directions.

§ 811. Legal actions by debt collectors

15 USC 1692i

(a) Venue

Any debt collector who brings any legal action on a debt against any consumer shall—

(1) in the case of an action to enforce an interest in real property securing the consumer's obligation, bring such action only in a judicial district or similar legal entity in which such real property is located; or

(2) in the case of an action not described in paragraph (1), bring such action only in the judicial district or similar legal entity—

(A) in which such consumer signed the contract sued upon; or

(B) in which such consumer resides at the commencement of the action.

(b) Authorization of actions

Nothing in this subchapter shall be construed to authorize the bringing of legal actions by debt collectors.

15 USC 1692j

§ 812. Furnishing certain deceptive forms

(a) It is unlawful to design, compile, and furnish any form knowing that such form would be used to create the false belief in a consumer that a person other than the creditor of such consumer is participating in the collection of or in an attempt to collect a debt such consumer allegedly owes such creditor, when in fact such person is not so participating.

(b) Any person who violates this section shall be liable to the same extent and in the same manner as a debt collector is liable under section 1692k of this title for failure to comply with a provision of this subchapter.

15 USC 1692k

§ 813. Civil liability

(a) Amount of damages

Except as otherwise provided by this section, any debt collector who fails to comply with any provision of this subchapter with respect to any person is liable to such person in an amount equal to the sum of—

(1) any actual damage sustained by such person as a result of such failure;

(2) (A) in the case of any action by an individual, such additional damages as the court may allow, but not exceeding $1,000; or

(B) in the case of a class action,

(i) such amount for each named plaintiff as could be recovered under subparagraph (A), and

(ii) such amount as the court may allow for all other class members, without regard to a minimum individual recovery, not to exceed the lesser of $500,000 or 1 per centum of the net worth of the debt collector; and

(3) in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court. On a finding by the court that an action under this sec-

tion was brought in bad faith and for the purpose of harassment, the court may award to the defendant attorney's fees reasonable in relation to the work expended and costs.

(b) Factors considered by court

In determining the amount of liability in any action under subsection (a) of this section, the court shall consider, among other relevant factors—

(1) in any individual action under subsection (a)(2)(A) of this section, the frequency and persistence of noncompliance by the debt collector, the nature of such noncompliance, and the extent to which such noncompliance was intentional; or

(2) in any class action under subsection (a)(2)(B) of this section, the frequency and persistence of noncompliance by the debt collector, the nature of such noncompliance, the resources of the debt collector, the number of persons adversely affected, and the extent to which the debt collector's noncompliance was intentional.

(c) Intent

A debt collector may not be held liable in any action brought under this subchapter if the debt collector shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(d) Jurisdiction

An action to enforce any liability created by this subchapter may be brought in any appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction, within one year from the date on which the violation occurs.

(e) Advisory opinions of Bureau

No provision of this section imposing any liability shall apply to any act done or omitted in good faith in conformity with any advisory opinion of the Bureau, notwith-

standing that after such act or omission has occurred, such opinion is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

15 USC 1692/

§ 814. Administrative enforcement

(a) Federal Trade Commission

The Federal Trade Commission shall be authorized to enforce compliance with this subchapter, except to the extent that enforcement of the requirements imposed under this subchapter is specifically committed to another Government agency under any of paragraphs (1) through (5) of subsection (b), subject to subtitle B of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5511 et seq.]. For purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act (15 U.S.C. 41 et seq.), a violation of this subchapter shall be deemed an unfair or deceptive act or practice in violation of that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Federal Trade Commission to enforce compliance by any person with this subchapter, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests under the Federal Trade Commission Act, including the power to enforce the provisions of this subchapter, in the same manner as if the violation had been a violation of a Federal Trade Commission trade regulation rule.

(b) Applicable provisions of law

Subject to subtitle B of the Consumer Financial Protection Act of 2010, compliance with any requirements imposed under this subchapter shall be enforced under—

(1) section 8 of the Federal Deposit Insurance Act [12 U.S.C. 1818], by the appropriate Federal banking agency, as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), with respect to—

(A) national banks, Federal savings associations, and Federal branches and Federal agencies of foreign banks;

(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act [12 U.S.C. 601 et seq., 611 et seq.]; and

(C) banks and State savings associations insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), and insured State branches of foreign banks;

(2) the Federal Credit Union Act [12 U.S.C. 1751 et seq.], by the Administrator of the National Credit Union Administration with respect to any Federal credit union;

(3) subtitle IV of title 49, by the Secretary of Transportation, with respect to all carriers subject to the jurisdiction of the Surface Transportation Board;

(4) part A of subtitle VII of title 49, by the Secretary of Transportation with respect to any air carrier or any foreign air carrier subject to that part;

(5) the Packers and Stockyards Act, 1921 [7 U.S.C. 181 et seq.] (except as provided in section 406 of that Act [7 U.S.C. 226, 227]), by the Secretary of Agriculture with respect to any activities subject to that Act; and

(6) subtitle E of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5561 et seq.], by the Bureau, with respect to any person subject to this subchapter.

The terms used in paragraph (1) that are not defined in this subchapter or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).

(c) Agency powers

For the purpose of the exercise by any agency referred to in subsection (b) of this section of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this subchapter shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (b) of this section, each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this subchapter any other authority conferred on it by law, except as provided in subsection (d) of this section.

(d) Rules and regulations

Except as provided in section 1029(a) of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5519(a)], the Bureau may prescribe rules with respect to the collection of debts by debt collectors, as defined in this subchapter.

15 USC 1692m

§ 815. Reports to Congress by the Bureau; views of other Federal agencies

(a) Not later than one year after the effective date of this subchapter and at one-year intervals thereafter, the Bureau shall make reports to the Congress concerning the administration of its functions under this subchapter, including such recommendations as the Bureau deems necessary or appropriate. In addition, each report of the Bureau shall include its assessment of the extent to which compliance with this subchapter is being achieved and a summary of the enforcement actions taken by the Bureau under section 1692*l* of this title.

(b) In the exercise of its functions under this subchapter, the Bureau may obtain upon request the views of any other Federal agency which exercises enforcement functions under section 1692*l* of this title.

§ 816. Relation to State laws

15 USC 1692n

This subchapter does not annul, alter, or affect, or exempt any person subject to the provisions of this subchapter from complying with the laws of any State with respect to debt collection practices, except to the extent that those laws are inconsistent with any provision of this subchapter, and then only to the extent of the inconsistency. For purposes of this section, a State law is not inconsistent with this subchapter if the protection such law affords any consumer is greater than the protection provided by this subchapter.

§ 817. Exemption for State regulation

15 USC 1692o

The Bureau shall by regulation exempt from the requirements of this subchapter any class of debt collection practices within any State if the Bureau determines that under the law of that State that class of debt collection practices is subject to requirements substantially similar to those imposed by this subchapter, and that there is adequate provision for enforcement.

§ 818. Exception for certain bad check enforcement programs operated by private entities

15 USC 1692p

(a) In general

(1) Treatment of certain private entities

Subject to paragraph (2), a private entity shall be excluded from the definition of a debt collector, pursuant to the exception provided in section 1692a(6) of this title, with respect to the operation by the entity of a program described in paragraph (2)(A) under a contract described in paragraph (2)(B).

(2) Conditions of applicability

Paragraph (1) shall apply if—

(A) a State or district attorney establishes, within the jurisdiction of such State or district attorney and with respect to alleged bad check violations that do not involve a check described in subsection (b), a pretrial diversion program for alleged bad check

offenders who agree to participate voluntarily in such program to avoid criminal prosecution;

(B) a private entity, that is subject to an administrative support services contract with a State or district attorney and operates under the direction, supervision, and control of such State or district attorney, operates the pretrial diversion program described in subparagraph (A); and

(C) in the course of performing duties delegated to it by a State or district attorney under the contract, the private entity referred to in subparagraph (B)—

(i) complies with the penal laws of the State;

(ii) conforms with the terms of the contract and directives of the State or district attorney;

(iii) does not exercise independent prosecutorial discretion;

(iv) contacts any alleged offender referred to in subparagraph (A) for purposes of participating in a program referred to in such paragraph—

(I) only as a result of any determination by the State or district attorney that probable cause of a bad check violation under State penal law exists, and that contact with the alleged offender for purposes of participation in the program is appropriate; and

(II) the alleged offender has failed to pay the bad check after demand for payment, pursuant to State law, is made for payment of the check amount;

(v) includes as part of an initial written communication with an alleged offender a clear and conspicuous statement that—

(I) the alleged offender may dispute the validity of any alleged bad check violation;

(II) where the alleged offender knows, or has reasonable cause to believe, that the al-

leged bad check violation is the result of theft or forgery of the check, identity theft, or other fraud that is not the result of the conduct of the alleged offender, the alleged offender may file a crime report with the appropriate law enforcement agency; and

(III) if the alleged offender notifies the private entity or the district attorney in writing, not later than 30 days after being contacted for the first time pursuant to clause (iv), that there is a dispute pursuant to this subsection, before further restitution efforts are pursued, the district attorney or an employee of the district attorney authorized to make such a determination makes a determination that there is probable cause to believe that a crime has been committed; and

(vi) charges only fees in connection with services under the contract that have been authorized by the contract with the State or district attorney.

(b) Certain checks excluded

A check is described in this subsection if the check involves, or is subsequently found to involve—

(1) a postdated check presented in connection with a payday loan, or other similar transaction, where the payee of the check knew that the issuer had insufficient funds at the time the check was made, drawn, or delivered;

(2) a stop payment order where the issuer acted in good faith and with reasonable cause in stopping payment on the check;

(3) a check dishonored because of an adjustment to the issuer's account by the financial institution holding such account without providing notice to the person at the time the check was made, drawn, or delivered;

(4) a check for partial payment of a debt where the payee had previously accepted partial payment for such debt;

(5) a check issued by a person who was not competent, or was not of legal age, to enter into a legal contractual obligation at the time the check was made, drawn, or delivered; or

(6) a check issued to pay an obligation arising from a transaction that was illegal in the jurisdiction of the State or district attorney at the time the check was made, drawn, or delivered.

(c) Definitions

For purposes of this section, the following definitions shall apply:

(1) State or district attorney

The term "State or district attorney" means the chief elected or appointed prosecuting attorney in a district, county (as defined in section 2 of title 1), municipality, or comparable jurisdiction, including State attorneys general who act as chief elected or appointed prosecuting attorneys in a district, county (as so defined), municipality or comparable jurisdiction, who may be referred to by a variety of titles such as district attorneys, prosecuting attorneys, commonwealth's attorneys, solicitors, county attorneys, and state's attorneys, and who are responsible for the prosecution of State crimes and violations of jurisdiction-specific local ordinances.

(2) Check

The term "check" has the same meaning as in section 5002(6) of title 12.

(3) Bad check violation

The term "bad check violation" means a violation of the applicable State criminal law relating to the writing of dishonored checks.

15 USC 1692 note

§ 819. Effective date

This title takes effect upon the expiration of six months after the date of its enactment, but section 809 shall apply only with respect to debts for which the initial attempt to collect occurs after such effective date.

Legislative History

House Report: No. 95-131 (Comm. on Banking, Finance, and Urban Affairs)

Senate Report: No. 95-382 (Comm. on Banking, Housing and Urban Affairs)

Congressional Record, Vol. 123 (1977)

April 4, House considered and passed H.R. 5294.

Aug. 5, Senate considered and passed amended version of H.R. 5294.

Sept. 8, House considered and passed Senate version.

Enactment: Public Law 95-109 (September 20, 1977)

Amendments: Public Law Nos.

99-361 (July 9, 1986)

101-73 (August 9, 1989)

102-242 (December 19, 1991)

102-550 (October 28, 1992)

104-88 (December 29, 1995)

104-208 (September 30, 1996)

109-351 (October 13, 2006)

111-203 (July 21, 2010)

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Dodd-Frank Wall Street Reform and Consumer Protection Act,
Pub. L. 111-2013, 124 Stat. 1376 (approved July 21, 2010)

Sec. 1031. Prohibiting Unfair, Deceptive, or Abusive Acts or Practices.

(a) In General.—The Bureau may take any action authorized under subtitle E to prevent a covered person or service provider from committing or engaging in an unfair, deceptive, or abusive act or practice under Federal law in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service.

(b) Rulemaking.—The Bureau may prescribe rules applicable to a covered person or service provider identifying as unlawful unfair, deceptive or abusive acts or practices in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service. Rules under this section may include requirements for the purpose of preventing such acts or practices.

(c) Unfairness.—

(1) In general.—The Bureau shall have no authority under this section to declare an act or practice in connection with a transaction with a consumer for a consumer financial products or service, or the offering of a consumer financial product or service, to be unlawful on the grounds that such act or practice is unfair, unless the Bureau has a reasonable basis to conclude that—

(A) the act or practice causes or is likely to cause substantial injury to consumers which is not reasonable avoidable by consumers; and

(B) such substantial injury is not outweighed by countervailing benefits to consumers or to competition.

(d) Abusive.—The Bureau shall have no authority under this section to declare an act or practice abusive in connection with the provision of a consumer financial product or service, unless the act or practice—

(1) materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service; or

(2) takes unreasonable advantage of—

(A) a lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service;

(B) the inability of the consumer to protect the interests of the consumer in selecting or using a consumer financial products or service; or

(C) the reasonable reliance by the consumer on a covered person to act in the interests of the consumer.

(e) Consultation.—In prescribing rules under this section, the Bureau shall consult with the Federal banking agencies, or other Federal agencies, as appropriate concerning the consistency of the proposal rule with prudential, market, or systemic objectives administered by such agencies.

(f) Consideration of Seasonal Income.—The rules of the Bureau under this section shall provide, with respect to an extension of credit secured by residential real estate or a dwelling, if documented income by the borrower, including income from a small business, is a repayment source for an extension of credit secured by residential real estate or a dwelling, the creditor may consider the seasonality and irregularity of such income in the underwriting of and scheduling of payments for such credit.

Sec. 1032. Disclosures.

(a) In General.—The Bureau may prescribe rules to ensure that the features of any consumer financial product or service, both initially and over the term of the product or service, are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances.

(b) Model Disclosures.—

(1) In General.—Any final rule prescribed by the Bureau under this section requiring disclosures may include a model form that may be used at the option of the covered person for provision of the required disclosures.

(2) Format.—A model form issued pursuant to paragraph (1) shall contain a clear and conspicuous disclosure that, at a minimum—

(A) uses plain language comprehensible to consumers;

(B) contains a clear format and design, such as an easily readable type font; and

(C) succinctly explains the information that must be communicated to the consumer.

(3) Consumer Testing.—Any model form issued pursuant to this subsection shall be validated through consumer testing.

(c) Basis for Rulemaking.—In prescribing rules under this section, the Bureau shall consider available evidence about consumer awareness, understanding of, and responses to disclosures or communications about the risks, costs, and benefits of consumer financial products or services.

(d) Safe Harbor.—Any covered person that uses a model form included with a rule issued under this section shall be deemed to be in compliance with the disclosure requirements of this section with respect to such model form.

(e) Trial Disclosure Programs.—

(1) In General.—The Bureau may permit a covered person to conduct a trial program that is limited in time and scope, subject to specified standards and procedures, for the purpose of providing trial disclosures to consumer that are designed to improve upon any model form issued pursuant to subsection (b)(1), or any other model form issued to implement an enumerated statute, as applicable.

(2) Safe Harbor.—The standards and procedures issued by the Bureau shall be designed to encourage covered persons to conduct trial disclosure programs. For the purposes of administering this subsection, the Bureau may establish a limited period during which a covered person conducting a trial disclosure program shall be deemed to be in compliance with, or may be exempted from, a requirement of a rule or an enumerated consumer law.

(3) Public Disclosure.—The rules of the Bureau shall provide for public disclosure of trial disclosure programs, which public disclosure may be limited, to the extent necessary to encourage covered persons to conduct effective trials.

(f) Combined Mortgage Loan Disclosure.—Not later than 1 year after the designated transfer date, the Bureau shall propose for public comment rules and model disclosures that combine the disclosures required under the Truth in Lending Act and sections 4 and 5 of the Real Estate Settlement Procedures Act of 1974, into a single, integrated disclosure for mortgage loan transactions covered by those laws, unless the Bureau determines that any proposal issued by the Board of Governors and the Secretary of Housing and Urban Development carries out the same purpose.

Appendix B

Survey of Consumer Views on Debt: Overview and Preliminary Results

I. Introduction

The Consumer Financial Protection Bureau (Bureau) conducted the Survey of Consumer Views on Debt between December 2014 and March 2015 to examine the debt collection experiences and preferences of a nationally representative sample of consumers with credit records. The survey was designed to provide the first comprehensive and representative information on consumers' experiences with debt collection in the United States. Data from consumer complaints regarding debt collection and from debt collection firms inform the Bureau's work, but these data sources may provide an incomplete view of consumers' debt collection experiences. Consumer complaint data, for example, reflect only the experiences of those consumers who contacted the Bureau or other governmental agencies and therefore may not be representative of consumers' experiences generally. Information and aggregated statistics from debt collection firms may be based on large samples and can provide detail that is helpful for understanding collection processes and practices. Information from firms, however, generally cannot capture the consumer's perspective. Thus, the Survey of Consumer Views on Debt expands the Bureau's basis for understanding the process of debt collection in the United States and, in turn, how the proposals that the Bureau is considering for regulations regarding collection might affect consumers and firms.

The next section briefly summarizes the survey's design and implementation, and the third section presents some initial findings. The Bureau continues to review and process survey responses, so these findings are preliminary and subject to revision; however, the Bureau expects any such changes to be small and unlikely to alter broad conclusions. The final section summarizes the Bureau's plans for preparing and distributing further documentation and analysis of the survey results.

II. Survey overview

A. Sample and data collection process

The Bureau's survey proceeded in two phases and was sent to 10,876 consumers in total. First, to gauge the potential success of the survey, the Bureau conducted a pilot survey of 997 consumers in December 2014. Responses from the pilot indicated that consumers could follow the question sequences and were willing to complete the survey. With the success of the pilot, the main survey of 9,879 consumers began in mid-January 2015, and data collection continued into March 2015. For both the pilot and main phases, the survey invitation and reminder letters were in both English and Spanish, and consumers were given the option to complete the survey in English either on paper or online. The main survey additionally included an online Spanish option. The survey questionnaires for the pilot and main phases were identical, so the preliminary results presented in the next section combine responses from both surveys.

The Bureau selected the sample from the Bureau's Consumer Credit Panel (CCP), a 1-in-48 random sample of credit records stripped of direct identifiers[1] from one of the three nationwide

[1] For more information on the privacy protections associated with this survey, see the governing Consumer Experience Research Privacy Impact Assessment, *available at*

credit reporting agencies.[2] One advantage of this approach is that it made it possible to mail a larger fraction of surveys to consumers who were more likely to have had experience with debt collection. Most consumers in a simple random sample of credit records would not have had a recent debt collection. To ensure that the survey included a sufficient number of responses from consumers who had experienced debt collection, credit records with a recent 60-day delinquency on a loan, a reported collection, or both as of September 2014 were sampled at a higher rate than other records. A greater proportion of not only records with collections but also records with a 60-day delinquency were sampled because many consumers who are delinquent in paying a debt may experience collection activity either by the creditor or a third-party collector without a collections tradeline being reported to credit reporting agencies. The survey weights account for the different sampling rates, so the survey results are representative of all consumers with a credit record.

The information included in the CCP such as credit score, age, and recent delinquencies strengthens the survey in two additional ways. First, this information is captured for consumers who did not respond to the survey as well as for those who responded. Statistical bias in estimates due to nonresponse is a concern for almost all surveys. The information contained in credit records provides a stronger basis to examine and to adjust for potential nonresponse bias than is generally available in most surveys, which typically do not have similarly extensive information for both respondents and non-respondents. Second, in some cases, information from credit records can be brought to bear in reviewing, editing, and statistical processing of incomplete or ambiguous survey responses.

B. Survey topics

The survey questionnaire comprised 67 questions covering seven topic areas. All respondents were asked to complete sections A, F, and G. Section A asked about consumers' general financial situation and credit-market experiences. Section F assessed preferences for ways that creditors or collectors could contact the consumer (for example, home phone, cell phone, letter, or email). Section G collected data on demographic characteristics, household income, and demographic or economic events that the household had experienced in the prior year.

Questions in sections B through E pertained only to consumers who indicated that a creditor or debt collector had contacted them in the prior year about a debt in collection.[3] Section B asked about all such collection attempts in the past year, including the types of debt in collection, whether the consumer paid a debt after being contacted, and whether the consumer felt any of the collections were in error.

The questions in Section C focused on details of the most recent collection attempt, including the ways in which the consumer was contacted, the frequency of contacts, and whether the creditor or a collector was pursuing payment. Section C also solicited consumers' views on, for

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http://files.consumerfinance.gov/f/201406_cfpb_consumer-experience-research_pia.pdf and System of Records Notice CFPB.022, Market and Consumer Research Records, *available at* http://www.consumerfinance.gov/privacy/system-records-notices/market-and-consumer-research-records-2/.

[2] This document uses the term "consumer" for brevity, but because the sample was drawn from the CCP, the sample and population are, more precisely, consumers with a credit record.

[3] The questions in these sections and elsewhere about consumers' experiences asked, specifically, about the period since January 2014, roughly one year before the survey was conducted.

example, whether the creditor or debt collector had been polite, provided accurate information, or had contacted the consumer too often.

Section D focused on disputed debts.[4] The section examined, for example, how and why consumers disputed debts as well as the creditor's or collector's response to the dispute. Section E collected information on the prevalence of collections-related lawsuits and whether consumers who were sued attended the court hearing.

C. Response rates

About 20 percent of consumers invited to complete the survey did so, yielding a sample of 2,133 survey responses. The response rate for the main survey (21 percent) was about twice the rate for the pilot (10 percent). Two facets of data collection likely explain a large part of the lower response rate for the pilot. First, the data-collection period for the pilot coincided with December holidays, when mail may have been slowed and when consumers may have been traveling, busier than normal, or getting more mail than usual. Second, data collection for the pilot spanned about two-and-a-half weeks, compared with roughly seven-and-a-half-weeks for the main survey.[5]

The response rate for consumers whose credit record contained a new 60-day past-due loan or a newly reported collection in the prior year was about 15 percent. By comparison, 30 percent of sampled consumers whose credit record did not include a new delinquency or collection responded to the survey. This difference in response rates might be expected because finances—and likely debt and debt collection in particular—are sensitive topics. Finally, the response rate for consumers who appear to have moved from one census tract to another between September 2014 and March 2015 was 13 percent, which was about eight percentage points lower than the response rate for other consumers.[6]

III. Selected Preliminary Results

A. Prevalence of collections and lawsuits

As outlined above, the Survey of Consumer Views on Debt provides some of the first estimates about debt collection in the United States that draw on a nationally representative sample of consumers.[7] The survey responses suggest, for example, that about one in three consumers with a credit record were contacted by a creditor or collector trying to collect a debt in the year prior

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[4] The survey did not explicitly define disputes, so the consumers' perspectives on whether they had disputed a debt may differ from the definition of dispute used by a given creditor or collector or what may constitute disputes pursuant to the FCRA and FDCPA.

[5] The pilot phase included a single reminder letter sent about one week after the initial survey invitation letter. The main survey included three follow-up letters, the second of which included another copy of the paper questionnaire in case consumers had misplaced the first one.

[6] The CCP data do not contain address or other identifying information.

[7] All estimates in this part are based on survey weights that account for: (i) the different sampling rates for different sets of credit records; and (ii) differences in response rates across types of consumers. The estimates also reflect initial processing and data editing (based, for example, on written explanations respondents may have provided), and they are subject to change due to further processing and editing.

to the survey.[8] Further, based on the survey, five percent of all consumers with a credit record, or 15 percent of consumers who had experienced a collection attempt in the prior year, said that they had been sued in the prior year by someone seeking repayment of a debt.

B. The consumer's perspective

1. Collections

The survey results indicate that consumers who had been contacted about repaying a debt in the prior year generally had been contacted about more than one debt. Most consumers who had been contacted in the prior year, 57 percent, reported attempts to collect payment on between two and four debts in the prior year, and about 15 percent were reportedly contacted about at least five different debts.

In many cases, however, consumers believed that attempts to collect a debt may be in error. More specifically, 28 percent of consumers who had been contacted about a debt in the prior year indicated that these contacts included attempts to collect a debt that the consumer did not owe. A slightly greater fraction, 33 percent, reported attempts to collect a debt in the wrong amount. An estimated 12 percent of consumers who had been contacted about a debt indicated these contacts included attempts to collect a debt owed by a family member for whom the consumer had not co-signed, and six percent reported that they had experienced attempts to collect debt owed by a deceased family member.

The survey results indicate that nine percent of all consumers with a credit record had disputed a debt, either with a creditor or with a collector, in the year prior to the survey. This estimate implies that 27 percent of consumers who had experienced a collection attempt in the prior year had disputed a debt. The survey did not explicitly define disputes, so consumers' perspectives on whether they had disputed a debt may vary and may differ from a creditor's or collector's determination that the consumer disputed a debt.[9] The disputes captured by the survey included verbal (*e.g.*, by phone or in person) and written (*e.g.*, by letter or email) disputes with either the creditor or the collector.

2. Contacts

The survey collected details about the most recent debt that consumers had been contacted about, including information about whom the consumer interacted with and how frequently the consumer was contacted regarding that debt. Among consumers who had been contacted about a debt in the prior year, 22 percent were reportedly last contacted about the debt by a creditor, and 64 percent were reportedly last contacted by a debt collector.[10] This survey question was one of a few that included "Don't know" as a response option, to measure how well consumers can discern whom they are interacting with in the context of collections. About one in seven

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[8] Recall that the pilot was completed in December 2014 and the main survey began in January 2015, so for most respondents the reference period for the survey questions about experiences since January 2014 was roughly one year.

[9] Creditors and collectors may, but do not always, have obligations to respond to disputes under the FCRA and the FDCPA.

[10] The survey contained a definition of debt collector as follows: "A debt collector is a person or company other than the creditor that tries to collect on a debt, such as an attorney, a debt collection firm, or other third party."

consumers contacted about a collection in the prior year were uncertain whether the most recent contact was from a creditor or debt collector.

The reported frequency of contacts, including both successful and attempted contacts, varies considerably. In particular, 34 percent of consumers who were contacted about a collection in the prior year were usually contacted less than once per week, whereas 16 percent were usually contacted 8 or more times per week, *i.e.*, more than once per day on average. This question captured the frequency of contacts for the debt that the consumer had most recently been contacted about.[11]

The survey asked about other aspects of the most recent collection experience including consumers' agreement or disagreement with descriptions of interactions with the creditor or collector.[12] Most consumers who had been contacted about a debt in collection (85 percent) said the creditor or collector stated that the reason for contacting the consumer was to collect a debt.[13]

For several of these questions, the responses included substantial shares both of consumers that agreed as well as of consumers that disagreed, which suggests that consumers' experiences can vary considerably. For example, 57 percent of consumers who had been contacted about a debt in collection said that the creditor or collector that most recently contacted them provided accurate information. Similarly, about half of consumers who had been contacted about a debt in collection reported that the creditor or collector provided options to pay the debt or addressed their questions clearly and accurately. The survey responses indicate that 62 percent of consumers who had been contacted about a debt in collection felt that they were contacted too often. Smaller but nonetheless sizable fractions of consumers who had been contacted about a debt in collection said the creditor or collector threatened them (27 percent) or reported that the creditor or collector called before 8:00 a.m. or after 9:00 p.m. (35 percent).

IV. Future Survey Results and Information

The Survey of Consumer Views on Debt complements data available, for example, from debt collectors or from government agencies to understand consumers' experiences with debt collection. To date, the Bureau has completed much of the data processing necessary to fully analyze the survey results, but this work is ongoing. This report provides preliminary results for

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[11] Consumers' estimates of the frequency of contacts may be subject to uncertainty, particularly for attempted phone contacts before a creditor or debt collector had initially reached a consumer, when a consumer may not have known who was attempting contact. Once a creditor or collector had reached a consumer, however, consumers may be reporting on attempted, as well as successful, contacts if they identified the caller. The survey does not purport to distinguish between these varying scenarios in its questions or analysis.

[12] It seems likely that consumers' responses to many of these questions about interactions with the creditor or debt collector are implicitly based on successful contacts. In contrast, the question about the usual frequency of contacts, for example, explicitly asked consumers to consider both successful and attempted contacts.

[13] Most consumers who had been contacted about a debt in collection also indicated that the creditor or collector communicated in the consumer's preferred language, but this proportion, 77 percent, is lower than expected. Analysis of responses to this question suggests that the question may have been interpreted by some consumers as referring to the tone and tenor of the communications, rather than, for example, a consumer's preference for Spanish rather than English.

several of the survey questions as context for the August 2016 meeting of small-business representatives about the potential effects of proposals that the Bureau is considering for regulations regarding debt collection. After processing of the survey data is completed, the Bureau intends to report additional technical documentation of the survey methodology and tabulations from the survey. The Bureau also expects that the survey will form the basis for in-depth studies of consumer finances and financial decisionmaking.

Appendix C

This Appendix lists the specific items of fundamental information that a collector may obtain and review for warning signs, in addition to the debt owner's representation of accuracy, to support initial claims of indebtedness. A collector who has each of these specific elements (plus a representation of accuracy and no warning signs of problems) would have a reasonable basis for claims of indebtedness. A collector nevertheless may be able to acquire a reasonable basis without each specific element. However, the collector would bear the burden of justifying its alternative approach. For each debt, the Bureau is considering identifying the following fundamental information:

- The full name, last known address, and last known telephone number of the consumer;
- The account number of the consumer with the debt owner at the time the account went into default;
- The date of default, the amount owed at default, and the date and amount of any payment or credit applied after default;
- Each charge for interest or fees imposed after default and the contractual or statutory source for such interest or fees; and
- The complete chain of title from the debt owner at the time of default to the collector.

Appendix D

This Appendix provides additional detail on the proposals under consideration regarding collector obligations for responding to consumer disputes. As discussed in more detail above, for timely, written disputes, the Bureau is considering proposing that collectors provide documentation to the consumer establishing the information specified in the relevant category of dispute. For oral or non-timely disputes, the Bureau is considering proposing that the types of documentation specified below may be reviewed to establish reasonable support for claims of indebtedness in certain categories of consumer disputes. Collectors could also support claims of indebtedness in other ways, such as by reviewing other documentation, but would bear the burden of justifying any alternative approach.

Some disputes are generic in nature, such as the statement by a consumer that "I dispute the debt" with no additional information as to the basis of the dispute. Other disputes are specific in nature, such as statements by the consumer that explain the basis for the dispute (*e.g.*, "the amount is wrong," "already paid," or "I am not the person who owes this debt"). The proposal under consideration would establish four general categories of dispute: (1) generic disputes; (2) wrong amount disputes; (3) wrong consumer disputes; (4) wrong collector disputes. Each of these dispute categories would correspond to a box consumers could check on the tear-off part of the validation notice, which is discussed above in part III.C. Additionally, the proposal under consideration would require that collectors have documentation (not just information) to verify disputes in each of these categories. The documentation requirement could be satisfied through collector review of copies of account-level documents establishing the required information. In the case of a timely written dispute, the proposal under consideration would require collectors to mail that documentation to consumers.

- Generic disputes. For generic disputes, *i.e.*, disputes that do not provide a reason or basis for the dispute, verification would consist of documentation establishing the following basic facts about the debt:

    - the first and last name, address, and account number (with the creditor at the time of default) of the debtor;

    - the date of default and date of last payment;

    - the name and address of the creditor at default; and

    - the amount of the debt balance at default and any post-default interest and fees, and a description of the amount owed.

    This documentation would establish information that is substantially similar to the fundamental information that satisfies part of a collector's obligation to possess reasonable support for initial claims of indebtedness. However, verification for generic disputes would omit documentation establishing the chain of title, phone number, and the contract's terms and conditions related to any post-default amount. Such documentation may be more relevant to specific disputes about the identity of the collector, the identity of the consumer, or the amount of the debt, respectively. Because the proposal under consideration tailors the debt collector's obligations to the basis for the dispute, such information has been included in the appropriate category, as described below.

    Documentation evidencing such information would depend on the type of debt but may include a combination of the following: (1) a charge-off statement; (2) the most recent billing

or periodic statement; or (3) a contract, note, application, or service agreement.

- Specific Disputes. For each of the three types of specific disputes discussed below, verification would consist of documentation establishing basic facts about the debt responsive to a generic dispute, combined with documentation establishing additional information responsive to the basis of the dispute.[1]

  Dispute as to amount of debt. For disputes in which the consumer challenges the amount that the debt collector seeks to collect, verification would consist of documentation establishing the following facts:

  - the amount of principal, interest, or fees disputed;
  - the basis for seeking to collect any such disputed amount (*e.g.*, late fee or a charge for purchase on a credit card and the date the charge was made), including the terms and conditions relevant to collecting any post-default interest or fees, if applicable;
  - the date and amount of each payment (or other credit) after default; and
  - any additional information required to respond to the specific dispute.

  Documentation evidencing such facts would depend on the type of debt and the nature of the dispute but may include the following: a copy of a billing or periodic statement(s) covering the relevant time period, and/or the underlying agreement describing the applicable interest rate or fees.

  Dispute as to wrong consumer. For disputes in which the consumer asserts that the debt collector is attempting to collect the debt from the wrong person or the consumer asserts that she or he did not incur the debt, verification would consist of documentation containing the following information:

  - either:
    - information that the consumer provided to the creditor with respect to the consumer's date of birth and information obtained with respect to the consumer's addresses throughout the life of the account; or
    - a number that uniquely identifies the consumer, such as a taxpayer ID number, as defined in 26 CFR 301.6109–1 (*e.g.*, SSN, EIN, ITIN);
  - the consumer's original agreement or original consent to the debt; and
  - any additional information required to respond to the specific dispute.

  Documentation evidencing such facts would depend on the type of debt but may include the following: a copy of the credit application, new patient form, or document reflecting

[1] In the rare circumstances where documentation establishing one of the required items of information does not exist, the Bureau is considering allowing collectors to provide an affidavit based on personal knowledge, setting out facts that would be admissible in court and showing that the affiant is competent to testify to the facts stated.

information gathered from the creditor's Customer Identification Program, and a copy of the contract, note, application, or service agreement.

Dispute as to wrong collector. Finally, for disputes in which the consumer asserts that the debt collector is not the owner of the debt or is not entitled to collect on the debt, verification would consist of documentation establishing the following facts:

- the names and addresses of all persons that obtained the debt after default (as debt owners or third-party collectors), and the date of and parties to each purchase, assignment, or transfer; and

- any additional information required to respond to the specific dispute.

Documentation evidencing such information would depend on the type of debt but may include a copy of the bill of sale or assignment of the debt.

Appendix E

- Information affecting collector obligations to comply with the FDCPA or rules to implement the FDCPA. The proposal under consideration would require subsequent debt collectors to obtain (and prior collectors to provide) certain information consumers provided to prior collectors that obligates collectors to take or refrain from taking certain action relating to rights arising under certain substantive provisions of the FDCPA and the proposals under consideration. Such information might include the following:

    - Whether the debt was disputed in writing within 30 days of receipt of the validation notice and either (1) a statement that the debt was verified; or (2) the details of the dispute, including information the consumer submitted or the prior collector provided;

    - Whether the debt was disputed orally or more than 30 days after receipt of the validation notice, and either (1) a statement that the claims were substantiated; or (2) the details of the dispute, including information the consumer submitted or the prior collector provided;

    - Any time, place, or method of communication that the consumer stated is inconvenient;

    - The name and address of any attorney who is representing the consumer in connection with the debt;

    - Whether the consumer's employer prohibits the consumer from receiving collection communications at the place of employment;

    - Whether the collector has made confirmed consumer contact, and the contact information used to establish such contact;

    - Whether the collector has provided the time-barred debt disclosure; and

    - Whether the consumer is deceased and, if so, the date of death.

- Information affecting collector obligations to comply with other federal laws. The Bureau also is considering a proposal to require that subsequent collectors have (and prior collectors provide) certain information consumers provided to prior collectors connected to other legal rights granted to consumers. Other federal consumer protection laws directly require collectors to take or refrain from taking certain actions depending on what they know about the consumer. For example, the Servicemembers Civil Relief Act (SCRA) gives active duty servicemembers certain protections relevant to the collection of certain debts. Similarly, under Federal student loan programs, consumers also have the right to apply for and, if qualified, enter into a rehabilitation program for defaulted loans. This information might include the following:

    - Whether the consumer is an active duty service member and whether the consumer has secured an interest rate reduction pursuant to the SCRA;

    - For defaulted student loans, whether the consumer has applied for discharge of the debt on a basis that imposes a collections pause, and the date of the application;

    - For defaulted student loans eligible for rehabilitation, the terms of any rehabilitation agreement, the number of payments made, and any requested adjustment to the amount

of the monthly payment; and

- Whether the consumer's income and assets are exempt under federal or state laws from a judgment-creditor seeking garnishment related to debt collection litigation.

- Certain other information that may be beneficial to consumers. The Bureau is considering requiring subsequent collectors to obtain (and prior collectors to transfer) certain other information that does not affect the legal obligations of subsequent collectors but may facilitate collector conduct that may be beneficial to consumers. At this time, the Bureau is considering including the language preference of the consumer, and whether the consumer has submitted an oral or written cease communication request. The Bureau is interested in feedback regarding the costs and benefits of transferring this information.

Appendix F

The proposals under consideration would require validation notices to contain enhanced and clarified information about the debt and the consumer's rights, along with an action-item "tear-off" to facilitate the exercise of dispute and original-creditor-information rights. The requirements under consideration are described below.

- Information about the debt on the validation notice. The Bureau is considering a proposal to require that validation notices contain the following information:
  - the consumer's full name and address;
  - the debt collector's name and address;[1]
  - a description of the debt type (*e.g.*, "credit card");
  - the merchant brand associated with the debt (*e.g.*, the name of the retailer that appears on a branded card), if applicable;
  - the name of the creditor at the time of default (the "default creditor");[2]
  - the account number with the default creditor;
  - the amount owed on the default date;[3]
  - the creditor to which the debt is currently owed;
  - an itemization of interest, fees, payments, and credits since the default date; and
  - the amount owed currently.
- Information about consumer rights on the validation notice. Section 809(a) expressly requires that the validation notice state that (1) the debt collector will assume the debt is valid unless the consumer disputes it (or a portion of it) within 30 days of receiving the notice; (2) if the consumer timely disputes the debt (or a portion of it), the debt collector will obtain and mail verification or a copy of a judgment to the consumer; and (3) the consumer may request and receive the name and address of the original creditor, if different from the current creditor. The Bureau is considering a proposal to require that validation notices contain the following additional statements:
  - A statement describing the effect of submitting either an oral dispute or any dispute outside of the 30-day period—*i.e.*, that before the debt collector may continue making collection communications it must confirm that it has a reasonable basis for its claims of

[1] The proposals under consideration would also permit a debt collector to include its website address.

[2] The proposals under consideration would permit a debt collector to omit the name of the creditor at the time of default from the validation notice as long as it discloses this information elsewhere when it provides the validation notice. The Bureau's model notice would include the name of the creditor at the time of default.

[3] The default date would appear in the validation notice as a calendar date—*e.g.*, "January 1, 2016."

indebtedness;[4]

- A statement explaining the "collections pause"—*i.e.*, the requirement that a debt collector in receipt of a timely written dispute or an original-creditor-information request cease collection until it verifies the debt or provides the name and address of the original creditor, as appropriate; and

- A statement that, for additional information, the consumer should refer to the accompanying Statement of Rights and visit the Bureau's website.

- Action-item "tear-off" on the validation notice. The Bureau is considering a proposal to require that the validation notice contain a "tear-off" with choices to facilitate the exercise of consumer rights. The tear-off would appear on the bottom of the validation notice. Once detached, it would allow consumers to dispute the debt by checking a box next to one or more pre-written statements—for example, "This is not my debt" or "The amount is wrong"—and returning it to the debt collector. Because the tear-off would contain consumers' selection of identified types of reasons for disputes, the Bureau believes that debt collectors would experience less uncertainty about the basis for many disputes, allowing collectors to respond more efficiently to them. The tear-off would also include an option allowing consumers to request the name and address of the original creditor.

  The proposals under consideration would also permit debt collectors to include an optional statement in the body of the validation notice informing consumers that they may contact the debt collector to discuss payment options, along with a check-off box within the tear-off that allows a consumer to indicate that he or she is submitting a payment.

The following page contains an example of what a model validation notice might look like.[5]

[4] The proposals under consideration would permit a debt collector to omit such a statement from the validation notice if the collector discloses it elsewhere when providing the validation notice. The Bureau's model notice would include such a statement.

[5] The example model validation notice provided consumers 30 days from the date they received the example notice during a consumer testing session (*i.e.*, December 12, 2015) to dispute the debt (*i.e.*, January 11, 2016).

North South Group
P.O. Box 121212
Pasadena, CA 91111-2222
(800) 123-4567 from 8am to 8pm EST, Monday to Saturday
www.nsgrp.com

To: Ms. Mary Smith
2323 Park Street
Apartment 342
Arlington, VA 22201

December 12, 2015

Reference: 564-345

North South Group is a debt collector. We are trying to collect a debt that you owe to ABC Credit. We will use any information you give us to help collect the debt.

Our information shows:

You had a Main Street Store credit card from Bank of Rockville with account number 123-456-789. ABC Credit now owns that account, so now you owe ABC Credit.

As of January 2, 2013, you owed:		$	1,234.56
Between January 2, 2013 and today:			
You were charged this amount in interest:	+	$	75.00
You were charged this amount in fees:	+	$	25.00
You paid this amount toward the debt:	–	$	50.00
Total amount of the debt now:		**$**	**1,284.56**

How can you dispute the debt?

- **Write to us by January 11, 2016 to dispute all or part of the debt.** We must stop collection on any amount you dispute until we send you information that shows you owe the debt. If you write AFTER January 11, we are not required to send that information to you, but we must stop collection until we confirm that our information is correct. For ease, you may use the form below or you may write to us without the form. You may also include supporting documents.
- **Call us to dispute. But if you do call, we are not required to send you information that shows you owe the debt.** We must stop collection on any amount you dispute until we confirm that our information is correct.

If we do not hear from you, we will assume that our information is correct.

What else can you do?

- **Ask us to send you the name and address of the original creditor.** Write by January 11, 2016 and we will stop collection until we send you that information. For ease, you may use the form below or you may write to us without the form.
- **Learn more about your rights under federal law.** For more information, see the enclosed *Know your debt collection rights* document or go to the Consumer Financial Protection Bureau's website at www.consumerfinance.gov.
- **Contact us about your payment options.**

Mail this form to:

North South Group
P.O. Box 121212
Pasadena, CA 91111-2222

Ms. Mary Smith
2323 Park Street
Apartment 342
Arlington, VA 22201

How do you want to respond to this notice?

Check all that apply:

☐ **I want to dispute the debt because I think:**
- ☐ This is not my debt.
- ☐ The amount is wrong.
- ☐ I already paid this debt in full or I settled it.
- ☐ You are not the right person to pay.
- ☐ Other or more detail: _____

☐ **I want you to send me the name and address of the original creditor.**

☐ **I enclosed this amount:** $ _____

Make your check payable to *North South Group*. Include the reference number 564-345.

Appendix G

The proposals under consideration would require debt collectors to provide consumers with a one-page Statement of Rights. The proposed document would include plain-language explanations of the following information:

- The consumer's right under the FDCPA to preclude a collector from contacting him or her at a time or place that the collector knows or should know (including based on information from the consumer) is inconvenient for the consumer;
- the consumer's right under the FDCPA to have the debt collector cease communications upon written request;
- the consumer's right under the FDCPA to dispute the debt;
- the restrictions under the FDCPA on a debt collector communicating with third parties about a debt;
- the prohibition under the FDCPA on harassment, oppression, or abuse by debt collectors;
- the prohibition under the FDCPA on false or misleading representations by debt collectors;
- the consumer's right under the Fair Credit Reporting Act to obtain a copy of the consumer's credit report from consumer reporting agencies and dispute any inaccurate or incomplete information that appears in it; and
- the existence of restrictions and prohibitions under various federal and state laws on collectors garnishing certain assets and income.

The document also would include a Spanish-language statement that the consumer may obtain a translated version of the Statement of Rights and validation notice template from the Bureau's website or the debt collector.

The following page contains an example of what a Statement of Rights might look like.

Know your debt collection rights

This form explains some of your rights under the Fair Debt Collection Practices Act and other laws. You may want to keep this form for reference.

What you can do

- **You can decide how and when debt collectors can contact you.**
  A debt collector cannot contact you before 8 am or after 9 pm except in limited circumstances. Also, if you tell a debt collector verbally or in writing that a certain time or place is inconvenient, such as while you are at work, the collector cannot contact you at that time or place.
- **You can stop communications.**
  If you write the debt collector and instruct them to stop all contact with you, the collector must stop. This does not make the debt go away, and in limited circumstances the collector may follow up with you.
- **You can dispute the debt at any time.**
  You can find further details about how to dispute your debt on the notice describing your debt.
- **You can obtain a credit report and dispute any item on it.**
  Under the Fair Credit Reporting Act, you may obtain a free copy of your credit report at annualcreditreport.com. If a debt appears on your credit report, you can dispute it if you believe the information is inaccurate.

What debt collectors cannot do

- **They cannot harass or be abusive to you.**
  For example, a debt collector cannot threaten you with violence or harass you with obscene language. A collector also cannot claim that you have committed a crime by not paying a debt. A collector cannot contact you more than a certain number of times each week.
- **They cannot deceive you.**
  A debt collector cannot make a false or misleading statement about what you owe.
- **They cannot discuss your debt with others.**
  A debt collector generally cannot communicate about your debt with other people (such as your neighbors, friends, and relatives) unless you give the collector permission. However, a collector is allowed to contact others to find out how to reach you.
- **They cannot garnish certain types of assets or income.**
  Federal and state laws may prevent a debt collector from taking certain assets and income to pay the debt. For example, collectors may not be able to take SSI, Social Security, public assistance, veterans', disability, unemployment, and workers' compensation benefits.

Need help?

The Consumer Financial Protection Bureau (CFPB) is a federal government agency built to protect consumers. Visit our website at consumerfinance.gov/debtcollection or call 855-411-CFPB (2372) to learn more about your rights and what you can do next.

Para obtener una copia de este documento en español, visite consumerfinance.gov/es or comuníquese con el cobrador de deudas.

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Appendix H

This appendix describes certain specific practices that the Bureau is considering clarifying should be deemed to be violations of the FDCPA. Specifically, the Bureau believes that this rulemaking presents an opportunity to identify practices that violate sections 806 through 808 of the FDCPA, thereby providing clarity as to what is and is not (or shall or shall not be) a law violation. The proposals under consideration are described below.

1. Collector contact information

FDCPA section 806(6) provides that, in general, debt collectors violate the FDCPA if they place telephone calls without meaningfully disclosing their identity. Section 807 of the FDCPA separately prohibits debt collectors from using false, deceptive, or misleading representations or means in connection with the collection of any debt.

With the prevalence of caller identification technology (caller ID), many consumers rely on incoming call information when deciding whether to answer a call. Collectors, on the other hand, have increasing options to use caller ID information to obscure their identities. For example, collectors can block their contact information altogether, or they can use meaningless or non-working phone numbers or use false names, such as a generic company name, to "spoof" or conceal the collector's identity. When caller ID information is blocked or falsified, consumers cannot make an informed decision about whether to pick up the call. They also cannot call back the person who was calling them—whether to engage in a communication or to tell the person to stop calling—which can result in consumer annoyance or harassment.

To address these concerns, the Bureau is considering a proposal that would require debt collectors to display working, in-bound, toll-free telephone numbers to appear on caller ID screens of consumers. The Bureau believes that maintaining and displaying such numbers would be only minimally burdensome for collectors. The Bureau is considering applying comparable requirements to newer technologies, for example, requiring collectors to display in the body of their email messages a working, in-bound, toll-free method to reach the collector.

2. Unavoidable charges for communications

The Bureau is considering a proposal that would prohibit a debt collector from contacting any person (*i.e.*, a consumer or a third party in a location communication) using a communication method that would cause the person to incur an unavoidable charge. Recipients of such communications, however, could consent to being contacted through that communication method and incurring such charges. The proposal under consideration would be technology-neutral (*i.e.*, it would apply to all technologies, even those not yet in existence).

For example, the cost of a text message sometimes is charged to the message recipient upon delivery and thus cannot be avoided. The proposals under consideration would require debt collectors, absent consent, to use Free-to-End-User text messaging so that the debt collector, rather than the recipient, would incur the charge for the message. On the other hand, recipients of phone calls and emails can avoid being charged for those communications by, for example, not picking up the phone, or by reading emails only when connected to WiFi. Debt collectors thus could call mobile phones and send emails without taking special precautions regarding the charges associated with those communications.

3. Certain false, misleading, or unsubstantiated claims

The Bureau is considering a proposal to clarify that prohibited false, misleading, or unsubstantiated claims include claims: (1) that a person (*e.g.*, a surviving spouse of a decedent in many circumstances) is responsible for a consumer's debts; (2) about the consequences for consumers of paying or not paying debts (*e.g.*, a military servicemember having his or her security clearance revoked); and (3) relating to the debt collector's location or identity (*e.g.*, a debt collector pretending to be located in the same city or town as the consumer).

4. Identifying information about the debt collector

Several provisions of FDCPA section 808 generally provide that it is unfair for a debt collector to communicate with a consumer in a way that would reveal to others that the communication relates to the collection of a consumer's debt. Specifically, section 808(7) prohibits communications with a consumer regarding a debt by post card, and section 808(8) provides that, when a debt collector communicates with a consumer by mail or by telegram, the debt collector may not use any language or symbol on the envelope other than the collector's address. The debt collector also may include his business name on the envelope, but only if the name does not indicate that he is in the debt collection business.

The proposals under consideration would adapt these standards to newer technologies such as email by specifying that a debt collector cannot send an email message to a consumer if the message's "from" or "subject" lines contain information that would reveal that the email is about a debt.

5. Incidental fees

The Bureau is considering clarifying that incidental fees, including payment method convenience fees, that are collected either directly or indirectly[1] by the collector are permissible only if: (1) state law expressly permits them; or (2) the consumer expressly agreed to them in the contract that created the underlying debt and state law neither expressly permits nor prohibits such fees. Incidental fees expressly permitted by contract would be impermissible if prohibited under state law.

[1] The proposals under consideration would specify that a debt collector charges convenience fees indirectly when, for example, a third party charges the fee but the collector receives a portion through a fee-splitting arrangement. Fees charged in full by, and paid in full directly to a third-party payment processor, would not be collected directly or indirectly by the collector and would not be covered under the regulation. (Whether such fees could be charged also could depend, however, on the contract establishing the debt or other laws.)