FINAL REPORT

of the

Small Business Review Panel on CFPB's Debt Collector and Debt Buyer Rulemaking

October 19, 2016

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1 Introduction

Under the Regulatory Flexibility Act (RFA), the Consumer Financial Protection Bureau (Bureau) must convene and chair a Small Business Review Panel (Panel) when it is considering a proposed rule that could have a significant economic impact on a substantial number of small entities.[1] The Panel considers the impact of the proposals under consideration by the Bureau and obtains feedback from representatives of the small entities that would be subject to the rule. The Panel includes representatives from the Bureau, the Chief Counsel for Advocacy of the Small Business Administration (SBA), and the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB).

This Panel Report addresses the Bureau's debt collector and debt buyer rulemaking. The Bureau is concerned that practices associated with debt collection may pose significant risks to consumers. Indeed, even though the Fair Debt Collection Practices Act (FDCPA),[2] the main law that governs the debt collection industry and protects consumers, was enacted in 1977, debt collection remains a major source of consumer complaints, lawsuits, and enforcement actions. 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.

In accordance with the RFA, the Panel conducts its review at a preliminary stage of the Bureau's rulemaking process. The Panel's findings and discussion here are based on information available at the time the Panel Report was prepared and therefore may not reflect the final findings of the Bureau in the process of producing a proposed rule. As the Bureau proceeds in the rulemaking process, including taking actions responsive to the feedback received from small entity representatives (SERs) and the findings of this Panel, the agency may conduct additional analyses and obtain additional information.

This Panel Report reflects feedback provided by the SERs and identifies potential ways for the Bureau to shape the proposals under consideration to minimize the burden of the rule on small entities while achieving the purpose of the rulemaking. Options identified by the Panel for reducing the regulatory impact on small entities of the present rulemaking may require further consideration, information collection, and analysis by the Bureau to ensure that the options are practicable, enforceable, and consistent with the Dodd-Frank Act.

Pursuant to the RFA, the Bureau will consider the Panel's findings when preparing the initial regulatory flexibility analysis. This Panel Report will be included in the public record for the Bureau's debt collector and debt buyer rulemaking.

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[1] 5 U.S.C. 609(b).
[2] 15 U.S.C. 1692 *et seq*.

This report includes the following:

a. A description of the proposals that are being considered by the Bureau and that were reviewed by the Panel;
b. Background information on small entities that would be subject to those proposals and on the particular SERs selected to advise the Panel;
c. A discussion of the comments and recommendations made by the SERs; and
d. A discussion of the findings and recommendations of the Panel.

In particular, the Panel's findings and recommendations address the following:

a. A description of and, where feasible, an estimate of the number and type of small entities impacted by the proposals under consideration;
b. A description of projected compliance requirements of all aspects of the proposals under consideration;
c. A description of alternatives to the proposals under consideration that may accomplish the stated objectives of the Bureau's rulemaking and that may minimize any significant economic impact on small entities of the proposals under consideration; and
d. An identification, to the extent practicable, of relevant federal rules that may duplicate, overlap or conflict with the proposals under consideration.

2 Background

2.1 Market Background

The Bureau began this rulemaking in response to concerns identified in its consumer complaints, supervision and enforcement experience, market monitoring, and feedback from other government agencies and industry participants about consumer harms that arise in the debt collection market. The Bureau recognizes that debt collection is a critical part of the consumer credit market infrastructure. But, in the debt collection market, consumer choice provides little, if any, constraint on the behavior of collectors. While consumers generally choose between creditors based on factors such as the creditor's identity and the credit terms offered, when an account goes into default, the consumer has no alternative but to deal with whichever 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. Further, even with the FDCPA and states' debt collection laws in place, debt collection remains a major source of consumer harm.

2.2 Statutory Authority

In 1977, Congress enacted the 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."[3] The FDCPA imposes a range of restrictions and disclosure requirements on collectors' conduct. The FDCPA generally covers

[3] 15 U.S.C. 1692(e).

the collection activities of debt collectors collecting on others' debts and of debt buyers (collectively "debt collectors" in this Report unless otherwise specified) but not the collection activities of first-party debt collectors (*i.e.*, creditors collecting in their own name on debts owed to them).

The Dodd-Frank Act (DFA) also empowers the Bureau to issue regulations 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.[4]

Pursuant to its authorities to issue regulations that implement the FDCPA and pursuant to its DFA authority, the Bureau is considering adopting regulations that cover the activities of debt collectors and debt buyers covered by the FDCPA.

2.3 Related Federal Rules

Several other federal laws and regulations include requirements related to debt collection. For example, the Bureau's Mortgage Rules under the Real Estate Settlement Procedures Act (RESPA) and Truth in Lending Act (TILA) include communication requirements and policies and procedures applicable to mortgage servicers, some of whom may also be subject to the FDCPA. As a result, when the Bureau issued a Final Servicing Rule, the Bureau concurrently issued an FDCPA interpretive rule to clarify the interaction of the FDCPA and specified mortgage servicing rules in Regulations X and Z.[5]

The Fair Credit Reporting Act (FCRA) also includes certain provisions that apply to debt collectors, including a provision that prohibits any person from selling, transferring for consideration, or placing for collection a debt that the person has been notified resulted from identity theft.[6]

Some federal laws implemented by other government agencies also include protections and requirements that may apply to debt collection activities. For example, the Telephone Consumer Protection Act (TCPA),[7] which is implemented by the Federal Communications Commission

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[4] 12 U.S.C. 5531(b) and 12 U.S.C. 5532(a).

[5] The Bureau's interpretive rule constituted an advisory opinion for purposes of the FDCPA and provided safe harbors from liability for servicers acting in compliance with specified mortgage servicing rules in three situations: (1) servicers do not violate FDCPA section 805(b) when communicating about the mortgage loan with confirmed successors in interest in compliance with specified mortgage servicing rules in Regulation X or Z; (2) servicers do not violate FDCPA section 805(c) with respect to the mortgage loan when providing the written early intervention notice required by Regulation X section 1024.39(d)(3) to a borrower who has invoked the cease communication right under FDCPA section 805(c); and (3) servicers do not violate FDCPA section 805(c) when responding to borrower-initiated communications concerning loss mitigation after the borrower has invoked the cease communication right under FDCPA section 805(c). *Available at* http://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/safe-harbors-liability-under-fair-debt-collection-practices-act-certain-actions-taken-compliance-mortgage-servicing-rules-under-real-estate-settlement-procedures-act-regulation-x-and-truth-lending-act-regulation-z/.

[6] 15 U.S.C. 1681m(f).

[7] 47 U.S.C. 227.

(FCC), may affect some debt collection activities by restricting the use of automatic telephone dialing systems and artificial or prerecorded voice messages. In addition, the Servicemembers Civil Relief Act (SCRA)[8] provides certain protections from civil actions against servicemembers in Active Duty. The SCRA restricts or limits actions against these personnel in a variety of areas related to financial management, including rental agreements, security deposits, evictions, credit card interest rates, judicial proceedings, and income tax payments.[9]

3 Overview of Proposals and Alternatives under Consideration

3.1 Scope of Coverage and Background

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). The Bureau has identified several categories of businesses that meet this definition: collection agencies, debt buyers, collections law firms, and small entity loan servicers that acquire accounts in "default." This SBREFA process did not include 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 expects to convene a second proceeding in the next several months for those collectors covered by the DFA. 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.

The SERs and the Panel reviewed proposals that address concerns related to all aspects of the debt collection lifecycle. In particular, as described below, the CFPB is considering proposals related to:

- **The integrity of information in debt collection**. This section of the proposals includes requirements 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. The proposals also consider the acquisition and transfer of certain consumer-provided information related to collection accounts.

- **Additional consumer understanding initiatives**. The Bureau is considering proposals related to several consumer disclosures, including a disclosure when collectors initiate or threaten to initiate a lawsuit, and a disclosure and other restrictions when collectors collect on time-barred and obsolete debts.

[8] 50 U.S.C. 3901-4043.

[9] The Bureau also recognizes that other federal regulations, including those issued by the Department of Education, may relate to debt collection, and to the extent that the Bureau moves forward with the proposals under consideration, the Bureau expects to continue working with other federal agencies whose regulations may be related to our debt collection proposals.

- **Debt collection communications and other interventions.** The Bureau is considering a wide range of proposals related to communications with consumers, including proposals related to the frequency of communication attempts, voicemail messages, and the collection of decedent debt. The Bureau is also considering proposals relating to transfer of debts and recordkeeping.

A detailed description of these proposals under consideration is included in the SBREFA Outline of Proposals under Consideration and Alternatives Considered at Appendix C.

3.2 Information Integrity and Related Concerns

In general, the Bureau is considering 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.

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 proposals under consideration would also 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. If the collector discovers warning signs during its initial review, 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.

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.[10]

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. 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.

Claims of indebtedness following a dispute

The Bureau is considering a proposal to require collectors to obtain additional support before proceeding with further claims of indebtedness following receipt of 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. 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.

The Bureau is also considering proposals to provide greater clarity for written disputes submitted within 30 days of the validation notice, including clarifying what types of information satisfy the verification requirement under the FDCPA for the various categories of disputes. The Bureau is also considering proposals related to requirements for oral disputes, including whether to require collectors to inform consumers of the right to obtain verification of the debt by submitting a timely written dispute, if applicable, unless the collector provides copies of verification in response to oral disputes as well.

Claims of indebtedness made in complaints filed in litigation

The proposal under consideration would require debt collectors, before making claims of indebtedness 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, 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 for all types of disputes. Alternatively, collectors could acquire a reasonable basis consistent with this level of support through another means, but would bear the burden of justifying any alternative approach.

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[10] 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.

Requirement to review and transfer certain information

The Bureau is considering a proposal to require subsequent collectors to obtain and review certain information arising from past collection activity 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. 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.

Requirement to forward certain information after returning or selling a debt

The Bureau is considering a proposal to require collectors to forward to an entity to which the debt collector has already transferred the debt (*i.e.*, the owner of the debt or a subsequent debt buyer) information received subsequent to the transfer that could indicate that all or part of the debt could be uncollectible or is likely to lack sufficient support.

Validation Notice and Statement of Rights

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. 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).

- Non-English language requirements

The Bureau also is considering 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. 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 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.

Credit Reporting

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.

3.3 Other Consumer Understanding Initiatives

Litigation Disclosure

The Bureau is considering a proposal to 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. That 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 calling the Bureau's toll-free telephone number.

Time-barred debt and obsolete debt

The Bureau is also considering several proposals related to time-barred and obsolete debts. First, the Bureau is considering a proposal to prohibit suit and threats of suit on time-barred debt. In addition, the proposals under consideration would require a debt collector to provide a time-barred debt disclosure when it seeks to collect a time-barred debt. The proposal under consideration would also prohibit a subsequent collector from suing on a debt as to which an earlier collector provided a time-barred debt disclosure. In addition, 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. Finally, 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.

The Bureau considered two alternative proposals related to time-barred debt, 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 proposals above under consideration may adequately address the risks to consumers posed by the sale and collection of time-barred debt.

Consumer acknowledgement before accepting payment on debt that is both time-barred and obsolete

The Bureau is considering a proposal to prohibit a debt collector from accepting payment on debt that is both time-barred and obsolete until the collector obtains the consumer's written acknowledgement of having received a time-barred debt disclosure and an obsolescence disclosure.

3.4 Collector Communication Practices

Limited-content voicemails and restricting debt collection contact with consumers

The Bureau is considering a proposal that would provide 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.

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 described in detail in the outline, the proposals under consideration would set the limits in Table 1 below.

Table 1: 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

Location contacts and frequency of general third-party contacts

The Bureau also 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. The proposals under consideration would set the limits in Table 2 below.

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

General time, place, manner requirements

The Bureau is considering proposals to clarify that collectors must abide by section 805(a)'s protections unless they receive consent directly from the consumer. The proposals under consideration would also clarify how collectors determine the presumptively convenient time to call where there is conflicting location information, as well as how the presumptively convenient time applies to newer technologies. The proposals under consideration would specify certain locations that trigger presumptions and thus a collector would not be able to continue the communication, absent affirmative consumer consent as discussed below.

In addition, 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, and temples; (3) places of burial or grieving, including funeral homes and cemeteries; and (4) daycare or childcare centers or facilities.

The Bureau also is also seeking feedback on the advantages and disadvantages of limiting contact with servicemembers in military combat zones or qualified hazardous duty postings.

Clarifications regarding inconvenient communication methods

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 (based on the fact that the consumer indicates, either expressly or by implication, that the method is inconvenient). 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.

Decedent debt

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.

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.

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.

Prohibition on transferring debt to certain entities and recordkeeping

The Bureau is considering an additional proposal to prohibit debt buyers from placing debt with, or selling debt to, certain entities that may pose greater risk to consumers.

The Bureau is also 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.

4 Applicable Small Entity Definitions

A "small entity" may be a small business, small nonprofit organization, or small government jurisdiction. The North American Industry Classification System (NAICS) classifies business types and the SBA establishes size standards for a "small business." To assess the impacts of the proposals under consideration, the Panel meets with small entities that may be impacted by those proposals and so, in this instance, sought feedback from collection agencies, debt buyers, collection law firms, and servicers that acquire debt after "default."

5 Small Entities That May Be Subject to the Proposals under Consideration

The Panel identified four categories of small entities that may be subject to the proposals under consideration. The NAICS industry and SBA small entity thresholds for those categories are the following:

NAICS Industry	Threshold for "Small"
Collection agencies	$15.0 million in annual receipts
Debt buyers	$38.5 million in annual revenues
Collection law firms	$11.0 million in annual receipts
Servicers who acquire accounts in "default"	Depository institutions with $550 million or less in annual receipts or Non depositories with $20.5 million or less in annual receipts

6 Summary of Small Entity Outreach

6.1 Summary of Panel's Outreach Meeting with Small Entity Representatives

The Bureau convened the Panel on August 23, 2016. The Panel held a full-day outreach meeting (Panel Outreach Meeting) in Washington, D.C. with SERs on August 25, 2016. In preparation for the Panel Outreach Meeting and to facilitate an informed and detailed discussion of the proposals under consideration, the Bureau provided each of the SERs with a list of discussion topics, attached in Appendix D.

In advance of the Panel Outreach Meeting, the Bureau, SBA Office of Advocacy, and OMB held a series of telephone conferences with the SERs to describe the Small Business Review Process, obtain important background information about each SER's current business practices, and discuss selected portions of the proposals under consideration.

Representatives from 19 small businesses were selected as SERs for this SBREFA process and participated in the Panel Outreach Meeting (either in person or by phone). Representatives from the Bureau, SBA Office of Advocacy, and OMB provided introductory remarks. The meeting was then organized around a discussion led by the Bureau's Office of Regulations and Office of Research about each of the proposals under consideration and the potential impact on small businesses. The PowerPoint slides framing this discussion are attached at Appendix E.

The Bureau also provided the SERs with an opportunity to submit written feedback by September 9, 2016. Fifteen of the 19 SERs provided written comments. Copies of these written comments are attached at Appendix A.

6.2 Other Outreach Efforts, Including to Small Entities

In addition to the SBREFA process, the Bureau has conducted extensive outreach efforts to consumer and community-based groups, industry and trade groups, other federal agencies, and members of the public. The Bureau also 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[11] that examines the debt collection experiences and preferences of a nationally representative sample of consumers with credit records. Second, the Bureau has conducted and continues to conduct extensive consumer testing of model validation notices and other disclosures.

Third, 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.[12] 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, litigation, and compliance.

[11] A summary of preliminary results from the Survey is attached to the Outline of Proposals under Consideration and Alternatives Considered at Appendix C; a full report on survey results will be published in the future. The Survey was conducted under OMB control number 3170-0047.

[12] *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. The survey was conducted under OMB control number 3170-0032.

In addition to research projects, the Bureau has 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. The Bureau also has obtained information through supervision and enforcement activities, market monitoring, and related rulemaking activities that intersect with debt collection.

Finally, as part of the SBREFA process, the Bureau held a held a public field hearing in Sacramento, California on July 28, 2016, to obtain feedback from stakeholders, including industry members and consumer groups.

7 List of Small Entity Representatives

The following 19 small entity representatives were selected to participate in the Panel's Small Business Review process:

NAME & TITLE	**BUSINESS NAME & CITY, STATE**	**BUSINESS TYPE & NAICS CODE**
Jack W. Brown III, President	**Gulf Coast Collection Bureau, Inc.** Sarasota, FL	Debt Collector 561440
Matthew Carroll, Director/Small Business Coordinator	**Credit Adjustments, Inc.** St. Louis Park, MN	Debt Collector 561440
Fran Censullo Vice President	**MCT Group, Inc.** Torrance, CA	Debt Collector 561440
J. Duke Edward Attorney	**Barnes Financial Services, LLC** Salt Lake City, UT	Debt Buyer 522298
Brian Fair President	**Fair Resolutions, Inc**. Wenatchee, WA	Debt Buyer 522298
Skip Foster Senior Vice-President and COO	**Access Receivables** Hunt Valley, MD	Debt Collector 561440
William E. Hopkinson President/CEO	**Valley Credit Service, Inc.** Charlottesville, VA	Debt Collector 561440
Michael Janakes President	**FMA Alliance, Ltd**. Houston TX	Debt Collector 561440
Nick Jarman President/COO	**Delta Outsource Group, Inc.** O'Fallon, MO	Debt Collector 561440
Kevin Kanouff CEO	**Statebridge Company, LLC** Greenwood Village, CO	Mortgage Servicer 522390
Keith Kettelkamp President/CEO	**Remex, Inc.** Princeton, NJ	Debt Collector 561440
Kelly Knepper-Stephens, General	**Stoneleigh Recovery Associates** Lombard, IL	Debt Buyer 522298 and

Counsel		Debt Collector 561440
Yale R. Levy Attorney	**Levy & Associates, LLC** Columbus, OH	Law firm 54110
Ohad Samet President	**TrueAccord Corp**. San Francisco, CA	Debt Collector 561440
Burton E. Stacy, Jr. President	**Hood & Stacy, P.A**. Bentonville, AR	Law firm 54110
Andrew E. Twyman CEO	**ATG Credit, LLC** Chicago, IL	Debt Collector 561440
Rance Willey CEO	**Troy Capital, LLC** Las Vegas, NV	Debt Buyer 522298
Nathan D. Willner Attorney	**Lyons, Doughty & Veldhuis, P.C.** Owings Mills, MD	Law firm 541110
Larry N. Zimmerman Attorney	**Zimmerman & Zimmerman, P.A.** Topeka, KS	Law firm 541110

These 19 SERs represent a mix of collection agencies, debt buyers, and law firms from different geographic areas throughout the United States. They also engage in different aspects of the debt collection process, including contingency collection, debt buying, and litigation.

8 Summary of Small Entity Comments

Through the SBREFA process, the Panel solicits feedback from small businesses early in a rulemaking proceeding and prior to the Bureau's development of a proposed rule. To obtain specific information about the costs of complying with a potential rulemaking, the Bureau provided SERs with a list of questions to consider about the impact of the proposals under consideration. These discussion questions, included at Appendix D, along with the Outline of Proposals under Consideration (Appendix C), formed the basis of the Panel Outreach Meeting and the subsequent written comments.

During the August 25th Panel Outreach Meeting, as well as during the associated telephone conferences and in written materials submitted to the Bureau following the Panel Outreach Meeting, the SERs provided feedback on all aspects of the proposals under consideration. The SERs provided a substantial amount of information to the Panel about how the SERs conduct their businesses and how the proposals could impact their businesses. The Panel appreciates the effort made by the SERs to provide meaningful comments and data and for their time spent assisting the Panel. This section summarizes SER feedback on the various parts of the Outline. Written comments provided by SERs are included at Appendix A.

8.1 General Comments from SERs

As detailed below, the SERs generally supported the Bureau's proposals under consideration to modernize and clarify certain requirements in the FDCPA, like the use of voicemail messages. The SERs also uniformly stated that proposals to clarify use of newer technologies (*e.g.*, emails and text messages) would make it easier for collectors to communicate with consumers through consumers' preferred methods, thus benefitting collectors and consumers. Several SERs said that the lack of consistent interpretations of the FDCPA since the law was enacted in 1977 was a source of costly and unnecessary litigation, and said that some of the proposals under consideration would provide clarity and help reduce litigation costs.

The SERs, however, recommended that the Bureau modify certain proposals, particularly those related to substantiation to differentiate among the information that is available for particular types of debt. For example, SERs noted that some types of debt, like medical debt, often were passed to collectors and debt buyers with fewer or different categories of information than other types of debt, and collectors were concerned that they would face increased litigation risk if they did not review the list of fundamental information included in the Bureau's proposal.

Several SERs also stated that they could not fully assess the burden or viability of some of the proposals related to substantiation and information flow without knowing whether creditors possess necessary information or whether creditors had the technological infrastructure to allow for the mutual sharing of this information between the collector and creditor. Several SERs stated that it was critical that the Bureau provide the third-party debt collector SERs with an opportunity to provide feedback on the second SBREFA process related to the first-party rulemaking.

With respect to the Bureau's proposals under consideration related to disclosures, many SERs stated that the creation of a model validation notice could potentially benefit them by reducing the likelihood of litigation. But many SERs also expressed concern about the tear-off dispute portion of the notice, stating that it might increase the frequency of disputes. SERs also expressed specific concerns about other disclosures, which are described in detail below.

The SERs generally supported aspects of the proposals under consideration related to communication, including providing a voicemail message, which they stated would improve their ability to reach consumers. On the other hand, many SERs expressed concern with the contact cap requirements, stating that the proposed cap would often be too low and could greatly lengthen the period of time to reach the consumer.

In general, the SERs urged the Bureau to clarify that any regulations would apply only prospectively and cautioned that retroactive application would result in significant costs, including the loss in value of pre-existing debts that might become difficult or impossible to collect.

8.2 Comments Related to Information Integrity and Related Concerns

Initial claims of indebtedness

Many SERs who commented on this proposal under consideration expressed support for the Bureau's goals of ensuring that debts were collected from the right person and in the right amount. SERs also stated that they could obtain and review the majority of fundamental information listed in the Bureau's proposals for most of the debts they collected.

Several SERs, however, pointed out that particular items on that list could be more difficult to determine and obtain or were not applicable to some types of debt. Several SERs also expressed concern that, while the Outline provides for the possibility of establishing a reasonable basis using an alternate set of information, doing so could lead to increased litigation risk. The SERs specifically identified the following information as posing challenges:

- Date of Default. Many SERs expressed concern that it would be difficult and in some cases impossible to obtain the date of "default" and information as of that date, such as the amount owed. In particular, several SERs noted that some types of debt, like medical debt, did not have a date of default, while for other types of debt, creditors did not necessarily pass along dates of default. One SER stated that, where a creditor did not pass along information about a default date, a collector would need to hire external legal counsel to determine the correct "default" date under state law. This SER estimated that the cost to hire outside counsel to make this determination for all accounts could range from $62,000 to $125,000. Other SERs stated that the term "default" did not have a clear definition and urged the Bureau to define the term as part of a proposed rule. A few SERs also noted that debt could move in and out of default, which would mean that there was not a single date that applied. Several SERs offered alternative recommendations, including using information related to the amount owed when the debt was transferred to the collector, using "charge-off" for credit card debts, or "last payment date," or using date of service for medical debt.

- Post-default fees and charges. A few SERs identified two challenges related to the proposal to review an itemization of post-default fees and charges. First, as described above, they noted that for many debts, it would not be possible to identify the default date, and therefore to use that point to identify post-default fees and charges. Second, some SERs stated that it would be difficult and costly to receive and review all post-default fees and charges given the number of such charges that could be related to a single account. These SERs recommended that instead of requiring a break-out of all fees and charges, the proposal require a review of aggregate fees, interest, and charges.

- Phone number. Several SERs stated that a consumer's phone number was not always provided by their clients and was generally unavailable for certain types of debt, like government debts. One SER also commented that much of the debt obtained by his business included email contact information, rather than a phone number. The SERs recommended that the Bureau eliminate this piece of data or permit alternatives to the phone number, such as email addresses.

- Chain of title. A few SERs requested clarity as to whether the proposals required a review of chain of title for each individual account in a portfolio or merely to review the chain of title for the portfolio. If the Bureau required chain of title review for individual accounts and if this were to apply retroactively, one SER estimated that it would cost its business $504,000 for employees to open each account and review this information to ensure that chain of title was complete. This SER recommended that the Bureau either limit chain of title review to new or disputed accounts or only require the review at the portfolio level. A few law firm SERs also stated that chain of title review may not be necessary or applicable to law firms given that they did not receive debts in portfolios.

Several SERs said that they currently obtain a representation of accuracy from the creditor when they receive accounts; however, a few SERs said that they do not do so. Some also stated that a representation of accuracy should not be necessary where information is obtained directly from the creditor. One SER also noted that small businesses, like local contractors, plumbers, or medical offices, may not have written policies and procedures and may be unable to make the representations of accuracy contemplated in the Outline.

Finally, as a general matter, one debt buyer SER urged the Bureau to require that actual documents, rather than just information about the accounts, be provided any time debt was sold because it was often difficult to obtain certain information from creditors either because of the high cost or, in some instances, because creditors went out of business or lost information after the debt sale.

Claims of indebtedness following the appearance of a warning sign during the course of collection

In response to the proposal under consideration that collectors review for warning signs that arise in the course of collections, many SERs recommended that the Bureau provide a clear and specific list of warning signs, as compared with the non-exhaustive, illustrative list included in the proposal. In particular, several SERs expressed concern about increased litigation risk because consumers could sue collectors arguing that, although the collector checked the proposal under consideration's non-exhaustive list of warning signs, the collector failed to identify and check some other unspecified set of warning signs and, in some cases, conduct additional substantiation based on those alleged warning signs. To address this problem, a few SERs recommended that the Bureau consider identifying particular warning signs that could arise for each type of debt and that a proposal provide a safe harbor for those collectors who reviewed for the list of specific warning signs identified by the Bureau.

The SERs also expressed concern and sought greater clarity about the process required to review information related to warning signs and to resume collection. In particular, several SERs were concerned that if they discovered a portfolio-level warning sign, they could be required to cease collection on all accounts in the portfolio, even if the particular issue that gave rise to the warning sign related to only a subset of accounts.

A few SERs also stated that the requirement to review a "portfolio" for warning signs was not applicable in some cases. In particular, some SERs, notably law firms, stated that their clients do not assign them "portfolios" of debts, but rather send individual accounts on a rolling basis. One of these SERs stated that "portfolio" review should not be required for law firms, while another SER recommended that the Bureau adopt a different term, such as a review for a "pattern of disputes," and then specify a percentage of problematic accounts that would constitute a "pattern." Another SER stated that review of portfolios for warning signs should be eliminated where a collector obtains debts directly from the creditor.

Claims of indebtedness following a dispute

Several SERs stated that the Bureau's proposal to define a "dispute" provides helpful guidance. Further, many SERs noted that they already took additional steps to review accounts and information regardless of whether the consumer provided a timely, written dispute (as defined under the FDCPA) or disputed the account orally or after 30 days.

Many SERs, however, offered recommendations about the Bureau's dispute proposals. First, many SERs urged the Bureau to distinguish clearly between questions and disputes. SERs noted that consumers often have questions about the name of the creditor or an inquiry about the amount owed, and these questions should not constitute disputes that require them to cease activity on the account until the dispute is resolved. A few SERs also stated that there should be a mechanism for consumers to affirm that they owe the debt, and if a consumer makes that affirmation, it should establish a reasonable basis that allows collectors to resume collection. SERs also urged the Bureau to create proposals that would encourage consumers to provide more specific details about the reasons for their disputes. They noted that generic disputes often make it difficult for collectors to provide the type of information that is most useful to consumers.

Several SERs also recommended that the Bureau clarify what constitutes a "duplicative" dispute and explain with more specificity how collectors can reasonably identify and share information to identify these "duplicative" disputes. The SERs, for example, noted that unless the details of each dispute move from a first collector to a subsequent one, it may be difficult to identify whether a new dispute is duplicative of an earlier one. Further, as discussed in the information transfer section below, several SERs noted that it may be very challenging for collector and creditor systems to share this level of detail. One SER also recommended that debt owners should not be permitted to sell accounts where there was an unresolved dispute.

With respect to the list of information necessary to respond to disputes, several SERs noted an original agreement or original application may not be available for some debts, like certain credit card debts, that were originated decades ago. A few SERs also noted that an application or agreement document may not always exist, such as when the underlying transaction is conducted orally.

Several SERs also expressed a concern that the requirement to review extensive information for each account would lead to greater security and data privacy concerns and would likely mean increased insurance costs for collectors and law firms. A few SERs also expressed concerns that creditors often had different amounts of data and different computer systems, so it would be challenging to adopt a single approach to sharing information. These SERs noted the potential for substantial and ongoing costs to purchase and update technology that allowed them to obtain this information from creditors.

Several SERs also offered process-oriented suggestions. Many SERs urged the Bureau to permit or require collectors to provide an online dispute process so that consumers could file disputes online. A few law firm SERs also recommended limiting the "dispute" definition and related requirements to questions or challenges that arise prior to the filing of a lawsuit to collect on the debt. These SERs noted that, if disputes could be made after a lawsuit is filed, it could affect the court process, including by requiring collectors to cease the litigation process until a dispute is investigated.

Finally, SERs stated that the distinction drawn in the proposals between timely written disputes and other disputes (which reflects section 809 of the FDCPA) was not helpful to consumers. Some SERs noted that they currently treat both types of disputes similarly.

Claims of indebtedness made in complaints filed in litigation

Although law firm SERs generally stated that they could obtain and review many of the documents required in the proposals under consideration, the law firm SERs noted that to do so would require more staff time and increase the costs of litigation. A few law firm SERs also pointed out, as noted above, that they might not be able to review certain documentation, such as an original agreement or application, and that in their view such documentation was not generally necessary to establish the identity of the debtor or the amount owed.

A few SERs also stated that the litigation process was governed by state laws and that attorneys should be permitted to file cases consistent with those state laws. These SERs stated that, if the Bureau believed the litigation process was inadequate, the Bureau should work with states to change court requirements.

Proposal to require review and transfer of certain information

In general, many SERs stated that, while they may be able to transfer some of the information included in the proposals under consideration, a requirement to review and transfer all the information being considered would require them to develop new systems or include new data fields in their current systems. As a result, a few SERs noted that this requirement could add significant costs and potentially require a longer period of time to implement.

Several SERs noted operational challenges of recording, reviewing, and transferring certain information that was currently not captured in specific data fields. For example, some SERs noted that some information, like inconvenient times to call, was currently being included in a "notes" field, and that in order to transfer and use the information, they would need to upgrade systems to code this information or hire staff to read these notes. Some SERs also said that to comply with the proposals under consideration they would need to revise the processes they use to exchange data with their clients, noting that the need to make these revisions separately for each client would increase the cumulative costs of the proposal. Some SERs expressed concern that if clients found it too costly to update their systems to permit them to transfer and accept the information the clients would choose to collect the accounts themselves, reducing the SERs' revenue. For example, one SER noted that auto lenders may lack the systems necessary to transfer information, and this could result in those creditors choosing to bring debt collection in-house.

Some SERs provided estimates of the cost of system investments that would be required to comply with the proposal under consideration. Estimates of one-time costs ranged from $35,000 to $200,000, with two SERs stating that this included programming costs of $500 to $2,500 per client and 5-10 hours per client, respectively. One SER estimated ongoing costs of $22,500 per year to operate an upgraded database system and that as an alternative it would need to hire staff at a cost of $100,000 to manually review notes fields; another estimated ongoing programming costs of approximately $50,000 per year (although this SER suggested that these ongoing costs might fall as its clients adopt standard data formats). Other SERs stated that, until they better understood their creditor client's systems, it would be difficult to know with certainty the cost or viability of reviewing and transferring all of the information. One SER, while generally supporting the proposal in other respects, said that updating software to comply with the proposal could be prohibitively costly or otherwise infeasible for some debt collectors.

The SERs also urged that, if they were required to transfer this detailed information, the Bureau should allow information related to consumer consent to be transferred to subsequent collectors. Several SERs also stated that the effect of that consent should transfer. For example, one SER recommended that if a consumer consents to contact outside of presumptively permissible times or requests contact by a particular method (like text messaging) that consent (and its effect) should also transfer to a subsequent collector. Consistent with comments about the dispute process, SERs also stated that it was not useful to distinguish between written and oral disputes for purposes of transferring information.

While a few SERs were skeptical about this transfer of information, a few other debt buyer SERs stated that it would be very useful to require the transfer of information.

Requirement to forward certain information after returning or selling a debt

Only a few SERs specifically addressed requirements to transfer information after an account is returned or sold. One SER indicated that its clients currently require this information transfer, but that SER understood that not all debt collectors are able to do so. Another SER said this requirement would increase operational costs by requiring it to maintain information about closed accounts. Another SER expressed concern that creditors and collectors may no longer have information about the consumer; this could be particularly likely if a long period of time elapsed between the closing of the account and when the information is received. This SER recommended that the Bureau provide guidelines about what steps to take if the creditor or collector no longer has an active account or a record for the consumer. Another SER recommended that, rather than requiring this post-closing transfer of information, the Bureau should require that a notice be sent to the consumer that the account had been returned to the creditor so that the consumer did not continue sending information to the collector.

Validation Notice and Statement of Rights

In general, SERs stated that the Bureau's model validation notice likely would benefit them by reducing the current litigation risk that exists because of conflicting court opinions related to what language is permitted in the notice. Several SERs, however, stated that the Bureau should make clear that use of the model notice protects them from FDCPA liability because they were concerned that some of the language on the notice, like that related to requesting payment, could be deemed to violate the FDCPA.

With respect to the tear-off component of the model notice, several SERs stated that it was useful to provide an explicit opportunity for consumers to make payments, although at least one SER suggested that the payment option should be made more prominent. Many SERs stated that the dispute portion of the tear-off would likely increase the prevalence of disputes, which would add substantial, ongoing costs to their business. Several SERs also stated that the ability of collectors to use the tear-off for generic disputes would detriment collectors and consumers because, without an ability to identify the specific reason for the dispute, the collectors would be unable to provide the most useful, responsive information to the consumer. In addition to comments about the tear-off, several SERs also echoed the earlier comments about the Bureau's use of "default," stating that that term did not apply to all debts and the meaning was unclear.

A few SERs also expressed concern that there was not sufficient space on the model notice to account for certain state disclosures, which some states may require to appear on the front of the notice. A few SERs noted that, in order to include these state disclosures, they might be required to increase the validation notice to legal size, which would substantially increase mailing costs. One SER estimated the cost of sending a legal-size validation notice to be $0.63 per mailing, while another SER estimated that its printing cost would increase from less than $0.02 per form to $0.40 per form to produce validation notices that comply with the proposals under consideration. A few SERs recommended that to reduce the costs of mailing the notice, the Bureau should provide that the notice could be emailed.

- *Statement of Rights*

The SERs generally agreed that it would be useful for consumers to be aware of the rights provided in this document, although one SER stated that the Bureau should clarify that the list of rights was non-exclusive. The most significant recommendations for this document related to the method of sending it. Several SERs, for example, expressed concern about lawsuits claiming that the Statement of Rights had not been included in the mailing of the validation notice, and said that it might be necessary to staple the Statement of Rights to the validation notice to avoid such liability. Many SERs also urged the Bureau to allow collectors to email the notice and/or to provide a link to a CFPB web page that disclosed the rights. Some SERs indicated that it cost $0.02-$0.05 per page to add a page to a validation notice mailing. Finally, a few SERs stated that they should not be required to offer to re-send the document after 180 days.

- *Non-English language requirements*

Several SERs expressed skepticism about the benefits of non-English language disclosures. Some SERs stated, for example, that it could be confusing for consumers to receive a disclosure in a language other than English if the collector did not have any consumer representatives who spoke that language. During the panel meeting, several SERs also expressed concern that the translated notices would imply that the collector had representatives who could answer questions in the language used in the disclosure and, because this was not the case, the SERs were concerned about frustrating consumers. A few SERs also stated that they collected debts in areas where there were relatively few non-English speakers so the foreign language disclosures were unnecessary.

Of the SERs who commented on the non-English language alternative proposals, most emphasized that it was important, regardless of the option used, that the Bureau provide model language to prevent potential litigation. Only a few SERs expressed preferences for either of the options. These SERs indicated that they preferred that foreign language disclosures be required only when the debt collector initiates communication in the foreign language, arguing that requiring a Spanish-language translation with every mailing would be unnecessarily burdensome given that only a fraction of consumers they contact speak Spanish.

Credit Reporting

The Bureau is considering a proposal that would prohibit furnishing information about a debt to a credit reporting agency unless the collector has communicated directly about the debt with the consumer, which usually would occur by sending a validation notice. A few SERs requested that the Bureau clarify that they are only required to send a validation notice but do not need to ensure that the consumer receives the notice. These SERs noted the additional cost that would be incurred if they were required to send the notice by certified mail or otherwise ensure that it was received by the consumer. One SER indicated that, for about half of its accounts, it currently sends validation notices only after speaking with the consumer, and that if it were required to send validation notices to all consumers it would incur mailing costs of $0.63 per mailing for an estimated 400,000 accounts per year.

8.3 Other Consumer Understanding Initiatives

Litigation Disclosure

Many SERs who commented on the litigation disclosure were skeptical about its benefit, stating that there is little evidence to suggest that such disclosures change consumer understanding or reduce default judgments. Of the SERs who commented, the vast majority urged the Bureau to test the litigation disclosure for consumer understanding and to provide model language. SERs noted that litigation disclosures used in other states had erroneously led some consumers to believe that the collector could provide them with information about litigation. These SERs believed that the Bureau should not be recommending disclosures that it had not tested, particularly where there was some evidence of consumer confusion when similar disclosures were used.

Several SERs also expressed concern about facing private actions based on the FDCPA prohibition on misleading representations. These SERs noted the potential risk that could result from including a litigation disclosure and then subsequently deciding not to pursue a case (or deciding not to file based on a client's request).

In contrast to these criticisms, at least one SER was in favor of the notice and stated that it would provide consumers with a final opportunity to work out repayment of their debt.

Time-barred Debt and Obsolete Debt

Of the SERs who indicated that they collect time-barred debt, most stated that they did not sue on time-barred debts and that this aspect of the proposal under consideration was already standard practice in the industry. Some SERs, however, expressed concern about the proposed requirement to disclose time-barred debt status. The SERs stated that it was difficult to determine whether debt was time-barred, and collectors feared potential lawsuits if good faith determinations about time-barred debt status proved wrong. One SER also noted that consumers could incorrectly believe that a time-barred debt status eliminated their obligation to the pay the debt. This SER believed that the disclosure could generate confusion if the creditor later sought payment.

With respect to a proposal under consideration to prohibit collection of time-barred debt that can be revived under state law unless a collector waives the right to sue on the debt, one SER stated that this proposal could harm some consumers because it may discourage collectors from arranging long-term payment plans even prior to the expiration of the statute of limitations, because of a fear that the debt would become uncollectible if it later moves into a time-barred debt status in a revival state. This SER commented that the proposal could negatively affect some consumers by encouraging collectors to sue consumers before a debt moved into a time-barred debt status in these states.

Consumer acknowledgement before accepting payment on debt that is both time-barred and obsolete

In response to the proposal to require consumer acknowledgement before accepting payment on debt that is both time-barred and obsolete, a few SERs stated that this would result in an added hurdle for consumers who wanted to pay their debts. One SER stated that this requirement would significantly curtail the ability to collect time-barred and obsolete debts because few consumers would return the required acknowledgment, citing its experience that only about 27 percent of consumers returned written acknowledgements in another context. That SER estimated that it would cost $0.63 per account to send written acknowledgement requirements to consumers, which it estimated would imply an additional $211,603 in letter charges in the first year, including the cost of sending acknowledgements for accounts it owns in inventory. A few SERs recommended that the Bureau consider allowing for oral acknowledgment or make clear that the requirement only applied to accounts purchased or obtained prospectively.

8.4 Collector Communication Practices

Limited-content voicemail and other messages

The vast majority of SERs supported the Bureau's proposed language for permissible limited-content voicemail and other messages. A few SERs noted that they do not currently leave voicemail messages because of the litigation risk, and the ability to leave these limited messages would facilitate the consumer's ability to reach collectors and reduce the need for frequent calling. One SER estimated that the proposal would reduce its litigation costs by $8,000 per year. Another SER, although supportive of the proposal under consideration, requested that the Bureau test the message and provide a "safe harbor" for use of that message.

Another SER stated that the Bureau should also provide additional clarity around the use of email and text messaging because consumers prefer and are more likely to respond to communications through those methods. Another SER noted that it does not currently have an "800" number and that it could be costly to obtain one if that were necessary to take advantage of the proposal.

Restricting debt collection contact with consumers

The SERs generally agreed with the Bureau's goals of reducing abusive and harassing communications that might result from too many calls to consumers. However, several SERs expressed concern about the scope of the communication restrictions under consideration.

Several SERs said that applying the proposed communication limitations to all instances of communication would inhibit communications in ways that could harm collectors and consumers. SERs recommended the following types of contacts be expressly excluded from the cap: (1) contact initiated by the consumer; (2) contact that responds to a consumer request or a consumer question; (3) contact that is legally required; (4) contact with a consumer's attorney; (5) contact that is a written correspondence (*i.e.*, a letter); and (5) contact attempts that leave no "footprint" or when the consumer is otherwise unaware of the call attempt (*e.g.*, a phone call where the collector gets a busy signal). In addition, a few law firm SERs argued that a limit of one live contact per week was impractical in a number of litigation situations, including pre-dispute conferences, settlement negotiations, hearings, and post-judgment remedies. These SERs recommended that certain litigation-related communications should be excluded from proposed caps. One law firm SER said that currently it has hundreds of consumer contacts each week in some of the categories above that would exceed the proposed caps. One SER recommended clearly defining what is considered a "week" (*e.g.,* a work week, a calendar week, or a rolling week).

The SERs had different views on whether the overall contact frequency being considered would make it difficult to contact consumers. Some SERs said that the caps under consideration, particularly for the period prior to establishing confirmed consumer contact, were much lower than their own calling limits and argued that the caps would significantly increase the amount of time needed to reach consumers. One SER, which currently limits call attempts to six per day, estimated that, under the proposed cap of six attempts per week, its average time to reach consumers could increase from 66 days to 459 days. This SER and some others believed the caps under consideration would harm consumers and collectors alike by making it more difficult for consumers to have an opportunity to speak with collectors and/or to work out payment plans. Other SERs indicated that the contact caps under consideration would not impose a burden if some or all of the above exclusions were in place and/or if they were able to leave limited-content messages.

While many SERs suggested modifications to the contact cap, one SER stated the proposal was reasonable. This SER, however, recommended that the Bureau provide additional clarity that collectors could use other methods of communication, like email and text messaging. This SER noted that those methods of communication allow the consumer to respond at a time that is most convenient for the consumer and, as a result, greatly increase the likelihood that the consumer will contact the collector to resolve the debt. Other SERs similarly argued that the Bureau should clarify how collectors can use new technology in a way that is consistent with the FDCPA (*e.g.*, by explaining how to provide certain required disclosures in a text message). In addition, a few SERs noted that additional clarity was needed around how to determine the number of contacts associated with asynchronous communications or newer technologies, like web-based chats, where there might be a prolonged back-and-forth conversation.

General time, place, manner requirements

In response to questions during the Panel meeting about the categories of places where contact was presumptively inconvenient, the majority of SERs stated that it was uniform practice not to knowingly contact consumers at any of those places. For example, several SERs said that as soon as a consumer indicated that she was at a hospital they would stop attempting to collect the debt and then ask about a more convenient time.

Given that SERs already limited contact at these places, the SERs questioned the benefit of including a presumptive prohibition in a rule. They also expressed concerns about the costs that could be associated with doing so. For example, several SERs noted that they faced increased risk of litigation if they failed to incorporate procedures to determine when a consumer might be at one of these places. These SERs explained that this was particularly challenging given the prevalence of cell phones.

Other SERs stated that there were potential consumer harms associated with the presumptively inconvenient designation. For example, one SER noted that if a consumer indicated on a call that she was at a hospital, it was not clear whether or how the collector could obtain consent to continue the conversation. This SER pointed out that consumers likely would be frustrated if SERs simply ceased the call, but there was not a mechanism in the proposal for SERs to ask follow-up questions about a consumer's preferences in order to continue the communication.

A few SERs also were concerned that the proposal did not place any timeframe on the presumptively inconvenient contact, asserting that in effect, this could result in an inability to reach consumers who might be at one of these places, like a hospital, for a long period of time even if the consumer actually was at the place for only a few days. Several SERs recommended that the Bureau provide some clarity around when the collector could try again to reach a consumer.

Finally, a few SERs recommended that this restriction should not apply to asynchronous communications, like letters or emails, that they argued are unlikely to disturb the consumer. A few SERs noted that emails or letters to a consumer at one of these places would not inconvenience the consumer in the same way as a phone call given that consumers can choose whether and when to open email communications or letters.

Servicemember contact

Nearly all SERs stated that it is standard practice in the industry to scrub accounts using a Department of Defense list to identify any consumers who are active duty servicemembers. The SERs noted that this scrub is even more inclusive than would be required by the proposal because it identifies any active duty servicemember, rather than just those in hazardous duty stations. The majority of SERs that do this scrub stated that they cease communication with that servicemember, but some said that they would further consider whether the servicemember is on active duty based, for example, on where he or she is located.

8.5 Other Initiatives

Prohibition on the sale and transfer of debts to certain entities

Most SERs who commented on a prohibition of sale and transfer of debts to entities who pose greater risk of consumer harm stated that they supported the proposal. Several SERs noted that many creditors already engage in an extensive vetting process to prevent sale to the types of entities identified in the proposal. A few SERs recommended that the Bureau also consider a requirement that debt buyers should be certified by an association like the Debt Buyers Association because that certification could then provide a consistent standard.

Recordkeeping

Nearly all SERs stated that their current recordkeeping practices are already consistent with the three year recordkeeping requirement in the proposals. Some SERs, in fact, stated that they retain records for longer periods ranging from five to ten years.

A few SERs, however, stated that they retain certain information, like phone calls or notes, for a shorter period of time, like one year, and that storing additional data could be costly. One SER also noted that his business's call recordings are indexed only by time and date, and as a result, it is not equipped to identify which recordings relate to accounts for which there has been no communication for three years. This SER said that the recordkeeping proposal might mean that any recorded calls must be kept indefinitely, and that the firm might cease recording calls to eliminate high recordkeeping costs.

8.6 Cost of Credit

Several SERs said that the proposals under consideration could have an impact on the cost of credit for them and for their small business clients. Some SERs said that they use lines of credit in their business and that regulations that raise their costs or reduce their revenue could mean they are unable to meet covenants in their loan agreements, causing lenders to reduce access to capital or increase their borrowing costs. One SER said that access to credit is already challenging for debt collectors because some lenders choose not to lend to the debt collection sector, making it harder for debt collectors to find a willing lender. Some SERs also emphasized that they have many small business clients that rely on them to collect unpaid bills, and that these clients could be affected by regulations that reduce the effectiveness of collections or make it harder or more expensive to use debt collectors' services. Such clients might suffer reduced revenue because they would be able to collect less of their overdue receivables. Alternatively, clients that currently permit consumers to defer payment for goods or services might find themselves compelled to stop accepting deferred payments, which might reduce their sales. Either of these consequences could reduce the revenue of small businesses that currently use third-party debt collectors, which could make it more difficult for them to obtain loans.

9 Panel Findings and Recommendations

9.1 Number and Type of Entities Affected

For purposes of assessing the impacts of the proposals under consideration on small entities, "small entities" are defined in the RFA to include small businesses, small nonprofit organizations, and small government jurisdictions. A "small business" is defined by the SBA Office of Size Standards for all industries in the NAICS.

The proposals under consideration would apply to "debt collectors," as defined in the FDCPA. During the Small Business Review Panel process, the Bureau identified four categories of small entities that may be subject to the proposals under consideration: collection agencies; debt buyers; collections law firms; and small entity loan servicers that acquire accounts in "default," which may be commercial banks, savings institutions, credit unions, or nondepository loan servicers. For each of these categories, the table below identifies the small entity threshold as determined by the SBA Office of Size Standards and the Bureau's current estimate of the number of debt collectors and small entity debt collectors within each of these categories.

Table 9.1.1

Category	NAICS	Small Entity Threshold	Estimated total number of debt collectors within category	Estimated number of small entity debt collectors
Collection agencies	561440	$15.0 million (receipts)	9,000	8,800
Debt buyers	522298	$38.5 million (receipts)	330	300
Collection law firms	541110	$11.0 million (receipts)	1,000	950
Loan servicers	522390 (non-depositories) 522110, 522120, and 522130 (depositories)	$20.5 million (receipts) for non-depositories $550 million (assets) for depositories	700	200

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."[13] In 2012, according to the Census Bureau, there were approximately 4,000 collection agencies with paid employees in the United States. Of these, the Bureau estimates that 3,800 collection agencies have $15.0 million or less in annual receipts and are therefore small entities.[14] 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.[15] Many debt buyers—particularly those that are small entities—also collect debt on behalf of other debt owners.[16]

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.[17]

Loan servicers. Loan servicers would be covered by the proposals under consideration if they acquire servicing of loans already in default.[18] 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.[19]

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[13] 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.

[14] 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.

[15] 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.

[16] 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).

[17] 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.

[18] 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.

[19] 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.

9.2 Related Federal Rules

As noted in section 2.3 above, several other federal rules address debt collection, including the Bureau's mortgage servicing rules and the FCRA. Further, other federal laws and regulations (*e.g.*, the SCRA and the TCPA) include protections that would apply to debt collection activities. As is discussed above, the Bureau intends to continue working with other federal agencies to the extent that potential debt collection rules overlap with existing regulations.

9.3 Compliance Burden and Potential Alternatives

Generally, as described in section 8 above, the SERs expressed concerns and offered suggestions related to the Bureau's proposals under consideration related to information integrity, consumer understanding, and communication. In the sections below, the Panel provides recommendations related to these SER comments.

In addition to the SER concerns about the substance of the proposals, the SERs more generally stated that because they receive debts from upstream parties, particularly creditors, the impacts on their business were dependent in part on whether these creditors possess the necessary information. The SERs urged the Bureau to provide them with an opportunity to provide input on a second future SBREFA process, which will include DFA-covered entities, like creditors, who engage in debt collection.

On this point and consistent with the Bureau's comments at the SBREFA Panel meeting, the Panel understands that the Bureau is committed to offering the SERs who participated in this panel with a meaningful opportunity to provide feedback related to proposals under consideration for collectors covered by the DFA, including many first-party creditors. In order to provide third-party SERs with the information that will be most useful to them, the Panel understands that the Bureau will first develop the relevant proposals, determine the scope of their coverage, and release a SBREFA outline describing the proposals under consideration. The Panel then recommends that the Bureau determine an efficient and effective way to gather additional feedback from these SERs.

9.3.1 Information Integrity and Related Concerns

Initial Claims of Indebtedness

In general, the SERs expressed concern that several pieces of information on the list of fundamental information, such as date of default, phone number, and chain of title, could be difficult to determine and obtain or were not applicable to some types of debt. Similarly, a number of SERs expressed concern regarding the cost and time burden associated with obtaining and reviewing an itemized list of interest, charges, and fees imposed after the date of default. Several SERs also expressed concern that, while the Outline provides for the possibility of establishing a reasonable basis using an alternate set of information, doing so could lead to increased litigation risk.

The Panel recommends that the Bureau continue to consider the list of fundamental information, including whether modifications should be made for some types of debt where information is not applicable or where the creditor does not have the information. The Panel also recommends that the Bureau continue to consider less costly alternatives to satisfy any proposed information integrity requirements.

Claims of indebtedness following the appearance of a warning sign during the course of collection

In response to the proposal under consideration that collectors review accounts for warning signs that arise in the course of collections, many SERs recommended that the Bureau provide a clear and specific list of warning signs, rather than an illustrative list of examples, and requested that review of that specific list should provide a "safe harbor." The SERs also expressed concern and sought greater clarity about the process required to review information related to warning signs and to resume collection. In particular, several SERs were concerned that if they discovered a portfolio-level warning sign, they could be required to cease collection on all accounts in the portfolio, even if the particular issue that gave rise to the warning sign related to only a subset of accounts. A few SERs also stated that the requirement to review a "portfolio" for warning signs was not applicable in some cases. In particular, some SERs, notably law firms, stated that their clients do not assign them "portfolios" of debts, but rather send individual accounts on a rolling basis.

Should the Bureau include this requirement in a proposal, the Panel recommends that the Bureau consider whether it should provide a specific, exclusive list of warning signs and consider whether it should develop warning signs for particular categories of debt (*e.g.*, credit card or medical debts). In addition, the Panel recommends the Bureau consider whether it should provide additional guidance about the process to resolve warning signs and resume collection.

Claims of indebtedness following a dispute

Many SERs urged the Bureau to distinguish clearly between questions and disputes. SERs noted that consumers often have questions about the name of the creditor or an inquiry about the amount owed, and these questions should not constitute disputes that require them to cease collection activity on the account until the dispute is resolved. SERs also urged the Bureau to create proposals that would encourage consumers to provide more specific details about the reasons for their disputes. Several SERs recommended that the Bureau clarify what constitutes a "duplicative" dispute and explain with more specificity how collectors can reasonably identify and share information with other collectors to identify these "duplicative" disputes. Many SERs urged the Bureau to permit or require collectors to provide an online dispute process so that consumers could file disputes online.

Should the Bureau include this requirement in a proposal, the Panel recommends that the Bureau consider whether there are ways in which a proposed rule could permit or facilitate a web-based dispute process, including seeking comment as to whether any collectors currently use such a process. The Panel also recommends that the Bureau continue to consider whether additional clarification is needed to distinguish between questions or inquiries versus disputes.

Claims of indebtedness made in complaints filed in litigation

Although law firm SERs generally stated that they could obtain and review many of the documents required in the proposals under consideration, the law firm SERs noted that to do so would require more staff time and increase the costs of litigation. A few law firm SERs also pointed out, as noted above, that they might not be able to review certain documentation, such as an original agreement or application, and that in their view such documentation was not generally necessary to establish the identity of the debtor or the amount owed. A few SERs also stated that the litigation process was governed by state laws and that attorneys should be permitted to file cases consistent with those state laws.

The Panel recognizes that the Bureau will continue to engage with state governments, including state attorneys general, about its debt collection proposals. The Panel also recommends that the Bureau consider whether additional clarity is needed as to any potential overlaps between the Bureau's proposals and state laws.

Proposal to require review and transfer of certain information

In general, many SERs stated that, while they may be able to transfer some of the information included in the proposals under consideration, a requirement to review and transfer all the information being considered would require them to develop new systems or include new data fields in their current systems. Some SERs also said that to comply with the proposals under consideration they would need to revise the processes they use to exchange data with their clients, noting that the need to make these revisions separately for each client would increase the cumulative costs of the proposal. The SERs also noted that, if they were required to transfer this detailed information, the Bureau should allow information related to consumer consent to be transferred to subsequent collectors.

Should this requirement be included in a proposal, the Panel recommends that the Bureau seek comment as to whether any data fields related to the transfer of information are likely to be particularly burdensome or costly. Should this requirement be included in a proposal, the Panel further recommends that the Bureau seek comment more generally as to the initial and ongoing costs and benefits associated with the review and transfer of information, and specifically seek comment as to the costs and benefits associated with the transfer of consumer preferences and consent (regarding, for example, preferred method of communication), permissible contact times that may otherwise be deemed inconvenient, and other relevant circumstances in which consumer consent or preferences are documented). Should this requirement be included in a proposal, the Panel further recommends that the Bureau seek comment as to whether some creditors or collectors face particular difficulties in transferring information about certain debts (*e.g.*, medical debts) because of privacy or security concerns, and if so, whether modifications could be made to reduce burden or cost with respect to these types of debt.

Validation Notice and Statement of Rights

While several SERs stated that a model validation notice would reduce litigation risk, many SERs expressed concern about the tear-off component of the model notice. These SERs stated that the dispute portion of the tear-off would likely increase the frequency of disputes, which would add substantial, ongoing costs to their business. A few SERs also expressed concern that there was not sufficient space on the model notice to account for certain state disclosures. According to these SERs, it would be necessary to increase the validation notice to legal size, which would substantially increase mailing costs.

With respect to the Statement of Rights document, several SERs recommended that the Bureau clarify a collector's obligation to prove that the document had been sent to consumers. Several SERs also recommended that the Bureau permit debt collectors to provide consumers with a weblink and information about the disclosure, rather than requiring that they mail a separate disclosure document.

The Panel understands that the Bureau is continuing to test aspects of the validation notice and tear-off and may further refine it. The Panel recommends that the Bureau continue this analysis of the notice and tear-off, including considering whether there may be ways to solicit more specific dispute information, including considering changes to the tear-off, as well as considering permitting a web-based dispute process.

The Panel recommends that the Bureau continue to consider state law disclosures, in particular to determine whether there are any specific burdens or costs imposed because of overlap or conflicts between the Bureau's model validation notice and the states' disclosures. The Panel further recommends that the Bureau continue to consider whether clarifications may be necessary in the event that federal disclosures overlap with state law requirements.

Should the Statement of Rights be included in a proposal, the Panel further recommends that the Bureau consider clarifying whether SERs are required to prove that consumers have received it. Finally, the Panel recommends that the Bureau further consider whether alternative electronic or web-based mechanisms could be used to provide consumer with either the Statement of Rights or the tear-off portion of the validation notice.

- *Non-English Language Requirements for Validation Notice and Statement of Rights*

Of the SERs who commented on the non-English language alternative proposals, most emphasized that it was important, regardless of the option used, that the Bureau provide model language to prevent potential litigation. Only a few SERs expressed preferences, and these SERs indicated that they preferred that foreign language disclosures be required only when the debt collector initiates communication in the foreign language.

Given SER comments about the importance of a model notice, the Panel recommends that the Bureau clarify that, if it includes a non-English language requirement, it will provide translated model notices online and, consistent with the above, available by weblink.

Credit reporting

The Bureau is considering a proposal that would prohibit furnishing information about a debt to a credit reporting agency unless the collector has communicated directly about the debt with the consumer, which usually would occur by sending a validation notice. A few SERs requested that the Bureau clarify that they are only required to send a validation notice and do not need to ensure that the consumer receives the notice.

The Panel recommends that, should this requirement be included in the proposal, the Bureau consider whether to clarify the type of communication that is sufficient to satisfy the requirement, including clarifying that collectors do not need to ensure that the consumer receives a validation notice (*e.g.*, by sending it via certified mail).

9.3.2 Other consumer understanding initiatives

Litigation Disclosure

Many SERs who commented on the litigation disclosure were skeptical about its benefit, stating that there was little evidence to suggest that such disclosures changed consumer understanding or reduced default judgments, and some noted that providing such a disclosure could constitute legal advice. Of the SERs who commented, the vast majority urged the Bureau to test the litigation disclosure for consumer understanding and takeaway, to provide model language, and to clarify that providing the disclosure does not constitute legal advice.

The Panel recommends that the Bureau continue to consider the costs and benefits of this notice. The Panel also recommends that, should this notice be included in a proposal, the Bureau should consider providing model language and consider testing that model language.

Should the disclosure be included in a proposal, the Panel further recommends that the Bureau consider whether it should provide guidance to address circumstances in which a debt collector provides this notice and later decides it is not appropriate to sue (*e.g.*, if a consumer's circumstances change or the owner of the debt instructs the collector not to sue). Should the disclosure be included in a proposal, the panel further recommends that the CFPB consider whether to provide guidance to clarify that providing this disclosure does not obligate a collector to answer a consumer's questions about the content of the notice or the legal process.

Time-barred debt and Obsolete debt

Of the SERs who indicated that they collect time-barred debt, most stated that they did not sue on time-barred debts and that this aspect of the proposal under consideration was already standard practice in the industry. Some SERs, however, expressed concern about the proposed requirement to disclose time-barred debt status. The SERs stated that it can be difficult to determine whether debt is time-barred, and collectors feared potential lawsuits if good faith determinations about time-barred debt status proved incorrect.

The Panel understands that the Bureau continues to test these disclosures. The Panel recommends that the Bureau continue to consider consumer understanding of the notices.

Consumer acknowledgement before accepting payment on debt that is both time-barred and obsolete

A few SERs stated that a consumer acknowledgement requirement would result in an added hurdle for consumers who wanted to pay their debts. Several SERs recommended that the Bureau consider allowing for oral acknowledgment and make clear that the requirement would apply only to accounts purchased or obtained prospectively.

Should this requirement be included in a proposal, the Panel recommends that the Bureau seek comment as to the likely costs and benefits of the disclosure and how those costs and benefits differ if debt collectors are permitted to obtain consumer acknowledgement on a website or orally. Should this requirement be included in a proposal, the Panel also recommends that the Bureau seek comment on whether debt collectors have experience with other regulations that require consumer acknowledgement and to seek comment on the costs and benefits of those analogous regulations.

9.3.3 Collector communication practices

Limited-content voicemail and other messages

The vast majority of SERs supported the Bureau's proposed language for permissible limited-content voicemail and other messages. One SER requested that the Bureau test the message and provide a "safe harbor" for use of that message. Another SER stated that the Bureau should also provide additional clarity around the use of email and text messaging because consumers prefer and are more likely to respond to communications through those methods. Another SER noted that it could be costly to obtain an "800" number if that were necessary to take advantage of the proposal.

Should the Bureau include a provision on limited-content voicemail or other messaging in a proposal, the Panel recommends that the Bureau seek comment on the costs and benefits of permitting 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. Should the Bureau include a provision on limited-content voicemail or other messaging in a proposal, the Panel further recommends that the Bureau seek comment on the costs and benefits of requiring collectors to provide a toll-free method for the consumer to reach the collector.

Restricting debt collection contact with consumers

Several SERs said that the Bureau's proposals under consideration related to contact caps would inhibit communications between collectors and consumers and extend the time necessary to reach consumers. SERs recommended the following types of contacts be excluded from the cap: (1) contact initiated by the consumer; (2) contact that responds to a consumer request or a consumer question; (3) contact that is legally required; (4) contact with a consumer's attorney; (5) contact that is a written correspondence (*i.e.,* a letter); and (6) contact attempts that leave no “footprint” or when the consumer is otherwise unaware of the call attempt (*e.g.*, a busy signal or wrong number). In addition, a few law firm SERs stated that a limit of one live contact per week was impractical in a number of litigation situations, including pre-dispute conferences, settlement negotiations, hearings, and post-judgment remedies.

Should this be included as a proposal, the Panel recommends that the Bureau consider whether it should provide any exceptions to the cap (*e.g.*, consumer-initiated contact) and whether the contact caps should apply equally to all communication channels (*e.g.*, telephone, mail, email, text messages, and other newer technologies). The Panel also recommends that the Bureau consider whether any modifications to the proposal are appropriate for communication that occurs after a law firm files a complaint.

General time, place, manner requirements

In general, the SERs questioned the benefit of including a presumptive prohibition on contact at the four categories of places listed in the Outline, noting that they already avoid contacting consumers at these places if they know a consumer is at one of these places. SERs also stated that there were potential consumer harms associated with the presumptively inconvenient designation. For example, one SER noted that if a consumer indicated on a call that she was at a hospital, it was not clear whether or how the collector could obtain consent to continue the conversation if the consumer expressed an interest in doing so. A few SERs also were concerned that the proposal did not place any timeframe on the presumptively inconvenient contact, and in effect, this could result in an inability to reach consumers who might be at one of these places, like a hospital, for a long period of time. Finally, a few SERs recommended that this restriction should not apply to asynchronous communications, like letters or emails, that they stated are unlikely to disturb the consumer.

Should places be designated as presumptively inconvenient, the Panel recommends that the Bureau seek comment as to whether and how a collector may be able to obtain consent to continue a conversation with a consumer who indicates that she is located at one of these places. The Panel also recommends that the Bureau consider whether it should provide guidance on the timeframe of the presumptive prohibition. Should places be designated as presumptively inconvenient, the Panel also recommends that the Bureau seek comment as to whether the presumption should apply to asynchronous communication, like letters and emails.

9.3.4 Other initiatives

Recordkeeping

Nearly all SERs stated that their current recordkeeping practices are already consistent with the three year recordkeeping requirement in the proposals under consideration. Some SERs, in fact, stated that they retain records for longer periods ranging from five to ten years. A few SERs, however, stated that they retain some information, like phone calls or notes, for a shorter period of time, like one year, and that storing additional data could be costly.

Should this recordkeeping requirement be included in a proposal, the Panel recommends that the Bureau seek more information to estimate the costs of record retention and seek comment as to whether the retention of some records (*e.g.*, phone calls) pose particularly high costs for any collectors.

9.3.5 Additional Approaches to Regulation

Newer technology

Many SERs encouraged the Bureau to provide clarity as to whether and how newer forms of communication, like emails and texts, could be used. The SERs noted that such clarity would benefit consumers and collectors given that these methods were often preferred by consumers.

The Panel recommends that the Bureau consider whether it should facilitate email, text, and similar communication methods where it would benefit consumers.

Differences in types of debt and entities

SERs recommended that the proposals under consideration, particularly those related to information flow and substantiation, be tailored to recognize differences between types of debt and entities.

The Panel recommends that the Bureau consider whether it should tailor proposals, where feasible, to account for differences between types of debt and entities, including available data for different types of debt.

Specificity in terms and prospective application for rules

SERs also requested clarity in the use of any definitions that were critical to understanding the proposals and where ambiguity in the definition of terms could increase litigation risk (*e.g.*, "default" and "portfolio"). The SERs also expressed concern about the potential burden if various proposals were to apply retroactively.

The Panel recommends that the Bureau consider whether it should provide guidance or definitions for certain terms, like "default" or "portfolio," particularly where such terms are important for compliance with the proposals. The Panel also recommends that the Bureau seek comment on the time necessary to implement proposals. The Panel further recommends that the Bureau carefully consider how rules might apply to accounts in collections prior to the rules' effective date.

The Panel further recommends that the Bureau consider the amount of time that small entities may need to comply with any provisions in a future rulemaking, particularly those that require substantial capital investments or fundamental changes to technology or the hiring and training of staff.

9.3.6 Cost of Credit for Small Entities

Several SERs said that the proposals under consideration could have an impact on the cost of credit for them and for their small business clients. Some SERs said that they use lines of credit in their business and that regulations that raise their costs or reduce their revenue could mean they are unable to meet covenants in their loan agreements, causing lenders to reduce access to capital or increase their borrowing costs.

The Panel recommends that the Bureau continue to solicit input, particularly from small business debt collectors and small business creditors that use third party debt collectors, about the costs of the proposal. In particular, the Panel recommends that the Bureau continue to consider whether and how the proposals, if adopted, would impact the cost of credit for small businesses across various segments of the market.

Appendix A

Final Report of the Small Business Review Panel for the Debt Collector and Debt Buyer Rulemaking

Written Comments Submitted by Small Entity Representatives

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9/8/2016

Mr. Dan Sokolov
Deputy Associate Director
Division of Research, Markets, & Regulations
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, D.C. 20552

Re: Small Business Review Panel for Debt Collector and Debt Buyer Rulemaking

Dear Mr. Sokolov and the Small Business Advisory Review Panel Members,

Thank you for allowing me, on behalf of Credit-adjustments, Inc., to be a part of the Small Business Review for Debt Collector and Debt Buyer Rulemaking (SBREFA). I wanted to take a moment to share with you that Credit Adjustments is a third party debt collection, faith based, HUBZone, small business that is proactive in community service. We opened our doors in 1977 with a mere 6 employees. We've evolved and grown to employ more than 150 people today. Headquartered in Defiance, Ohio, CAI primarily services clients in the medical and education fields. We are proud to not only be a small business ourselves, but also of the fact that we help other small businesses. By providing services which help the other businesses recover assets from delinquent accounts, we enable them to survive and expand. We continue to strive, daily, to discover and then implement new ways to deliver a superior service.

Initial Thoughts

The delegation, making up the SBREFA panel, included the traditional debt collection agencies, debt buyers and attorney collection firms. Even though the members represented three businesses which are unique, we all fall under the "3rd party debt collector" title. However, sharing the title doesn't ensure that we all follow the same rules. Depending on the type of debt being serviced, the requirements may be different for each business. It is apparent that the concerns, presented in the SBREFA document, were only focused on the issues regarding a single industry type.

CAI would ask that as the CFPB moves forward with the rule making process, that they please consider the different types of collection fields and debt; creating varied rulemaking based on type of collection industry and clients. Enacting just one overarching set of rules to blanket the "3rd party debt collector" title, would decrease our ability to service the client and consumer in an efficient and reasonable manner. CAI is dedicated to delivering the highest quality of collection efforts to all parties involved, and by having a specific set of mandates, customized for the unique collection business classifications, would help ensure we could continue doing just that.

In principle, we agree with what is believed to be the CFPB's intentions to continue refining the collection industry standards. However, we do feel the steps outlined in the SBREFA document could create unintentional financial burden on small business entities. Many of the document's key points are contingent upon our clients being able to provide and track the information. Without these businesses present to discuss the specific items, the process in serious doubt. The resources needed to accommodate these recommendations cannot be known without their direct input.

Information Integrity and Related Concerns

CAI understands the CFPB's desire to ensure proper substantiation is in place of all debts placed for collection. The term "reasonable support" is used to describe data and actions the debt collector need to do. We request that the term "reasonable "be clearly defined so that it does not encourage frivolous law suits from predatory attorneys. The term "Warning Signs" are used to describe indicators that should alert an agency to potential problems with accounts that the clients are placing. We propose that these "Warning Signs" be clearly defined and a safe harbor be established for company's who follow the warning sign process to prevent predatory attorneys from bringing lawsuits. An unscrupulous attorney could suggest an ulterior "Warning Sign" not identified by the agency nor the CFPB. Another concerning term used is, "Adequate". We would also like a clear definition for that term, to ensure the expressed expectations are achieved by the collection fields. Agencies are trying to comply with a plethora of industry regulations already, and we would like to avoid any unnecessary pitfalls created by this type of oversight, as it relates to definitions.

There are definitive situations where a dispute needs to be accounted for, however, the direction, given by the document, leaves a lot of room for interpretation. As previously stated, we recommend for all areas of interpretation to be removed and specific guidance be given to ensure the consumer is serviced properly. The recommendation for the dispute identification on the initial letter is confusing and cumbersome for the least sophisticated consumer. If the consumer simply checks a box on the form, it will not necessarily help their situation but rather provide further complexities to the process that they will not be aware of or understand. We recommend that there be a notification directing the consumer to the agency's website where they can provide the nature of the dispute and additional information so the agency and client can help resolve the dispute for the consumer.

The proposed changes to the validation statement can prove to be a significant expense for most agencies. The additional disclosures and bill of rights will more than double the existing, ongoing expenses which does not even include the cost of the setup of the process. The ability to use Email in communicating with the consumer would offset some of these expenditures. Provided the consumer has an available email address, communication, in this manner, would ease the burdens placed upon both the consumer and agencies that regular mail creates, as it relates to: time, cost, lost documents and convenience. IF we could move these discourses to either an electronic email or direct the consumer via the hard copy letter, to the agencies website to see the different disclosures or bill of rights, it would be a more efficient process for the consumer. Also, as changes are made to the disclosures, it can be changed in real time, rather than having all the letters rewritten.

Collector Communication Practices

In the present time, communication takes place in many different forms as compared to when the FDCPA was written. As was seen at the SBREFA conference, by all the government members in attendance, the first thing the panel members looked at on break was their cell phone for missed calls, messages and text messages. In many cases the preferred manner of communication is electronic means: text message, email or cell phone call. When a consumer is asked to contact information, those are the preferred, and often times, only method the consumers wish to provide and have the agencies use. We propose that the CFPB provides clear direction on the use of Email, text messaging and cell phones, especially when the consumer requests such contact.

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The document outlines a ridged attempt to control the frequency of communication, that we feel is not in the best interest of the consumer. We currently limit our call attempts to six per day but in common practice, rarely make more than 3 calls to any given number, in a day. We make these 3 calls to try to contact a consumer in the morning, afternoon or evening, if we have not left a message. In present times, MANY consumers no longer work 8-5 jobs. If the CFPB instituted this rigid policy, it would not allow the agencies an appropriate time frame based on the consumers' schedules. Limiting attempts, to their home, only 1 day per week (if they were trying to make a call at various times of the day) would delay the consumer from being notified of their outstanding obligation and thereby delay a resolution. Additionally, the CFPB has identified letters as "communication" to the consumer and counts a letter against the "contact cap". The issue with this is, the fact that it is impossible to know when the consumer has received, then opened and finally, actually read the letter. Not to mention, many letters are required by law which then is an automatic "communication" to the consumer, limiting the agencies' ability to service the consumer.

We would recommend that the CFPB restrict the number of calls to 3 attempts per day, per number of accounts that we have not had consumer contact with, and 2 attempts per day on accounts that we have had contact on- if the situation has changed since the last conversation. Excluded from this count; calls from the consumer, calls that the consumer asks us to make, any written correspondence and any call attempt that did not ring the consumers phone. In addition, we recommend that it be clearly defined to allow for Email and text messaging as a form of communication to consumers.

Key Points

- Provide clear definitions and guidance eliminating ambiguity and confusion
- Provide clear guidance on what is or is not acceptable for communicating with consumers-
    - Telephone Calls
    - Email
    - Text messaging
- Provide "Safe Harbors", if the proposed rules are instituted but there is unforeseen ambiguity that was not anticipated by the CFPB.

Thank you, again, for this opportunity to give our input and we look forward to seeing your final edition of the proposed rule changes. Please, let us know if we can help with any additional insight.

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DELTA OUTSOURCE GROUP

September 9, 2016

Via e-mail: lauren.weldon@cfpb.gov

Small Business Advisory Review Panel Members
c/o Consumer Financial Protection Bureau
1700 G Street N.W.
Washington, D.C. 20552-0003

Re: *Small Business Review Panel for Debt Collector and Debt Buyer Rulemaking*

I would first like to thank you for allowing Delta Outsource Group, Inc. to participate as a small entity representative (SER) for the Consumer Financial Protection Bureau's SBREFA Panel for debt collectors and debt buyers. Founded in 2009, Delta Outsource Group, Inc. is a nationwide provider of collection and receivable management programs. We offer a diverse selection of call center solutions from first party, early stage collections to third party, post charge off recovery programs. Delta Outsource Group, Inc. employs a highly experienced and motivated workforce that utilizes state of the art technology and strategies.

Since the inception of the Consumer Financial Protection Bureau, no other industry has been under such scrutiny as debt collection. The data in which at least 1 in 4 consumers have an account in collections is what brings forth that scrutiny, not the unjust actions of a few bad apples. In addition to the scrutiny of the CFPB, debt collectors have also been subject to Operation Chokepoint over the last several years as well, hindering the ability of small debt collectors to access payment processing and lines of credit needed to operate. Many in our industry, including ourselves have been told by numerous financial institutions that they will "not bank debt collectors" because of Operation Chokepoint. This is an important note because as the burden and cost of compliance continues to rise with new CFPB regulations, access to payment processing and credit for debt collectors will become even more problematic than it is today.

As it relates specifically to the Outline of Proposals, it is important to understand and follow where the data leads which is what ultimately drives the action(s) of the Consumer Financial Protection Bureau. The data from the CFPB complaint portal clearly shows that a very minimal amount of complaints are generated by small debt collectors and therefore small debt collectors should be excluded from these proposed rules. We strongly believe that the CFPB SBREFA Small Business Review Panel was flawed and unfulfilling because creditors were not included at the table and the vast majority of the proposals were dependent upon their initiation, implementation, and execution.

We also want to go on record that we feel the CFPB SBREFA Debt Collection process was unfair due to SER's having only twenty eight days to respond to the Outline of Proposals that the CFPB has been working on for four years. Then less than two weeks before the in-person meeting we were provided an additional seventeen pages of questions as well. With those aforementioned facts in mind, we do not believe that is a "material" compliance with the SBREFA process. The Outline of Proposals also failed to address other permissible modes of communications to better address consumer communication preferences and these rules would be the perfect opportunity to clarify such means.

III. Information Integrity and Related Concerns

(A.1.) Proposals under consideration to prohibit unsubstantiated claims of indebtedness

We do not agree that data integrity is a major concern in the debt collection process. Creditors indeed generate much of the underlying information in the debt collection system and from our experience much of that information is conveyed to us a third party debt collector. In our experience, if there is information that is not conveyed for one reason or another we have found creditors to be more than willing to produce the requested information in a complete and timely manner.

Because there are many different types of debts that are sent to debt collectors, we strongly feel it is imperative for the Bureau to be considerate of that fact and not mandate a "one-size fits all" requirement for the debt collector to possess reasonable support for making collection attempts. Any such mandate would dramatically impact all debt collectors, especially small debt collectors who may collect on behalf of creditors who would not be able to produce a standard set of data points that isn't applicable to the debt in question.

We presently review and look for "warning signs" when onboarding new clients and continually upon placements. Any issues are immediately addressed and corrected with our partners. As it relates specifically to Appendix C we ask for flexibility based on the type of debt in question. For example:

- While most accounts have a last known address and/or last known phone number there are some that may not. In instances where a consumer doesn't have a phone provided to the creditor at the time of transaction, based on this proposal the debt would not be able to be collected upon.
- Not all debts are assigned an official "account number" and therefore should have consideration as such.
- The date of default is a very slippery slope based on current industry usage and highly debated. The term default needs to be clearly defined or flexible for various types of debts.
- "Each charge…" as it relates to interest or fees imposed, we would ask that a summary of each charge be sufficient and clarified.

We strongly encourage the Bureau to clearly define what constitutes a "dispute." One of the more litigated complaints against debt collectors relates to "disputes" and that is because it is not clearly defined and there is also contradiction within the federal and state courts. The Bureau has set out to the clarify many uncertainties or multi-translated interpretations by various courts and we feel the proposal relating specifically to disputes opens it up to be even more broad and ambiguous which will certainly lead to an increase in unnecessary lawsuits filed against debt collectors.

The proposed requirement for subsequent collectors to reasonably support claims of indebtedness before resuming collection activity is an unreasonable request for debt collectors without the requirement being put forth on creditors to provide that information from debt collectors to subsequent debt collectors and therefore should not be considered a reasonable proposal at this point in the process.

Financial Impact: > $100,000. This proposal is difficult to truly quantify just how much it will cost. We will certainly need to add several full time employees, custom programming for warning signs initially and ongoing, and the broadening of the term “dispute” will open up even more frivolous litigation by consumer attorneys which costs could easily put a company out of business either settling or defending these unnecessary lawsuits that can be easily avoided by the Bureau defining “dispute.”

(A.6.) Claims of indebtedness made in complaints filed in litigation

In the proposals, the Bureau believes that consumers face a higher risk of harm during litigation than during other points in the collection process. It should be dully noted that numerous proposals contained with the entire Outline of Proposals are going to significantly increase lawsuits filed against consumers mainly driven due to the inability of debt collectors to contact the consumer based on the rules becoming more restrictive.

As it relates to the Bureau’s belief that a higher level of support is needed to make claims in litigation than in most initial collection activity, we feel this is an issue the Bureau should address with the Federal and State court system. Debt collectors, creditors, and their attorneys must provide substantiation of each debt that is filed in court in which a judgment is sought against a consumer. If the Bureau feels there is not enough information being presented, then the Bureau seems to have an issue with the judicial review process and not necessarily an issue with more information being possessed.

(B.1.) Proposal to require collectors to review and transfer certain information

The proposed requirement for subsequent collectors who do not receive updated or new information resulting from prior collection activity, without the requirement being put forth on creditors to provide that information from debt collectors to subsequent debt collectors should not be considered a reasonable proposal at this point in the process. At which time the Bureau determines to require the creditor to furnish this information then it should be reconsidered from the debt collector’s perspective.

Financial Impact: Initial programming is estimated to cost around $25,000 for our host system. Each interface would then have to be adjusted which would range from $500 to $2,500 per interface. In addition to the $25,000 initial setup cost, to get caught up with each interface would range from $37,500 to $100,000.

The other consideration that must be taken into account is the creditor’s business decision to stop placing accounts with external collection agencies or with post-primary collection partners if the costs of transferring of information becomes too expensive and/or burdensome. This proposal could also easily cut agency revenue’s in half or put them out of business as well.

(B.2.) Requirement to transfer and review certain information

We currently have numerous partners that have this requirement implemented and we do not have an issue with returning specified information regarding collection activity to our partners. We do understand however that not all debt collectors have this ability or are able to do such within reasonable costs.

(C) Validation notice and statement of rights

(C.1) Validation notice

Due the validation notice being a heavily litigated complaint with conflicting court rulings across the states we are in favor of the Bureau issuing a model notice. With that said, we are not in favor of the current model notice in Appendix F and we ask that the Bureau seek guidance from debt collectors in regards to the content and structure of the notice as well. We agree that allowing for debt collectors to include more information and data to the consumer would be mutually beneficial. The content requirements, especially the “tear-off” is problematic for several reasons.

(C.2) Content Requirements

First, it reduces letter content usage of at least 30% and debt collectors already struggle today to incorporate all of the required federal and state disclosures that must be on the front of the letter. Secondly, the “tear-off” is very leading for consumers to dispute the debt and cease communication which does not benefit the consumer. Less than 1% of the accounts placed in our office are disputed and the vast majority of disputes come from non-consumer related entities such as credit repair and debt settlement companies. If the Bureau reduces the ability even further to communicate with consumers, then litigation would be the only avenue to recover the monies owed.

(C.3) Statement of Rights

In relation to the Statement of Rights, we are not in favor of this proposal. There are many outlets for the consumers to learn about their rights and our company even provides links on our website for them to find those as do many other debt collectors.

We recommend the Bureau issue a mobile friendly website link that can be provided to debt collectors for them to reference in their communications that will allow consumers to visit the link at their convenience and would also allow the Bureau to update the contents as they see fit.

(C.4) Non-English language requirements

We are not in favor of any requirement of providing disclosures in non-English languages unless the contract that initiated the debt was in another language. If the contract that initiated the debt and the consumer agreed to was done in another language then that language should be passed to the debt collector and the debt collector should communicate to the consumer in that language.

Financial Impact: The financial impact referenced here are for all in costs for all of the proposed letter requirements. The initial setup and testing of the letters will run around $2,500. The additional cost per first written correspondence will increase postage and delivery by at least 35%.

IV. Other Consumer Understanding Initiatives

(A.1) Litigation disclosure

We agree that a litigation disclosure would be benefit the consumer and allow them a “final opportunity” to try and voluntarily work out repayment of the just debt. We would encourage the Bureau to consider providing model language because if what the disclosure states isn't clear and remains ambiguous it will provide another avenue for consumer plaintiff attorneys to file frivolous lawsuits costing all debt collectors unnecessary legal expenses.

V. Collector Communication Practices

(A.1) Contact Frequency

There is a misperception when it comes to consumers complaining about the frequency with which debt collectors contact them being harassing. It is imperative to understand that consumers with a debt in collection tend to have multiple debts in collections with accounts placed with multiple debt collectors. Therefore, the perception that a single debt collector is harassing a consumer doesn't justify the reality that multiple debt collectors are attempting to contact the consumer on multiple debts which makes the appearance of harassment.

We feel the FDCPA already addresses communication practices and what is not acceptable in Section 1692d (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." Legitimate debt collectors collecting on just debts make telephone calls with one intended purpose and that is to contact the consumer to notify them of the debt and work out a solution. Any other purpose for the call, even in relations to the frequency as long as it is not deemed to "annoy, abuse, or harass" should be allowed.

(A.2) Permitting certain limited-consent voicemails and other messages

We are strongly in favor of this proposal and support it completely. The ability to leave messages for consumers may somewhat decrease the calling frequency, but it is important to remember these messages that do not convey information about the existence of the debt are often vague and ambiguous. So while some consumers will call back or research the info on the internet, there will still be some consumers that do not engage in communication from the debt collector. However, the ability to define communication is absolutely needed and allowing limited content messages will be mutually beneficial to both the consumer and the debt collector.

(A.3) Restricting debt collection contacts with consumers

We find this proposal to be the most troublesome for both consumers and debt collectors. Restricting the ability for debt collectors to communicate with consumers will inevitably lead to creditors filing a substantial more number of lawsuits against consumers. This is not beneficial to the consumer in any regards as it eliminates or substantially decreases the consumer's ability to work out voluntary repayment of their debt with the debt collector. One of the reasons lawsuits against consumers are high today is the consumer's refusal or inability to speak with debt collectors. By establishing hard cap numerical restrictions will limit the debt collector's ability even further to communicate to the consumers, extremely limiting the ability of debt collectors to resolve the debt.

In the event these contact caps are implemented, we strongly suggest that the contact caps do not equally apply to all communication channels. The Bureau should create separate limits per unique phone number(s) and address(s), in addition to other communication channels such as email or text.

DELTA OUTSOURCE GROUP

Financial Impact: Further restrictions on the ability to communicate with consumers will be the most significant financial impact we face. We anticipate losing 30% to 40% of revenue due to not being able to make enough attempts that are currently required to reach the consumer based on historical data analysis.

In conclusion, we appreciate the Bureau's intention of clarifying unclear and ambiguous issues relating to debt collection activity. With that in mind, the Outline of Proposals will ultimately be problematic for both consumers and small debt collectors. The proposals will lead to an increase in lawsuits filed against consumers which is avoidable and creates unnecessary harm caused to the very people the Bureau seeks to protect. The proposals will also lead to small debt collectors losing revenue, employees, clients, and ultimately face the consequence of going out of business due to lack of opportunity in the market place.

Many of these proposals feel as if the Bureau has "put the cart before the horse" in regards to creditors not being a part of the process, especially when very significant portions of the proposals start and end with the creditors willingness and cooperation. During the rulemaking process on debt collection we strongly encourage the Bureau to be considerate of the unintended consequences of the proposals. It is also important to keep in mind that when the cost of non-litigation collection efforts meet or exceed those of litigation collection efforts, creditors will seek litigation collection efforts first creating a lose-lose situation for consumers and small debt collectors alike.

Sincerely,

Nick Jarman
President & COO
Delta Outsource Group, Inc.

Fair Resolutions, Inc.

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September 9, 2016

Via email: lauren.weldon@cfpb.gov

Small Business Advisory Review Panel Members
c/o Consumer Financial Protection Bureau
1700 G Street, N.W.
Washington, DC 20552-0003

Re: Small Business Review Panel for Debt Collector and Debt Buyer Rulemaking

Dear Members of the Small Business Advisory Review Panel:

Thank you for allowing me to participate as a small entity representative ("SER") during the CFPB's Small Business Review Panel for Debt Collector and Debt Buyer Rulemaking. I own and operate licensed small business debt buying companies located in Wenatchee, Washington. These companies focus on buying and collecting consumer debt where the consumer is located in the Pacific Northwest states of Washington, Oregon, and Idaho. As such, my concerns with the Outline of Proposals Under Consideration and Alternatives Considered ("Outline") as it relates to small business are as follows:

1. That the proposals under consideration would increase the cost of credit for small business
2. That the cost of proposals under consideration would outweigh the perceived benefit as determined by the consumer.
3. That any regulation be enacted prospectively and not retroactively.
4. That charge off date be used as opposed to default date when addressing national bank debt.
5. That the environment for the small business debt buyer be leveled so that the consumer can benefit from greater competition.

A. Increased Cost of Credit to Small Business

All proposals in the "Outline" are fixed cost proposals. That is, the cost of collecting on each account will increase regardless of the size of the creditor or merchant, and regardless of the size of the balance. The cost of collecting a $100 account will increase by the same dollar amount as for collecting a $10,000 account. Merchants and creditors that originate smaller balance credits will therefore be competitively disadvantaged. A study published by the Mercatus Center of George Mason University[1] cautions "the CFPB should take care to avoid imposing disproportionate regulatory burdens on small firms that would reduce competition and promote further consolidation of the industry."

In 1978, William Dunkelberg published a study of the 1973 Wisconsin Consumer Act (WCA), which, among other things, imposed substantial new limits on the remedies available to creditors on a consumer's default. Forty-one percent of banks responding to his survey indicated that they had tightened credit standards, making fewer loans to "marginal borrowers."[2] Twenty percent restricted loan maturities or the type or size of loans available. For example, because the WCA increased the costs of collection, some banks discontinued making small loans. In this day and age, consumers that need these types of loans will be forced to go to payday or title lenders, or worse yet to unregulated or illegal lenders.[3]

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[1] Zywicki, Todd. "The Law and Economics of Consumer Debt Collection and Its Regulation." *Mercatus Center: George Mason University* September 2015. Available at http://mercatus.org/sites/default/files/Zywicki-Debt-Collection.pdf.
[2] Dunkelberg, William. "Banks' Lending Response to Restricted Creditor Remedies." *Credit Research Center, Krannert Graduate School of Management, Purdue University* 1978: Working Paper No. 20.
[3] See Zywicki..

Adding the cost of collection to small balance accounts will result in a loss of "net" value to those accounts simply as an accounting measure. Additionally, it will discourage placement of these accounts with collection agencies, which will impair two sets of small businesses:

1. Those small businesses that specialize in the collection of small balances will receive fewer placements, impairing their income, resulting in less capital which affects their borrowing base, and ultimately raising their cost of borrowing, and
2. Those small businesses that provide small dollar credit to consumers, such as a dentist's office or a local hardware store. If small businesses cannot collect on debts that are owed them, they will cease to provide the credit that results in these small dollar receivables. As a result, not only will the business community suffer but so will consumers who will not be able to smooth out the costs associated with life necessities due to the lack of credit.

B. Cost of Proposals Outweigh Perceived Benefit to Consumers

An empirical study of 1,776 personal loans found that although consumers expressed a willingness to pay higher prices for credit in order to exclude certain creditor remedies upon default, the amount that they were willing to pay to avoid those remedies was smaller than the amount that creditors would raise prices to make up for losing access to those remedies.[4] For example, the study estimated that for every $1.00 reduction in the size of allowable late fees by creditors, lenders would increase the APR on the loan by 2.2 percentage points, whereas borrowers would value that reduction by only 0.045 percentage points. This results in a cost increase to the consumer 49 times greater than their value of the increased protection. Consumers would also be willing to pay 0.0045 higher APR for a reduction in the allowed

[4] Barth, James, Joseph Cordes, and Anthony Yezer. "Benefits and Costs of Legal Restrictions on Personal Loan Markets." *Journal of Law, University of Chicago* 1986.

garnishment amount by $10 whereas it was estimated that creditors would increase the APR by 0.65 for each $10 reduction in allowed garnishment, a cost 144 times greater than the perceived benefit as determined by the consumer. Thus, while Barth, et al., found that although borrowers might be willing to pay higher costs for credit in order to restrict certain creditor remedies, those amounts were often very small, statistically insignificant, and much smaller than the size of the price increases that creditors would impose to compensate for loss of access to those remedies.[5]

C. Enactment Date

The Outline does not address which areas could see a retroactive enactment. Nor was this information made available at the SBREFA Panel Outreach Meeting. Any retroactive enactment date would have a devastating impact on the business value of small business debt buyers and correlating cost of credit.

DBA International recently conducted a survey of its debt buyer membership on the impact of the Outline if it were to be applied retroactively. Respondents[6] indicated that retroactive application of the data requirements would render 76 percent of their credit card portfolio and 71 percent of their non-credit card portfolio "a complete loss" or would have "significant impact to the value of the portfolio."

D. Charge Off Date vs Date of Default

The Outline would impose a radical change on the broader financial services industry, which includes the debt buying industry, by changing the reference date for account data from the "charge off date" to the "date of default." The "charge off date" is a legal, accounting, and federally mandated term used by national banks when referring to defaulted accounts and as such

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[5] See Zywicki.

[6] Ninety-one percent of respondents were small businesses.

is the most widely used term in the industry for referencing a point in time for account data. Not only are financial institutions regulated by the Office of the Comptroller of the Currency ("OCC") required to "charge off" non-performing loans, the concept of "charge-off" in ensuring the accuracy and integrity of debt collection information has been adopted into law in numerous states and has even been the documentation point referenced in recent CFPB consent orders with companies in the debt buying industry. Determining "date of default" would be, if not impossible, certainly cost prohibitive to the extent that small business debt buyers would be able to obtain missing data and then perform highly complex legal assessments based on individual state jurisdictional requirements and conflicts of law. Simply stated, such a change would have a disproportionate impact on small business debt buyers who will not be able to compete.

E. Leveling the Playing Field for Small Business Debt Buyers so Consumers Can Benefit from Increased Competition

Over the last ten plus years, many small business debt buyers have relied on a secondary or "resale" market to purchase consumer accounts, mostly credit card accounts that originated with national banks. Many of the buyers in this market are small businesses that do not have the capital to purchase a portfolio of accounts that covers all fifty states, or choose to specialize in a limited number of states or regions in which they operate and have an in-depth knowledge. This secondary market has been all but obliterated by guidance provided by the OCC and subsequent enforcement actions brought by the CFPB.

Focusing primarily on notary and affiant practices, the OCC commenced a review of debt collection and sales activities in April 2011. The OCC stated that appropriate due diligence reviews should occur before the sale, including reviewing whether debt buyers have appropriate licenses; whether there are existing regulatory and legal actions against the debt buyer or its owners; and whether they are in good standing. A best practice list also suggested that the bank "limit the resale of debt" theorizing that by contractually limiting the ability of the third party to resell the debt to another entity allows the bank to control who ultimately will pursue collection from "their" customer and helps prevent legal validity and ownership questions later.[7]

In 2015, there were three CFPB enforcement actions that also addressed the resale market. A Consent Order with Chase Bank provided, among other things, that while Chase could continue to sell consumer accounts, they must contractually prohibit the resale of such accounts to another entity. The Chase consent order was quickly followed by two Consent Orders with large national debt buyers whose stock is publicly traded, Encore Capital Group (Encore) and Portfolio Recovery Associates (PRA). Despite the fact that neither company sells debt on the secondary market, the CFPB choose to prohibit them from doing so. As a result of these consent orders, national banks have now adopted "no resale" as a safe-harbor contractual term.

As a consequence of these enforcement actions against these large industry participants, Chase can still continue to sell consumer accounts, and Encore and PRA can still continue to buy consumer accounts, but those small businesses that purchase consumer accounts on the secondary market are effectively prohibited from participating regardless of the absence of findings of wrong doing by small business debt buyers.

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[7] "Shining a Light on the Consumer Debt Industry." *Hearing Before the Subcommittee on Financial Institutions and Consumer Protection of the Committee on Banking, Housing, and Urban Affairs United States Senate* July 17, 2013.

As a competitive and active participant for consumer accounts in the Northwest, I am keenly aware of my small business regional competitors and have a cordial relationship with them. Together, I believe we have purchased over 90% of consumer accounts offered on the resale market in this region for the last decade. My Northwest small business competitors have provided me with their debt buying activity for the last five years, for purposes of submitting this information to you. Our companies combined spent $2,463,875 in purchasing consumer accounts in 2011. For the first six months of 2016, these same companies spent only $78,084 acquiring consumer accounts. Annualized, this represents a 94% decrease in our ability to purchase accounts. During essentially this same period Encore has gone from investing $386 million in its purchase of consumer accounts in 2011, to $1 billion in 2015, a 258% increase. PRA has increased its expenditure for debt purchases from $209 million in 2011 to $448 million in 2015, a 214% increase.

What I think is often overlooked by the regulatory community is the important role that market forces play in providing direct benefits to consumers. The debt buying and collecting marketplace is fiercely competitive. Not only do debt buying companies compete for acquisition of accounts or creditor clients, but they also compete for the available funds consumers have for settlement. When consumers have reserved or obtained funds for settlement, they can cause a bidding process amongst debt buyers and collectors by settling with those who provide the largest discounts. This gives them the ability to "vote with their feet". In April 2016, DBA International published a White Paper entitled "The Value of Resale on the Receivables Secondary Market" that describes this dynamic.[8]

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[8] Reid, David. "The Value of Resale on the Receivables Secondary Market." *DBA International White Paper* April 2016. Available at http://www.dbainternational.org/wp-content/uploads/DBA_white_paper_value_of_resale.pdf.

The current consolidation trend now has Encore owning debt owed by one of every five Americans.[9] As their market share grows with the elimination of small business, consumers are losing their ability to force competition amongst creditors, debt buyers, and collectors.

I urge the CFPB to adopt regulations that will help level the playing field between small business debt buyers and large national debt buyers in order to bring back competition that will help consumers. To accomplish this, I respectfully suggest the following:

1. When title is transferred on an account, require the creditor to provide all documentation available for the account. Providing mere "access" at some unspecified date to be determined is not enough. To do otherwise, would allow creditors and other businesses the ability to later fail in their compliance responsibility, leaving the owner of the account unable to provide supporting documentation when the consumer requests it.
2. Require national banks to list their accounts with third party registries before selling the accounts, and that subsequent owners of the accounts maintain the flow of data to the registry. Over ten years my company has paid an average of $18 per account to order statements and affidavits. I have been in contact with two companies that provide registry services, Global Debt Registry and Convoke. We discussed their system and pricing. The costs to my company to use either of these registry systems would be far less than $18 per account, and would provide the statements and information that allows my companies to ensure the accuracy and integrity of our accounts. Thus, affordable

[9] Washington Post, "Taking on the country's biggest debt buyer," May 9, 2014.

options exist that would improve the entire debt purchasing system, and facilitate deep and competitive discounts for consumers when settling their accounts.

3. Require all debt buyers to be part of a self-regulatory program, such as DBA International's Receivables Management Certification Program.
4. Require debt buyers to have a physical presence in any state in which they choose to initiate litigation. This would ensure that the owner of an account has meaningful knowledge of the consumer protection laws, as well as the economic conditions germane to a state or region. I would think it would be a frustrating experience for a consumer to have applied for credit at a local bank branch, only to be sued by a debt buyer located on the other side of the country.

Thank you for your time. It is an honor to be part of this rulemaking process.

Sincerely,

Brian Fair

Alliance, Ltd.

September 9, 2016

Via Electronic Mail: lauren.weldon@cfpb.gov

Mr. Dan Sokolov
Deputy Associate Director
Division of Research, Markets, & Regulations
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, D.C. 20552

Re: Small Business Review Panel for Debt Collector and Debt Buyer Rulemaking

Dear Mr. Sokolov and the Small Business Advisory Review Panel Members:

I. Introduction

First, FMA would like to express our appreciation for being selected as a Small Entity Representative ("SER") on the CFPB's historic Debt Collection Rulemaking SBREFA Panel. FMA is a national third-party debt collection agency headquartered in Houston, Texas. (b) (4) [redacted] As the majority of the debt collection industry is comprised of small businesses, FMA recognizes the importance of providing valuable commentary regarding our experiences to the Bureau for consideration in its upcoming rulemaking. To that end, FMA is grateful for the opportunity given to the SERs on Thursday August 25th, at the CFPB's headquarters to provide commentary on the outline of proposals under consideration. However, we would like to express that we feel the amount of time given to the SERs to digest, review, and gather the required data necessary to respond to the outline of proposals under consideration and subsequent one hundred-plus follow up discussion questions was severely inadequate to give the SERs time to fully prepare an adequate response[1]. FMA is concerned that several of the proposed rules under consideration will have a varied and greatly negative impact for small businesses as well as result in substantial consumer harm. We have outlined our comments and concerns below.

II. Commentary on Third Party Debt Collection CFPB Operations Study

FMA would like to highlight several issues we thought important to note regarding the CFPB's

[1] Small Entity representatives ('SERs") were given the SBREFA Final Discussion Topics containing over 100 questions on August 11th, 2016. SERs were invited to the CFPB's headquarters to provide commentary on those questions just two weeks later on August 25th, 2016. SERs were given just 15 days after that time to submit final written comments.

Study of Third-party Debt Collection Operations ("CFPB Study"). Similar to the inadequate amount of time given to the SERs to prepare comments for the SBREFA panel, the debt collections operations study surveyed an alarmingly small number of industry participants, with several types of participants under-represented. Using the information provided in the study, the Bureau surveyed just 56 of the 3,994 available participants or 1.4% of the collection industry[2]. It is our opinion that a study of this size is grossly deficient for the amount of information needed for the Bureau to base the first major regulatory update in debt collection regulation since the FCPA was enacted in 1977.

Furthermore, the largest size category of participants (employing 500 or more) was greatly overrepresented in the study. According to the census in the study, firms with 99 employees or less comprise over 92% of the debt collection industry, while firms employing 500 or more represent only a fraction or 2.5% of the industry[3]. However, over 19% of the study participants employed 500 or more employees[4]. FMA is concerned the Bureau may disproportionately base its rulemaking on information provided by the largest and most sophisticated firms that already have invested in technology and staff to support larger clients. Indeed, the Bureau also points out that smaller agencies tend to service many smaller clients, whereas larger firms service a smaller number of larger clients. FMA urges the Bureau to adopt rules that can be absorbed and implemented in a cost effective way for smaller agencies, which comprise the vast majority of the industry overall. FMA is concerned that the proposals under consideration could raise the cost of compliance for small firms to effectively regulate those small businesses out of certain markets or out of business altogether. As the CFPB highlights in the debt collection survey, zero of the smaller agencies with less than 100 employees work student loans, telecommunications, or on behalf of the large credit issuing banks[5].

III. Selected Commentary on Outline of Proposed Rules and Alternatives Considered

A. Information Integrity and Related Concerns

FMA is concerned with the proposal that a debt collection agency be required to substantiate claims for indebtedness, including reviewing account level data for warning signs prior to and during the collection lifecycle of an account. The proposal under consideration would require an agency to review accounts and portfolios for "warning-signs" that include reviewing for facially improbable or inaccurate data. As stated in the Bureau's operations study, the type and amount of data passed to collection agencies vary by debt type and client size. There currently does not exist a standardized set of data that is passed to the agencies from debt owners whereby completing a statistical review of the data in order to identify trends would be possible. Furthermore, the absence of data, rather than facially implausible or inaccurate data, by no means should prevent the agency from initiating the collection process. In many cases, and especially for smaller creditor clients, the client may rely on the collection agency to confirm and correct data that may have become inaccurate. FMA would strongly urge the Bureau to define exactly which

[2] CFPB Study at p.7, Table 1.
[3] *Id.*
[4] *Id.*
[5] *Id* at p. 10.

data points would need to be reviewed and specify for each data point, what would rise to the level of facially implausible or inaccurate.

Additionally, FMA is concerned that requiring an agency cease collection on individual accounts or an entire portfolio after identifying facially implausible or inaccurate data would certainly cause unintended consumer harm. If an agency were required to cease activity with regard to an entire portfolio after identifying a certain number of warning signs, those consumers with accounts in that portfolio that were not affected by the particular issue would then not be able to resolve unaffected accounts with accurate data. Similarly, those consumers that entered into payment arrangements would have their arrangement cancelled or postponed, resulting in an increase in the amount of time an account would be in collections or reported on their credit report. As an alternative, FMA would propose only ceasing efforts on those accounts which contain the identified warning sign. For example, if a portfolio has a high rate of unresolved disputes, only those accounts with unresolved disputes would have efforts ceased until further information could be provided by the creditor.

Furthermore, requiring systemic processes to review for warning signs prior to initiating as well as, during the collection process would add significant cost, delay, and inefficiency to the debt collection lifecycle. (b) (4) [redacted]

(b) (4) [redacted]

Finally, running these types of queries on placement data for an entire portfolio will also likely delay the start of collection activity by several days or more, which will a negatively impact the consumer and agency alike. As previously mentioned, this will increase the amount of time consumers have accounts in collection as well as the amount of time accounts will be reported by the credit bureaus. This will also cause great cost to agencies as the first several days the account is placed with an agency are critical. As an alternative, FMA would suggest allowing agencies to run reporting on account portfolios during the collection process to identify warning signs such as unresolved dispute rate, which we expect to cost significantly less in terms of programming, (b) (4) [redacted]

Claims of Indebtedness Following a Dispute

FMA takes issue with the Bureau's proposed definition of a dispute both for defining a dispute as any question or challenge regarding the debt or the collector's right to collect the account. As the data in the Bureau's study indicates, many, if not most disputes, may be solved after the consumer has a chance to

[6] Exhibit One - "FMA Cost Projections"
[7] *Id.*

speak with an agent regarding their account[8]. Many consumers may express concern or challenge a collection agency simply upon learning an account has been sent to a collection agency. To require an agency to cease speaking to a consumer after any challenge regarding the account would rob the consumer of the courtesy and convenience of a subject matter expert helping explain the circumstances of the account to the consumer. FMA prides itself in assisting consumers solve problems, which includes helping consumers resolve legitimate disputes. To that end, FMA as a matter of policy accepts both written and verbal disputes regardless of when the dispute is received after placement of the account. However, to require an agency treat any question or challenge as a dispute would only serve to needlessly delay the collection process and take away the right of the consumer to quickly and efficiently have account level questions answered by agents via the communication channel the consumer chooses, rather than written correspondence only which would be required under the proposal.

In addition to taking issue with the proposed definition of dispute, FMA objects to the proposed unnecessary and confusing categorization of disputes each requiring varying degrees of information in response to the dispute. As mentioned, it is common practice to accept all disputes, no matter the form, or age of the account. To require an agency to go further and then categorize and review account level documentation in response to each dispute will complicate a currently consumer friendly and efficient process. (b) (4) [redacted] (b) (4) [redacted] (b) (4) [redacted] We will then likely need to add additional employees to handle increased dispute volume caused by the proposal to update the definition of dispute as well as the inclusion of the action item "tear-off" on the validation letter.

As an alternative, FMA propose the Bureau accept a streamlined approach to disputes that is in line with current industry practices. FMA proposes the CFPB allow consumers to dispute the account either verbally or in writing and within or outside of the validation period, but that consumers must use the word "dispute" in order to dispute the account. Additionally, as an alternative to categorizing the disputes, the Bureau should then allow agencies to provide a single set of data and documents to respond to the dispute, similar to the New York Department of Finance substantiation process. This way, all verbal and written disputes would be accepted and responded to, regardless of when the dispute is received, greatly improving the efficiency and integrity of the dispute proposal under consideration.

B. Proposal to Require Review and Transfer of Information

FMA is concerned with the proposal to review and transfer certain information to and from debt owners. Transferring information back to debt owners is common practice, but requiring an agency to rely on information provided by other agencies presents significant legal risk to agencies and potential harm to consumers. As the Bureau mentions time and again, potential issues with data integrity could cause an

[8] CFPB Study at p.30.

[9] Exhibit One - "FMA Cost Projections"

agency to rely on false or inaccurate information provided by a debt owner. As such, if the Bureau implements a rule requiring agencies to rely on creditor information, which could affect the agency's ability to comply with the FDCPA, that the Bureau issue a safe-harbor exception for related FDCPA violations if an agency could show evidence that it relied on information provided by the debt owner. Alternatively, or in addition to a safe-harbor, FMA would request rules that allow an agency to call the consumer in order to confirm the accuracy of the information required to be reviewed in Appendix E.

As with most of the proposals being considered, FMA expects this data transfer proposal to produce significant costs to small entities. (b) (4) [redacted]
(b) (4) [redacted]

C. Validation Notice and Statement of Rights

FMA opposes the proposals under consideration with regard to the changes in the validation notice and the addition of a statement of rights for the consumer. Specifically, FMA opposes tracking and providing data from the date of default, the check box categories contained on the tear-off action item, as well as the inclusion of a separate page for a statement of rights. Currently, date of default is not a data point that is commonly used in the industry. The date of default for a given type of debt may depend on contract language or the jurisdiction in which the consumer resides. Requiring debt owners and agencies to track data points from the date of default will be problematic and inefficient as well as provide less valuable and informative data to consumers. As an alternative, FMA would suggest aligning with the requirements of the New York Department of Finance and require debt owners and agencies to provide information calculated from the date the debt was charged-off. Typically, this information is more valuable to a consumer as the consumer is not informed that the debt has been charged-off and that typically, late fees, interest, and other charges stop accruing after this date.

FMA feels strongly that the check box options on the tear-off action item will lead to consumer confusion as well as inefficiency in the debt collection process. As previously discussed, requiring varying degrees of responses depending on the type of dispute received will lead to operational inefficiencies and legal liability. Specifically, FMA finds the check box option "You are not the right person to pay" is particularly troublesome. If a consumer checks this box, the agency will still have to make additional attempts to contact the consumer to resolve their concerns, potentially upsetting the consumer. Additionally, FMA disagrees with the Bureau's approach to draw a distinction between whether a dispute is made within or outside of the validation period if the Bureau will require an agency to stop collection efforts in both situations. If in either scenario the agency must cease collection efforts until a response to the dispute is provided, the distinction regarding when the dispute is received is unnecessary and will only obfuscate the dispute process. Alternatively, as discussed above, FMA proposes the Bureau streamline the dispute process and allow an agency to provide the same set of data in response to all disputes regardless of whether they are received within or outside of the validation period.

[10] *Id.*

Finally, requiring agencies to expand the information required on a validation letter as well as include a separate statement of rights for the consumer will be a significant ongoing cost. As it stands today, debt collection agencies struggle with including all of the FDCPA and state specific disclosures on a single page letter. To require expanded validation disclosures, an action item tear-off, as well as a statement of rights, will add an additional two pages at minimum to each validation notice. (b) (4) [redacted] As an alternative, FMA would propose what the Bureau itself has used, which is listing a reference to a website or link where the consumer may view or dispute the account or view their statement of rights online. This will substantially reduce the monetary impact to small businesses as well as the environmental impact for the addition of several pages to the initial letter.

V. **Collector Communication Practices**

A. Frequency of Contacts

FMA is extremely concerned with the proposed restrictions on consumer contacts being considered by the Bureau. (b) (4) [redacted] This would lead to substantial harm to consumers as this would greatly increase the time disputes would go unresolved, the amount of time the debt may be reported to the credit bureaus, as well as delay consumers from resolving accounts that may have gone delinquent due to oversight or some other temporary issue.

(b) (4) [redacted]

[11] *Id.*

As an alternative, FMA strongly urges the Bureau to adopt several common sense communication limits as well as exceptions including:

- Allowing one attempt per number per day
- Excluding inbound calls from any contact restrictions
- Excluding written communications from the contact restrictions as the vast majority of letters sent are legally required communications and/or requested by the consumer and generally less intrusive than calls or texts
- Allowing one voice message left per number per day
- Excluding attorney and debt relief representative contact from the restrictions
- Allowing calls beyond the caps if a consumer/patient requests or consents to additional contacts

B. General Time, Place and Manner

FMA would also like to comment on the proposed time, place, and manner rules under consideration. With regard to inconvenient communication times, FMA would like to request the Bureau consider two items. First, FMA proposes that a safe-harbor provision would apply, should the collector contact the consumer at a presumptively convenient time based on the consumer's address and area code. This way, there would not be claim for a violation under the FDCPA if the consumer happened to temporarily be in an inconvenient time zone. Next, FMA would like to exclude email and other written communications from inconvenient time restrictions. Generally, a collector may not always be in control of when these communications are received or read by the consumer. Additionally, as previously mentioned, written communications, including email, are not as intrusive or disturbing as a telephone call or text message and as such should be excluded from any inconvenient time restrictions.

With regard to the proposal of presumptively inconvenient places, FMA feels this proposal is confusing from a practical standpoint and is already adequately provided for under the FDCPA. The outline details a proposal where an agency may not contact a consumer if the agency knows the consumer is at a place of worship, a child care facility, a place of grieving, or a medical facility. The likelihood that an agent would know the consumer is at one of the above places prior to initiating a call is extremely low. The proposal details that an agent need not investigate prior to making phone calls, but that the agent could not ignore information received regarding the aforementioned presumptively inconvenient places. However, the FDCPA already has adequate prohibitions in place whereby an agent may not contact a consumer at any place known to be inconvenient thereby providing for greater protection than the Bureau's proposal.

FMA would also like to express concern with the proposal under consideration regarding inconvenient communication methods. FMA believes the proposal under consideration, which puts the burden on debt collectors to qualify a consumer's statement, is impractical, unclear, and will result in consumer harm. As expressed by the SERs repeatedly, the industry needs clarity with respect to rule changes implemented by the Bureau. Attempting to qualify a consumer's statement or requesting additional information after the consumer expresses intention to end the communication, will certainly upset the consumer and risk unnecessary claims of harassment against the agency. Furthermore, requiring an agency to make assumptions regarding unqualified statements will lead to unintended consequences that will negatively impact the consumer. Without clarity, an agency is likely to interpret unclear statements made by the consumer in the most conservative light. This would lead to an increase in handling the accounts as a cease and desist or a refusal to pay, which will increase the likelihood of litigation.

VI. Closing

For the reasons stated above, FMA is genuinely concerned with the effect the debt collection proposals under consideration by the Bureau will have on small businesses and consumers. The numerous proposals, taken together, will undoubtedly lead to an unreasonable increase in the cost of operating a debt collection agency, an increase in costly litigation, as well as operation inefficiencies. The results of the proposed rules will undoubtedly cause a disproportionate number of small businesses to close. Without those agencies more creditors will be forced to litigate against the indebted, and more consumers will be left unaware of a debt, causing further harm to their credit and without a means to dispute. Conversely, if the proposed alternatives are considered, small businesses can continue to service the financial services sector, helping the overall national economy, and still have strong protection for consumers.

Sincerely,

Michael Kelleher
General Counsel
FMA Alliance, Ltd.

(b) (4)

[redacted]

September 9, 2016

Via email: lauren.weldon@cfpb.gov
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Re: Advice and Recommendations of Small Entity Representative Jack W. Brown III on Small Business Advisory Review Panel for Debt Collector and Debt Buyer Rulemaking

Dear Mr. Sokolov, Ms. Smith, and Ms. Ahmed:

Thank you for the opportunity to participate as a Small Entity Representative ("SER") in the Small Business Advisory Review Panel process charged with outreach on the CFPB's Outline of Proposals under Consideration for the Debt Collector and Debt Buyer Rulemaking ("SBAR Panel"). I am President of Gulf Coast Collection Bureau, Inc., of Sarasota, FL. Gulf Coast is a third party consumer debt collection agency that focuses on health care debt. We have one office, with 60 employees. We qualify as a small business under the Small Business Administration's size standards for the debt collection industry sector.

The CFPB's Outline of Proposals contains a number of positive approaches that would clarify requirements under the Fair Debt Collection Practices Act ("FDCPA") and address problems

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created by inconsistent Court interpretations that have developed around the country in the years since the FDCPA was enacted. I strongly support CFPB efforts to establish bright line standards and "safe harbors," which will assist businesses in complying with the FDCPA, reduce the incidence of nuisance litigation, and benefit consumers. At the same time, I must caution the CFPB about some aspects of the current proposals. In particular, the proposals do not recognize the many types of debt collection services in the marketplace today, and the nuanced approach that will be needed to accommodate the differences in these products and services. For example, as discussed further below, the concept of a "default date" is not the same for medical debt as it is for credit card or auto payment debt, and a "one size fits all" approach will not work effectively in a binding regulatory scheme.

Another broad area of concern is the CFPB's focus on limiting collector contacts with consumers. While I agree that measures that protect consumers against harassment are important, it is essential to strike a thoughtful balance, so that contacts that benefit consumers in resolving disputes are not inadvertently foreclosed as an undesirable consequence of good intentions. In the same vein, the proposal's requirements for transfer of information among creditors, third party collectors, and subsequent collectors should be expanded to allow consent given by consumers on acceptable times and methods of contact to be transferred with the account, so that consumers' preferences can be honored.

Finally, I join other SERs in expressing a concern that was raised at the August 25 SBAR meeting. The absence of first parties from the discussion prevents the SERs from effectively commenting on the viability of the CFPB's proposals with respect to information integrity, since the fundamental information the proposals seek to establish as a prerequisite to debt collection is not under the control of third party collectors. I understand that the CFPB plans to convene a first party SBAR proceeding and elicit information on what fundamental information first party creditors are able to provide. Caution will be necessary, since just as with third party debt collection, different types of credit involve differing types of account information: medical accounts do not come with the same information as credit card, auto loan, or small business accounts, which involve creditors such as plumbers, dentists, or auto repair shops. Further, the CFPB lacks jurisdiction over many of these businesses, and will have to assess what leverage it has to enforce information integrity requirements that may be adopted in a final rule. Once the CFPB has obtained the necessary information and analyzed these issues, the third party SERs should be reconvened under SBREFA, since only then will they have the ability to comment effectively on the impacts of the CFPB's proposal on small entities and suggest workable alternatives that would create less burden and cost while still achieving the CFPB's regulatory objectives.

In addition to these broader comments, I have specific feedback and recommendations on several points in the outline of proposals, which are discussed below.

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Warning Signs. The Bureau's proposal would include a requirement that collectors look for warning signs both at the time of placement of an account or portfolio of accounts and during the course of collection activity. The outline of proposals lists some examples of factors that could potentially constitute a warning sign, and notes that collectors would be held responsible for warning signs that they detect "or should have detected." The difficulty with such an open-ended approach is that it deprives those who must comply with a regulation of a clear understanding of the scope of their legal obligations and invites second-guessing and increased litigation. As I noted during the SBAR meeting, my company successfully defended unfounded litigation under the Telephone Consumer Protection Act ("TCPA"), but the cost was $250,000 in attorneys' fees, which are not recoverable under the TCPA. If adoption of a "warning signs" provision is contemplated, the CFPB should allow litigation with respect to it only as part of an administrative enforcement proceeding.

In addition, if the CFPB moves forward with a proposal that includes warning sign requirements, it must take steps to establish bright lines and safe harbors. For example, with respect to warning signs at placement, the CFPB should allow collectors to institute a warning sign program tied to the fundamental information required for each type of debt; this program would be established between the client and debt collector as a prerequisite to collection, and adherence to the program would constitute a presumption of compliance. Similarly, for warning signs during the course of the account, the three bullet points on page 10 of the outline of proposal should comprise the list of warning signs, with one revision: the first bullet point should be reworded to read "a pattern of disputes that are unable to be verified."

Disputes. As a threshold matter, the CFPB should match up the process for dispute resolution with FCRA procedures that are already in place and have a 95% response rate.

The discussion of the dispute process in the outline of proposals generated a fair amount of comments at the SBAR meeting. A principal reason for this is that the term "dispute" is open to interpretation. Often, a conversation with a consumer consists of answering questions about the debt, after which the matter is quickly resolved in the initial oral conversation. In fact, according to a recent survey conducted by ACA International, 48 percent of debt collector respondents reported that they are able to resolve an oral dispute during the conversation in which the issue is raised by the consumer, between 51 and 100 percent of the time. (A copy of the survey report is attached.) The distinction between questions and disputes is important, and the proposal should clarify the difference between the two.

Another major area of concern is the CFPB's reliance on categories of disputes and a catch-all "generic dispute" category, neither of which ultimately benefit consumers. The "tear off" form that the CFPB has put forward directs a consumer to check off one of three types of disputes, or classify the issue as a "generic dispute." The consumer, however, does not care what category of dispute is involved; his or her critical need is how to resolve the problem. Moreover, a tear off

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form sent through the mail is not a prompt method to settle a dispute. A better option is to encourage consumers to respond through a collector's electronic portal or website, if available, and in any case, specifically state the nature of the dispute. ACA International's study shows that generic disputes are the most prevalent (by 79.2%), and, according to the SERs, 80% of these types of disputes come from debt settlement companies rather than individual consumers. Because these disputes are so general, they take the longest time to investigate and resolve – more than three weeks on average – and prolonging the timeframe of an unresolved debt is not in the consumer's interest. Requiring a clear description of the nature of the dispute will expedite resolution and benefit consumers.

As with other areas of the proposals, it is important to provide clear direction and safe harbors in order to avoid encouraging needless litigation. One suggestion along this line is that if a collector sends a consumer all documentation that would respond to all the dispute categories the CFPB has outlined, any additional disputes would be presumed to be duplicative.

Default Date. Another issue that produced considerable discussion was the key term "default date." This term has no universal meaning that applies across all product lines. I urge the CFPB to give this issue the attention it deserves and establish definitions that are workable for various types of debt. For example, for medical debt, the default date could be 180 days from the date of service, if exceptions are recognized for cases subject to a workers' compensation or personal injury claim, since many times providers wait to pursue the consumer until the claim has concluded. In those cases, a time period that allows for these claims to conclude would be necessary. A myriad of state laws set varying standards for statutes of limitations on medical debt and necessarily require a conversation to determine the date from which the statute of limitations would start to run, i.e. a "default date." In Arkansas there is a 2-year statute of limitation that runs from the date of service or from the date of the most recent partial payment for the services, whichever is later. Nevada has a 4-year statute of limitation that runs from the date on which any payment that is due for services is not paid and is tolled during any periods in which the hospital is awaiting a determination concerning eligibility for, or the amount of benefits from an insurance company.

Other types of debt require a similar conversation and analysis as the application varies depending on the type of debt. If this term is not clarified and tied to custom and practice within various types of debt, it will be a litigation magnet, with increased costs and burdens to collectors. Those costs must be taken into account in the CFPB's analysis of its proposal.

Information Provided by Consumers on Inconvenient Times, Places, and Methods. The outline of proposals includes provisions for consumers to specify inconvenient times, places, and methods of communication, but it is lacking in important, practical aspects. For example, the proposal would not allow consumer contact preference information to be transferred from a collector to the creditor or another collector; the result is that the consumer would have to re-

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specify his or her choices to the next party to the process, increasing costs and annoying consumers. There is little risk to the consumer in allowing this information to be transferred, since he or she may revoke consent at any time.

Nor does the provision clearly allow the collector to ask a follow-up question on preferences to a consumer who states a call is not convenient for his or her preferred time, place, or manner of contact. In the same way, it does not provide any guidance on how long a collector must wait before trying again to reach the consumer at a time, place, or in a manner of his or her choosing. Encouraging contact with consumers – while protecting them from harassment – is in the consumer's interest, since communications allow for settlement of the debt and avoid the potentially adverse consequences of prolonged uncollected status.

Transfer of Consent. As explained above, there are positive benefits for consumers in allowing for the transfer of information, and this holds true for the broader issue of consent. Thus, both positive and negative consent information should transfer with the account.

As the CFPB moves forward, it must address a point of confusion between the outline of proposals and the discussion issue document provided to the SERs: the outline talks in terms of general consent, while the discussion issues document refers to consent as a waiver of rights under the FDCPA. Clarification is needed on this point.

Debt Parking. The outline of proposals notes the Bureau's consideration of a prohibition on a collector's furnishing information about a debt to a credit 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." This requirement must be clarified, to ensure that sending a validation notice to the consumer's last known address is sufficient. If the Bureau were to require that a collector to confirm that the consumer *received* the notice would require every validation notice to be sent by certified or registered mail, which will greatly increase the costs associated with this requirement.

Call Frequency. As a general proposition, consumers benefit from access to all appropriate communications methods, to maximize their options for resolving outstanding debt. The CFPB's proposal must recognize and endorse the variety of technologies now available and provide for flexibility in reaching consumers who often have multiple telephone numbers per account and may also have email and text preferences that should be accommodated. In addition, the CFPB's Third Party Debt Collector survey indicates that 57% of consumers say they were contacted within the prior year regarding two to four debts, and the proposed rule will have to provide for the ability to contact consumers with regard to each account that is in the collections process. For these reasons, the proposal appears too simplistic for the level of complexity in the current marketplace.

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ACA International suggested, in its comments in response to the debt collection Advance Notice of Proposed Rulemaking, a maximum of six calls per day per account, to deal with consumers who may be at work or unavailable due to any number of different lifestyle arrangements, and the CFPB should consider this standard for its proposed rule. At a minimum, the Bureau should provide for exemptions and exclusions to a call frequency cap in order to avoid unintended negative consequences. For example, exemptions should be spelled out for inbound calls, calls that do not cause the phone to ring, and wrong numbers. Exclusions should be specified for letters, legally required communications, and communications with an attorney. Lastly, the Bureau should define the term "weekly" – does this mean a work week, a calendar week, or a rolling week?

Finally, many state laws regulate contact frequency within their states, including Massachusetts, which sets contact frequency limitations on communications initiated by the debt collector and does not limit communications initiated by a consumer. New York City allows for exceptions with consent of the consumer or permissions of a Court. Washington allows for three communications per week. The Bureau's proposal must be coordinated with state law requirements.

Validation Notice. Several SERs raised issues with the cost and practicality of the validation notice proposal under consideration. Among other concerns, the proposal does not take into account applicable state laws that govern disclosures collectors must provide, and the numerous items the Bureau expects to be included in the notice will entail substantial burden and cost. As noted above, to reduce burden and cost, while achieving the Bureau's objectives, the proposal should promote electronic alternatives to the "tear off" form, allowing the notice to invite consumers to state the nature of their dispute on a website or portal (or to request a mailed form), and requiring, if a tear off form is retained in the proposal, the consumer to specify the nature of the dispute. And, in addition, to make sure that consumers are readily able to resolve their debts, language promoting resolution of a dispute should be given equal prominence with that assisting consumers in pursuing disputes.

Potential Impacts on the Cost of Credit for Small Businesses. The discussion at the SBAR meeting noted several potential impacts of the proposal on the cost of credit for small businesses on both small collection agencies and small business customers.

With respect to the impacts of the proposal on small business customers, any increased cost imposed on collectors will have to be passed along to creditor customers. Those small businesses – plumbers, HVAC installation and repair operations, pest control franchises, dentists, auto repair shops, and the like – will have to decide whether they can afford the higher cost of debt collection (which will diminish profits or be passed on to their customers) or must forgo use of collection services, with consequent increases in their accounts receivables. A higher accounts receivables status (or decreased income or profits if they continue to use the services of

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collectors) will adversely affect their creditworthiness, which in turn will increase their cost of credit, or make it unaffordable and unavailable to them.

Margins are very thin for small businesses in this sector, and that includes both small collection agencies and their small business customers. The CFPB must conduct a thorough benefit-cost analysis of the impacts of its proposals as required by Section 603(d) of the Regulatory Flexibility Act. The outline of proposals states the Bureau's view that its proposals would not apply to businesses because they are intended to govern debt incurred primarily for personal, family, or household purposes. However, regardless of the Bureau's intention to directly regulate only certain types of debt, the impacts of its regulation will have discernable, significant impacts on the cost of credit to both small collectors and their small business customers, and these costs must be analyzed and taken into account in justifying the rule or adopting alternatives that would lessen these costs and burdens. It is not sufficient for the Bureau to assume that the proposals would not impose large enough costs to have a "measurable impact" on the cost or availability of credit products for small entities; the Bureau must carry out a full and careful analysis of the actual size and impact if it is to discharge its statutory responsibilities.

Alternative for Small, Single-State Debt Collection Operations. In an effort to offer an alternative that could alleviate burden on small entities, I urge the Bureau to consider exempting from the scope of the FDCPA a small business that has less 50 employees, is located in a state that has a regulatory scheme in place that registers or licenses the collection agency, where the agency's operations are limited to collecting for creditors located within its state, and collection activities are conducted solely through interstate communications. When the FDCPA was enacted, consumer did not have this additional state level protection. With the proliferation of state agencies regulating debt collection activity in the states, those consumer protections will still remain in place. Florida has done an excellent job of reducing the number of complaints against consumer collection agencies by excluding any persons from the registration if they have been convicted of a crime of moral turpitude, and thoroughly investigating and resolving consumer complaints. The regulatory scheme put in place by the Florida Office of Financial Regulations sufficiently regulate agencies that are located within the State of Florida and should therefore provide sufficient assurances to the CFPB that these small agencies should be wholly exempted from the requirements of the FDCPA as the Florida Consumer Collection Practices Act explicitly states that it provides greater protections for the consumer than the FDCPA. Subjecting these agencies to multiple levels of regulations effectively raises the barriers of entry to the debt collection market to exclude small businesses from entering the market.

Conclusion

I appreciate the opportunity to participate in the SBAR process and the time and effort the Bureau has taken to prepare its Outline of Proposals and involve small entity representatives.

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These written comments, along with attachments, and my oral comments at the August 25 meeting, provide feedback on the Bureau's proposals and suggested alternatives. While the proposals contain some positive steps, they must be refined to include increased clarity, bright line standards, and safe harbors to be workable and to avoid needless, unproductive litigation. I remain concerned that the absence of first parties from the process – or at a minimum a carefully developed analysis, by product line, informed by first party experience, of the information integrity part of the proposal – deprives the SERs of the chance to provide effective comments on the feasibility of the approaches under consideration. In order to fulfill its requirements under the Small Business Regulatory Fairness Enforcement Act, the Bureau must reconvene the third party collector SERs, once full information is developed on the information integrity aspects of the proposal, to ensure appropriately informed outreach.

Sincerely,

Jack W. Brown III, President
Gulf Coast Collection Bureau, Inc.

Attachment

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ATTACHMENT

Findings from ACA International's 2016 Business Practices Survey

Purpose
To help with advocacy efforts related to the CFPB's debt collection rulemaking, ACA International commissioned a 2016 Business Practices Survey in August 2016. This report by the ACA Research Department describes the business practices of member organizations in an effort to assess the potential impact of additional regulatory measures on members and the industry.

Method
ACA International members that are either third party debt collection agencies or debt buyer members were invited to complete the web-based survey. Email invitations were sent to 6,210 individual association members.

The survey instrument was designed by ACA International's General Counsel. Development of the survey web site, broadcast email contacts, mailings, and tabulation were all handled by ACA International team members.

The data in this report was collected from August 15, 2016 – August 18, 2016. This report reflects responses from 446 members, representing a response rate of 7.2%.

The margin of error for percentages based on all 446 usable responses is ±4.47% at the 95% confidence level. This means that 95% of the time we can be confident that percentages in the actual population would not vary by more than 4.47% in either direction. The margin of error for percentages based on smaller sample sizes will be larger.

N = **446**
Sample population = **6,210**
Response rate = **7.2%**
Confidence level = **95%**
Margin of error = **±4.47%**

Discussion of Findings

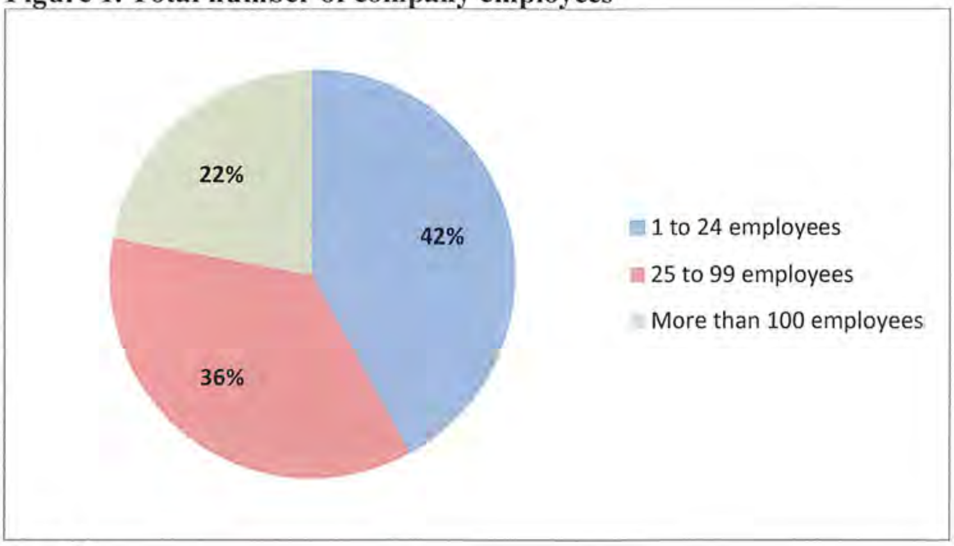
Organization Size

Respondents were asked to indicate the size of their company by both total employees and average annual receipts. The Small Business Administration (SBA) Office of Advocacy defines a small business as "an independent business having fewer than 500 employees." Additionally, the SBA has set the size standard at $15 million in average annual receipts for debt collection businesses.

Figure 1 shows the total number of employees for respondents' companies. Nearly half (42%) indicate that their organization has 24 or fewer employees; 78% of respondents indicated that their organization employs fewer than 100 employees.

Survey Question: *How many total employees does your company have?*

Figure 1. Total number of company employees

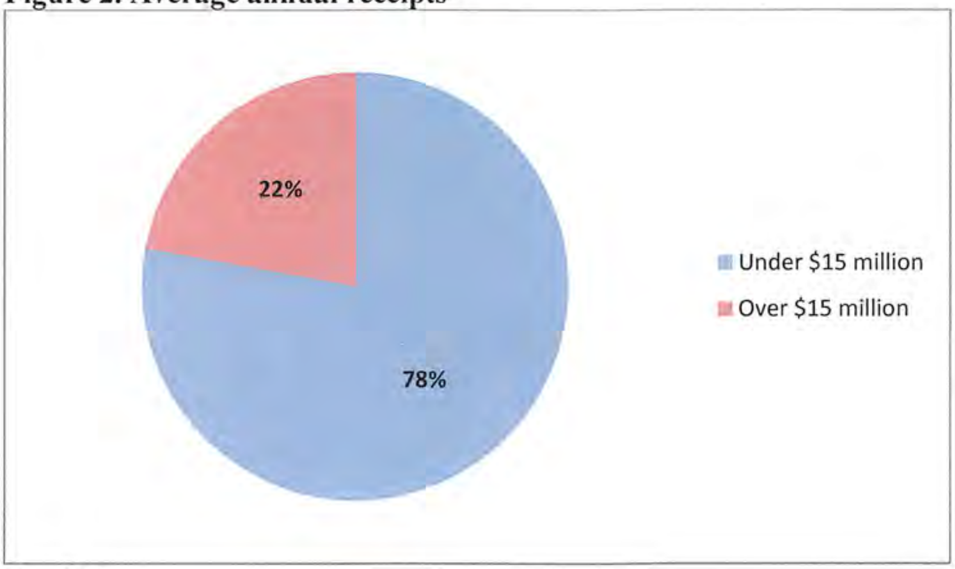


N = 443

Figure 2 shows the percentage of member organizations indicating whether they are above or below the SBA's $15 million threshold for annual receipts. Again, 78% of responding members indicate that their organization has under $15 million in annual receipts.

Survey Question: *Do your average annual receipts total:*

Figure 2. Average annual receipts

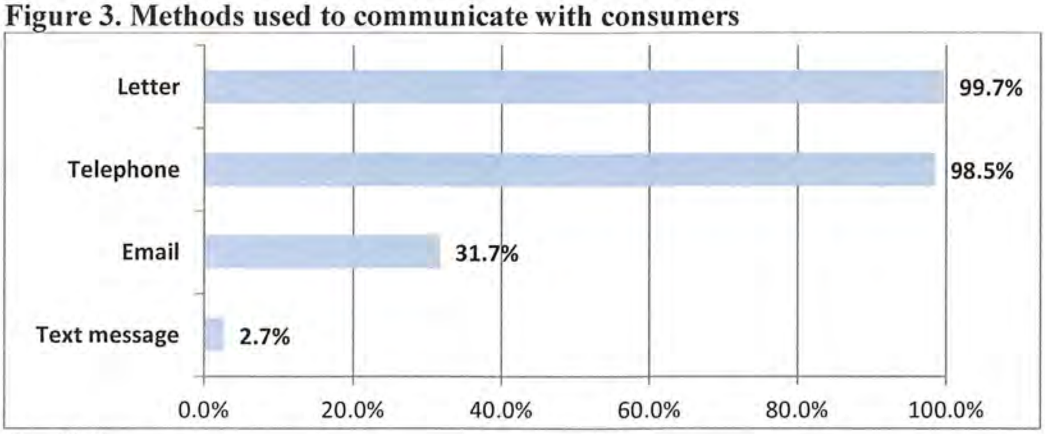


N = 424

Members were asked to indicate the methods they use to communicate with consumers about debt. Figure 3 shows that letters (99.7%) and Telephone calls (98.5%) are the most common methods used to communicate with consumers. A minority of respondents (31.7%) indicate that they use Email as a mode of communication. Only 2.7% of respondents report that they use text messaging to communicate with consumers.

Survey Question: *Which of the following methods do you use to communicate with consumers? (check all that apply)*

Figure 3. Methods used to communicate with consumers



N = 328

Table 1 shows the estimated cost of mailing an additional page of disclosures in conjunction with a validation notice. Respondents report that the average increase in cost for additional mailings would be $95,405. The median estimated increase in cost was $15,950.

Survey Question: *What would your annualized cost be if you were required to mail an extra page of disclosures along with your validation notice?*

Table 1. Estimated annualized cost to mail an additional page of disclosures with a validation notice.

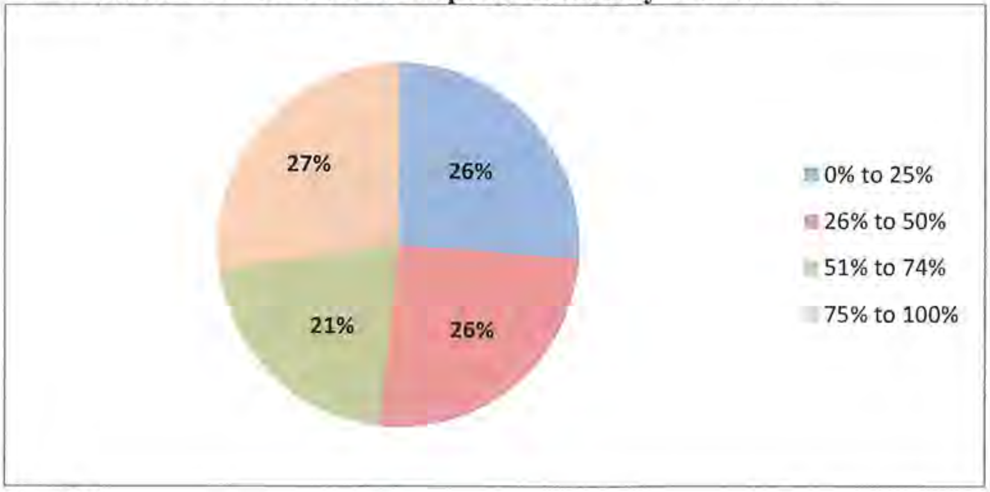
Mean	$95,405
Median	$15,950
	N = 209

Management of Disputes and Dispute Resolution

Members were asked about the types of disputes they encounter on a regular basis and how those disputes are typically resolved. Figure 4 shows the percentage of the time that a respondent is able to resolve an oral dispute during the conversation in which the oral dispute arises. Forty-eight percent (48%) of respondents indicate that they are able to resolve an oral dispute during the conversation in which the oral dispute is raised by the consumer between 51% and 100% of the time.

Survey Question: *What percentage of the time are you able to resolve an oral dispute during the conversation in which the oral dispute arises?*

Figure 4. Percentage of the time respondent is able to resolve an oral dispute during the conversation in which the oral dispute is raised by a consumer.

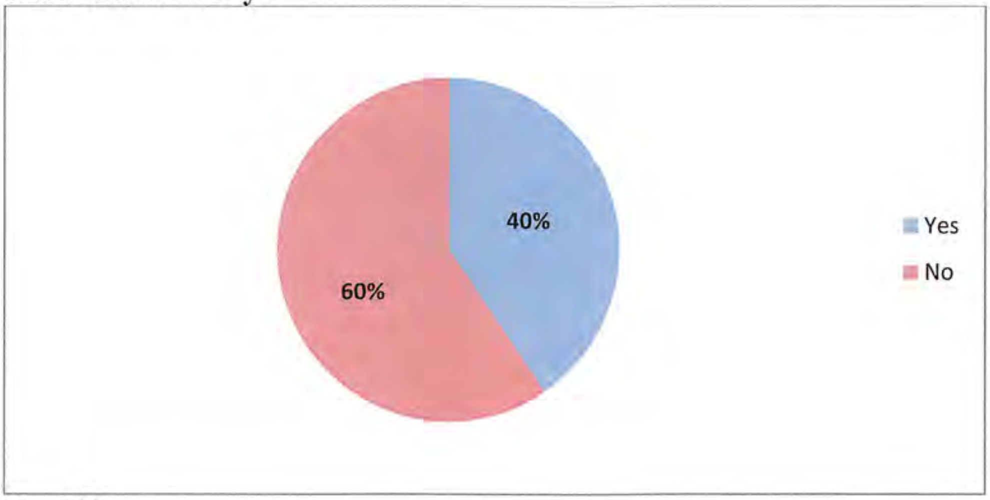


N = 294

Members were also asked whether their organization maintains a website that allows consumers to dispute debts electronically. Figure 5 shows that 40% of respondents indicate that their organization maintains a website with this type of dispute feature.

Survey Question: *Does your company have a website that allows consumers to dispute debts electronically?*

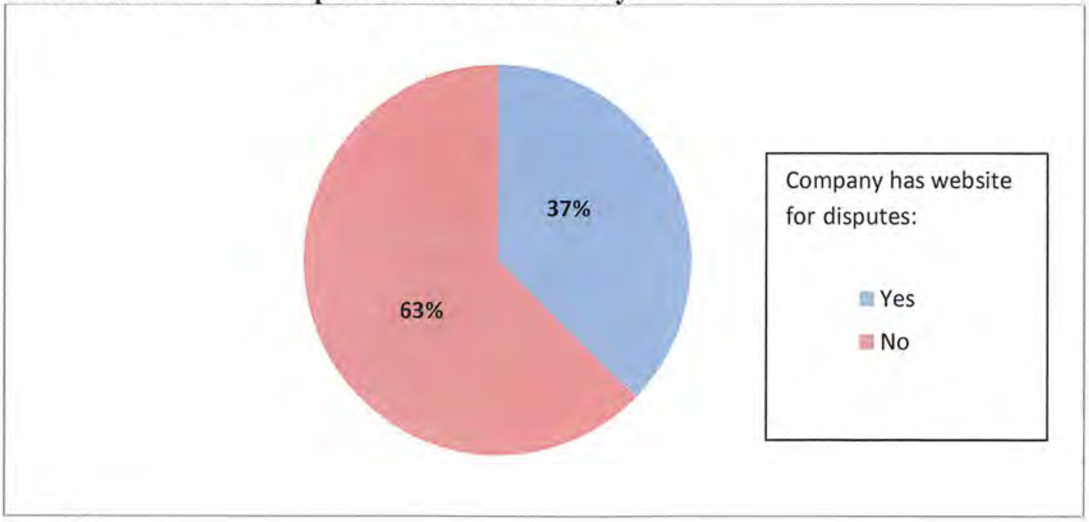
Figure 5. Percentage of companies which have a website that allows consumers to dispute debts electronically.



N = 299

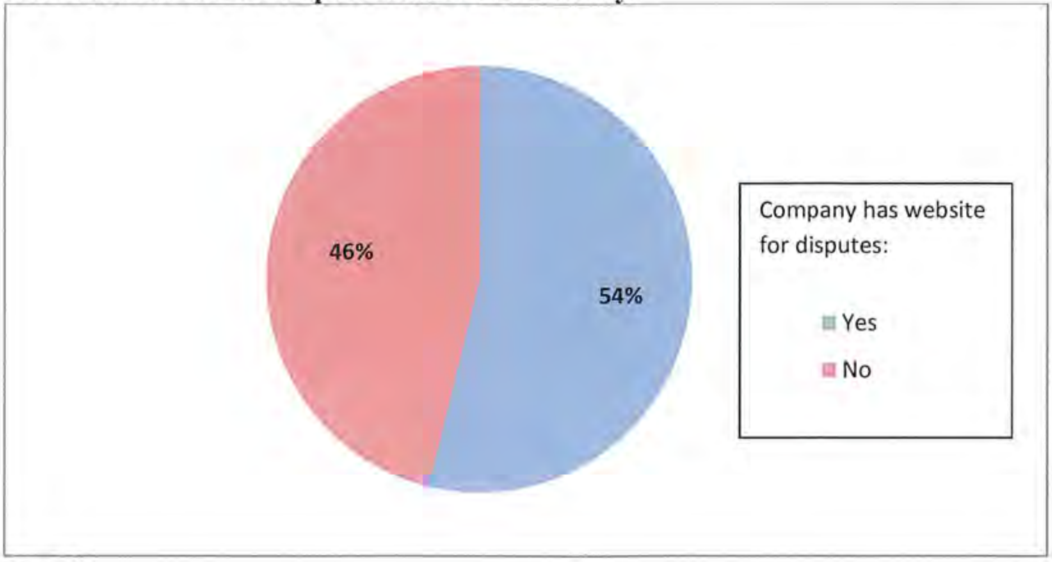
Figure 6 shows companies with average annual receipts under $15 million with a website that allows consumers to dispute debts electronically. Sixty-three percent (63%) of companies with average annual receipts under $15 million do not have a website that allows consumers to dispute debts electronically. Figure 7 shows companies with average annual receipts over $15 million with a website that allows consumers to dispute debts electronically. Forty-six percent (46%) of companies with average annual receipts over $15 million do not have a website that allows consumers to dispute debts electronically.

Figure 6. Companies with average annual receipts under $15 million with a website that allows consumers to dispute debts electronically.



N = 244

Figure 7. Companies with average annual receipts over $15 million with a website that allows consumers to dispute debts electronically.



N = 52

Similarly, members were asked what percentage of disputed debts they are unable to verify on an annual basis. Table 2 shows that, on average, respondents are unable to verify 14.5% of disputed debts; the median value for unverifiable disputed debts is 4.5%.

Survey Question: *What percentage of disputed debts, on average and annually, are you unable to verify?*

Table 2. Percentage of disputed debts, on average and annually, respondents are unable to verify.

Mean	14.5%
Median	4.5%
	N = 266

Table 3 shows the types of disputes as ranked by overall prevalence. Seventy-nine percent (79%) of respondents indicated that generic disputes with no information relating to the nature of what is being disputed are the most common type of consumer dispute.

Survey Question: *Rank the order of dispute types by prevalence from 1-4, with 1 representing the highest number of disputes and 4 representing the least number of disputes.*

Table 3. Type of dispute, ranked by prevalence (1 represents highest number of disputes; 4 represents least number of disputes).

Type of Dispute	Ranked Value 1	2	3	4
Generic disputes (i.e., disputes with no information relating to the nature of what is being disputed)	**79.20%**	14.96%	3.65%	2.19%
Disputes related to the amount owed	14.07%	**60.74%**	21.48%	3.70%
"Wrong consumer" disputes	3.05%	20.61%	**61.83%**	14.50%
"Wrong debt collector" disputes"	3.76%	2.63%	12.78%	**80.83%**

N = 277

Generic disputes also require just over three weeks to resolve at an average of 23 days, while specific disputes (those disputes relating to the amount owed, the wrong consumer, or the wrong debt collector) are typically resolved in just under two weeks at 13.46 days. (See Table 4).

Survey Question: *How many days, on average, does it take you to resolve the following types of disputes:*

Table 4. Average number of days required to resolve dispute, by dispute type.

Type of Dispute	Mean	Median
Generic Disputes (i.e. disputes with no information relating to the nature of what is being disputed).	23.07	10
Specific Disputes (i.e. disputes relating to the amount owed, the wrong consumer, or the wrong debt collector).	13.46	10

N = 255

Maintenance and Transmission of Information

Members were asked about the information systems they use and the ability of those systems to transmit data to and from clients. Table 5 shows the percentage of organizations that currently maintain software allowing for transmission of various types of consumer information received during the collection process back to the client, by function. Respondents indicate that the most common functionalities of their software systems include dispute information and details (56%), whether consumer is deceased and if so, date of death (67%), and oral or written cease communications request (66%).

However, respondents also indicate that their software systems are lacking a range of functionalities, including any time, place, or method of inconvenient communication (65%), whether the consumer was provided a Statute of Limitations disclosure (65%), whether consumer is an active duty servicemember and whether consumer has secured a rate reduction (67%), whether consumer applied for discharge of the student loan debt on a basis that imposes a collections pause and the date of application (82%), terms of any defaulted student loan rehabilitation agreement, number of payments made, any requested adjustment to the monthly payment amount (82%), and language preference (75%).

Survey Question: *Does your company currently maintain software that would enable you to transmit consumer information received during the collection process back to the client, including:*

Table 5. Percentage of organizations that currently maintain software allowing for transmission of consumer information received during the collection process back to the client, by function.

Functionality	Software Status		Response Count
	Yes	No	
Dispute information and details	56%	44%	255
Any time, place, or method of inconvenient communication	35%	65%	253
Whether the consumer was provided Statute of Limitations disclosure	35%	65%	252
Whether consumer is deceased and if so, date of death	67%	33%	253
Whether consumer is active duty servicemember and whether consumer has secured a rate reduction	33%	67%	252
Whether consumer applied for discharge of the student loan debt on a basis that imposes a collections pause and the date of application	18%	82%	233
Terms of any defaulted student loan rehabilitation agreement, number of payments made, any requested adjustment to the monthly payment amount	18%	82%	234
Language preference	25%	75%	250
Oral or written cease communications request	66%	34%	253

For those respondents indicating that their current software systems are lacking in some or all of the functionalities described in Table 5, the average estimated cost to implement or modify their software system for additional functionality is $73,339. The median estimated cost of modifying their systems for additional functionality is $30,000. (See Table 6).

Survey Question: *If you answered "no" to any of the above categories of information, what would be the approximate cost to implement/modify a system?*

Table 6. Estimated cost to implement or modify a software system for additional functionality.

Mean	$73,339
Median	$30,000
	N = 127

Members were also asked whether their organization maintains software allowing for the forwarding of consumer information received after an account is closed back to the client. Table 7 shows the percentage of organizations that currently maintains software allowing for this type of transmission. The majority of respondents report that they did have the ability to transmit payments (75%), bankruptcy discharge notices (62%), and disputes (59%) back to clients. However, the majority of respondents report that they do not have the capability to transmit identity theft reports (55%) or the assertion/implication of legally exempt income/assets (70%) back to clients.

Survey Question: *Does your company currently maintain software that would enable you to forward consumer information received after an account is closed back to the client, including:*

Table 7. Percentage of organizations that currently maintains software allowing for the forwarding of consumer information received after an account is closed back to the client, by information category.

Information Category	Software Status		Response Count
	Yes	No	
Payments	75%	25%	253
Bankruptcy discharge notices	62%	38%	253
Identity theft reports	45%	55%	252
Disputes	59%	41%	251
Assertion/implication of legally exempt income/assets	30%	70%	247

For those respondents indicating that their current software systems are lacking in some or all of the information capabilities described in Table 7, the average estimated cost to implement or modify their software system for additional functionality is $57,150. The median estimated cost of modifying their systems for additional functionality is $25,000. (See Table 8).

Survey Question: *If you answered "no" to any of the above categories of information, what would be the approximate cost to implement/modify a system?*

Table 8. Estimated cost to implement or modify a software system to transmit additional information.

Mean	$57,150
Median	$25,000
	N = 110

When asked about the potential response from small business clients if they were required to furnish additional documentation, 49.6% of respondents indicate that the small business client will have to invest additional resources to increase their ability to collect accounts receivable. An additional 32.1% of respondents indicate that the small business client will have to forego collections causing their accounts receivable to increase. (See Table 9).

Survey Question: *In speaking with your small business clients, if they had to provide documentation related to the date of default, the amount owed at default, payment histories, itemization of the debt, and the complete chain of title, would your clients:*

Table 9. Potential response of small business clients if required to provide documentation related to the date of default, the amount owed at default, payment histories, itemization of the debt, and the complete chain of title.

Small Business Response Categories	Response Percent
The small business client will have to invest additional resources to increase their ability to collect accounts receivable.	49.6%
The small business client will have to forego collections causing their accounts receivable to increase.	32.1%
Other	18.3%

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September 9, 2016

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1700 G Street, NW
Washington, DC 20552

VIA E-MAIL ONLY: Kristin.McPartland@cfpb.gov; Lauren.Weldon@cfpb.gov; John.McNamara@cfpb.gov

RE: Small Business Advisory Review Panel for Debt Collector & Debt Buyer Rulemaking

Dear Ms. McPartland, Ms. Weldon and Mr. McNamara:

Thank you again for giving me the opportunity to participate as a Small Entity Representative ("SER") during the Small Business Advisory Review Panel's outreach meeting held on August 25, 2016 at the Consumer Financial Protection Bureau ("CFPB" or "Bureau). I also appreciate the opportunity to submit this written response that further elaborates on the concerns I have about the Bureau's Outline of Proposals under Consideration and Alternatives ("Proposals") that were released on July 28, 2016.

As the Bureau is aware, to comply with its Proposals, collectors would have to incur costs to upgrade and update several aspects of their collection management systems. However, it is much harder for small businesses, such as Hood & Stacy, to minimize and absorb these costs compared with large collectors. Relative to these larger players, costs incurred to purchase and maintain software represent a larger percentage of small business collectors' total expenses. Consequently, increased software expenses would have a larger impact on the profit margins of small business collectors, such as Hood & Stacy, compared to the impact those expenses would have on large collectors' profit margins. Additionally, unlike large collectors, as a small business Hood & Stacy does not have the option of hiring an in-house programmer in the event that we are unhappy with a quote from an external provider. As such, I set forth a number of recommendations that would alleviate or offset these costs.

Included in this written submission are three exhibits:

- **Exhibit 1**. On August 11, the CFPB provided SERs with a document outlining discussion topics that included well over 100 questions. The Bureau solicited answers to these questions during the one-hour outreach calls held on August 16 and August 18, and again during the August 25 meeting. Given the scope of these questions and the limited amount of time to address them, I address only the most relevant ones for my law firm in this exhibit.

- **Exhibit 2**. Included in the Proposals were appendices. To make clear my concerns with certain appendices, this exhibit reflects my recommendations for alternative language that would minimize the cost of regulation to my firm, and likely other small business collection law firms.

- **Exhibit 3**. For ease of reference, this exhibit lists each of my recommendations.

Upcoming Consultation Process for Creditors Must Involve Debt Collectors

I recognize the difficulty in promulgating debt collection regulations that would apply not only to third-party debt collectors, but also to creditors and others engaged in collection activity. However, I agree with the SERs when they raised concerns that (1) the Bureau's Proposals focused only on "debt collectors" subject to the Fair Debt Collection Practices Act ("FDCPA") and (2) the Bureau's thinking on first-party creditors would not be released until a later date. Because the Bureau bifurcated the debt collection proposals, SERs must evaluate the July 28 Proposals without the benefit of insight into how the CFPB's intends to regulate first-party creditors, and how those regulations would operate alongside the third-party regulations being considered. It is likely that any debt collection regulations that would apply to first-party creditors would have an economic impact on the collections industry. As such, small business debt collectors should again be consulted. Therefore, when the Bureau releases its outline of proposals applicable to first-party creditors, I **recommend** that the agency seek input from small business debt collectors. I would welcome the opportunity to again serve as a SER during that outreach meeting.

Debt Collection Rulemaking should not be Bifurcated

During the August 25 meeting and the SER calls leading up to the meeting, CFPB representatives explained that while the Bureau has bifurcated the Small Business Regulatory Enforcement Fairness Act (SBREFA) consultation process, it has not yet been determined whether the agency will also bifurcate the debt collection rulemaking.

Any regulations applicable to debt collectors and debt buyers will impact first-party creditors. Similarly, any regulations applicable to banks and other creditors will also impact debt collectors and debt buyers. Even the Bureau recognized this in its Proposals, noting that "[c]reditors 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."[1] This acknowledged symbiotic relationship between the parties supports my **recommendation** that the Bureau avoid bifurcating the rulemaking. Further, imposing rules on how third-party debt collectors must substantiate the validity of the debt without imposing any corresponding rules on creditors when it is the "[c]reditors [that] generate much of the underlying information" would be a grave injustice. Though I do not advocate that the Bureau "regulate by enforcement," a delayed debt

[1] Outline of Proposals under Consideration and Alternatives at 6.

collection rulemaking, where both first- and third-party entities engaged in collection activities under subject to the same regulatory regime, is preferable.

Notice of Proposed Rulemaking Must Account for Different Debt & Debt Collectors

As a preliminary matter, Hood & Stacy supports the CFPB's efforts to prohibit debt collectors from seeking to recover from the wrong consumer or in the wrong amount. My firm agrees with the Bureau that collectors be required to have a reasonable basis for asserting claims of indebtedness. The Proposals as drafted, however, do not adequately account for key differences in the debt collection industry.

The Bureau's use of "date of default" fails to acknowledge the different types of debt.

I recognize that certain courts of appeal use the term "default" to distinguish between "creditor" and "debt collector," and that these courts use the status of the debt (*i.e.*, whether the debt is in default) to determine when FDCPA obligations are triggered. However, there is no reason to require information related to default to serve as a basis of substantiating claims of indebtedness. While date of default is one way to determine when an entity's activities are governed by FDCPA, there is limited value, if any, in using that same date to verify the validity of the debt.

In fact, as many SERs pointed out, using "date of default" is problematic. As the Bureau acknowledged during the SER calls and in the August 25 meeting, there is no universally accepted definition of when an account goes into default. Further, depending on the type debt, there is no "date of default." And more importantly, the use of "date of default" may contravene the very goal the Bureau seeks to accomplish. Under the proposals related to prohibiting unsubstantiated claims of indebtedness, the Bureau seeks to ensure that debt collectors recover the right amount from the right consumer. Yet, these proposals would require debt collectors to use information that either does not exist or information that a consumer may not necessarily recognize.

While we generally handle defaulted debt as a collection law firm, the information provided to us is often not explicitly tied to a "date of default" across all clients. Instead, depending on the type of debt, the information is tied to other dates such as date of charge off (credit cards), date of default (federal student loans), and date of last default (auto deficiencies). Accordingly, I **recommend** that the Bureau use "date when the account went into collections or assignment" rather than "date of default." Assessing when an account went into collections or was assigned would then be a debt-specific inquiry determined by the debt collector. Depending on the type of debt at issue, information necessary to substantiate the claim could be based on the following dates: date of charge off, date of last default, date of default, date of service, and date of last payment. In this way, the Bureau would use a flexible approach that would account for the various types of debts under collection. My recommendation is further set forth in **Exhibit 1**.

The Bureau's use of "portfolio" fails to acknowledge the differing players in the industry.

While my firm is supportive of the proposal to prohibit unsubstantiated claims of indebtedness, I am concerned with how the Bureau intends to implement such a proposal with respect to requiring collectors to look for warning signs across a "portfolio." By way of example, the CFPB explained that "[a] significant percentage in the portfolio has missing or implausible information" and "[a] significant percentage of debt in the portfolio has unresolved disputes, either in absolute terms or relative to portfolios with comparable types of accounts" would constitute as warning signs. As an initial matter, Hood & Stacy does not receive "portfolios" of debt. The same holds true for most, if not all, collection law firms that work with original creditors.

My firm receives accounts primarily from original creditor clients on an ongoing basis, and as such, there is no group of accounts that would constitute a "portfolio." Our clients do not segregate accounts into batches or portfolios when they assign them to us. Accordingly, I **recommend** the Bureau define the term "portfolio," to make clear that the meaning would not include accounts received from original creditor clients on an ongoing basis. My rationale for my recommendation is further explained **Exhibit 1**, in which I respond to specific questions from the Bureau.

Our understanding is that the Bureau intends to define "portfolio" to refer to a group of defaulted debt that has been purchased by debt buyers, and my firm would support such a definition.

However, in the event that the definition of "portfolio," and the requirement to look for warning signs across a "portfolio," also applies to accounts that are placed by first-party creditors (*i.e.*, debts that have ***not*** been sold to debt buyers), this proposal would have a substantial economic and operational impact on Hood & Stacy.

At a minimum, in order to track information and identify warning signs across a particular group of accounts, Hood & Stacy would have to purchase a software program that is capable of aggregating and synthesizing information for related accounts. We estimate that this software program would cost approximately $30,000. We also anticipate that we would incur ongoing costs to maintain the software, such as service fees or paying a programmer to synchronize our systems.

In addition, we estimate that we would incur costs of $7,000–$10,000 per year[2] to manage and address the unique administrative and logistical challenges that this proposal would create for Hood & Stacy.[3] As mentioned, my firm primarily receives accounts from first-party creditor clients on an ongoing basis, and these accounts are not related to a particular "portfolio" or placed as a unit. Because there are insufficient common characteristics by which to group debts that we receive, looking for warning signs across an assigned group of debts would be administratively challenging. Further, determining what constitutes a "significant percentage" would be subject to continuing uncertainty due to the fact that accounts are received on an ongoing basis.

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[2] This estimate is based on the compensation we would have to provide to an employee (either new or existing, working overtime) for the time needed to manually review incoming accounts and updating group-wide calculations for the purpose of tracking information about the group and calibrating thresholds.

[3] If the definition of "portfolio," and the requirement to conduct a "portfolio" review, is not limited to situations involving a group of defaulted debt that has been purchased by debt buyers, firms such as Hood & Stacy that primarily work with first-party creditors would actually incur a disproportionate economic impact under the proposal versus firms that primarily work with debt buyers. For instance, firms that receive a portfolio of debt (as the term is commonly understood) would only have to perform one initial review upon receiving the portfolio and tracking information across the portfolio would be straightforward because the accounts would be linked upon placement. Hood & Stacy, on the other hand, would have to continuously perform the initial "portfolio" review because we receive accounts on an ongoing basis and tracking information would be difficult since accounts within a given "group" are not linked upon placement.

The Bureau's broad definition of "dispute" may improperly regulate collection attorneys.
While my firm generally agrees with the Bureau's measures in handling generic and specific disputes, I raise two specific issues.

1. The present definition of "dispute" — "any question or challenge related to the validity of the debt or the legal right of the collector to seek payment on the debt" — without setting forth parameters suggests that when a question or challenge to the validity of the debt is raised even *after* a lawsuit has been filed, the debt collector law firm would have to cease collection activities, including the pending lawsuit.

   Such an overbroad definition of dispute is unnecessary and will likely cause consumer harm. The Bureau intends for consumers to receive a bill of rights as well as a litigation disclosure, and these measures will provide the requisite safeguards for consumers to challenge the claim of indebtedness before *and* after litigation commences. Further, the Bureau's requirement that collectors substantiate claims prior to filing a lawsuit will provide another pre-litigation safeguard that would significantly reduce the likelihood of warranted challenges to the validity of the debt.

   Once litigation has commenced, challenges to the claims of indebtedness should be resolved pursuant to the applicable court rules of procedure rather than the dispute-handling process anticipated by the Bureau's outline. Once a suit is filed, the parties are subject to a schedule that is set by the court. That schedule often includes inflexible deadlines and events such that it would be impractical to require a party to seek continuances or extensions as would be necessary to fulfill the requirements of this aspect of the Proposals. I understand the Bureau's concern that unsophisticated consumers often do not participate in the litigation process or fail to protect their interests. However, these concerns are addressed to a great extent by additional proposed disclosures, such as the bill of rights and the litigation disclosure. Further, the Bureau is considering a requirement that any collector substantiate claims of indebtedness prior to filing suit. These measures negate the notion that the Bureau should oversee the conduct of attorneys during litigation proceedings. Moreover, it would violate the practice of law exclusion[4] set forth in the Dodd-Frank Act.

   Accordingly, I **recommend** that the Bureau modify the definition of "dispute" to mean "any question or challenge related to the validity of the debt or the legal right of the collector to seek payment on the debt *prior to the filing of a lawsuit to collect upon the debt.*"

   Putting aside concerns about the practice of law exclusion, there are sound reasons for the Bureau to make clear that only timely questions or challenges would cease collection

[4] As the Bureau is aware, it does not have the authority to regulate how attorneys practice law. We acknowledge that the Bureau's position is that it believes it has authority over attorneys when we offer or provide a consumer financial product or service that is "not offered or provided as part of, or incidental to, the practice of law, occurring exclusively within the scope of the attorney-client relationship," or that is "otherwise offered or provided by the attorney in question with respect to any consumer who is not receiving legal advice or services from the attorney in connection with such financial product or service."

activities. First and foremost, allowing a "dispute" after the filing of a suit would likely confuse consumers into relying to their detriment that they have a right to dispute indefinitely – even after being served with a complaint and summons, which provides a limited amount of time to respond. Consumers may wrongly believe that a response to the summons and complaint is not necessary if they challenge the debt outside litigation proceedings. Without the modification, the Bureau would also be exposing collection attorneys to increased litigation risk from private actions for technical violations that do not in fact cause any harm to consumers. Under my recommendation, consumers would still be able to raise their challenges to the validity of the debt or the legal right of the collector, but such challenges would not stay litigation proceedings. Instead, those challenges would be addressed by a court of law.

Because of the Bureau's other safeguards — bill of rights, litigation disclosure, substantiated claims — once litigation has commenced, our clients should be able to rely on the court to settle claims of indebtedness without involvement from the Bureau.

2. Certain information required to respond to disputes as to the wrong consumer (as set forth in Appendix D of the Proposals) is simply unavailable or never existed. To resolve disputes as to the wrong consumer, the CFPB is considering requiring collectors to obtain the consumer's original agreement or original consent to the debt. As a preliminary matter, with respect to credit card debt, my firm is able to resolve disputes as to wrong consumer without ever receiving the original agreement, original consent to the debt or the loan application because we often receive unique identifiers such as the consumer's name and social security number along with other underlying documentation. Such identifying factors are mostly obtained from the consumer's application for credit, which is often done by phone or internet.

   For many types of debt, there is no document that is signed and can be obtained to show that the consumer consented to the debt. Certain debt, such as credit cards, originated decades ago and entities were not required to retain the relevant original documentation indefinitely. Also, obtaining a credit card often occurs over the phone or online. (This is also the case for debt arising from online marketplace lending.) Moreover, in certain contexts, the consent to the debt results from the consumer receiving and using (or permitting someone else to use) the credit card. Thus, an activity statement would suffice to reflect the consumer's consent or agreement to the credit card debt.

   To respond to wrong consumer disputes, our policy as a general matter is to supply the consumer with an FTC fraud affidavit and ask the consumer return the signed affidavit as well as other information they have to show that they are a fraud victim. When a consumer fails to do so, after we attempt to obtain a fraud affidavit, it is a good indication that there is no merit to the consumer's challenge.

   Accordingly, I **recommend** that the Bureau (1) eliminate the original agreement and original consent to the debt requirement; and (2) include in its safe harbor, the use of documentation attempting to obtain a fraud affidavit to respond to a wrong consumer dispute.

<u>The Proposed Requirements Could Lead to an Increase in FDCPA Litigation.</u>

Several of the proposals under consideration could expose debt collectors to meritless litigation and increased liability under the FDCPA's private right of action. Specifically, several proposals shift the burden of proof to collectors with respect to certain issues.[5] As a result, those proposals could lead to an increase in both the number of FDCPA lawsuits filed and also the cost of defending each lawsuit, because certain claims may be unable to be resolved by motion. In addition to increasing our direct costs related to defending FDCPA litigation, increased FDCPA litigation and liability exposure would raise our insurance premiums and deductibles.

We estimate that our total annual costs related to FDCPA litigation would increase by approximately 10%, which includes both the direct costs of defending an increased number of lawsuits (*e.g.*, attorney fees, court costs) and indirect costs such as higher insurance premiums and deductibles. There may also be costs associated with increased FDCPA litigation that are harder to quantify, such reputational damage or perceived riskiness, which also affect our firm's bottom line.

<u>The Bureau's Cost Estimate for Transfer of Information is Based on Faulty Assumptions.</u>

In Table 5 of the Proposals, the Bureau provides the following likely impact of the proposal related to the "[t]ransfer of certain information at and after subsequent debt placement" for collection law firms:

> Small one-time impact to ensure information can be received; collection law firms generally do not transfer accounts once received.

I disagree. For the cost to be "[s]mall," the Bureau is assuming that (1) all debt owners will use the identical electronic data interchange (EDI) to transmit the information; (2) all debt owners will make the same identical changes; and (3) that collection law firms have only a few clients. Each assumption is invalid.

Though the Bureau has set forth the information that must be transmitted, there is no prescribed uniform manner in how that information will be maintained and transmitted from the various players in the credit and collections industry to collection law firms. The Bureau incorrectly assumes banks and other first-party creditors maintain and transmit information in the same manner as that of collection agencies and of debt buyers. In fact, my bank and other first-party creditor clients use different protocols to maintain and transmit information to my firm.

Accordingly, I will likely face a cost *per* client. And this cost will vary significantly depending on the client. By way of a recent example, pursuant to one client's requirement for a material change to its EDI, the cost was $25,000.

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[5] For example, the proposals related substantiating claims of indebtedness state that collectors that do not obtain the types of information or documentation specified by the CFPB (in the proposals or corresponding Appendix) may meet the substantiation requirement by obtaining other types of information and documentation, but those collectors would bear the burden of justifying the alternative approach.

As a conservative estimate, I believe the Bureau's transfer of information proposal would have an impact of $200,000 on my firm alone. However, this figure is likely based also on unsustainable assumptions: (1) the exact change required would be the same for every single client; and (2) the cost to implement each EDI would be the same regardless of the size and complexity of the client and type of debt. Accordingly, my estimate is likely on the low end and a more robust estimate would require consulting with each client and their respective IT staff.

I appreciate the opportunity to provide input into the Proposals and am available to provide further guidance as the Bureau continues to develop the Notice of Proposed Rulemaking.

Sincerely,

Burton Stacy, Jr.

Burton Stacy, Jr.

Exhibit
1

Information Integrity

Section A. Substantiation of Claims of Indebtedness

Questions	Answers
1. What information do debt owners currently provide when placing or selling debts?	As a preliminary matter, most of Hood & Stacy's clients are banks, credit card issuers, auto lenders and other first-party creditors. When we receive an account for collection from a client, we typically also receive an electronic data interchange (EDI) file. Depending on the type of debt, the file generally contains several items of information as follows. With respect to the account: • Account number; • Date the account was opened; • Date of charge-off; • Last payment date; and • Balance at charge-off or when the account was referred to collection. With respect to consumer: • Name, • Address, and • Social security number. Again, depending on the type of debt and the particular client's standard operating procedures, we also receive certain underlying documentation such as the operative account agreement containing the applicable terms and conditions. However, when we receive the underlying information varies by client, and it typically ranges from when the client places the account with us to some short period of time thereafter. This information is uploaded into our account management system with the underlying documentation we receive for each account.
What representations do debt owners make to you about the accuracy of the information they place with or sell to you?	Because we receive information directly from original creditors, we do not receive representations about the accuracy of the information that they place with us. As our clients are primarily original creditors, we do not believe representations are necessary. Further, either unilaterally or upon our request, our clients routinely provide us affidavits to support the underlying claims.
2. What information do you review before contacting consumers?	We review the information outlined in response to Question 1 above.
3. Would you be able to obtain and review the list of fundamental	No. Appendix C is problematic for two reasons: • **Inclusion of telephone number.** Our clients do not consistently provide a telephone number as such numbers

information identified in Appendix C of the Outline? If not, what alternative information would you review? Would you recommend adding or subtracting any category of information from the list in Appendix C of the Outline because of cost or similar considerations? If so, why?	change frequently and several times. Moreover, this information is unnecessary to verify that we are seeking debt from the right consumer in the right amount. The combination of name, address, and social security is sufficient. • **Use of date of default.** The information provided by our clients is not tied to when the debt defaulted. We recognize that certain circuits find that FDCPA obligations are triggered when debt goes into default, and as such, it could provide a starting point for validating claims of indebtedness. For Hood & Stacy, we generally only handle defaulted debt. But many of our clients do not use date of default. For example, for credit card debt, we often do not receive date of default, the amount owed at default, and the date and amount of any payment or credit applied after default. Instead, we often receive information based on when our client charged off the debt. For auto deficiencies, on the other hand, we receive information based on date of *last* default and/or the date in which the collateral securing the loan was sold in a commercially reasonable manner. Accordingly, we **recommend:** • Eliminate inclusion of telephone number. • Eliminate the use of "default" for substantiation purposes. • Provide a list of acceptable dates (e.g., date of charge off, date of last payment, date of last default) from which first-party creditors and debt collectors can choose the most appropriate date for purposes of substantiation. The intent of Appendix C is to help ensure that debt collectors are collecting debt from the right consumer in the right amount. There is no reason to link that purpose to when FDCPA obligations attach.
4. Before you start collection, do you currently review the information received? How do you conduct that review, *e.g.,* manual or computerized review?	Yes. We currently have procedures and controls in place to ensure that we are collecting the correct amount of debt from the correct consumer. The review is both manual and automated. Before collections activity commences (i.e., when we send a validation notice that we refer to as a demand letter), there have been various stages of review. Once the account file is opened and uploaded in our software

	system (CLS), data vendors will perform scrubs to ensure that the consumer is not active military or deceased, and the consumer has not filed for bankruptcy. An account is closed and returned to the client if there is a match to any of these types of scrubs. Once the automated review occurs, an attorney will review the account prior to sending the validation notice.
5. If you conduct a review, does this review include looking for any warning signs that the information associated with an individual account or portfolio is inaccurate or inadequate, and what warning signs do you look for? What steps do you take when you discover a warning sign? Would you recommend adding or subtracting any warning signs from the examples on page 8 of the Outline?	Yes. A few days after the account is opened, an attorney will review the account and draft a validation notice, which he or she will sign. In preparing the validation notice, the responsible attorney will review the relevant consumer and account information and ensure that it matches the corresponding items of information as reflected in the underlying documentation. If any information regarding the debt or the consumer is missing, inaccurate, or contradictory, thus raising a "warning sign," this issue will be flagged and addressed with the client for resolution prior to the demand letter being sent. Before the demand letter is sent, at least one staff member and at least one attorney at Hood & Stacy will have reviewed information about the debt and the consumer to ensure that the information is complete, that there are no apparent issues or discrepancies with respect to the account information, and the validation notice is accurate. Yes. While my firm is supportive of the proposal to prohibit unsubstantiated claims of indebtedness, there is concern with how the CFPB intends to implement such a proposal with respect to requiring collectors to look for warning signs across a "portfolio." By way of example, the CFPB explained that "[a] significant percentage in the portfolio has missing or implausible information" and "[a] significant percentage of debt in the portfolio has unresolved disputes, either in absolute terms or relative to portfolios with comparable types of accounts" would constitute as warning signs. As an initial matter, Hood & Stacy does not receive "portfolios" of debt. Instead, my firm receives accounts primarily from original creditor clients on an ongoing basis, and as such, there is no group of accounts that would constitute a "portfolio." Accordingly, we **<u>recommend</u>** the CFPB should define the term "portfolio," to make clear that the meaning *would not* include accounts received from original creditor clients on an ongoing basis. Our understanding from the August 10, 2016 SBREFA outreach call is that the CFPB intends to define portfolio to refer to a group of defaulted debt that has been purchased by debt buyers, and my firm would support such a definition.

6. What changes, if any, would the proposals under consideration require you to make to your operations and systems? What are the amount and type of costs and benefits associated with any such changes?	The Proposals, as drafted, **would result in a significant economic impact** to my firm. As drafted, Appendix C provides no flexibility for the different types of debt. While we are able to substantiate the date with information other than what is listed in Appendix C, we would not be able to send out validation notices under these Proposals. Our clients, mostly banks and other first-party creditors do not generally provide telephone numbers nor do they provide account information tied to date of default. We also cannot review accounts on a "portfolio" level as we receive accounts on a rolling basis. Should the Bureau require us to review accounts on a rolling basis, even two disputes could result in a work stoppage. We would have to stop collections on even those accounts in which consumers agree with the debt.

Section B. Alternative to the current proposal: Collectors to obtain and review copies of all the original account-level documentation that may be required to verify the debt before commencing collection activity.

Questions	Answers
1. How frequently do debt owners provide original account-level documentation when placing or selling debts?	Hood & Stacy often receives certain account-level documentation after receiving the data file, but before sending the validation notice. To be clear, the type of documentation we receive depends on the debt and the client. For credit card debt, we receive the operative credit card agreement. (We often obtain additional information such as statements or affidavits at a later date, if necessary.) For auto deficiencies, we receive the retail installment contract and history of payments.
How frequently do you review original account-level documentation prior to collecting a debt?	When the client provides account level information at placement, we review the information prior to sending the validation notice.
2. What changes would such an alternative proposal cause you to make to your operations and systems?	In addition to the changes outlined in answer to Question 6 of Section A above, the alternative proposal could result additional changes to our system if the Bureau were to require a specific list of account-level documentation beyond the operative credit card agreement for credit card debt and retail installment contract and history of payments for auto deficiencies.
What are the amount and type of costs and benefits associated with any such changes?	Were the Bureau to require more than the operative credit card agreement or retail installment contract at the very initial stage of collections, there would be unnecessary costs without any attendant benefits. The data file we receive about the debt and the

	consumer along with the current account-level documentation suffices in ensuring that we are collecting the right amount from the right consumer.

Section C. Warning signs during the course of collections

Questions	Answers
1. During the course of collection, do you currently review individual accounts or portfolios for warning signs, and if so, what warning signs do you look for and what steps do you take when you discover a warning sign?	Yes. Just as we conduct a review process prior to sending a validation notice, we monitor individual accounts during the course of collections. In its Proposals, the Bureau outlined that warning signs included: (1) a dispute filed by a consumer with respect to an individual debt, (2) the inability to obtain underlying documents in response to a dispute, and (3) receipt of disputes for a significant percentage of debt in the portfolio. We raise two concerns: • The term "dispute" under the Proposals is defined as "any question or challenge related to the validity of the debt or the legal right of the collector to seek payment on the debt" is overbroad. This suggests that a consumer can raise a dispute after suit has been filed and our firm would have to request a stay in the proceedings. • We do not receive a "portfolio" of debt, and therefore, do not manage accounts at a batch level." (This is discussed more fully above in response to Question 5, Section A.) We handle each account separately and look for warning signs at the account level. As a matter of course, Hood & Stacy utilizes a comprehensive resolution process for disputes that are raised by a consumer in connection with a debt at any time during the pre-litigation collections process. This includes ensuring that we obtain and review additional documentation necessary to verify the debt. If we are unable to obtain sufficient documentation to verify the accuracy of the claim of indebtedness, the issue is escalated to the client who then determines how to proceed. However, if a consumer challenges the debt after a suit has been filed, the court's rules and the applicable substantive law govern. As attorneys and officers of the court, we adhere to the timing and manner of review and production of documents, and respond to any information related to the challenge pursuant to court rules and substantive law.
Do you regard any warning signs as more or less likely	Disputes by themselves do not indicate that the client has provided inaccurate information. Nonetheless, a dispute does trigger additional review and all pre-litigation collection activities are put

to indicate inaccuracies in the information?	on hold until the matter has been resolved.
2. What changes, if any, would the proposals under consideration require you to make to your operations and systems? What are the amount and type of costs and benefits associated with any such changes?	We already conduct a review for warning signs at the account level. Therefore, to the extent that the CFPB limits the definition of "portfolio" to refer only to defaulted debt that has been purchased by debt buyers, such that the term does not apply to an ongoing flow of accounts from an original creditor that debt collection law firms receive on an ongoing basis, then reviewing for warning signs during the collections process would not require any changes to the operations and systems. Our current "hands-on" approach requires significant attorney review of accounts for disputes and warning signs both before and after litigation. We have already incurred such costs to meet our client requirements based upon the most stringent client best practices, and any alternative automated approach would result in significant initial and ongoing capital expenses to our law firm that would not provide a superior warning sign identification than the process we currently have in place.

Section D. Claims of indebtedness following a dispute

Questions	Answers
1. What steps do you currently take to respond to: a. Disputes that meet the requirements (written and within 30 days) of FDCPA section 809? How does the documentation or information you provide differ from the information described in Appendix D? b. Oral consumer disputes or disputes submitted more than thirty days after receipt of a validation notice?	Hood & Stacy supports the Bureau's position of requiring collectors to obtain reasonable support for their claims of indebtedness prior to resuming collection activity after receiving a "dispute." However, as discussed above in response to Question 1, Section C, the Bureau's present definition of "dispute" is problematic. It suggests that when a challenge is raised after a lawsuit has been filed, the debt collector law firm would have to cease collection activities, including the pending suit. Moreover, allowing a "dispute" after litigation commenced would likely confuse consumers into relying on their right to dispute indefinitely after being served with a complaint and summons, which gives the consumer a limited amount of time to respond. Consumers may believe a response to the summons and complaint is not necessary if the debt is disputed outside of litigation, and such reliance would contravene with the rules of civil procedure. Accordingly, we **recommend** that "dispute" be defined to as "any question or challenge related to the validity of the debt or the legal right of the collector to seek payment on the debt *prior to the filing of a lawsuit to collect upon the debt.*" At Hood & Stacy, as a general matter, we utilize a resolution process for any pre-litigation question or challenge to the debt. The process varies depending on the issue raised and specific client work

	standards. When pre-litigation disputes are raised, our process includes reviewing account-level documentation, obtaining additional documentation from the client (if necessary), and soliciting additional information from the consumer. In certain circumstances, we escalate issues to our clients (generally, banks and first-party creditors) for them to determine how to proceed. We raise two concerns about Appendix D. • **Use of "consumer's original agreement or original consent to the debt" to respond to wrong consumer disputes.** This proposal calls for documentation that often does not exist depending on the type of debt. We are able to resolve disputes as to wrong consumer without ever receiving the original agreement or the loan application because we often receive unique identifiers (e.g., SSN). Certain debt, such as credit cards, are decades old. Banks and first-party creditors do not have original documentation to provide to debt collectors. Also, the consent to the debt results from the consumer receiving and using (or permitting someone else to use) the credit card. As a result, an activity statement suffices to reflect the consumer's consent or agreement to the debt. Moreover, there is no document that is signed and can be obtained to show the consent to the debt. Most are done online or over the phone. This is also the case for debt arising from online marketplace lending. Accordingly, our policy is to supply the consumer with an FTC fraud affidavit and ask the consumer return the signed affidavit as well as other information they have to show that they are a fraud victim. If the consumer fails to do so, Hood & Stacy should be allowed to continue its collections activity. Requiring documentation that does not exist such as original agreement, original consent to the debt, or the credit application would result in a **significant economic impact to our business**. It unnecessarily increases our exposure to litigation risk from consumer attorneys without any benefit to consumers. • **Use of date of default.** There is no agreed upon universal definition of the term. As discussed above in response to Question 3, Section A, our clients generally do not provide us information tied to date of default. Accordingly we **recommend** the following:

		• Eliminate the "original agreement or original consent to the debt" and loan application requirements. We note that while original agreements may sometimes be available (e.g., mortgage and student loans), they are not always available across the spectrum of different types of debt. As such, the Bureau should not list "original agreement or original consent to debt" as requirements. Instead, these items should be *included* in the "[d]ocumentation evidencing" facts that go to the validity of the claim against a specific consumer. By removing the requirements for these documents and listing those as types of documentation a debt collector could rely upon, we would not be penalized for not having documents that do not exist. • Include in the verification of documentation list "evidence of an attempt to obtain a fraud affidavit and other information supporting allegations of fraud." Attempting to obtain a fraud affidavit from a consumer allow us to continue with collections activities. • Eliminate use of "default" for substantiation purposes. • Provide a list of acceptable dates (e.g., date of charge off, date of last payment, date of last default) from which debt collectors can choose the most appropriate date to substantiate the debt.
2.	Are there types of specific disputes that would not fall into the categories detailed in Appendix D of the Outline (*e.g.*, dispute as to the amount of debt, dispute as to wrong consumer, dispute as to wrong collector)? If so, what are they and how prevalent are they?	Aside from questions or challenges about the validity of the debt (e.g., billing disputes or account information disputes), we are aware of other specific disputes related credit reports. While this does not happen often, we occasionally have consumers raise concerns about information provided in their credit reports. As a general matter, we transmit those concerns to our clients.
3.	What is your current practice when you receive duplicative disputes or disputes unrelated to the validity of the debt or the collector's right to collect?	How we handle duplicative disputes or disputes unrelated to the validity of the debt or the collector's right to collect varies depending on the guidelines established by each of our original creditor clients. As a preliminary matter, dealing with these types of disputes is costly, more so for collection law firms as opposed to collection agencies. Duplicative disputes or those not even related to the indebtedness claim are often raised as defenses or as counterclaims

	in litigation. As such, we have to address them with motions and appear in court, all of which carries additional costs. Accordingly, I **recommend** that the Bureau provide safeguards that make clear that a debt collector is not required to cease collections activities pursuant to such disputes. The Bureau's regulations under the Fair Credit Reporting Act ("FCRA") provide some instruction. Pursuant to 12 C.F.R. 1022.43(f), a furnisher is "not required to investigate a direct dispute if the furnisher has reasonably determined that the dispute is frivolous or irrelevant." Under the regulation, a dispute qualifies as frivolous or irrelevant, among other things, if (i) "[t]he consumer did not provide sufficient information to investigate the disputed information" or (ii) [t]he direct dispute is substantially the same as a dispute previously submitted by or on behalf of the consumer."
4. Do you currently receive information from prior collectors about whether an account has been disputed and whether the dispute has been addressed? Do you currently take any steps to address any outstanding disputes when a debt is transferred to you? What information or documentation do debt owners make available to collectors in response to disputes?	We generally do not receive information from prior collectors about whether an account has been disputed or the dispute history because a client would generally not send us an unresolved dispute. If the consumer is represented by an attorney or debt management company, we would certainly be provided this information by our clients and there are some accounts that are sent to us because of such representation and because of such dispute. In those instances, we would be provided detailed information about the dispute and a copy of the dispute, as long as the dispute was made in writing. The information or documentation that our clients provide is dependent upon the facts of each dispute. Information and documentation may include, but is not limited to, client affidavits attesting to relevant facts, copies of billing statements, copies of ACH transfers, correspondence to and from consumers, and previously recorded conversations with consumers about the debt.
5. What changes, if any, would the proposals under consideration require you to make to your operations and systems? What are the amount and type of costs and benefits associated with any such changes?	As drafted, the Proposals would have a significant impact on my firm's revenue stream and increase our litigation exposure. Because the term proposal for the term "dispute" requires us to halt legal proceedings if a consumer challenges the validity of claim after the filing of a lawsuit, we would be unable to rely on the courts to be the finder of fact. We would no longer be able to rely on courts to arbitrate factual disagreements. Additionally, to resolve disputes as to the wrong consumer, we would need documents that do not exist. And if we were to rely on other documentation or evidence than those required by the Bureau, we would open ourselves to litigation risk from the

	plaintiffs' bar for technical rule violations.

Section E. Claims of indebtedness made in complaints filed in litigation

Questions	Answers
1. What steps do you take to review information or documentation before filing a complaint in litigation? Do you ever use affidavits, and if so, under what circumstances do you use them (*e.g.* only when documentation is unavailable)?	Prior to filing a complaint, Hood & Stacy has policies and procedures in place to ensure that we have obtained, and an attorney has reviewed, documentation necessary to verify our assertion of the accuracy of the claim of indebtedness. The required documentation will vary based on the type of debt sought to be collected. As a general matter, for credit card debt, we obtain and review account-level documentation including the relevant (not original) account agreement, charge-off statement, other billing statements, and supporting affidavits from the creditor as necessary. Hood & Stacy uses affidavits provided by its clients to verify the validity and amount of claims when we determine that it is necessary. For example, affidavits may be provided to consumers as part of our verification process when a written dispute or request for verification is timely received. Our practice of law utilizes affidavits in the following instances: • Filed with complaints or motions, if needed in our legal opinion; and • Provided to the courts to verify the amount of the claim, if required by the court under court rules applicable to a particular case or if requested in the discretion of the judge responsible for a particular case prior to the entry of judgment.
2. What changes, if any, would the proposals under consideration require you to make to your operations and systems? What are the amount and type of costs and benefits associated with any such changes?	Similar to the Proposals pertaining to disputes to wrong consumer, these Proposals are problematic. Requiring collectors to satisfy their support for claims of indebtedness after commencement of litigation by obtaining and reviewing documentation in Appendix D would result in disruption of the litigation process. Any final regulation should recognize that once litigation commences, the court (or arbitrator) before which a case is pending should control the proceedings, such as the timing and manner of review or production of documents, pursuant to the court's rules. The court is in the best position to assess the information required to apply substantive law to the applicable claim. While consumers have a right to defend themselves against lawsuits, the Bureau's regulations should not encourage consumers to raise untimely disputes to stay litigation. Let's use the example of when a consumer raises a challenge as to a charge, late fee or interest amount on the eve of trial. The information necessary to resolve

	such an issue may not be available before the upcoming trial date. A law firm would then face the dilemma of either not fulfilling a court order to try its case on a given date, or proceed with the trial and potentially have to defend an alleged FDCPA violation. Such example would most likely involve the consumer being represented by an experienced consumer counter-claimant attorney who strategically chose to raise a specific challenge on the eve of trial rather than pursue the challenge during the ordinary course of the discovery process before trial or prior to the suit being filed. Further, we cannot quantify a cost impact of requiring us to obtain and review documentation that does not exist. We reiterate and summarize our position on Appendix D. We **recommend**: • Modify the term "dispute" be defined to as "any question or challenge related to the validity of the debt or the legal right of the collector to seek payment on the debt *prior to the filing of a lawsuit to collect upon the debt.*" • Eliminate the "original agreement or original consent to the debt" and loan application requirements. • Include in its safe harbor provision that after receiving a wrong consumer dispute, that collection activities may resume once a firm has attempted to obtain a FTC fraud affidavit and the consumer fails to provide it.

Non-English language requirements

Questions	Answers
1. Do you currently communicate with consumers in languages other than English?	Yes, we communicate with consumers in Spanish on average at most once a week. This infrequency is because (1) we have few Spanish-speaking consumers and (2) many of them speak English as well. Nevertheless, we have bilingual collectors on staff who are able to speak with consumers who prefer to communicate in Spanish.
Do you currently provide consumers with any non-English written materials? What costs did you incur to obtain or develop these non-English written materials?	No. We have not found it necessary to provide non-English written materials. We have Spanish-speaking staff available who can deal with consumers who prefer to communicate orally
2. What changes, if any, would each alternative	Alternative 1: We would need to flag only those accounts belonging to LEP consumers and send translated materials to these

proposal require you to make to your operations and systems? What are the amount and type of costs and benefits associated with any such changes?	consumers. Alternative 2: While the attendant costs are not unduly prohibitive, they would be unnecessary, would cut into already thin profit margins for a small business, and provide no corresponding benefit to consumers who have never indicated that they are part of the LEP population. Further, it could cause consumer confusion. While one of Hood & Stacy's clients has a requirement that our firm send non-English statements upon a consumer's request, no consumer has ever taken advantage of this feature.
3. Do you prefer one alternative to the other based on cost and other considerations? Why?	We **recommend** the first alternative. There is no reason for us to incur the additional burden of sending Spanish translation on the reverse of every validation notice and Statement of Rights when it would be unnecessary and put further pressure on our success as a small business. Providing translated versions of a validation notice and Statement of Rights to a consumer outweighs the cost to our businesses *only if* we are aware that the consumer speaks a language other than English and the Bureau provides a translated validation notice and Statement of Rights in the Federal Register.

Prohibition on transferring debt to certain entities or in certain circumstances

Questions	Answers
1. Do you currently place or sell debt? If so, do you vet, or otherwise perform due diligence on, those with which you place debt or to which you sell debt? If so, what does your vetting process consist of? What are you looking for in the vetting process?	As a collection law firm, we do not place or sell debt.
2. Are you subject to any type of vetting process by creditors or sellers of debt? If so, what does it consist of?	Many of the creditors who seek to engage us to collect on their behalf usually have extensive vetting processes that must be successfully completed prior to the creditor making a final decision to engage Hood & Stacy to serve as its collection attorneys. Those processes generally require us to provide extensive information to the creditor about our firm, how we handle collection accounts, and the security measures we utilize. Once the creditor has received this information, creditors send their staff to our offices to test (by audit) whether our business in fact operates as we represented. Our firm's written policies and procedures are reviewed in detail and tested to ensure their use in our daily practice.

	Once we have been engaged, most creditors oversee our handling of their collection accounts regularly on a periodic basis with both remote and on-site audits. Depending on the collection activity, remote audits are done either weekly or monthly. On-site audits are typically done at least annually, and for larger clients at least semiannually. On-site audits, which lasts anywhere from two to four days, generally consist of the client/creditor's staff meeting with our team, reviewing and testing our procedures and security measures, and observing how we handle the creditor's accounts. Additionally, our firm conducts its own internal audits to ensure we are abiding by our clients' work standards.
3. What changes, if any, would the proposals under consideration require you to make to your operations and systems? What are the amount and type of costs associated with any such changes?	Not applicable.
4. Should the two categories of impermissible transferees described above be expanded? Should they be narrowed? Should categories be added?	We support the Bureau's proposal that would 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.

Exhibit 2

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~~,~~ and 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~~ collections or was assigned (e.g., the account number of the consumer with the creditor);
- The date the account went into collections or was assigned~~of default~~, the amount owed at the time the account went into collections or was assigned~~default~~, and the date and amount of any payment or credit applied after the account went into collections or was assigned ~~default~~;
- Each charge for interest or fees imposed after the account went into collections or was assigned ~~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.

Assessing the date when an account went into collections or was assigned would be a debt-specific inquiry determined by the debt collector. Depending on the type of debt at issue, information necessary to substantiate the debt may be based on the following dates: date of charge off, date of last default, date of default, date of service, and date of last payment.

Appendix D

As provided in the text of the Proposals

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

We propose the following edit:

Definition of dispute. The proposal under consideration would clarify that communications 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 prior to the filing of a lawsuit to collect upon the debt.

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 the account went into collections or assignment~~of default~~) of the debtor;
  - the date the account went into collections or was assigned~~of default~~ and date of last payment to the extent that these are different dates;
  - the name and address of the creditor at the time the account went into collections or was assigned ~~default~~; and
  - the amount of the debt balance at the time the account went into collections or was assigned ~~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 imposed after the account went into collections or was assigned. 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 the date the account went into collections or was assigned~~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); and

[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.

- ~~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 information gathered from the creditor's Customer Identification Program, ~~and~~ a copy of the contract, note, application, or service agreement; and a copy of the debt collector's attempt to obtain a fraud affidavit from a consumer.

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 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;[2]
  - 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 the account went into collections ~~default~~ (the "~~default~~ creditor");[3]
  - the account number with the ~~default~~ creditor;
  - the amount owed on the ~~default~~ date the account went into collections or was assigned;[4]
  - the ~~creditor~~ debt owner to which the debt is currently owed;
  - an itemization of interest, fees, payments, and credits since the ~~default~~ date the account went into collections or was assigned; and o 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 indebtedness;[5]
  - 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

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

[3] 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.

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

[5] 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.

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.[6]

[6] 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).

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.

Exhibit
3

Recommendations

I recommend the following:

1. The Bureau eliminate the inclusion of the consumer's telephone number as a requirement to substantiate claims of indebtedness;

2. The Bureau eliminate the use of "default" for substantiation purposes;

3. The Bureau provide a list of acceptable dates (*e.g.*, date of charge off, date of last payment, date of default, date of last default) from which first- party creditors and debt collectors can choose the most appropriate date to substantiate the debt;

4. The Bureau define the term "portfolio" to make clear that the meaning *would not* include accounts received from original creditor clients on an ongoing basis. My understanding is that the Bureau intends to define "portfolio" to refer to a group of defaulted debt that has been purchased by debt buyers, and my firm would support such a definition;

5. The Bureau define the term "dispute" to mean "any question or challenge related to the validity of the debt or the legal right of the collector to seek payment on the debt *prior to the filing of a lawsuit to collect upon the debt*;"

6. The Bureau modify what documents are necessary to respond to wrong consumer disputes. Specifically, the Bureau should eliminate the "original agreement or original consent to the debt" and loan application requirements;

7. The Bureau include "original agreement or original consent to debt" as "[d]ocumentation evidencing" facts that could go to the validity of the claim against a specific consumer;

8. The Bureau include in the wrong consumer verification of documentation list "evidence of an attempt to obtain a fraud affidavit and other information supporting allegations of fraud;"

9. The Bureau provide safeguards that make clear that a debt collector is not required to cease collections activities pursuant to "frivolous or irrelevant" disputes in the same way furnishers under FCRA are not obligated to investigate such disputes;

10. The Bureau allow debt collectors representing original creditor clients to utilize an individualized attorney review process of each account for "warning signs" in lieu of a requirement that these type of debt collectors be required to implement an automated system to identify warning signs; and

11. The Bureau require debt collectors to flag only those accounts belonging to LEP consumers and send translated materials to these consumers.

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September 9, 2016

Lauren S. Weldon, Esq.
Office of Regulations
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552
Lauren.Weldon@cfpb.gov (By E-mail Only)

RE: Small Business Advisory Review Panel for Debt Collector and Debt Buyer Rulemaking

Dear Ms. Weldon:

As I expressed at the meeting on August 25, 2016, I am extremely honored to have been selected by Consumer Financial Protection Bureau ("CFPB") and the Small Business Administration ("SBA") to participate as a Small Entity Representative ("SER") in the outreach meeting held by the Small Business Review Panel for Debt Collector and Debt Buyer Rulemaking ("Panel"). As an active participant in the legal recovery sector of the credit lifecycle, my input and insight into the effect that the proposals under consideration would have on my business, and other similarly situated businesses, is both relevant and substantial. Again, thank you for allowing me this opportunity to be involved in the rulemaking process.

Contents

Background on Levy & Associates.

I am a creditors' rights attorney and owner of Levy & Associates, LLC, a collection law firm located in Columbus, Ohio that provides legal recovery services. Upon graduating law school, I started my career as a creditors' rights attorney in 1995, when a prospective client contacted me to recover unpaid obligations. Over the years my practice grew and transformed into what it is today. Currently Levy & Associates employs attorneys, paralegals, legal assistants, non-legal administrative staff and collectors to recover unpaid obligations owed to its clients.

Most importantly, Levy & Associates is not a collection agency. Levy & Associates is a law firm that engages in the practice of law to recover unpaid obligations owed to its clients by consumers and businesses. The attorneys at Levy & Associates take pride in the work that they perform and expend considerable effort every day to provide legal services to our clients. All of the attorneys employed at Levy & Associates have attended accredited law schools and are members of the state bar in good standing with the Ohio Supreme Court. In regulating the practice of law, the Supreme Court of Ohio has established the Office of Disciplinary Counsel to investigate allegations and initiate complaints concerning ethical misconduct and the Board of Professional Conduct to interpret and enforce Ohio's Professional Rules of Conduct. Accordingly, as a law firm, Levy & Associates is uniquely dissimilar from collection agencies and other companies that provide non-legal recovery services.

Executive Summary.

Levy & Associates appreciates this opportunity to submit written comments on the CFPB's debt collection proposals under consideration (collectively, "Proposals"), which were released by the Panel on July 28, 2016.

In order to supplement the advice on the Proposals' potential implications for small businesses that I provided to the Panel at the outreach meeting on August 25, 2016, this written submission provides information about the anticipated compliance requirements and costs arising from the Proposals. Also included are recommendations for regulatory alternatives which would accomplish the objectives of each corresponding proposal while minimizing the potential economic and operational impact to small businesses.

Section I of the written submission discusses three overarching issues raised by the Proposals: a) Single-Track Debt Collection Rulemaking; b) Need for Tailored Requirements; and c) Increased Exposure to FDCPA Litigation.

Section II addresses the economic impact of, and regulatory alternatives for, the following Proposals: a) Requirement to Substantiate Claims of Indebtedness; b) Requirement to Review and Transfer Certain Other Information; c) Litigation Disclosure; d) Time-Barred Debt; and e) Numeric Restrictions on Contacts with Consumers.

Also included with the written submission is an exhibit ("Exhibit A") which lists each regulatory alternative recommended by Levy & Associates.

I. Overarching Concerns Raised by the Proposals.

A. Debt Collection Rulemaking Should Not be Bifurcated.

The ability of collectors such as Levy & Associates to comply with the Proposals is largely dependent on whether creditors and other clients are willing and/or able to provide the types of documentation and other information that are required under the Proposals. As a small business, Levy & Associates lacks the leverage to insist that our clients maintain and provide us with documentation and information which they do not already maintain or provide.

In the Outline of Proposals, the CFPB recognized that while "[c]reditors generate much of the underlying information in the debt collection system, . . . they may not convey their full files to a third-party debt collector or debt buyer."[1] Apparently recognizing that collectors' ability to comply with the Proposals is predicated on creditors' willingness to maintain and transfer documentation and information, the CFPB stated that it intends to consider in the future both "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"[2] and "whether to propose requirements that creditors make . . . representations [of accuracy] when placing or selling debt."[3]

Obligating third-party collectors to comply with information integrity requirements without imposing corresponding requirements on first party creditors would result in an inefficient regulatory regime, inconsistent compliance, and small businesses being forced out of business. Accordingly, any debt collection rulemaking should cover both creditors and third-party collectors at the same time.

B. Need for Tailored Requirements.

As other SERs and I mentioned during the Panel outreach meeting on August 25, any rulemaking on debt collection must account for inherent differences among the various types of consumer debt. Adopting a "one size fits all" approach would create additional

[1] Small Business Review Panel Outline of Proposals Under Consideration, at 6 (July 28, 2016).
[2] Small Business Review Panel Outline of Proposals Under Consideration, at 54 n.86.
[3] Small Business Review Panel Outline of Proposals Under Consideration, at 56 n.92.

confusion, give rise to meritless litigation under the Fair Debt Collection Practices Act ("FDCPA"), and actually harm consumers.

Specifically, requirements should be tailored to address variances posed by different types of debt so that no requirement applies unequally to, or imposes stricter standards on, certain types of debt. In order to avoid unequal application, requirements should be adaptable to each type of debt and provide sufficient flexibility to enable compliance.

C. Increased Exposure to FDCPA Litigation.

Several of the proposals under consideration have the potential to expose even the most scrupulous debt collectors to increased, and unwarranted, litigation and liability under the FDCPA. Specifically, certain proposals shift the burden of proof to collectors or otherwise provide standards which, unless further clarified, could give rise to issues of fact that cannot be resolved by motion. This would result in an increase in both the number of FDCPA lawsuits filed and also the cost of defending each lawsuit. In addition to increasing our direct costs related to FDCPA litigation defense, increased exposure to such litigation would raise insurance premiums and deductibles.

For instance, the proposal that requires collectors to substantiate claims of indebtedness allows collectors to satisfy the substantiation requirement at different stages of collection by meeting a "safe harbor." In order to meet each "safe harbor," collectors would have to obtain and review the types of information and documentation enumerated in the proposal and corresponding appendix. Under the proposal, collectors that do not meet the "safe harbor" could satisfy the substantiation requirement by obtaining other types of information and documentation, but those collectors would bear the burden of justifying the alternative approach. By placing the burden of justifying an alternative approach on collectors, the threat of FDCPA litigation could arise every time collectors are unable to meet a "safe harbor," regardless of whether the collector obtained sufficient alternative information and documentation to substantiate the claim of indebtedness.

Additionally, the proposal that requires collectors to transfer and review certain other information could also give rise to additional FDCPA litigation because collectors' obligations under that proposal are not sufficiently defined. Although the proposal states that "it generally would not require collectors to attempt affirmatively to obtain the information [enumerated in Appendix E]" from prior collectors,[4] FDCPA litigation could nevertheless arise if information is transferred in a format that is neither accessible nor understandable by the subsequent collector.

Further, unless the CFPB clarifies, the proposal that requires collectors to provide a litigation disclosure upon representing to consumers an express or implied intent to sue could expose law firms to frivolous FDCPA litigation. Similarly, the proposals related to the treatment of time-barred debt could create unduly strict liability unless the CFPB articulates clear and reasonable standards.

[4] Small Business Review Panel Outline of Proposals Under Consideration, at 14.

In total, Levy & Associates estimates that the Proposals would cause our annual costs related to FDCPA litigation to increase by approximately 20%,[5] while firm revenues would likely remain flat. This estimate includes i) increased insurance premiums and deductibles, ii) additional litigation defense costs arising from an increase in the number of suits filed and the length of individual suits, and iii) additional costs arising from increased employee time spent preparing to defend claims, including responding to discovery requests, attending depositions, and attending court proceedings.

II. Comments to Specific Proposals.

A. Requirement to Substantiate Claims of Indebtedness.

Content of the Proposed Requirement. The proposal under consideration would require debt collectors to "substantiate," or possess a reasonable basis for, claims that a particular consumer owes a particular debt. Specifically, the proposal would require collectors to substantiate: 1) initial claims of indebtedness; 2) claims of indebtedness following the appearance of a warning sign during the course of collections; 3) claims of indebtedness following a dispute; and 4) claims of indebtedness made in complaints filed in litigation. The proposal also articulates specific steps that collectors can take to obtain reasonable support for claims of indebtedness at different stages of the collections process, thus providing a "safe harbor" for purposes of meeting each substantiation requirement. In order to meet each safe harbor, collectors would have to obtain and review the types of information or documentation articulated in the proposal or corresponding Appendix.

Comments. Levy & Associates is generally supportive of the proposed requirement that debt collectors must substantiate claims of indebtedness by having reasonable support for making a claim that a specific consumer owes a particular debt. However, as discussed during the Panel outreach meeting, we are concerned about the potential impact of having to complete the specific steps required to meet each "safe harbor" for substantiation purposes.

As described in Section I.A., supra, we are concerned that the types of information or documentation which must be obtained to meet each substantiation "safe harbor" would become de facto requirements, thus subjecting us to FDCPA litigation any time we are unable to obtain the enumerated types of information or documentation. Under the proposal, despite the fact my firm obtained sufficient documentation to reasonably establish the amount of debt and identity of the consumer prior to asserting a claim of indebtedness, whether our alternative approach to substantiation was "justified" would be an issue of fact that would prevent us from prevailing on a pre-trial motion.

1. Substantiation Prior to Commencing Collections.

Content of the Proposed Requirement. In order to meet the substantiation requirement for an initial claim of indebtedness, the proposal under consideration provides that a collector has a "reasonable basis" for asserting such claim if it: 1) obtains each item of

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[5] This estimate is based on our assumption that FDCPA litigation would increase by 20% if the CFPB's rulemaking on debt collection adopted the requirements set forth in the Proposals, as written.

"fundamental information" with respect to the debt listed in Appendix C; 2) obtains a written representation from the debt owner regarding the accuracy of the information provided; and 3) reviews the information provided and finds that there are no "warning signs" with respect to the specific account or the portfolio in general.

The CFPB considered an alternative that would require collectors to obtain and review copies of all the original account-level documentation such as, for example, the account agreement (where one exists) and one or more statements sent to the consumer that may be required to verify the debt before commencing collection activity.

Comments. While Levy & Associates agrees with the CFPB's proposal that collectors should have a reasonable basis for asserting claims of indebtedness and should not commence collections activity if there are warning signs, or red flags, with respect to a particular debt, we would like to raise the following concerns and recommend regulatory alternatives.

i. Fundamental Information Regarding the Consumer—Telephone Number.

Current Practice. Upon receiving an account for collection from a client, Levy & Associates also receives an Electronic Data Interchange ("EDI") file for that account which contains information about the consumer and the debt. Information that we receive about a consumer often includes the consumer's name, last known address, last known telephone number, social security number ("SSN"), and/or date of birth.

As I mentioned at the August 25 outreach meeting, the last known telephone number of the consumer is not consistently provided by our clients. The telephone number of the consumer is ***not*** a static piece of information because it may be changed by the consumer from time to time. Further, a consumer may have provided a telephone number that relates to a place of employment where the consumer no longer works or that belongs to a third-party with whom the consumer no longer communicates. In addition, for accounts placed by several of our clients, we do not initiate telephonic communication. As a result, the last known telephone number of the consumer is often not helpful for identifying the consumer.

Anticipated Cost of Complying with the CFPB's Proposed Rule. As explained in Section I.A, supra, failing to obtain and/or review any item of fundamental information, such as the consumer's last known telephone number, could expose Levy & Associates to FDCPA litigation based on an alleged violation of the substantiation requirement under the proposals, regardless of whether we were able to sufficiently substantiate the claim of indebtedness under an alternate approach.

As a result of the anticipated increase in FDCPA litigation resulting from this proposal and others, Levy & Associates estimates that our costs related to FDCPA litigation would increase by approximately 20% per year.[6]

[6] This estimate includes i) additional costs arising from an increase in insurance premiums and deductibles, ii) additional litigation defense costs arising from an increase in the number of suits filed and the length of

Recommended Regulatory Alternative. We **recommend** the CFPB remove the "last known telephone number of the consumer" from the list of fundamental information as set forth in Appendix C. This item of fundamental information could be replaced by another unique identifier such as the consumer's social security number ("SSN") or date of birth.

ii. Fundamental Information Regarding the Debt—Default.

Current Practice. In addition to containing information regarding the identity of the consumer, the EDI file we receive from clients for each account placed with us also contains information about the amount and nature of the debt. Information that we receive about the debt may include the i) account number; ii) date the account was opened; iii) date of charge-off; iv) balance at charge-off; and v) last payment date.

The dates and amounts of any payment or credit applied after default as well as each charge for interest or fees imposed after default and the contractual or statutory source for such interest or fees are currently not always provided by our clients. If provided by our clients, Levy & Associates' current collection system does not have the ability to capture individual payments and credits applied, or interest and fees charged, after default.

Anticipated Cost of Complying with the CFPB's Proposed Rule. With respect the date and amount of any payment or credit applied after default, as well as each charge for interest or fees imposed after default and the contractual or statutory source for such interest or fees, (collectively, "Data"), Levy & Associates anticipates that it would expend moderately significant resources, reflected by a one-time initial cost and ongoing maintenance costs, to comply with the proposal.

- **One-Time Cost**. Initially, in year one, Levy & Associates would have to buy and build a SQL warehouse to store and manage the Data and hire a programmer to import and export the Data received from clients. We estimate that this one-time would be approximately \$60,000–\$80,000, assuming that every client would provide Data according to standard procedures, instead of each client providing Data pursuant to a distinct, proprietary procedures.

- **Ongoing Annual Cost**. After year one, Levy & Associates would incur annual expenses of approximately \$22,500–\$35,000 to employ a part-time programmer to maintain the SQL warehouse and handle changes and updates for new and existing clients and to cover the additional IT hardware and storage costs.

Recommended Regulatory Alternative. Appendix C of the Proposals requires collectors to use "default" as the operative event for purposes of determining certain items of "fundamental information" (date of default; account number of the consumer with the debt owner at the time the account went into default; the amount owed at default; the date and amount of any payment or credit applied after default; each charge for interest or fees imposed after default).

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individual suits, and iii) additional costs arising from increased employee time spent preparing to defend claims, including responding to discovery request, attending depositions, and attending court proceedings.

We **recommend** that, for each type of debt, the CFPB replace "default" in Appendix C with an operative event (i.e., commencement of third-party collections) that is significant for that specific type of debt. Thus, the items of fundamental information relating to the nature and amount of each debt would be established based on the event that demarcates the beginning of collections for each type of debt.

The corresponding items of information that must be included in the validation notice,[7] set forth in Appendix F of the Proposals, should be amended accordingly. Thus, we **recommend** that, for each type of debt, the CFPB replace "default" in Appendix F with the operative event specified in Appendix C for that type of debt.

Basis for Recommendation. It appears that certain items of fundamental information are aimed at ensuring that collectors have complied with the terms and conditions agreed upon by the creditor and consumer and applied payments made during the collections process. Thus, the operative event for purposes of establishing these items of fundamental information ***should*** be the event that demarcates the beginning of collections, i.e., when the debt was first transferred from a creditor to a debt collector.

However, as I mentioned at the August 25 Panel outreach meeting, the definition and significance of "default" varies substantially by type of debt. As a result, "default" is generally not an operative event for most collections purposes and, in practice, does not demarcate the beginning of collections for certain types of debt.[8]

Additionally, for purposes of establishing certain items of information that must be included in the validation notice pursuant to Appendix F of the Proposals, the use of "default" could result in the consumer receiving unrecognizable information.[9]

Example—Credit Card Debt (Charged-Off).

Unlike "default," the term charge-off is defined in guidance by the Federal Financial Institutions Examination Council and relevant for determining when the debt is sold or placed in third-party collections. Charge-off generally occurs 180 after delinquency and signifies that the creditor has determined that the debt is uncollectible and thus written the debt off its balance sheet.

"Default," on the other hand, is not uniformly defined and the term generally has little, if any, significance for most purposes of collections. In some cardholder agreements, "default" may defined to occur at any time the consumer misses a payment or fails to make a payment in the required amount.

[7] These items of information include the "default creditor;" the account number with the default creditor; the amount owed on the default date; and an itemization of interest, fees, payments, and credits since the default date.
[8] In addition to lacking operational significance for several types of debt, for other types of debt covered by the FDCPA, such as medical debt, there may not even be a "date of default."
[9] Consumers may not recognize certain types of information established by "default," such as the amount owed on the default date, because, depending on the type of debt, there may be multiple occurrences of default or the consumer may not be explicitly notified when he or she is "in default."

Further, for credit card debt that is charged-off, "charge-off" is generally the operative event that demarcates the beginning of collections. Prior to charge-off, the first-party creditor is typically responsible for servicing the account; after charge-off, the account is typically sold or placed in collections.[10]

However, several problems would arise if "default" were used as the operative event. Since "default" can be defined to occur whenever the consumer falls behind on making required payments, a consumer may be considered "in default" at several times during the pre-collections life of his or her account. Thus, "default" generally does not demarcate the beginning of collections for most credit card debt. As a result, collectors may not be able to ascertain which occurrence of default to use for purposes establishing the relevant items of fundamental information for purposes of Appendix C.

Therefore, Levy & Associates **recommends** that, for purposes of credit card debt that has been charged off, the list of fundamental information provided in Appendix C should be amended to replace the term "default" with the term "charge-off."

iii. Representation of Accuracy.

Our ability to obtain representations of accuracy from our clients, and the extent to which the proposal would impact our operations and systems, depends on whether we would have to obtain a separate representation of accuracy for each debt, or whether the proposal would allow us to obtain a general representation of accuracy from each client that would cover all debts received from that client, pursuant to a contract or other document.

Anticipated Cost of Complying with the CFPB's Proposed Rule. We do not believe that our clients would be able to provide a separate representation of accuracy for each debt. Assuming that our belief is accurate, we estimate that we would incur costs of approximately $87,500 per year[11] in order to perform additional due diligence to substantiate the claim of indebtedness using an alternative approach.

However, if all of our clients could provide separate representations of accuracy for each debt, we estimate that we would incur a one-time cost of approximately $25,000 in order to update our collection system to receive and identify each representation of accuracy. Further, we estimate that we would also incur ongoing costs of approximately $16,000–$32,000 per year[12] to manually review files and notes received from our clients to ensure that representations of accuracy are received for each account, and to follow up with clients on accounts for which representations of accuracy are not initially provided.

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[10] With respect to the itemization of interest, fees, payments, and credits, charge-off is appropriate for two reasons. First, creditors are generally in the best position to ensure that they have correctly charged interest and applied payments while servicing the account. Second, since creditors are in the superior position with respect to pre-charge-off account activity, collectors typically do not receive an itemized list of charges for interest and fees or payments and credits applied pre-charge-off.
[11] This estimate is based on anticipated expenditures for hiring, training, managing, and compensating 3–4 part-time employees to perform the additional due diligence.
[12] This estimate is based on anticipated expenditures for hiring, training, managing, and compensating 2-3 part-time employees to perform the additional review.

Although debt owners may be unwilling to provide separate representations of accuracy for each debt, we believe that they would be able to provide a general representation of accuracy for all debts placed with a particular collector. We estimate that we would not incur any additional costs to acquire general representations of accuracy from clients.[13]

Recommended Regulatory Alternative. We **recommend** that any requirement related to obtaining a representation of accuracy should allow collectors to obtain a general representation of accuracy from each client on an annual basis.

In addition, we **recommend** that the debt owner should be allowed to make the representation based on its having in place i) reasonable policies and procedures to ensure the accuracy of transferred information and ii) sufficient controls to ensure that the information transferred for each account is identical to the information in the debt owner's records.

iv. Definition of Portfolio.

Levy & Associates generally supports the proposed requirement that collectors review information obtained by the debt owner to look for "warning signs" with respect to the adequacy or accuracy of information.

However, with respect to the requirement that collectors look for warning signs across an entire portfolio, we **recommend** that the definition of "portfolio" should mean only defaulted debts that are packaged as a unit and sold by the creditor to a third party FDCPA (i.e., a debt buyer). Thus, the term "portfolio" would ***not*** include, and the portfolio review requirement would not apply to, accounts received from original creditor clients on an ongoing basis.

2. Substantiation Following a Dispute.

Content of Proposed Requirement. In order to meet the substantiation requirement and resume making claims of indebtedness following a dispute, the proposal under consideration provides a "safe harbor" that allows collectors to obtain a reasonable basis for their claims of indebtedness by reviewing documentation that is responsive to the dispute, as described in Appendix D of the Outline. Under the proposal, collectors could substantiate claims of indebtedness in other ways, such as by reviewing other documentation, but they would bear the burden of justifying any alternative approach.

The proposal defines "dispute" to mean any 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. The proposal would require collectors to cease collection communications until the claim of indebtedness is further substantiated, regardless of whether the dispute was timely (within 30 days of validation notice) or submitted orally or writing.

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[13] The costs incurred to obtain a separate representation of accuracy for each debt would not result in increased information integrity or provide a benefit to consumers. Instead, such costs arise from increased administrative obligations generally and not heightened measures to ensure the accuracy of information.

Comments. Levy & Associates generally agrees with the CFPB that collectors investigate consumers' disputes and undertake a resolution process following a dispute. However, we are concerned about several aspects of the proposed requirement which would have a significant economic and operational impact our practice.

i. Substantiation Requirement Ceases After Complaint is Filed.

Current Practice. Levy & Associates currently maintains a resolution process for disputes and general complaints raised by consumers. Pursuant to our resolution process, upon receiving a dispute from a consumer, made either orally or in writing, Levy & Associates ceases collection of the account until the dispute is verified or otherwise resolved.

Once a complaint has been filed, the court is generally in the best position to determine the validity of claims of indebtedness and adjudicate disputes as to the amount owed or identity of the consumer.[14]

Anticipated Cost of Complying with the CFPB's Proposed Rule. If the proposed "substantiation following a dispute" requirement applies to disputes raised after a complaint is filed, Levy & Associates would incur significant economic and reputational costs under the proposal.

Under the proposal, it appears that Levy & Associates would have to cease all collections communications upon receiving a dispute from a consumer at ***any*** time. In order to comply with Appendix D and meet the substantiation "safe harbor," we would be unable to resume collection communications until we obtained and reviewed documentation responsive to the consumer's ***specific*** dispute.

For disputes that are very specific in nature (e.g., a double charge that occurred two years prior to charge-off), Levy & Associates would have to cease collection communications for ***at least*** several weeks to obtain the applicable documentation. If a specific dispute were raised on the eve of trial, Levy & Associates would either have to i) request that the trial be continued or dismissed to permit us to obtain the applicable documentation, or ii) proceed to trial without the protection of the Appendix D "safe harbor."

Continuing a scheduled trial or dismissing a case at the last minute would inconvenience and displease the court (and in many jurisdictions is not possible) and could prejudice our client's claims as we may be unable to re-file the lawsuit following dismissal. However, moving forward with a trial without obtaining the documentation required by Appendix D would place us in jeopardy of being sued by the consumer for failing to comply with the "substantiation following a dispute" requirement. Thus, the "substantiation following a dispute" requirement should cease upon the filing of the complaint so that the proposal does not interfere with ongoing litigation and give rise to significant exposure to FDCPA litigation, as explained in Sections I.A and II.A, supra.

Levy & Associates anticipates that if the "substantiation following a dispute" requirement does not cease after a complaint is filed, we would incur significant costs to defend FDCPA

[14] Article IV of the Ohio Constitution grants the Ohio Supreme Court exclusive jurisdiction to regulate all matters related to the practice of law in Ohio.

lawsuits arising from instances in which a court refuses to grant us an extension to obtain the documentation specified by Appendix D. We estimate that these expenses, combined with the anticipated litigation defense expenses created by other proposals, would increase our annual costs related to FDCPA litigation by approximately 20%.

Recommended Regulatory Alternative. We **recommend** that the "substantiation following a dispute" requirement cease once a complaint is filed. This regulatory alternative is appropriate given the types of documentation that collectors are required to obtain and review prior to filing the complaint for purposes of substantiation. In addition, the consumer would not be prevented from contesting the validity of the claim of indebtedness after the complaint is filed. However, the court would then be responsible for evaluating the evidence submitted by both parties to determine the validity of the claim of indebtedness.

Alternatively, we propose a litigation exception to the "substantiation following a dispute" requirement, so that only non-litigation collection communications (e.g., collection calls or letters to the consumer that are unrelated to pending legal proceedings) would have to cease prior to the collector obtaining documentation responsive to the specific dispute.

ii. Documentation for Purposes of Appendix D.

Current Practice. Although we may obtain an account agreement as part of the dispute resolution process, this type of documentation is not always helpful or relevant for purposes of verifying the amount of certain types of debt. For credit card debt, Levy & Associates does not always receive an itemization of the charge-off balance from the creditor (i.e., the balance at charge-off is not broken down to show what portion of the balance is purchases and/or cash advances made by the consumer and what portion is charges for interest and fees).

For disputes as to the identity of the consumer, Levy & Associates will take steps to verify that we are attempting to collect the debt from the correct consumer and that the consumer incurred the debt. These steps may include confirming unique identifiers such as the consumer's date of birth, SSN and prior address(es) and reviewing billing statements, including those showing payments or purchases. With respect to disputes alleging fraud, we provide the consumer with an FTC Fraud Affidavit which he or she may complete.

Although we sometimes receive a signed credit application as part of the dispute resolution process, this type of documentation is neither consistently available[15] nor necessary to obtain reasonable support to establish the identity of the consumer.

[15] Signed credit card applications are not consistently available for several reasons. First, consumers may apply for credit over the phone or online, thus never submitting a signed credit application. In addition, creditors may not have retained credit applications for older accounts. *See, e.g.,* 12 C.F.R. § 202.12(b)(1) ("A creditor must retain for twenty-five months any written or recorded material related to a consumer credit application, as well as copies of any notification of action taken and statement of specific reasons for adverse action (or any written notation or memo of an oral notification and statement.").

Anticipated Cost of Complying with the CFPB's Proposed Rule. If we do not obtain an account agreement or credit application, but instead use alternative means, to substantiate a claim of indebtedness following a specific dispute, we would incur additional expenses relating to increased FDCPA litigation as described in Sections I.A and II.A, supra. We estimate that the additional litigation defense expenses created by the proposals would increase our annual costs related to FDCPA litigation by approximately 20%.

Recommended Regulatory Alternative. For purposes of the substantiation "safe harbor" following a dispute set forth in Appendix D, we **recommend** that the CFPB revise the types of documentation deemed necessary to verify debts following a dispute as to the amount of the debt or the identity of the consumer. Alternatively, we **recommend** that the CFPB provide additional flexibility so that collectors would not bear the burden of justifying a facially reasonable alternative approach.

In particular, we **recommend** that:

- A copy of the account agreement (e.g., terms and conditions or cardholder agreement) should not be required in order to meet the substantiation "safe harbor" following a dispute as to the amount of debt, unless the consumer's dispute raised a specific allegation that could only be resolved by reviewing the account agreement.
- A copy of the signed credit application should not be required in order to meet the substantiation "safe harbor" following a dispute as to the identity of the consumer (i.e., debt collector is attempting to collect the debt from the wrong person or the consumer did not incur the debt).

iii. Responding to "Generic" and Certain "Tear-Off" Disputes.

Levy & Associates generally agrees with the proposed requirement that collectors substantiate "generic" disputes. However, we **recommend** that the CFPB permit collectors to contact consumers to clarify generic disputes prior to reviewing additional documentation for the purpose of substantiation.

Additionally, Levy & Associates does not disagree with the proposal to include a "tear-off" response in the validation notice to assist consumers their dispute debt. However, we **recommend** that in addition, or as an alternative, to the "tear-off" response, the CFPB allow collectors to provide in the validation notice a link to a website for consumers to submit their disputes. The website would prompt consumers to respond to questions in order to clarify the nature and extent of their disputes to assist the collector understand and resolve the dispute.

Permitting the use of a website to obtain clarification from consumers regarding the nature and extent of their disputes would benefit both consumers and collectors because this process would remove time delays and facilitate resolution.

3. Substantiation Prior to Filing a Complaint.

Content of the Proposed Requirement. The proposal under consideration provides a "safe harbor" that would allow collectors to 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.

Such documentation would include, depending on the type of debt:

- A combination of the following: (i) a charge-off statement; (ii) the most recent billing or periodic statement; or (iii) a contract, note, application, or service agreement;
- Underlying agreement describing the applicable interest rate or fees or copy of billing or periodic statement covering specified time period;
- A copy of the credit application, new patient form, or document reflecting information gathered from the creditor's Customer Identification Program, and a copy of the contract, note, application, or service agreement; and/or
- A copy of the bill of sale or assignment of the debt.

Comments. Levy & Associates agrees with the CFPB's proposal that collectors should substantiate their claims that a consumer owes the amount claimed and that the collector has a legal right to make the claim prior to filing a complaint.

However, it is Levy & Associates' position that the CFPB should not provide a list of required documents that an attorney must review before signing and filing a complaint. First, the type of documentation required to substantiate a lawsuit varies based on the type of debt sought to be collected. Second, this type of requirement would violate the Ohio Constitution, which grants the Ohio Supreme Court exclusive jurisdiction over the regulation of the practice of law within the state of Ohio. Third, this requirement would impermissibly interfere with the attorney-client relationship by dictating the evidence that a client has to provide his or her attorney and the evidence an attorney has to obtain from his or her client. The decision about the types of documentation that must be reviewed prior to commencing litigation is within the sole discretion of attorneys and their clients.

Current Practice. Prior to filing a complaint, Levy & Associates obtains, and an attorney reviews, the account notes and account-level documentation in order to ensure that there is sufficient proof to support the attorney's belief that the claims in the complaint are warranted by existing law and have evidentiary support as required by Rule 11 of the Ohio Rules of Civil Procedure. The type of documentation obtained and information reviewed varies based on the type of debt sought to be collected.

Anticipated Cost of Complying with the CFPB's Proposed Rule. In the event that we do not obtain an account agreement or a signed credit application and use an alternative approach to satisfy the substantiation requirement prior to filing a complaint, we would incur additional expenses relating to increased FDCPA litigation exposure, for the reasons described in Section I.A, supra. We estimate that the additional FDCPA litigation defense expenses created by the proposals under consideration would cause our annual costs related to FDCPA litigation to increase by approximately 20%.[16]

<u>Recommended Regulatory Alternative</u>. We recommend that the CFPB not prescribe a list of information and documentation that must be obtained and reviewed prior to filing a complaint, as doing so would interfere with the attorney-client relationship and each state's supreme court's exclusive jurisdiction over the practice of law.

Alternatively, we **recommend** that collectors should be able to satisfy the substantiation requirement "safe harbor" prior to filing a complaint by reviewing account notes and sufficient account-level documentation to reasonably ensure that the claim of indebtedness is for the correct amount and that the correct consumer is named in the complaint. Specifically, collectors should ***not*** be required to obtain the account agreement or credit application in order to meet the substantiation requirement "safe harbor" prior to filing a complaint, unless circumstances dictate otherwise.

As explained in Section II.A.2.ii, supra, the account agreement and credit application are not always necessary or helpful to prove the amount of debt or the identity of the consumer. As a result, collectors should not have to obtain, or justify an alternative means of substantiation when they do not obtain, these documents in order to have a reasonable basis that they are suing the correct consumer for the correct amount of money (unless circumstances dictate otherwise).

B. Requirement to Review and Transfer Certain Other Information.

Content of the Proposed Requirement. This proposal under consideration would require prior collectors to transfer, and subsequent collectors to review, certain types of information provided by consumers that either i) affects the collectors' obligations to comply with the FDCPA and other federal consumer protection laws or ii) facilitates collector behavior that may be beneficial to consumers.

The Proposal would also require collectors to forward certain types of information that they receive from consumers after they have returned the debt to the debt owner or sold it to a subsequent debt buyer. The information covered by the proposal would include the following: (1) payments submitted by the consumer; (2) bankruptcy discharge notices (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

Comments. Levy & Associates generally supports the proposed requirement that prior collectors transfer, and subsequent collectors review, certain types of information that could affect the subsequent collectors' duties under the FDCPA or other federal or state laws.

[16] This estimate includes i) additional costs arising from an increase in insurance premiums and deductibles, ii) additional litigation defense costs arising from an increase in the number of suits filed and the length of individual suits, and iii) additional costs arising from increased employee time spent preparing to defend claims, including responding to discovery request, attending depositions, and attending court proceedings.

Anticipated Cost of Complying with the CFPB's Proposed Rule. If, for purposes of complying with the proposed requirement, prior collectors only transfer all of their notes and do not specifically identify the items of information listed in Appendix E, Levy & Associates anticipates that the proposal would place a significant economic and operational burden on small businesses due to the time that will be required to review the prior collectors' notes.

In particular, if prior collectors fail to identify and sort the types of information listed in Appendix E, those items of information will ***not*** populate unique fields when the account EDI file is uploaded to Levy & Associates' collection system (CLS). As a result, we would be required to review numerous pages of notes per account in order to identify and review the required types of information.[17] Further, most collectors use agency-specific shorthand to notate accounts, which would make review even more difficult and time-consuming.

The scale of Levy & Associates' effort to review prior collectors' notes would be hundreds of staff hours and may result in little if any corresponding consumer benefit. We estimate that we would incur costs of approximately $100,000 per year[18] if we had to review prior collectors' account notes to comply with this proposal.

If the items of information listed in Appendix E are transferred by prior collectors in data records (instead of notes), then such information would populate unique fields in an appropriately adapted collection system. However, Levy & Associates' current collection system operates on a flat file database, which is not capable of handling multiple records related to a specific field for one account. A relational database, which would permit an account field to have multiple records, would be needed to comply with the proposal. Thus, Levy & Associates would incur moderately significant one-time costs and also ongoing maintenance costs to establish and maintain the software and IT capabilities necessary to adapt our software system to comply with the proposal.

- **One-Time Cost**. For year one, Levy & Associates would incur a one-time cost of approximately $60,000–$80,000 to buy and build a SQL warehouse to store and manage the dispute records from prior collectors and to hire a part-time programmer to import and export the additional data received from clients.

- **Ongoing Costs**. After year one, we would incur ongoing costs of approximately $22,500 per year to employ a part-time programmer to maintain the SQL warehouse and handle client changes and updates and to cover the additional IT hardware and storage costs.

Recommended Regulatory Alternative. With respect to information about disputes included in Appendix E, we **recommend** that the CFPB only require prior collectors to transfer, and subsequent collectors to review, information about unresolved disputes submitted to prior

[17] Our estimate is based on the common practice that before a law firm such as Levy & Associates receives an account from a client, the account has typically been worked by the creditor and several (typically between 1 and 3, but potentially up to 10) prior collection agencies, thereby resulting in hundreds if not thousands of pages of notes.
[18] This estimate is based on anticipated expenditures for hiring, training, managing, and compensating 4–6 part-time employees to review prior collector notes to identify consumer raised disputes and complaint made and to determine which ones remain unresolved.

collectors which are not resolved before the account is received by the subsequent collector.

With respect to the other types of information included in Appendix E, we **recommend** that the CFPB require prior collectors to transfer such information in a clearly understandable and accessible format. Further, we **recommend** that subsequent collectors should not be liable under the proposal if a prior collector failed to transfer the information covered by Appendix E in a clearly understandable and accessible format.

C. Litigation Disclosure.

Content of the Proposed Requirement. The proposal 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, an intent to sue.

Comments. While Levy & Associates generally agrees that non-legal collectors should be required to provide a litigation disclosure in all written and oral communications in which they represent, expressly or implicitly, an intent to sue, law firms such as Levy & Associates should be only required to provide a litigation disclosure in written and oral communications in which they ***expressly*** represent an intent to sue.

The current proposal disproportionately impacts law firms because, as acknowledged by the CFPB, communications by law firms may be construed to implicitly represent an intent to sue, especially if the "least sophisticated consumer" test is applied.[19] Thus, under the proposal even law firms that lack a present intent to sue at the time of sending an initial demand letter or "non-collection correspondence"[20] could be required to include the litigation disclosure.

The CFPB should provide an alternative for firms that do not have an immediate intent to sue in order to avoid the potential Gordian knot[21] that would arise if all collection communications from attorneys are found to implicitly represent an intent to sue. In addition, the CFPB should clarify that law firms would not have to include a litigation disclosure in certain types of communications.

Anticipated Cost of Complying with the CFPB's Proposed Rule. Levy & Associates anticipates that it would expend moderately significant resources as a result of the proposal due to increased exposure to FDCPA litigation for the reasons explained in Section I.A, supra.

Recommended Regulatory Alternative. Levy & Associates **recommends** that the CFPB clarify that collectors do not implicitly represent an intent to sue merely by communicating with consumers in their capacity as attorneys. Further, we **recommend** that the CFPB

[19] The CFPB has recognized that "[f]or collection law firms, a large fraction of communications with consumers likely conveys the threat of litigation." Small Business Review Panel Outline of Proposals Under Consideration, at 63.
[20] Examples include payment letters, account closing letters, copies of court correspondence letters, transmittal letters, and validation response letters.
[21] An intractable problem (disentangling an "impossible" knot).

enumerate categories of communications by attorneys that do not represent an intent to sue.

In addition, we **recommend** that the CFPB provide attorneys and law firms a "safe harbor" specifying that an attorney or law firm that provides a litigation disclosure but does not subsequently file a lawsuit is not subject to liability under the FDCPA for threatening to take action that the collector did not intend to take.

D. Time-Barred Debt.

Content of the Proposed Requirement. This proposal under consideration would prohibit collectors from filing suit, and threating to file suit, on time-barred debt. The proposal would also require collectors to disclose the time-barred status of time-barred debt to the consumer when seeking to collect on time-barred debt.

Comments. Levy & Associates generally agrees with the CFPB that collectors should neither threaten to sue, nor sue, on time-barred debt. However, we urge the CFPB to recognize that statute of limitations determinations often involve numerous and complex legal analyses. This is especially true in states such as Ohio which have borrowing statutes, thus requiring collectors to first determine which statute of limitations applies and then determine whether the statute of limitations has expired.

Current Practice. Currently, Levy & Associates does not knowingly collect or sue on time-barred debt.

However, statute of limitations determinations are complex and often require significant legal analysis. As demonstrated by a recent case before the Ohio Supreme Court, *Taylor v. First Resolution Invest. Corp.*,[22] even members of the same court may reach contradictory statute of limitations decisions (e.g., which statute applies), highlighting that such issues are subject to different legal interpretations.

Anticipated Cost of Complying with the CFPB's Proposed Rule. The extent to which Levy & Associates would incur economic costs as a result of the proposal depends on the standard adopted by the CFPB.

If the CFPB adopts a strict liability standard, we would be exposed to liability under the FDCPA's private right of action if, upon determining that the applicable statute of limitations had not expired, we sue on debt that the court subsequently finds is time-barred. In total, we estimate that the proposals under consideration would increase our annual costs related to FDCPA litigation by approximately 20% for the reasons explained in Sections I.A, supra.

Recommended Regulatory Alternative. Levy & Associates **recommends** that any proposed rule explicitly state that a collector will not be liable for threatening suit, filing suit, or failing to provide a time-barred debt disclosure if the collector has made a good-faith

[22] No. 2013-0118, slip op. 2016-Ohio-3444 at 52–79 (Ohio June 16, 2016) (dissenting opinion of the Chief Justice which critiques the holding of the court, and in particular the court's choice-of-law determination as to the applicable statute of limitations).

determination, after appropriate consideration, that the statute of limitations has not expired.

E. Numeric Restrictions on Contacts with Consumers.

Content of the Proposed Requirement. This proposal under consideration would limit the frequency with which debt collectors may contact, or attempt to contact, consumers by establishing different numerical restrictions depending on whether the collector has successfully established contact with the consumer who is alleged to owe the particular debt.

Comments. Levy & Associates generally agrees with the CFPB's attempt to clarify certain provisions of the FDCPA, particularly with respect to the issue of how frequently a collector may contact a consumer before such contacts meet the threshold of "harassment or abuse." However, we also urge the CFPB to provide flexibility and exceptions to the numeric cap so that collectors can contact consumers in circumstances that would benefit the consumer, such as during settlement negotiations or when the contact is requested by the consumer.

Between both of the CFPB's proposed alternatives, i.e., a bright-line rule with exceptions or a rebuttable presumption, a bright-line rule with exceptions is the best alternative. Under the rebuttable presumption proposal Levy & Associates could be unduly exposed to increased FDCPA litigation for the reasons discussed in Section I.A, supra.

Recommended Regulatory Alternative. Specifically, Levy & Associates **recommends** that the CFPB adopt a bright-line rule limiting the number of times a collector may contact a consumer within a given week, with the following exceptions:

1) Contacts in Furtherance of Settlement. Levy & Associates **recommends** that any contact made in the course of settlement discussions (after a complaint has been filed) be exempted from the weekly numerical limitations on consumer contacts.

2) Consumer Initiated Contacts. Levy & Associates **recommends** that any proposed rule clarify that contacts initiated by the consumer are not subject to the weekly numerical limitations on consumer contacts.

3) Consented Contacts, Express or Implied. Levy & Associates **recommends** that contacts for which the consumer has provided consent, express or implied, be exempted from the weekly numerical limitations on consumer contacts.

4) Contacts with Attorney or Representative. Levy & Associates **recommends** that the CFPB clarify that communications with a consumer's attorney or non-personal representative are not subject to the weekly numerical limitations on consumer contacts.

5) Contacts in Furtherance of Court Action. Levy & Associates **recommends** that any consumer communications required in furtherance of court actions be exempted from the weekly numerical limitations on consumer contacts.

6) Contacts Required by Law. Levy & Associates **recommends** that communications required by law, such as certain notices related to garnishment rights, be exempted from the weekly numerical limitations on consumer contacts.

Closing Remarks.

Again, thank you for allowing me this opportunity to be involved in the rulemaking process.

As I expressed during the Panel outreach meeting on August 25, I truly believe that small businesses makes our country great. I am proud to say that I am a 4th generation owner and operator of a small business, but I am concerned that the rising costs of regulatory compliance faced by small businesses will mean that my sons will never become 5th generation small business owners or have the opportunity to work for themselves. One only has to look at the trajectory of industries such as banking to understand that small businesses do not have the financial ability to compete in highly regulated sectors. In addition, even small businesses such as medical and dental practices will be displaced by larger healthcare systems if they are unable to collect their debts.

I sincerely hope that my comments are helpful to the Panel and considered by the CFPB. Please know that I am available to provide further information and guidance to the CFPB as the debt collection rulemaking proceeds.

Sincerely,

Yale R. Levy

EXHIBIT A

Recommendations

Levy & Associates recommends that:

1. For purposes of substantiating initial claims of indebtedness, the CFPB remove the "last known telephone number of the consumer" from the list of fundamental information, as set forth in Appendix C.

2. For each type of debt, the CFPB replace "default," as it is used to establish certain items of fundamental information set forth in Appendix C,[23] with an operative event that is specific to that type of debt (i.e., an event that demarcates the commencement of third-party collections).

3. Any requirement related to obtaining a representation of accuracy should allow collectors to obtain a general representation of accuracy from each client covering all debts placed by that client instead of a specific representation of accuracy for each debt.

4. Debt owners should be allowed to make a representation of accuracy based on their having in place i) reasonable policies and procedures to ensure the accuracy of transferred information; and ii) sufficient controls to ensure that the information transferred for each account is identical to the information in the debt owner's records.

5. For purposes of the proposed requirements to look for "warning signs," the definition of "portfolio" should mean only defaulted debts that are packaged as a unit and sold by a creditor to a debt collector, as that term is defined under the FDCPA (i.e., a debt buyer).

6. The "substantiation following a dispute" requirement should cease once a complaint is filed.

7. The CFPB modify the types of account-level documentation that are necessary to respond to certain disputes for purposes of Appendix D. Specifically, collectors that do not review the account agreement or credit application in order to obtain a reasonable basis for claims of indebtedness following a specific dispute should not have to justify a reasonable alternative approach to substantiation.

8. The CFPB permit collectors to contact consumers for the purpose of obtaining clarification with respect to a generic dispute prior to reviewing additional documentation for the purpose of substantiation.

9. The CFPB modify the types of account-level documentation to be reviewed prior to filing a complaint for purposes of Appendix D. Collectors that do not review the account agreement or credit application to obtain a reasonable basis for claims of indebtedness

[23] These items of information include i) date of default; ii) account number of the consumer with the debt owner at the time the account went into default; iii) the amount owed at default; iv) the date and amount of any payment or credit applied after default; and v) each charge for interest or fees imposed after default.

prior to filing a complaint should not have to justify a reasonable alternative approach to substantiation.

10. With respect to information about disputes included in Appendix E, the CFPB only require prior collectors to transfer, and subsequent collectors to review, information about unresolved disputes submitted to prior collector(s) which the prior collector(s) were unable to resolve before sending the account to a subsequent collector.

11. With respect to the other types of information included in Appendix E, the CFPB require prior collectors to transfer such information in a clearly understandable and accessible format. Also, subsequent collectors should not be liable under the proposal if a prior collector failed to transfer the information covered by Appendix E in a clearly understandable and accessible format.

12. The CFPB clarify that collectors do not implicitly represent an intent to sue merely by communicating with consumers in their capacity as attorneys or law firm staff for purposes of the litigation disclosure requirement.

13. The CFPB enumerate categories of communications by attorneys and law firms that do not implicitly represent, expressly or by implication, an intent to sue.

14. The CFPB provide a "safe harbor" which states that attorneys and law firms are not subject to liability under the FDCPA for threatening to take action that they did not intend to take as a result of including a litigation disclosure in a consumer communication but subsequently deciding not to file a lawsuit.

15. A collector should not be liable for threatening suit, filing suit, or failing to provide a time-barred debt disclosure if the collector has made a good-faith determination, after appropriate consideration, that the statute of limitations for that debt has not expired.

16. The CFPB adopt a bright-line rule that numerically limits the number of times a collector may contact a consumer within a given week, and provide the following exceptions to the numerical cap: i) contacts made in furtherance of settlement discussions; ii) contacts initiated by the consumer; iii) contacts for which the consumer has provided consent, express or implied; iv) contacts with a consumer's attorney or representative; v) contacts with a consumer in furtherance of court action; vi) contacts with consumers that are required by law.

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Owings Mills, Maryland 21117

September 9, 2016
Consumer Financial Protection Bureau
1275 First Street, N.E.
Washington, DC 2000

Attention: Lauren S. Weldon, Counsel
Office of Regulations

SBREFA Submission on Debt Collection and Debt Buyer Rule Making

Thank you for affording my law firm the opportunity to participate in the SBREFA process. Our firm has offices located in New Jersey, Delaware and Maryland and have 75 employees. Our legal practice has focused nearly exclusively on consumer collections for over 20 years, representing both original creditors and debt buyers. Because we are on the front lines of the legal collection industry, we are able to speak with experience on how best to improve the consumer experience while enabling creditors and debt buyers to exercise their legal rights to recover sums owed to them. We are also able to speak to how our clients' response to increased regulatory requirements has impacted the viability of legal collections. Additionally, as attorneys that appear in Court and interact with consumers almost daily, we have gained particular insight to comment on the CFPB's debt collection and debt buyer rulemaking.

EXHIBIT A

Validation Notice and Statement of Rights

- **The Bureau's proposed rules regarding the validation notice and statement of rights, and the suggested validation notice appearing at Appendix F of the proposed Rules, put our Firm at risk for costly litigation due to the conflicts between the proposed Rules/suggested validation notice and the requirements of the FDCPA and jurisprudence interpreting those requirements. This risk can be obviated by supplementing the proposed rule with language clarifying that by using the Bureau's proposed validation notice, a debt collection attorney has complied with the requirements of 15 U.S.C. § 1692g.**
- **Retroactive application of the proposed rules regarding the validation notice and statement of rights put our Firm at risk for costly litigation by consumers who received our Firm's current initial**

notice, which mirrors the language of 15 U.S.C. § 1692g(b). Our Firm would also incur significant costs associated with hiring additional attorneys to determine whether cases filed prior to the Rules' enactment require certain activity in order to minimize risk to the Firm. This risk can be obviated by supplementing the proposed rule with language clarifying that this requirement applies only to accounts acquired on or after a date certain, among other potential safe-harbor language.

1. The proposed validation notice and statement of rights puts our Firm at heightened risk for costly litigation due to the conflicts between the proposed Rules and the proposed validation notice, and the requirements of the FDCPA.

Initial communications with consumers are governed by 15 U.S.C. § 1692g. This portion of the FDCPA mandates that consumers be provided with certain information regarding their rights to seek validation of their account; the methods by which to seek such information; and the repercussions of failing to seek such validation. Validation notices are ripe for class action litigation on topics ranging from slight deviations from the statutory text to "overshadowing" language to claims that letters are confusing or misleading.

Use of the Bureau's model validation notice and tear-off would expose our Firm to significant class action risk because several portions of the Bureau's validation notice conflict with the FDCPA, as follows:

A. The validation notice proposed by the Bureau does not contain the language mandated by 15 U.S.C. § 1692g. Unless the Rule is modified to explicitly state that use of the Bureau's proposed validation notice satisfies the requirements of 15 U.S.C. § 1692g, this Firm risks class action exposure with every initial communication. As is illustrated below, at a cost of approximately $50,000.00 for full resolution – a cost which includes no litigation, minimal discovery and consists largely of negotiations among counsel – one small, largely uncontested class action per year is financially devastating.

B. Several portions of the Bureau's validation notice overshadow a consumer's right to dispute the account. First, the Bureau separates "I want to dispute the debt because I think..." from "I want you to send me the name and address of the original creditor." The FDCPA does not distinguish the latter from the former in terms of whether a consumer is disputing the account – that is, where a consumer asks for the original creditor's name and address, the FDCPA treats such a request as a dispute, and all collection activity must cease until the validation period terminates and the consumer is provided with the requisite information. By separating these two options on the tear-off notice, the Bureau differentiates between a "dispute" and a "request for information," when the FDCPA makes no such distinction.

C. The Bureau's model notice states, "If we do not hear from you, we will assume that our information is correct." This is misleading to the least sophisticated consumer, as it suggests that (s)he may call anytime in order to dispute all or part of the debt, when in fact (s)he must write to the debt collector within 30 days in order to invoke his/her rights under the FDCPA.

D. The Bureau's validation notice contains multiple requests for payment, which have been found to overshadow a consumer's right to obtain validation of the account.

E. The Bureau's validation notice overshadows the rights of consumers residing in states sitting in the U.S. Courts of Appeals for the Second Circuit[1] (Connecticut, New York and Vermont), Fourth Circuit[2] (Maryland, North Carolina, South Carolina and Virginia), and Ninth Circuit[3] (Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington, Guam and the Northern Mariana Islands) who may invoke their validation rights orally, and not just in writing.

The following lists illustrates the costs associated with settling class actions premised upon debt collection letters. Significantly, in addition to the below sums, each defendant was also responsible for its own counsel fees and costs, in addition to the costs of class administration:

Case Name and Description	**Class Settlement**	**Class Counsel Fees**
Bellum v. The Law Offices of Frederic I. Weinberg & Associates, P.C., 2:15-cv-02460-CDJ (E.D. Pa.): Violation of § 1692g(a) by omitting the words "in writing" from the second sentence of the validation notice.	\$9,710.00, plus \$1,000.00 statutory damages to each class representative	\$24,500.00
Whiteford v. Weber & Olcese, P.L.C., 1:15-cv-00400-JTN (W.D. Mich.): Violation of § 1692g(a) by omitting the words "in writing" from the second sentence of the validation notice.	\$4,460.00, plus \$1,000.00 statutory damages to each class representative	\$30,000.00

1 *Hooks v. Forman, Holt, Eliades & Ravin, LLC*, 717 F.3d 282 (2d. Cir. 2013)

2 *Clark v. Absolute Collection Service, Inc.*, 741 F.3d 487 (4th Cir. 2014)

3 *Camacho v. Bridgeport Financial, Inc.*, 430 F.3d 1078 (9th Cir. 2005)

Kemper v. Andreu, Palma & Andreu, P.L., 1:15-cv-21226-JEM (S.D. Fla.: Violation of § 1692g(a) by omitting the words "in writing" from the second sentence of the validation notice.	$10,650.00, plus $1,000.00 statutory damages to each class representative	Pending
Chapman v. Bowman, Heintz, Boscia & Vician, P.C., 2:15-cv-00120-JD-JEM (N.D. Ind.): Violation of § 1692g(a) by omitting the words "in writing" from the second sentence of the validation notice.	$3,030.00, plus $1,000.00 statutory damages to each class representative	$26,500.00
Garza v. Mitchell Rubenstein & Associates, P.C., 8:15-cv-01572-GJH (D. Md.): Violation of § 1692g(a) by omitting the words "in writing" from the second sentence of the validation notice.	$12,425.00, plus $1,000.00 statutory damages to each class representative	Pending
Durham v. Schlee & Stillman, LLC, 8:15-cv-01652-GJH (D. Md.): Violation of § 1692g(a) by omitting the words "in writing" from the second sentence of the validation notice.	$3,200.00, plus $1,000.00 statutory damages to each class representative	$24,000.00
Chamberlin v. Mullooly, Jeffrey, Rooney & Flynn, LLP, 1:15-cv-02361-JBS-AMD (D.N.J.): Violation of § 1692g(a) by omitting the words "in writing" from the second sentence of the validation notice.	$5,910.00, plus $1,000.00 statutory damages to each class representative	$30,000.00
Oaks v. Parker L. Moss, P.C., 3:15-cv-00196-MGG (N.D. Ind.): Violation of § 1692g(a) by omitting the words "in writing" from the second sentence of the validation notice.	$2,080.00, plus $1,000.00 statutory damages to each class representative	$20,450.00
Blandina v. Midland Funding LLC, et. al., 2:13-cv-01179-NIQA (E.D. Pa.): Violation of § 1692e by including the phrase "Benefits of Paying – Interest Will Stop Accruing On Your Account!" on letters sent to collect accounts on which no interest was accruing.	$350,000.00, plus $5,000.00 to each class representative	$245,000.00

Adding the following to the Bureau's proposed rule would obviate these risks:

- The Rule should contain a safe-harbor provision confirming that use of a CFPB-approved validation notice satisfies the requirements of 15 U.S.C. § 1692g.
- The Rule should contain a safe-harbor provision confirming that any deviation between the Bureau-approved validation notice and current state/federal law cannot serve as a basis for private civil litigation, to avoid the financially devastating class action lawsuits described above.
- The Rule should contain a safe-harbor provision confirming that use of the Bureau-approved validation notice cannot serve as a basis for regulatory or enforcement action by a state agency or attorney general.
- The Rule should contain a safe-harbor provision confirming that use of the Bureau-approved validation notice does not constitute the provision of legal advice to consumers and does not constitute a violation of a debt collection attorney's ethical obligation to represent his or her client zealously within the bounds of the law.

2. Retroactive application of the proposed rules regarding the validation notice and statement of rights put our Firm at risk for costly litigation.

The proposed Rules are silent as to when they would take effect. Retroactive application of the Rules regarding validation notices would create an insurmountable financial burden for our Firm. We would be subject to fatal class action exposure from consumers whose accounts were placed with our Firm prior to the proposed rules. Retroactive application of the Rules would require the hiring of additional attorneys in each of our offices, at a substantial additional cost per year, to review all past accounts and ascertain the most prudent course of action – a task which cannot be delegated to paraprofessionals or non-legal staff. Finally, retroactive application of the rules would significantly decrease placement of accounts with our Firm for review, thus necessitating staff and attorney decreases and loss of revenue.

A. Retroactive application of novel debt collection requirements, or of newfound violations of consumer protection laws, have a well-documented devastating financial impact upon small businesses. For example, in 2008, Maryland began requiring that debt buyers obtain debt collection licenses. This requirement was applied retroactively, and as a result, several passive debt buyers who lacked debt collection licenses – because such licenses were not required – found themselves subject to investigation and enforcement[4].

Thereafter, this new licensure requirement became the basis for *Finch v. LVNV Funding, LLC,* in which a class of 1500 consumers argued that default judgments entered against them during the time period LVNV Funding, LLC lacked a debt collection license – including during the time period when no such debt collection license was required under Maryland law – were void, and thus any action to collect such debts via garnishment proceedings constituted violations of the Maryland Consumer Debt Collections Act and the Maryland Consumer Protection Act. After years of litigation, a jury trial ensured, and the jury returned a verdict of $38 million in favor of the class.

Since *Finch,* attorneys who filed suit on LVNV's behalf and/or assisted LVNV in garnishment proceedings have begun receiving complaints, alleging that their activities constituted violations of the MCDCA and MCPA. In light of the *Finch* jury verdict, such suits are settled quickly – and in this way, lawyers whose only wrongdoing is representing a client who failed to obtain a debt collection license at a time when no such license was required, are being made to pay several thousands of dollars per lawsuit simply to avoid the larger and more destructive costs of defense, litigation and verdict. In this way, such retroactive application of the licensure requirement has had a quantifiable impact on small debt collection law firms, years after its enactment.

B. The Third Circuit Court of Appeals' opinion in *Douglass v. Convergent Outsourcing,* 765 F.3d 299 (3d. Cir. 2014), is another example of the cost associated with such application. In *Douglass*, the Third Circuit held that an account number, visible through the glassine window on the face of an envelope, was "a piece of information capable of identifying Douglass as a debtor." Although this reasoning was rejected by courts in other Circuits, in Pennsylvania, New Jersey and Delaware, *Douglass* gave rise to hundreds of class action lawsuits geared not toward challenging *Douglass,* but to expanding its holding: law suits challenged the visibility of partial account numbers, classification codes, QR codes, bar codes containing no numbers, bar codes containing partial account numbers, and scrambled account numbers, the majority of which were used to track returned mail, to determine whether the

[4] On December 17, 2009, several such large debt buyers settled with the Maryland Office of Attorney General and Commissioner of Financial Regulation and agreed to pay civil penalties of $998,000.00. These debt collectors were fined for activity which, while legal when taken, was rendered illegal by later legislation.

visibility of such information through an envelope's window constituted similar violations of 15 U.S.C. § 1692e(8). The overwhelming majority of such suits were settled on an individual basis to avoid the lengthy and expensive process of class settlement[5]. Many small law firms and solo practitioners, faced with multiple *Douglass*-style class actions and negative net worth, allowed the entry of default judgments after simply being unable to afford to pay settlement after settlement.

C. Unlike debt collection agencies, whose involvement in an account has a specific and readily determined ending point, many times attorneys who successfully obtain judgment against a consumer remain "involved" in the account for years afterward, for a variety of reasons. For example, with respect to our Firm specifically, we practice in Maryland and New Jersey, both of which permit wage garnishment as a permissible means of recovering an outstanding judgment. Wage garnishment may last for several months or years, depending upon the specifics of the judgment, the consumer's income, and the consumer's employment status. A judgment obtained in 2010 may continue to require attorney involvement for years afterward.

A second example lies in the exercise of appellate rights, whether by the consumer or by the creditor. In Maryland, the majority of collection trials occur in county District Courts. Parties are entitled to a *de novo* appeal to the county Circuit Court, and may seek discretionary review via Petition for Writ of Certiorari to the Maryland Court of Appeals. A small claim debt collection matter filed in District Court in 2011 may not achieve full and final resolution until 2014 where a consumer's full appellate rights are exercised.[6] Thus, not all small claim collection matters terminate within a matter of months.

D. In those circumstances, the issuance of retroactively applied Rules would require attorney review not only of all active cases in our office, but of all cases closed within the longest possible statute of limitations to determine (1) whether our Firm faces any potential liability for sending our pre-Rule validation notice prior to filing suit; (2) whether such liability can be mitigated, perhaps by re-lettering each account in which judgment has yet to be obtained; (3) whether the use of our pre-Rule validation notice has the effect of rendering

[5] Because so many settlements occurred on individual rather than class bases, information regarding settlement size is not publicly available, and we cannot provide the CFPB with specifics regarding the terms of settlement due to the existence of confidentiality provisions.

[6] *See Bartlett v. Portfolio Recovery Associates, LLC*, 438 Md. 255, 91 A.3d 1127 (Md. 2014).

any judgment obtained against the consumer void or voidable; and (4) whether any payments made or garnishments obtained on judgments entered after use of the pre-Rule validation notice requires disgorgement of such funds. We are ethically and legally obligated to undertake such an analysis not only to minimize any financial harm to our Firm, but to counsel our clients regarding the status of their judgments and pending lawsuits. Based upon our current case census and employee levels, retroactive application of the validation requirement alone would require a review of all past accounts to ascertain the most prudent course of action which would entail hiring additional staff, potentially including attorneys, since much of this task cannot be delegated to paraprofessionals or non-legal staff. Additionally, IT staff would be required to adjust the software workflow to implement account holds and effect other necessary process changes, this would come at a substantial cost.

A series of revisions to the Bureau's proposed rule would obviate this risk:

- The Rules should contain either a firm enactment date or, alternatively, a provision making clear that the Rules shall apply prospectively. For purposes of debt collection litigation, the Rule should clarify that they affect cases filed on or after a certain prospective date.
- The Rule should affirmatively state that any deviation from these Rules that occurred prior to their enactment date cannot serve (1) as a basis for civil litigation or (2) as evidence of a violation of federal or state consumer protection laws.

Limitations on Communications

- **Limiting our Firm's frequency of contact with consumers puts us at odds with Rules of Professional Conduct and Rules of Civil Procedure. This risk can be obviated by exempting court-mandated notices, legal pleadings, service documents, and other litigation-related communications from the cap on communications.**
- **Limiting our attorneys' ability to discuss accounts with consumers heightens the rates of litigation and decreases our ability to resolve accounts on terms favorable to the consumer, thus defeating the Bureau's goal of decreasing rates of litigation and giving consumers a voice in the debt collection process.**

1. The Rules of Professional Conduct, and each court's practice rules, obligate us to speak with consumers at rates that would exceed the Bureau's proposed communications cap.

As noted above, each state has promulgated Rules of Professional Conduct governing the conduct of attorneys who practice within its borders. With respect to our Firm specifically and the states in which we practice, in addition to each state's ethical rules, we are also bound by state substantive and procedural requirements governing everything from the form and substance of pleadings to the necessary steps preceding trial on the merits.

The Bureau's proposed cap on the number of communications a debt collector may have with a consumer in any given week run afoul of many of these requirements in several ways:

A. In the jurisdictions in which our Firm practices (and in most other jurisdictions), court rules require parties to meet and confer before seeking judicial intervention for a discovery dispute. This generally consists of a series of communications over the course of several days. If debt collectors are limited to one communication with a consumer per account per week, debt collection attorneys will be unable to fulfill their obligation to meet and confer regarding discovery disputes. If debt collection attorneys cannot meet and confer with their opponents, they cannot certify that they have attempted good faith resolution of the discovery dispute, as is required by most courts. This, in turn, can result in a court's refusal to hear a discovery motion brought by the creditor; in the court's refusal to hear the creditor's opposition to a discovery motion brought by a consumer; in the preclusion of evidence; and in the entry of monetary sanctions against the creditor and its counsel for failing to meet and confer.[7] In many jurisdictions, habitual failure to abide by a court's practice rules are grounds for a disciplinary referral.

B. Court rules governing the service of discovery also require more than one communication per week per consumer. Parties are required to (1) serve their opponents with written discovery requests, (2) notify the court of the service of such requests, and (3) provide their opponents with a copy of their notification to the court. Thus, to comply with this rule, service of discovery requires not one communication with consumers, but two: one by which discovery is

[7] *See, e.g.*, Md. R. 2-431, Certificate Requirement. "A dispute pertaining to discovery need not be considered by the court unless the attorney seeking action by the court has filed a certificate describing the good faith attempts to discuss with the opposing attorney the resolution of the dispute and certifying that they are unable to reach agreement on the disputed issues. The certificate shall include the date, time, and circumstances of each discussion or attempted discussion."

served, and a second by which the consumer is notified of the filing of a pleading. Debt collection attorneys cannot comply with the communication cap and with court rules simultaneously.

C. Many courts require the party seeking an order to provide copies of the order to all other parties, represented or unrepresented. In small claims court, where the majority of our cases are tried, orders are issued from the bench, and we are obligated to send copies of those orders to consumers. Similarly, where our attorneys are able to negotiate resolutions of accounts immediately prior to trial, such dismissals are routinely approved at trial. Consumers who resolve their accounts prior to trial do not always remain in the courtroom to appear for the approval process, and thus we are obligated to mail those consumers copies of the Court's approval of such stipulated dismissals. Were the Bureau's proposed rules enacted as currently drafted, we would violate the communication cap by communicating with the consumer immediately prior to or during trial, and following up with service of any orders afterwards. We cannot delay service of these orders in order to fit within the communication parameters suggested by the bureau, as court rules require us to provide "prompt" notice, and a delay of even a few days deprives consumers of a portion of their appeal period.

D. Refusing to communicate with a consumer with whom our Firm is engaged in litigation constitutes a violation of the Rules of Professional Conduct governing all attorneys. As attorneys, in addition to our obligation to represent our clients, we have a concurrent obligation to "further the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority."[8] In fulfilling this obligation, our ethical rules impose upon us the obligation to maintain "a professional, courteous and civil attitude toward all persons involved in the legal system."[9] We are required to respect the rights of third parties[10], and be particularly sensitive to those litigants who are unrepresented[11]. Filing suit against a consumer, only to refuse to discuss the substance of and basis for such

[8] Maryland Lawyers' Rules of Professional Conduct, Preamble, ¶ 6.

[9] *Id.* at ¶ 9.

[10] *See, e.g.*, Md. R.P.C. 4.4, Comment 1.

[11] *See, e.g.*, Md. R.P.C. 4.3.

litigation after its commencement, puts our Firm at risk for disciplinary action, and prejudices our clients' ability to fully and fairly litigate their grievances, as attorneys who habitually disregard practice rules are sanctioned for their conduct.

2. Limiting our attorneys' ability to discuss accounts with consumers heightens the rates of litigation and decreases our ability to resolve accounts on terms favorable to the consumer.

Resolution of accounts, much like resolution of a discovery dispute, consists of a series of communications over the course of several days. It is overwhelmingly common for our Firm's attorneys to speak with a consumer in the days leading up to trial; to meet with the consumer at the courthouse and agree to a preliminary settlement agreement; to reiterate the terms of that agreement by telephone later in the day; and to confirm the terms of such agreement in writing within the next 24-48 hours.

Under the Bureau's proposed communication caps, our attorneys would have to choose which of these communications in which to engage, as our attorneys would be limited to only one. This would result in increased rates of judgments obtained against consumers who otherwise would have been able to resolve their accounts on more favorable terms.

A series of revisions to the Bureau's rules would obviate these issues:

- The Rules should exempt communications required by court order, rule or practice, such as service of copies of pleadings, orders, or other notices.
- The Rules should exempt communications initiated by consumers, whether such communications consist of inbound telephone calls, emails, written correspondence, or in-person discussions.
- The Rules should exempt communications in connection with litigation, such as written confirmation of a settlement agreement, written or verbal meet and confer communications, and other communications concerning the procedure or substance of litigation.
- The Rules should exempt communications between attorneys. Debt collection attorneys should not be limited in their ability to communicate with opposing counsel.
- If the final Rule does limit the number of communications an attorney may have with his or her opponent, the Rules should provide that a consumer may consent to additional communications.

Review of Documentation Prior to Filing Suit

- **The Rules of Professional Conduct, court rules, and substantive state law require attorneys to exercise their professional judgment when evaluating an account for suit. Mechanizing this review by requiring that an attorney possess specific pieces of information usurps and invites challenges to collection attorneys' exercise of professional judgment.**
- **The Bureau's Rule purports to permit the use of "alternative" avenues for obtaining or confirming information, but makes it incumbent upon the attorney to prove that such alternative means were reasonable. Meeting this burden requires attorneys to violate the attorney-client privilege, which is prohibited under the Rules of Professional Conduct.**
- **Because attorneys may only practice law in the states in which they are licensed, attorneys cannot ethically counsel their clients about portfolio-wide "red flags" that might render accounts in other states unfit for suit.**
- **Retroactive application of the document requirements would render high volumes of accounts uncollectible, regardless of whether meaningful attorney review has deemed such accounts appropriate for suit. This would have significant financial costs to our Firm and to our clients.**

As noted above, the Rules of Professional Conduct, rules of court, and substantive state law requires that attorneys commence and pursue litigation only with probable cause and for the purpose of obtaining the relief requested. In the context of debt collection, abiding by these rules and requirements means that an attorney must evaluate each account and determine whether its client has a basis to recover the amount due by the consumer. The Bureau's proposed Rules seek to mechanize this process by identifying specific pieces of information a debt collector (or, in our context, an attorney) must possess <u>before</u> beginning debt collection efforts, including litigation. The Bureau's proposed Rules would also require that the attorney review these pieces of fundamental information for "warning signs," on the basis that such "warning signs" may call into question the initial claim of indebtedness[12]. While the proposed Rule purports to leave room for instances in which a debt collector lacks a piece of fundamental information but moves forward with collection activity, the Rule makes clear that the collector "would bear the burden of justifying its alternative approach."[13]

[12] *See* Appendix C.

[13] *Id.*

These proposals interfere with an attorney's ability to meaningfully review its client's potential claim and evaluate it for suit, and with an attorney's obligations under the Rules of Professional Conduct, court rules, and substantive state law, as follows:

A. The Rules do not define the term "default," and contracts define this term differently. The "date of default" is not readily ascertainable across the spectrum of financial products[14]. If the Rules are implemented as written, our Firm will be placed at heightened risk for FDCPA lawsuits where the "date of default" is not readily available. In circumstances where attorneys use an easily ascertainable date, such as the date of charge-off, we will still be at heightened risk for adverse litigation because the Rule will lead consumers to believe that the "date of default" is infallible, when in fact for some types of accounts, such a date may not even exist. Attorneys, under the Rule, would bear the burden of proving that their use of the date of last payment or charge-off is "reasonable" – a term the Rules does not define.

B. By making it incumbent upon attorneys to justify their use of an "alternative approach" to reach the conclusion that an account which lacks a piece of fundamental information is nevertheless suitworthy, the Rule improperly invades the attorney-client relationship and the attorney's deliberative process. Any accounts lacking a piece of fundamental information as defined by the Bureau – such as a middle initial or a last known telephone number – but appearing appropriate for suit on the basis of other information, such as account statements or other documentation, would require the attorney to divulge why it deemed this account appropriate for suit in spite of the absence of fundamental information. Attorneys cannot do so without divulging attorney-client privileged communications, since it is the client, and not the attorney, who holds the ultimate decision-making power. Thus, attorneys will be forced to choose between complying with the Rule or violating its obligation to maintain the confidentiality of its communications with its client – and thus violating one of the most fundamental Rules of Professional Conduct.

[14] Utilization of the "date of default" also invites consumer confusion, as consumers may not understand the difference between post-charge-off itemization and post-default itemization.

C. Maryland is a notice-pleading state. Complaints (with the exception of complaints for assigned consumer debt) are required to consist of a short, plain statement of the claim for relief and the plaintiff's entitlement to such relief. No litigant, including a creditor, is required to prove his or her claim in the complaint. Under the Rules, however, attorneys would be required to evaluate each account not with an eye toward whether our client has probable cause to proceed, but whether our client will win its case. Such a requirement runs counter to court rules and touches on a creditor's right of access to the court system.

D. The Rules of Professional Conduct and each state's rules of civil procedure require us to individually analyze each account. We cannot ethically evaluate accounts in the context of the portfolio from whence they came. Rejecting accounts on the basis that other accounts from the same portfolio had "red flags" violates our duty to our client to individually assess each account for litigation and puts us at risk for termination of business relationships and legal action.

E. We practice in Maryland, New Jersey, and Delaware. We are prohibited from evaluating accounts for suit in states other than these three, as our attorneys are not members of other states' bars. Thus, while we can (and do) inform our clients that individual or groups of accounts received in our office may lack key pieces of information, we cannot ethically characterize such deficiencies as portfolio-wide "red flags," because we cannot evaluate such deficiencies through the lens of what other states may or may not deem sufficient to proceed with suit.

F. Retroactive application of these Rules puts our attorneys at risk in a manner similar to that illustrated with respect to the *Finch v. LVNV* matter referenced above. Class action litigation for accounts missing pieces of information deemed "fundamental" by these Rules would bankrupt our Firm (and others similarly situated). Moreover, such application would not only affect the viability of accounts currently placed with our offices, but with accounts placed in the future as well, as significant portions of our clients' accounts would be retroactively deemed uncollectible. We estimate that even a 10% reduction in file placements with our office would result in a substantial annual loss.

A series of revisions to the Bureau's rules would obviate these issues:

- The Rules should utilize the charge-off date, rather than the date of default, as its "gold standard," as this date is highly regulated readily ascertainable, whereas "default" is defined differently from contract to contract. Utilization of the charge-off date will also minimize consumer confusion, as itemization of an account as of charge-off will match the information received by the consumer in the charge-off statement. This will minimize disputes based on "wrong amount," and will similarly minimize litigation claiming that our Firm sued for the inappropriate amount.
- The Rules should clarify that attorneys may use their professional judgment, in accordance with the Rules of Professional Conduct and state law, to investigate their client's claims and evaluate them for suit. Attorney review should not be dictated via checklist, as such review is not "meaningful."
- The Rules should limit attorney obligations to reporting "red flags" on an account-level basis, and should clarify that debt collection attorneys are not responsible for determining whether certain deficiencies may be problematic in jurisdictions in which they are not licensed to practice.
- The Rule should contain an effective date, making clear that these requirements apply only to accounts placed on or after a date certain.

Respectfully submitted,

Willner

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Re: Advice and Recommendations of Small Entity Representative Fran Censullo on Small Business Advisory Review Panel for Debt Collector and Debt Buyer Rulemaking

Dear Mr. Sokolov, Ms. Smith, and Ms. Ahmed:

After participating in the Rulemaking Panel on August 25, 2016, I herein submit my written comments and I urge the CFPB to take my views and data points, as well as those of the other SERS, into consideration when proceeding to propose the subsequent Rule. Although the CFPB has been working on the Outline of Proposals for three years and the SERS were given twenty-six days to prepare for the Panel and two weeks to document their written comments, I feel the input provided by the SERS is very substantive. I have never, in my forty-six years as a debt collector, been part of a group that was more informed and professional than the nineteen that shared the table that day. They openly shared their passion, dedication and proprietary ideas in an attempt to improve the consumer affecting processes under which we operate our businesses. I must tell you that both Michael McFall, our Chief Information Officer, and I took back with us ideas that we will immediately implement into our business practices. I urge you to consider the ideas and alternatives presented by the SERS when you and your associates finalize the rules that will forever affect our industry and our small businesses. We would like to highlight the following topics:

I. DISPUTES

Specificity is important in addressing consumers. Allowing for and facilitating consumer input- with a high degree of particularity in their disputes- can tell us if there is a problem with the accounts we are receiving from our clients and particularly, should a pattern arise in the type and volume of dispute, if there are any flaws in our processes. Highly specific disputes, typically a pairing of consumer provided documents and written input, can be investigated and resolved efficiently and satisfactorily, as they allow us to easily ascertain the nature and context of the information the consumer is requesting. Detailed, specific disputes allow us to efficiently perform complete investigations and meet the consumer's expectations for dispute resolution. Generic disputes on the other hand, which consist of consumers simply stating that they dispute, with no reason provided, can be cumbersome and not easily resolved to the satisfaction of the consumer. They usually require multiple communications to determine the area of the dispute and its subsequent resolution.

Approximately 75% of the generic disputes MCT receives arrive via mail, from credit repair organizations or other third parties, who do not provide any formal letter of representation. These disputes arrive with the consumer's alleged signature and a return address. The signatures rarely, if ever, match the one in our files and the postmark is typically from a city that is not that of the consumer. These types of generic disputes should not be permitted and are potentially damaging to the consumer. If a dispute comes from a third party such as a credit repair organization, we believe it should be accompanied by a signed letter of representation to speak on the consumer's behalf, to avoid facilitating unrestricted, damaging third party disclosures of consumer's personal and private information. Under the FDCPA, we are not required to respond to suspect communications that show these "warning signs." We ask for the same consideration under the CFPB's rules.

In the December 2012 CFPB whitepaper, "*Key Dimensions and Processes in the U.S. Credit Reporting System*[1]," it is my understanding that the CFPB took issue with the former e-OSCAR dispute processing format, because it did not allow consumer-provided documentation and thorough explanations to be transmitted to credit data furnishers for consideration in their dispute investigations. Instead, disputes funneled through e-OSCAR at the time created a system in which all consumer disputes were reduced to broadly generic dispute codes- not unlike the generic dispute categories in the CFPB's proposed dispute tear-off sheet- and consumers were being harmed due to "investigations" being performed on a merely perfunctory basis, based on the generic nature of the disputes credit data furnishers received, rather than performing thoughtful, thorough investigations, with satisfactory resolution, as the CFPB desired. The e-OSCAR system for handling disputes on consumers' credit has subsequently been overhauled and has been arguably improved as a result of the CFPB's direct input; it

[1] Consumer Finance Protection Bureau, "Key Dimensions and Processes in the U.S. Credit Reporting System", §7.3 Resolving Trade Line Disputes: The e-OSCAR system,
p.33-35, available at http://files.consumerfinance.gov/f/201212_cfpb_credit-reporting-white-paper.pdf

currently allows for more substantive written dispute explanations as well as the submission and transmission of consumer documentation to credit data furnishers to facilitate complete and satisfactory investigations to disputes. To quote CFPB Director Richard Cordray, in his statements regarding the flaws of e-OSCAR, prior to its overhaul: "...when credit reporting companies forwarded disputes [to credit data furnishers], they did not send attachments, such as account statements, supplied by consumers. Instead, they simply reduced everything submitted by the consumer to a three-digit code and, occasionally, a few words that described the dispute. Without any of the crucial supporting information from the consumer, disputed claims were often denied because there was nothing to dictate any change in the outcome.[2]" As a data furnisher, we are pleased with the CFPB's guidance and resulting improvements made to e-OSCAR and feel that we are now better equipped to adequately respond to consumer's credit disputes. Per the CFPB's own data in the aforementioned whitepaper, 95.5% of data furnishers respond to disputes received through e-OSCAR's electronic dispute process in a timely manner, with only 4% failing to respond within the allotted time[3].

In spite of these dispute participation figures and prior progress with improving the e-OSCAR system of handling credit disputes, the CFPB is now proposing a validation notice dispute tear-off sheet that regresses to that overly broad and generic format, where disputes are reduced to simplistic categories and checkboxes, with only one line, one and one-quarter inch long, for the consumer to provide details of what is typically a complicated and sensitive matter. While we are highly encouraged by the CFPB's attempts to extend a safe harbor by recommending a standard validation notice and model language, this dispute tear-off approach will increase mail-in disputes- by my estimate- fourfold, with questionable benefit to the consumer, as evidenced by the CFPB line of inquiry into how e-OSCAR disputes were previously handled. To reiterate, the categories of dispute on this tear-off form are generic, inefficient, and will potentially create perfunctory processes that are harmful to consumers. None of these generic disputes will tell us why "this is not the consumer's debt", nor why "the amount is wrong." It does not tell us when the debt was "paid in full or settled." How are we to prove we are the "right person to pay"? The only time our clients sign an individual assignment of account is when we request authorization to sue. Without thoughtful, contextual information for us to compare against in an investigation, we can only provide a perfunctory minimal investigation that does not benefit consumers or the small business collection industry.

Additionally, we do take issue with the CFPB's characterization that "questions" constitute formal disputes, which is frustrating. As debt collectors, we are trained to listen to questions and respond with the information we have available to us. The

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[2] Cordray, Richard, "Prepared Remarks of CFPB Director Richard Cordray at the Consumer Advisory Board Meeting", Press Release, available at http://www.consumerfinance.gov/about-us/newsroom/prepared-remarks-of-cfpb-director-richard-cordray-at-the-consumer-advisory-board-meeting/

[3] Consumer Finance Protection Bureau, "Key Dimensions and Processes in the U.S. Credit Reporting System", Figure 5: Dispute Results, p.34, available at http://files.consumerfinance.gov/f/201212_cfpb_credit-reporting-white-paper.pdf

CFPB's suggestion that a generalized question initiates a formal dispute would mean that a cessation of further collection contact could limit beneficial communication with the consumer. If a question is a dispute, each call that includes a question from the consumer will have to be documented as a dispute, reported to the original creditor or owner of the account, and reported again as transferable information when the account is closed. Because a question arose in the conversation, the account would need to be reported to the CRAs as disputed and all activity would need to cease. The CFPB's industry study references that after a discussion with a debt collector, only 10% to 20% of consumers continue to dispute the debt.[4] How is that a bad thing? We should encourage conversation and information flow with consumers. A SER who conducted a review of disputes in which verification of the debt was sent to its consumers reported during the August 25 meeting that only 7% of them eventually paid their debt. This percentage is less than the average recovery rate for a debt collector. Simple verification of the debt is not effective in most cases, yet discussions apparently resolve 80% to 90% of questioned issues, to the consumer's benefit and satisfaction. The CFPB should seek to promote, not hinder, this productive type of communication.

ALTERNATIVE

The dispute process should mirror the existing FCRA procedures for dispute resolution by following examples currently in place such as the CFPB's improvements and progress made on the e-OSCAR system. Debt collector dispute portals that facilitate information flow should be encouraged by the CFPB as a means of resolving disputes before intervention by regulators. This would greatly reduce the number of complaints the CFPB receives. Only unresolved disputes would then become the issue that needs intervention. Generic, third party disputes should be discouraged and they should come directly from the consumer, unless they are accompanied by a power of attorney or letter of representation executed by the consumer. The electronic dispute process is less expensive and provides a better benefit to the consumer, as it allows for timely processing and tracking of disputes.

As a debt collector, we feel it is within our technological capacity and cost parameters to create and maintain an online portal in-house where consumers can communicate a dispute with us directly through our own website, where consumers, without encumbrance, can easily provide as much or as little information as they wish so that any potential dispute they have may be adequately addressed. We are also open to processing disputes through a third party electronic system, such as the current and widely utilized e-OSCAR. After sufficient verification of a debt is sent to the consumer, any additional dispute(s) that do not demand any new information beyond what was required to verify should be deemed duplicative. Safe harbor status should be given to the compliant debt collector to reduce litigation, otherwise the cost of litigation

[4] Consumer Finance Protection Bureau, "Study of Third Party Debt Collection Operations", §5.3 Debt collection disputes, p.30, available at http://www.consumerfinance.gov/documents/755/20160727_cfpb_Third_Party_Debt_Collection_Operations_Study.pdf

will need to be passed onto the small business clients. The CFPB should encourage communication between consumers and debt collectors.

II. TRANSFER OF INFORMATION

OPEN ACCOUNTS

Upon assignment, a debt collector should welcome as much data and documentation related to the account being placed or purchased as exists. Having this information at the onset of assignment increases the likelihood of collection and requires the participation of first party creditors. This data may affect the manner in which the debt collector reports the account to the major Credit Reporting Agencies, specifically open dates, last pay dates, and generational data. Unfortunately, the trend in the past decade is for first parties to want to reduce the volume of account-level documentation transmitted to third party debt collectors, primarily due to security reasons concerning personal and private information at rest and in transit. A spreadsheet with essential information seems to be the preference amongst creditors.

Some information concerning the collectability of the debt is currently transmitted to clients throughout the collection process. This information can include data that may affect the manner in which the creditor reports the account to major Credit Reporting Agencies, such as a bankruptcy filing, discharge or dismissal, the death of the consumer, or a dispute that proves to be valid.

Other information covered by the proposal presents several issues. Some information may not be required of consumers by original creditors and/or may not be passed along to the collector. The technological costs required for creditors to onboard the extent of new data submitted by a debt collector may be prohibitive or otherwise unfeasible for them to handle. For example, a dispute that has been resolved, Statute of Limitations disclosures, change in military status, the consumer expiration date and an itemization of each payment received by the debt collector- rather than the cumulative sum of all payments- will require a large range of custom software functionality for both the original creditors and their debt collectors to effectively implement. Requiring first party creditors to modify their information systems to allow for interoperability and flow of information between themselves and the variety of third party debt collector vendors they may be using at the time may be cost prohibitive and result in original creditors abandoning third-party collections and conducting all collections in-house. An extensive cost-benefit analysis and the involvement of first party creditors would be necessary to adequately quantify and assess the potential impacts to small businesses and consumers.

ALTERNATIVE

The debt collector should transmit back to the original creditor information obtained during the collection process that may affect the manner in which the creditor reports the account to the major Credit Reporting Agencies, such as amount owed, bankruptcy filing, discharge or dismissal, death, a dispute that proves to be valid, and when the account is paid. Debt collectors that collect for first party creditors typically already communicate this information in their monthly remittance statements.

CLOSED ACCOUNTS

With respect to the transfer of information after a collection account has been closed or returned to the original creditor, the consumer would be better served by receiving a notice from the collector, not unlike the validation notice, where the consumer is informed of the account closed status and should the original creditor still be in business at that time, that the consumer may contact the original creditor, whose name and address may appear on that notice, for further information. Requiring the debt collector to continuously maintain and transfer account level documentation on business they no longer have nor can legally collect payment on will require a collector to redundantly maintain ongoing operational costs on closed accounts.

ALTERNATIVE

Except in the case of a bankruptcy discharge or deceased with no estate, a debt collector should send a notice to the consumer advising the account has been returned to the original creditor. The notice should bear the name and address of the original creditor. This alternative would communicate useful, actionable information to the consumer, with minimal cost burdens.

III. VALIDATION NOTICE

Our industry has struggled with the validation notice issue for almost forty years to avoid any conflict with the thirty-day validation period. The notice that has evolved, while providing the information required under 809(a) of the FDCPA, 15 U.S.C. 1692g(a), is predominantly a recitation of federal and state debt collection laws. Our present validation notice avoids words such as "pay," "payment arrangements," "now" and "immediately." In fact, it does not ask the consumer to pay at all. This is due to an over-abundance of caution, a result of litigation initiated by consumers.

We would welcome a model validation notice from the CFPB that, if used by debt collectors, would provide a safe harbor for a compliant party. We do, however, have several issues with Appendix F of the Bureau's Outline of Proposals. As aforementioned in the addressing of consumer initiated disputes, the tear-off dispute portion lacks specificity, which we do not feel would allow for dispute verification or validation that would be beneficial or meaningful to the consumer; a requirement for more highly specific dispute information would be more useful to all parties.

The proposed validation notice lacks an explanation of the state laws that may affect the consumer's rights. I understand that an explanation of state regulations is to be included it the proposed Statement of Rights, but this presents other problems. First, we believe the proposed validation notice will require a 8 ½ x 14 inch page. If this proposal is implemented, we expect to use a custom two-part continuous form similar to the form we use to remit to our clients. The copy will be used to confirm the notice was sent. The client form is 8 ½ x 7 1/4 and costs .20 per page. Because the validation notice will be twice as large, we expect the cost to be .40 per page. We are presently using one-part 8 ½ x 11 inch continuous computer paper for our validation notice, which costs .0167 per page, so the increase in costs will be 25 times the current cost.

Additionally, the only way to prove the Statement of Rights is mailed in the same envelope with the validation notice is to staple them together. There is a case ongoing in the U.S. District Court for the Southern District of California in San Diego[5] in which the debt collector has been unable to prove that its letter vendor included a second page of state rights in its mailing to the consumer. This is despite declarations from the debt collector and the letter vendor that attest to the procedures in place to ensure accurate mailing. One SER estimates that stapling will increase the cost of the validation notice and Statement of Rights to $5.00 per account, as it must be performed manually. There could be further costs related to the Statement of Rights as the Outline of Proposals suggests that the document should be mailed again six months after a lapse in communication with the consumer.

ALTERNATIVE

The validation notice needs to be one page. The notice should include references to both federal and state regulations governing debt collectors. The notice should encourage electronic communication as it is faster and cheaper, directing the consumer to the debt collector's dispute website portal. It should also advise the consumer that, if he/she is unable to resolve a dispute directly with the debt collector, that a CFPB electronic dispute portal, or a CFPB approved third party electronic dispute portal that is similar to e-OSCAR, is available. The notice should also direct the consumer to the CFPB's website for its Statement of Rights.

IV. CALLER ID

We believe the CFPB's concerns about manipulation of Caller ID are valid. We are certain we have all experienced these types of calls, particularly from parties claiming to be with the I.R.S. or U.S. Treasury who threaten us with incarceration. We feel the Bureau's proposal for Caller IDs to display the debt collector's toll-free telephone number is fair and reasonable and that a display that shows the debt collector's name could be problematic from a disclosure standpoint.

[5] Ziba Youssofi v. CMRE Financial Services, Inc., Case No. 15cv2310 JM(WVG), United States District Court, Southern District of California

SUMMARY OF COSTS OF THE OUTLINE OF PROPOSALS

I have been the treasurer of MCT Group since 2004. During this period, I have had control of the corporation's expenditures related to payroll, taxes and operational costs. I have analyzed the Outline of Proposals issued by the CFPB and I have attempted to estimate its costs upon our operation. There will be set-up costs to design a new validation notice and Statement of Rights. The Transfer of Information after cancellation of the account will require further communication costs and the retention of information will require additional data processing. Foreign Language Disclosures will require further printing expense. Litigation Disclosures may result in an increase in responsive pleadings, adding to legal fees expended.

70% of the increase in reoccuring costs relate to further managerial oversight in the areas of Transfer of Information, both at the time of assignment and at time of cancellation, and disputes. As previously stated, we anticipate a fourfold increase in disputes if the tear-off validation notice is implemented. To comply with the CFPB's new rules will increase MCT's operational costs by 7.2%.

Respectfully submitted by,

Fran Censullo
Vice President, MCT Group, Inc.

September 9, 2016

VIA EMAIL (lauren.weldon@cfpb.gov)
Lauren S. Weldon
Counsel | Office of Regulations
Consumer Financial Protection Bureau

RE: Written Comments of Keith Kettelkamp, Small Business Review Panel for the Consumer Financial Protection Bureau's ("CFPB or Bureau") Outline of Proposal for Debt Collection and Debt Buyer Rule Making

Dear Ms. Weldon:

Thank you for allowing me to participate as a small entity representative ("SER") in the Small Business Advisory Review Panel ("SBARP") discussion regarding the CFPB's Outline of Proposals Under Consideration ("Proposal") for Debt Collection and Debt Buyer Rulemaking, which took place on August 25, 2016 in Washington, D.C. I appreciate the opportunity to submit my written comments, which outline some of my concerns with the Proposal, to put forth various data points that support my comments, and to offer suggested alternative proposals that will reduce costs to small businesses while at the same time providing for increased benefits to consumers.

I am the President and CEO of Remex, Inc., a full service accounts receivable management company founded in 1983 that implements a compassionate collection approach when working with consumers on behalf of our clients. Remex provides 3rd party debt collection services to a wide array of industries on a national basis including healthcare, retail, utility, financial services, and real estate businesses. Our clients provide both services and products to consumers and commercial entities. Remex is a small business with annual revenues under $15,000,000.00 and 21 employees.

I currently serve as President of the Board of Directors of ACA International, the Association of Credit and Collection Professionals (ACA). ACA is the largest and oldest trade organization in this industry, representing more than 3,500 members, the large majority of which are small businesses. Specifically, 48% of ACA members have fewer than 9 employees (1,164 companies) and 86% of ACA members have 49 or fewer employees (2,080 companies).[1] In addition to being small businesses themselves, ACA members report that they provide essential collection services

[1] ACA International White Paper: *Small Businesses in the Collection Industry: An Overview of Organization Size and Employment* (August 2016) (attached hereto as Appendix A).

to other small businesses. 44% of ACA members report that between 50-100% of their clients are small business clients.[2]

Given how prevalent small business clients are in the debt collection industry, I urge the CFPB not to overlook the impact its Proposal will have on small businesses that use debt collectors to recover overdue receivables. Those businesses are likely to see one of two outcomes or a combination of both: increased costs that will be passed along to consumers or lack of revenue, due to forgoing unaffordable collections efforts, which will hurt their bottom lines and their ability to access credit for their businesses.

I. Overarching Themes

The credit and collection industry has been looking for clear regulatory guidance on the Fair Debt Collections Practices Act, ("FDCPA" or the "Act"), 15 U.S.C. § 1682 *et seq.*, since its enactment in 1977. It was dilatory for Congress not to provide the Federal Trade Commission ("FTC"), the primary agency with jurisdiction over the debt collection industry, with any rulemaking authority when the FDCPA, which is a strict liability statute, became law. The failure of Congress to act has resulted in a patchwork of interpretations of the FDCPA by the courts, as well as a cottage industry of consumer attorneys who have done little to protect consumers while creating profit centers for themselves.[3]

It is important for the CFPB to carefully consider its proposals from the perspectives of both the consumer and the debt collector. The SERs who appeared before you on August 25th have a combined expertise of well over 150 years. Those same SERs, however, have spent the last five years investing in compliance management systems and personnel to ensure not only accuracy of information but improvement in the consumer experience when the time comes to discuss the resolution of legitimately-owed debts. Specific to our business, we have added a non-revenue producing, full-time compliance officer due to the complexity and ambiguity of navigating the compliance landscape. The CFPB must recognize the fact that a "one size fits all" regulatory approach does not contemplate the diversity of businesses that use 3rd party debt collectors or the types of debts collected. Due to this diversity in debt types and the industries debt collectors serve, enhanced consideration must be given to effectuate bright lines, provide clear model language and establish effective and workable safe harbors to reduce unnecessary liability for reasonable and good faith interpretations of the law. Then and only then will the rules be able to separate the good players from the bad.

One cross-cutting concern about this SBARP process is the absence of the 1st parties, the owners and/or the original creditors, from the discussion. This critical missing element has deprived all the SERs of the ability to provide important feedback on the workability of the CFPB's proposals. On issues like substantiation and transfer of information, if the 1st and 3rd parties are

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[2] *Id.*

[3] *Jacobson v. Healthcare Financial Services*, 434 F. Supp. 2d 133 138 (E.D.N.Y., 2006) ("The interaction of the least sophisticated consumer standard with the presumption that the FDCPA imposes strict liability has led to a proliferation of litigation in this District.... The cottage industry that has emerged does not bring suits to remedy the "widespread and serious national problem" of abuse that the Senate observed in adopting the [FDCPA] legislation, nor to ferret out collection abuse... Rather, the inescapable inference is that the judicially developed standards have enabled a class of professional plaintiffs...").

not brought together in dialogue, there is great risk that our comments and feedback will be read in a vacuum, depriving the process of careful consideration of the very intricate and complex working relationships between 1st and 3rd parties when it comes to the recovery of legitimately-owed debts. The CFPB must establish a time when collaborative and simultaneous dialogue can take place between both of these sets of crucial stakeholders as part of the SBREFA process.

While the Proposal makes reference to alternative forms of communication like email and text, the CFPB has not set forth any guidelines to encourage their use. This is somewhat contradictory given past comments and policy statements by the Bureau recognizing the importance of technology and use of the alternative methods in other financial services markets.[4] It is also inconsistent with the desires expressed by consumers with whom we interact on a daily basis. Our clients' customers frequently request electronic contact as their primary method of communication. Therefore it is imperative that any final rule provide clear guidance for the use of email, text and other alternative methods of technology that are less intrusive to consumers and are the preferred ways that consumers want to be contacted. Limiting these contacts and methods reduces the opportunities for a consumer to resolve a debt in the manner he or she finds most comfortable, and it also impedes the most effective dispute resolution process. This ultimately harms consumers.

In its Proposal, the Bureau has stated that the failure to communicate important consumer information upon subsequent placement and sale of a debt can cause significant harm to consumers. This includes the failure to provide relevant information received by a 3rd party debt collector even after an account has been closed. However, any consideration of the transfer of information must include the transfer of consent, which is curiously omitted from this Proposal. Failure to pass along consent from a consumer needlessly adds costs and harms consumers by exposing them to additional contacts to ensure transfer of information that they have already provided.

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[4] "The Bureau also notes that, as the prevalence of borrowers with landline telephone numbers decreases, collectors and servicers must be able to deliver these required communications to consumers through other methods, including calls made to wireless telephone numbers." Comments of the CFPB to the FCC's TCPA federal government debt collection NPRM, at 7, https://ecfsapi.fcc.gov/file/60002112663.pdf.

"Let me also take a moment to acknowledge another positive development, which is the decision some banks and credit unions have made to provide consumers with real-time information about the funds in their accounts available to be spent. They are doing this through various means, including online banking and text and e-mail alerts, which can reduce the risks that consumers inadvertently overspend their accounts." Speech by Richard Cordray at field hearing on access to checking accounts (Feb. 3, 2016), http://www.consumerfinance.gov/newsroom/prepared-remarks-of-cfpb-director-richard-cordray-at-a-field-hearing-on-checking-account-access/.

In early 2016, "the Bureau engaged in a series of structured interviews with individual student loan borrowers in order to better understand the barriers student loan borrowers face when repaying their loans, and to identify opportunities for improving borrower communications about repayment options." One of the Bureau's initial observations from the interviews included the following: "Routine electronic communications may present an opportunity for targeted outreach. Borrowers described that they may be more likely to take action in response to monthly email communications containing personalized repayment information, rather than written statements instructing borrowers to log in to review their account or to call a customer service representative to discuss available options." Request For Information Regarding Student Loan Borrower Communications, 81 Fed. Reg. 26529, 26532 (May 3, 2016), https://www.gpo.gov/fdsys/pkg/FR-2016-05-03/pdf/2016-10327.pdf.

Finally, as noted above and as further articulated in these comments, the adverse small business impact will be felt not only by the 3rd party debt collectors but also by the clients they serve.

II. Substantiation

As indicated above, the CFPB's Proposal for substantiating claims of indebtedness fails to take into the account the varied types of small businesses that place accounts with 3rd party debt collectors. In particular, many of these small businesses are local contractors, plumbers or medical or dental offices. The technologies of these small businesses are meant to ensure their primary business functions are served and not to collect on their accounts receivables. The documentation for these small businesses is not standardized and varies greatly. Many small businesses do not currently have written policies or procedures in place to confirm the accuracy of their information. That is not to say the information is inaccurate. Substantiation and placement are inextricably connected and 1st & 3rd parties traditionally work together to formulate a process that works effectively for all involved. However, as the Proposal is currently written, many of these small businesses will simply be unable to comply with these requirements. This is one reason that the CFPB missed an important opportunity to bring 1st parties into this process. Their feedback regarding their ability to comply with the CFPB's proposals was noticeably missing.

ACA International conducted a 2016 Business Practices Survey ("ACA Survey") of its members after the CFPB's Proposal was released. Attached is a copy of the ACA Survey, as Appendix B. ACA Members were asked to speak with their small business clients about specific aspects of the CFPB's Proposal, in particular the economic consequences of providing documentation related to the date of default, the amount owed at default, payment histories, and itemization of the debt. The results show that 49% of the clients of ACA members will have to invest additional resources in order to collect overdue receivables and 32.1% will simply forgo collections altogether. As noted in Section I., the impact on small businesses that turn over accounts for collection will result in these businesses' having to either increase prices to make up for lost revenue, or in the case of forgoing collection, a loss of income that will have a negative effect on their ability to obtain future business credit.

A. Recommendations for the use of the Term Default

The Bureau must also pay particular attention to the use of the term "default" in its proposal. Not every 1st party uses the term consistently, if at all, and in certain instances it is defined by contract. In my experience, I see files get placed in many ways and the trigger date that starts the collection process may vary by industry or even within an industry. It is rare that files are placed with a default date. In instances where an account is being credit reported, a default date may be further out than the last transaction date or date of service, meaning that the item will be reported on the consumer's credit report longer, having a negative impact on a consumer's credit score.

The Proposal should adopt a clear definition of default with well-articulated exceptions, as follows: *If not defined by a contract which formed the basis of the debt, or not otherwise defined by the owner or creditor of the debt (i.e. last date of payment or last date of service), then the default date shall be the date the debt was placed or assigned to a 3rd party debt collector.* This alternative takes into account the various ways accounts are placed with agencies as well as the contractual differences that may be present with different debt types.

B. Accounting for Additional Fees and Charges Post-Default

The CFPB proposes that debt collectors review certain fundamental information to substantiate initial claims of indebtedness. The CFPB's Proposal at Appendix C, bullets #3 & #4, suggests that a collector must have information for each payment made after default as well as information for each charge or fee imposed after default. This proposal is unclear as to whether an itemization of each charge is to be provided or just the total aggregate information.

I would also encourage the CFPB to look at what states like California and New York have done in relation to adopting requirements for the provision of aggregate information on costs and fees after default or charge-off.[5] Both states are leaders on issues of debt collection reform and in both cases, industry and consumer advocates worked together to advance these proposals. Before going in a totally different direction, the CFPB should examine what has been an industry practice now for more than two years and adopt a coordinated approach, to avoid needless costs to collectors, not to mention confusion to consumers.

Another piece of fundamental information that a debt collector must review is the account number of the consumer with the debt owner at the time the account went into default. The CFPB must recognize the varied nature of 1st party industries and internal processes. In the event that a small business does not utilize an account number, a reasonable account identifier must be considered as a viable alternative.

C. Clarity on Warning Signs

The Bureau's proposal also imposes additional requirements upon debt collectors to review the fundamental information from their clients for warning signs: indications that the information may be inaccurate or inadequate. The Bureau expects this review process to occur both upon placement and during the course of collection activity. However, the CFPB has not identified what a warning sign is and how to detect it. Without a clear definition and a bright line determination, debt collectors will lack the necessary guidance in order to comply and even good faith efforts will result in increased risk and litigation.

Substantiation and warning signs, especially during the placement phase, are one and the same. Debt collectors work with clients to implement clear perimeters of the necessary and reasonable information that is warranted to set up the file from the outset. Due to the variety of debt types,

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[5] California Statute, Title 1.6C5, 1788.52(a)(2): "The debt balance at charge off and an explanation of the amount, nature, and reason for all post-charge-off interest and fees, if any, imposed by the charge-off creditor or any subsequent purchasers of the debt. This paragraph shall not be deemed to require a specific itemization, but the explanation shall identify separately the charge-off balance, the total of any post-charge-off interest, and the total of any post-charge-off fees."

New York Statute, 23 NYCCR 1, § 1.2(b)(2): "An itemized accounting of the debt, including: (i) the total amount of the debt due as of charge-off; (ii) the total amount of interest accrued since charge-off; (iii) the total amount of non-interest charges or fees accrued since charge-off; (iv) the total amount of payments made on the debt since the charge-off."

an agreed-upon baseline provides a framework of information and data that both the debt collector and client can rely upon during the placement of an account. As an alternative approach, I would recommend the development of a Warning Sign Program that would bedeveloped by the client and debt collector before collection begins.. The Program would outline the necessary information each client must provide upon placement for each particular debt type. There would be a presumption of compliance if the client provides the stated information and the debt collector reviews it to ensure it is what the client represents it to be.

III. Disputes

The CFPB's Proposal to define a "dispute" provides helpful guidance for debt collectors. However, I would caution against the Bureau's use of the term "question" in its definition. A question about a debt may not necessarily be a dispute as to the validity of the debt; rather it may simply be a request for information in order for a consumer to make an appropriate decision about how he or she wants to handle the debt. The goal of any dispute process must be resolution of the dispute; that is why a consumer takes the time to reach out to a debt collector in the first place. In this vein, the Proposal's recommendation to categorize disputes, including the use of a "generic" dispute category does little to achieve resolution of the debt, which is the ultimate benefit to the consumer.

Data suggest that on-going and appropriate communications with consumers are the best ways to diagnose a dispute in order to resolve it. According to the ACA Survey, 48% of ACA members report that they are able to resolve an oral dispute during the conversation in which the oral dispute is raised.[6] The ACA Survey also indicates that only 14.5% of disputes are unable to be verified.[7] The CFPB's Study of Third Party Debt Collection Industry ("CFPB Industry Study") confirms that after a discussion with a debt collector, only 10-20% of disputes still persist.[8] The CFPB Survey of Consumer Views on Debt ("CFPB Consumer Survey"), Appendix B of the CFPB's Proposal, had no findings on the issue of dispute resolution.

The ACA Survey data also suggests that the use of the catchall, generic disputes is harmful to consumers. According to the ACA Survey, members report that generic disputes are the most prevalent, occurring 79.2% of the time.[9] Several of the ACA Member SERswho participated in the SBARP process report that 80% of the time a generic dispute comes from a debt settlement company and not the consumer directly. Lastly, on average it takes more than three weeks to investigate a generic dispute as opposed to a specific dispute, which takes less than two weeks to investigate.[10]

It is also important to provide perspective in regard to the overall dispute rate. The CFPB's 2015 Annual Report on the FDCPA reports that more than 77 million individuals had a trade line on their credit report that indicated they had some kind of debt in collections. The Federal Reserve

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[6] ACA Survey, p. 4.
[7] ACA Survey at Table 2, p. 6.
[8] CFPB Industry Study at §5.3, p. 30.
[9] ACA Survey at Table 3, pp. 6-7.
[10] ACA Survey at Table 4, p. 7.

Bank of Philadelphia reported that that there are over 1 billion consumer contacts per year regarding the collection of a debt.[11]

In the year ending 2015, the CFPB reported that it handled 85,200 debt collection complaints through its own complaint portal (down by 3,100 from the prior year). A complaint is defined as a consumer's expression of mere dissatisfaction with a financial product or service and may not otherwise involve a violation of any law or a dispute of a debt. Furthermore, complaints received by the CFPB have a prevalence of being misclassified as complaints about debt collection when in fact the complaint could have been about some other financial product or service.[12] ACA undertook an analysis of the CFPB's Complaint Database and found that a lack of rigorous methodology and inherent bias results in the CFPB's data having limited utility as figures may be over reported.[13] Therefore, the 85,200 consumer complaints reported by the CFPB are more likely far fewer in total. Even assuming the CFPB's debt collection complaint figures are accurate and using the value of one billion contacts annually, they only account for .000085 percent of total consumer contacts.

Finally, all three major trade associations for the credit and collection industry, ACA, the National Creditors' Bar Association (NARCA) and DBA International ("DBA"), report dispute rates between 1 and 5 percent.[14] The Federal Trade Commission ("FTC") also reported a 3.2 percent dispute rate in its debt buyer study.[15] Therefore, industry as well as CFPB and FTC data are in agreement that disputes are not a far-reaching problem in relation to the total amount of contacts annually.

Suggested alternatives would increase benefits for the consumer while at the same time reducing costs relative to the nature and prevalence of overall disputes. Putting the dispute into categories appears to provide no benefit to the consumer or the debt collector. Instead, disputes should be defined in terms of a 3-step process: intake, investigation and resolution. During the intake phase, the debt collector obtains all the information from the consumer in order to diagnose the dispute. In this phase all disputes must be as specific as possible in order to provide the consumer with the most thorough investigation possible. At the investigation phase, the debt collector would be required to review and obtain as much information in response to the dispute, and during the resolution phase, the debt collector would relay the information to the consumer. This process could be greatly enhanced if consumers utilized debt collector portals to transmit their

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[11] Robert Hunt. "Understanding the model: The life cycle of a debt." Presentation at FTC-CFPB roundtable, "Life of a debt: Data integrity in debt collection," at 10 (2013) available at https://www.ftc.gov/sites/default/files/documents/public_events/life-debt-data-integrity-debt-collection/understandingthemodel.pdf.

[12] Committee on Financial Services Hearing, "Semi-Annual Report of the Bureau of Consumer Financial Protection," March 16, 2016; Relevant Testimony at 03:09:12.

[13] ACA International White Paper: *Methodological and Analytical Limitations of the CFPB Consumer Complaint Database* (May 2016) (attached hereto as Appendix C).

[14] ACA Response to Advance Notice of Proposal Rulemaking on Debt Collection (CFPB-2013-0033-0001), February 27, 2014, p.16); NARCA Response to Advanced Notice of Proposed Rulemaking, (CFPB-2013-0033-0001), February 28, 2014, p.16), DBA Response to Advanced Notice of Proposed Rulemaking, (CFPB-2013-0033-0001), February 28, 2014).

[15] Federal Trade Commission, The Structure and Practices of the Debt Buying Industry, at iv (Jan. 2013), *available at* https://www.ftc.gov/sites/default/files/documents/reports/structure-and-practices-debt-buying-industry/debtbuyingreport.pdf.

disputes. 40% of ACA members report that they already accept disputes electronically.[16] 37% of members with revenues under $15,000,000.00 report that they already have the capability to accept disputes electronically.[17] The cost to implement this on-line capability would be less expensive than if companies had to process disputes in the manner the CFPB proposes here. The CFPB's own Complaint Database mandates that all companies receive electronic complaints. Therefore an on-line option must be encouraged when consumers seek to make a dispute with a debt collector. Consumers can be made aware of this on-line option in the validation notice.

The Bureau should discourage the use of the generic dispute category, as the term is not recognized in the dispute process for the Fair Credit Reporting Act ("FCRA"). In fact, the CFPB should consider marrying the dispute process with the procedures outlined in the FCRA, which not only requires specificity but has a 95% response rate.

Finally, if the CFPB decides to move forward with dispute categories, there should be a safe harbor if a debt collector provides responsive documentation that would satisfy each type of dispute in its initial response to the consumer. Any additional disputes would then be considered duplicative and further investigation would not be necessary.

IV. Transfer of Information

For many small businesses that use 3rd party debt collectors, the CFPB's Proposal for the transfer of information is a big lift and for many no existing process is in place. Providing this type of information comes down to technology and ultimately requires that the systems of a client, a debt collector and a subsequent debt collector all work together. However, such an adjustment would be costly. The ACA Survey shows that improvements to existing software to in order to maintain the information received during the collection process will exceed $73,000, and that does not include on-going maintenance, which is a significant recurring expense when technology is implemented.[18] In addition, many challenges can occur after an account is closed, especially if closure occurs after the time period to retain records. ACA members report that it will cost in excess of $57,000 to modify existing software in order to transmit information received post-closure, not including on-going maintenance.[19] Even apart from these costs, logistical challenges are evident. How is a debt collector to receive information for a client it no longer does business with, or with consumers with whom it no longer has a relationship?

Feedback from 1st Parties would be essential to appropriately develop this part of the CFPB's Proposal. What information will be returned and how that information should be labeled is a client decision and it can vary from client to client. Therefore, a one size fits all approach will not work here. Much of the information that is outlined in Appendix E of the CFPB's Proposal is not data that can be put into data fields or is easily transferrable (*i.e.* specific details of a dispute, including information provided by the consumer).

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[16] ACA Survey, Figure 5, p. 5.
[17] ACA Survey, Figure 6, p. 5.
[18] ACA Survey, Table 6, p. 8.
[19] ACA Survey, Table 8, p. 9.

Finally, if the Bureau wishes appropriate information to be transferred between the 1st Party and the 3rd Party, then logic dictates that positive consent must transfer as well. Information regarding when a consumer is to be contacted and in what manner is equally as important as those requests that suggest otherwise.

For small businesses that use debt collectors, the Bureau should consider a carve-out for these requirements, especially if the entity does not have a centralized data base and serves a small geographical region. Requiring these businesses to invest in such technological advances will likely result in their forgoing the collection of accounts receivable which harms consumers in two ways: first, the small business may be reluctant to provide the same credit terms as before, or second, the business may simply not service the consumer. In rural and underserved communities, where few options exist, the impact upon consumers would be significant. As an alternative to the CFPB's Proposal and in the event a debt collector receives information from a consumer after an account has been closed, the debt collector could either forward the information to the client or return the information to the consumer with an explanation. This would satisfy the purpose of the requirements surrounding information transfer.

V. Call Frequency

As the CFPB weighs how and when to limit communications with consumers, it must carefully consider that any barrier to communication ultimately harms consumers. The current Proposal does not do enough to encourage or promote alternative methods of communication, through websites and portals, with requisite safe harbors. ACA members report that 31.7% use email to communicate with consumers compared with the 99.7% that use the telephone and 98.5 that communicate by letters (some collectors use multiple means of contact).[20] Given that email and text messages are typically less intrusive forms of communication that provide consumers with more control, the CFPB's endorsement of these modern communication methods would be beneficial to consumers. Hindering essential two-way communication between debt collectors and consumers to discuss the resolution of legitimately-owed debt exposes consumers to long-term harm by increasing the likelihood of litigation to recover outstanding debt,[21] the aspect of debt collection that the Bureau believes presents the greatest risk of harm to consumers. [22]

VI. Litigation Disclosure

The CFPB should carefully consider the impact of its requirement of a litigation disclosure on non-lawyers. Ultimately it is the client who makes the determination to sue. Many factors go into this decision and lack of communication with the consumer is one such factor. A litigation disclosure creates a sense of frustration for all parties involved. For a 3rd party debt collector who is not a lawyer, a disclosure of intent to sue can prompt questions from the consumer that the debt collector may not be able to answer. Such a disclosure ultimately does a disservice to a consumer by causing unnecessary frustration and ultimately creates a barrier to future communication. Finally, the disclosure can cause great risk to a debt collector that makes such a

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[20] ACA Survey, Figure 3, p. 3.
[21] NARCA Response to ANPR: " Survey respondents (82.5%) indicate that that once a consumer makes the decision to refuse further communication, the likelihood of filing a collection lawsuit increases by 81.1%," p. 29.
[22] Proposal, p. 12.

disclosure if the client decides at a later point not to sue. In such circumstances, the debt collector would be faced with potential liability for a false misrepresentation under the FDCPA. Such disclosures must apply only to attorneys seeking to collect debt on behalf of their clients.

VII. Time-Barred Debt

Similarly, mandates of disclosures for time-barred debt are also troubling if imposed on non-lawyers. Determination of the appropriate statute of limitations is far from a clear-cut process and involves not only contractual language but a patchwork of state laws.[23] Debt collectors that are non-lawyers should not be making determinations regarding the statute of limitations, to avoid engaging in the unauthorized practice of law. Furthermore, I urge the CPFB to do additional testing to ensure that consumers will not be confused by a time-barred debt disclosure, especially in those instances where the consumer's account may still be subject to credit reporting. The Bureau must recognize the fact that a time-barred debt disclosure may conflict with contractual obligations that may form the basis of the debt. A statute of limitations only affects the legal remedy available and not the right to payment.

The Proposal suggests that the Bureau is considering whether a written acknowledgment from the consumer should be required prior to the payment of time barred debt. The CFPB should consider such a proposal carefully and articulate very clear requirements, including whether such a written acknowledgement would be necessary prior to each and every payment made by a consumer and whether this written acknowledgment can be satisfied through the validation notice or by a separate agreement. Since the consumer would already receive affirmative disclosures regarding the statute of limitations and obsolete debt, written acknowledgment would have no additional benefit; in fact, it would harm consumers who want to make payments by forcing them to deal with additional hurdles.

Specificity should be the goal of the CFPB's Proposal. To that end, if a consumer must be provided a written acknowledgment before the payment of a time-barred debt, then that same consumer must be required to specifically explain the nature of the dispute rather than just characterizing it as a generic, unspecific dispute.

VIII. Debt Parking

In regard to the CPFB's Proposal regarding "debt parking," the Bureau must fully formulate its intentions regarding the phrase, "unless the collector has communicated directly with the consumer." Does this mean there must be evidence that the consumer has received the debt collector's validation notice prior to credit reporting or just evidence that it was sent? Clear guidance will be helpful not only to consumers, but will be crucial for debt collectors in analyzing whether to allocate costs that could be draconian.

IX. False & Misleading Claims (Appendix H(3) of CFPB Proposal)

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[23] The complexities of statute of limitations determinations were recently illustrated in *Midland Funding LLC Current Assignee v. Thiel*, Docket A-5797-13T2 (Super. Ct. NJ) (Aug. 29, 2016) (attached as Appendix D).

Any clarity with respect to what is a false, misleading or unsubstantiated claim would be welcomed by the industry. The CFPB, however, needs to proceed cautiously so as to not pre-empt state law. For example, under certain state laws and in instances of medical debt, a surviving spouse of a decedent may be responsible for the medical bill of the decedent.

X. Comments on CFPB Industry Survey

As the Bureau requested at the August 25 SBARP meeting, I have reviewed the CFPB's Industry Survey and have the following comments. The Survey encompassed an extremely small sampling of a varied industry and did not fully address all the necessary costs involved in the running of a collection agency. Neither the Industry Survey nor the Proposal makes any reference to increased labor costs, which account for 42% of annual revenue. The Proposal as written will result in increased costs to hire additional employees for researching and responding to disputes, especially credit reporting disputes under e-Oscar. Additional IT personnel will need to be hired in order to implement the transfer of information requirements. Furthermore, all technology changes come with ongoing fixed maintenance, support and labor costs. They are simply not one-time expenses.

The CFPB's Industry Survey also fails to look at the percentage of expenditure compared to the overall business revenue, and it failed to examine the current costs in various categories as compared to the percentage of revenue overall. The industry is facing an economic environment of shrinking profit margins while costs, including compliance costs, are outpacing revenue. Many small business debt collectors will soon reach the tipping point where it is simply not viable to continue.

XI. Small Business Impact

As mentioned throughout my comments, should the CFPB proceed forward with its Proposal, in all likelihood, there will simply be no collection market to assist small businesses with their small balance accounts. This is confirmed by the CFPB's Industry Survey, where larger agencies state that they turn down clients with small balance accounts because the cost of collecting those accounts – unit expense – is too high relative to the potential revenue.[24] The additional cost burden on collectors that is expected from the Bureau's Proposal will increase the unit expense. For example, the cost of sending a letter is the same whether you are a big or small agency. However, smaller agencies that tend to service smaller balance accounts have a more difficult time absorbing costs, unless that agency can increase its unit revenue per account. If unit revenue cannot increase, then the natural consequence for the collector would be to work only those accounts that have higher balances and can produce higher unit revenue per account. This sequence of events precludes smaller balance accounts from being profitable, hence they go unplaced or uncollected. It also excludes those creditors with small balance accounts from the market. This puts consumers in a difficult position. In rural and underserved areas where options for services are limited, small businesses that are unable to collect on their receivables will either raise prices or not provide terms, instead demanding payment upon completion of service. Consumers who desire the use of a particular medical provider or retailer may be turned away

[24] CFPB Industry Survey, § 3.2, p. 11.

from services either because of increased prices or inability to meet payment terms. Consumer choice is then restricted.

In addition, I am concerned that the proposals the Bureau is considering will exacerbate the problems that small business debt collectors have experienced in either getting or maintaining access to vital banking services, including readily available credit. The well-known, yet ill-conceived, operation by the United States Department of Justice and the Federal Deposit Insurance Corporation – dubbed "Operation Choke Point" – has oftentimes led financial institutions to discontinue providing banking services to debt collection businesses.[25] Operation Choke Point is an initiative in which the government pressures financial institutions to cut off access to banking services of entire industries, without first having shown that individual companies have violated the law or the individual companies' activities fall outside the financial institutions' fraud or money laundering risk tolerance. Operation Choke Point has been used as a pretext to choke off banking services to industries that some policymakers feel are unsavory. Given that small business debt collectors have already felt the effects of Operation Choke Point through unilateral termination of banking services such as credit and bank account access, it is concerning and not wholly unexpected that the CFPB's proposals, if enacted, may cause risk-averse financial institutions that have to answer to the CFPB and/or prudential banking regulators, to decide that maintaining a customer relationship with a small business debt collector is not worth the risk.

XII. Conclusion

I want to thank the CFPB again for allowing me to participate in this important process. We have waited too long for the clarity needed for this complex industry and I sincerely hope the CFPB considers it proposals carefully to not only achieve its objective in protecting consumers, but also to ensure that all small businesses, no matter what industry, are able to continue to provide much needed and affordable services to consumers. Debt collectors want to operate in a lawful manner and to assist consumers in the resolution of their legitimately-owed debts. The Bureau must carefully consider all available options that forge an environment of productive communication between consumer and debt collector. Technology will be the tool that provides the greatest benefit for all parties involved. I hope the CFPB will use this opportunity to create a debt collection market that fairly serves all participants.

Sincerely,

Keith Kettelkamp

Attachments (4)

[25] See, e.g., U.S. House Committee on Oversight and Government Reform, "The Department of Justice's 'Operation Choke Point': Illegally Choking Off Legitimate Businesses?" Staff Report (May 29, 2014), *available at* http://oversight.house.gov/wp-content/uploads/2014/05/Staff-Report-Operation-Choke-Point1.pdf ; see also ACA Daily, "ACA International Board of Directors Supports Legislation to End Operation Choke Point," (April 29, 2015), *available at* http://www.acainternational.org/news-aca-international-board-of-directors-supports-legislation-to-end-operation-choke-point-35842.aspx.

APPENDIX
A

ACA INTERNATIONAL WHITE PAPER

Small Businesses in the Collection Industry: An Overview of Organization Size and Employment

AUGUST 2016

Josh Adams, PhD
Director of Research
ACA International
Washington, D.C.

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ACA INTERNATIONAL WHITE PAPER

Small Businesses in the Collection Industry: An Overview of Organization Size and Employment

Josh Adams, PhD, Director of Research, ACA International, Washington, D.C.

Introduction

The debt collection industry is often portrayed as an assortment of faceless corporate organizations. However, an overwhelming proportion of the debt collection industry is comprised of small businesses. Recent research shows that the majority of ACA International's member organizations fall into the small business category based on number of criteria, including employee size and total annual receipts.

ACA International (ACA), the association of credit and collection professionals, is the largest and oldest membership trade organization in the credit and collection industry, representing more than 3,500 member organizations. Founded in 1939, ACA advocates for third-party collection agencies, law firms, asset buying companies, creditors and vendor affiliates, representing tens of thousands of industry professionals. In order to best represent the interests of member organizations, ACA has conducted research on the size, scope, and benefits provided by the industry. To gain greater insight into the composition and size of organizations in the collection industry, in the fall of 2015 ACA surveyed its members as part of the annual membership renewal process. This survey was designed, in part, to ascertain how many members are either small businesses or serve small business clients.

Executive Summary

» 48% of ACA member organizations (1,164 companies) have fewer than nine employees. Additionally, 86% of members (2,080 companies) have 49 or fewer employees and 93% of members (2,257 companies) have 99 or fewer employees.

» The top five states that employ the largest number of individuals in the collection industry are Texas (7,425), California (6,324), New York (5,854), Illinois (4,861), and Ohio (4,464).

» The five states with the highest average number of employees per organization are Kansas (87), New Hampshire (66), Tennessee (62), West Virginia (54), and Massachusetts (52). The average number of employees for all members is 32; the median number of employees across all organizations is 10.

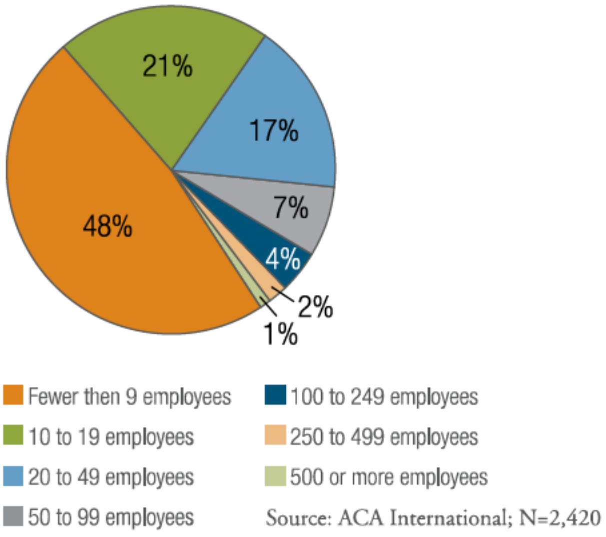
» The Small Business Administration has set the size standard at $15 million in average annual receipts for debt collection agencies to qualify as small businesses. Based on this standard, 78% of ACA members qualify as small businesses. Almost half of ACA members (44%) indicated that between 51% - 100% of their customers are also small business clients.

» The collection industry also employs a greater percentage of individuals with a disability (7%) than are represented in the overall labor force (3.7%).

Small Businesses in the Collection Environment

The Small Business Administration (SBA) Office of Advocacy defines a small business as "an independent business having fewer than 500 employees." [1] Figure 1 shows the percentage of ACA member organizations by number of employees. Almost half (48%) of member organizations (1,164 companies) have fewer than nine employees. Furthermore, 86% of members (2,080 companies) have 49 or fewer employees and 93% of members (2,257 companies) have 99 or fewer employees. By way of comparison, only 0.5% of ACA members reported having in excess of 500 employees.

Figure 1: Percentage of Organizations by Reported Number of Employees



Source: ACA International; N=2,420

ACA has members in every state throughout the U.S. Table 1 shows the number of member organizations in each state as well as the total number of individuals employed by those organizations and the average number of employees per organization. The top five states with the most collection agencies are California (213), Texas (163), New York (160), Florida (109), and Illinois (107). Several of those states also employ the largest number of individuals in the collection industry including Texas (7,425), California (6,324), New York (5,854), Illinois (4,861), and Ohio (4,464). Table 1 also indicates the average number of employees per organization in each state. The five states with the highest average number of employees per organization are Kansas (87), New Hampshire (66), Tennessee (62), West Virginia (54), and Massachusetts (52). The average number of employees for all members is 32; the median number of employees across all organizations is 10.

Table 1. Number of Organizations, Total Employees, and Average Number of Employees per Organization by State.

State	Number of Organizations*	Total Number of Employees**	Average Number of Employees Per Organization***
AL	28	502	18
AK	7	84	12
AZ	65	1,729	27
AR	26	525	20
CA	213	6,324	30
CO	55	1,719	31
CT	19	214	11
DE	12	257	21
DC	3	45	15
FL	109	3,678	34
GA	93	2131	23
HI	15	189	13
ID	23	158	7
IL	107	4,861	45
IN	70	1,378	20

* Highlighted columns indicate states with the largest number of organizations.

** Highlighted columns indicate states with the largest number of employees across all organizations.

*** Highlighted columns indicate states with the largest average number of employees per organization.

State	Number of Organizations*	Total Number of Employees**	Average Number of Employees Per Organization***
IA	20	933	47
KS	38	3,293	87
KY	27	1,030	38
LA	33	428	13
ME	5	88	18
MD	37	528	14
MA	34	1,754	52
MI	72	1,160	16
MN	75	2,898	39
MS	26	506	19
MO	64	1,895	30
MT	26	247	10
NE	26	559	22
NV	35	502	14
NH	12	797	66
NJ	73	2,013	28
NM	4	40	10
NY	160	5,854	37
NC	40	867	22
ND	13	126	10
OH	92	4,464	49
OK	31	1,019	33
OR	64	1,215	19
PA	78	1,939	25
RI	1	4	4
SC	22	1,004	46
SD	23	446	19
TN	56	3,472	62
TX	163	7,425	46
UT	19	448	24
VT	1	8	8
VA	45	1,226	27
WA	86	2,064	24
WV	9	482	54
WI	54	2,178	40
WY	11	140	13

Source: ACA International; N=2,420

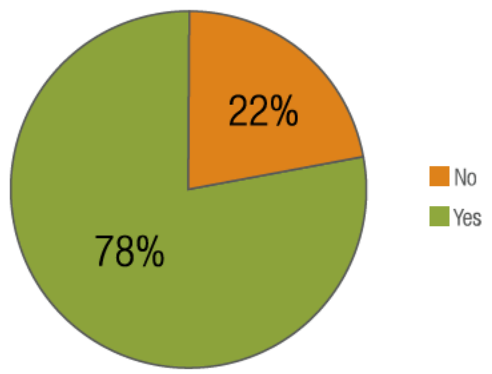
* Highlighted columns indicate states with the largest number of organizations.

** Highlighted columns indicate states with the largest number of employees across all organizations.

*** Highlighted columns indicate states with the largest average number of employees per organization.

Rather than establishing size standards in number of employees for debt collection agencies, the SBA has set the size standard at $15 million in average annual receipts. [2] As such, member organizations were asked to indicate whether their business has less than $15 million in average annual receipts. Based on the responses to this question and the SBA criterion for debt collectors, 78% of ACA members qualify as small businesses (see Figure 2).

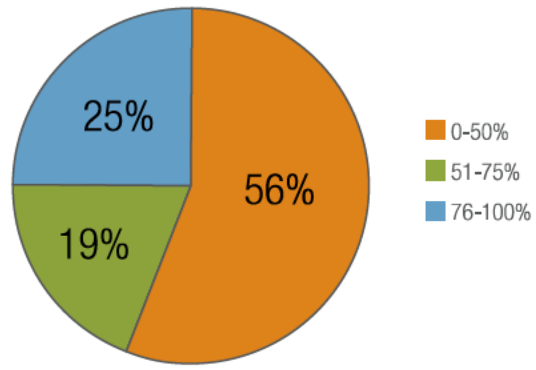
Figure 2: Percentage of Organizations Responding "Yes" to the Question "Does your business have less than $15 million in average annual receipts?"



Source: ACA International; N=1,236

Data collected by ACA suggests that members are not only part of the small business community, but also provide an essential service for small business clients. Member organizations were asked what percentage of their business serves small business clients. Almost half of the respondents (44%) indicated that between 51% - 100% of their customers are small business clients (see Figure 3). As such, not only are the majority of ACA members small businesses, but they also provide an important service to small businesses to help them remain viable and competitive in the marketplace.

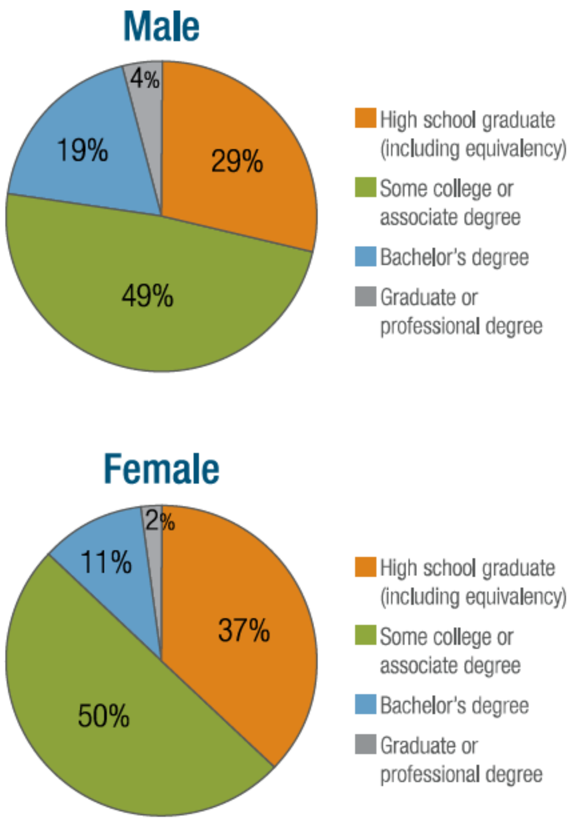
Figure 3. Percentage of Member Responses to the Question "What percentage of your business serves small business clients?"



Source: ACA International; N=1,209

Beyond providing services to small businesses in local communities, the debt collection industry also offers employment for a large and diverse workforce. According to prior research on the demographics of the collection industry, ACA found that although women compose roughly 47% of the overall workforce in the U.S., the collection industry is overwhelmingly female, with women making up 70% of the total debt collection workforce. [3] Figure 4 shows the educational attainment of individuals in the Bill and Account Collection industry by gender. The largest proportion of individuals employed in the collection industry, particularly women, has either some college or an associate degree or a high school diploma or equivalent. This is reflective of the broader population, where 58.9% of the population aged 25 or older has "some college or more." [4] Data indicate that 72% of men and 63% of women in the collection industry have some college or more (Figure 4). Having a labor force that is reflective of the population it serves enables debt collection agencies to provide a greater level of customer service for clients and consumers.

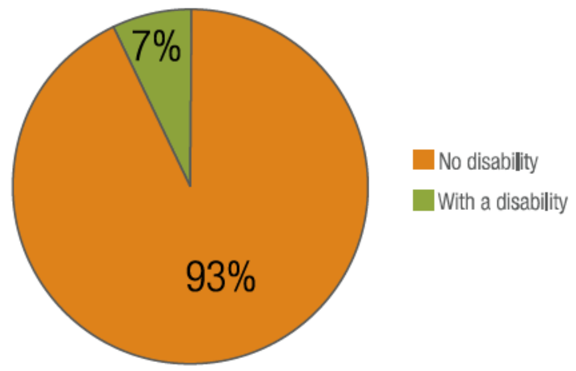
Figure 4. Educational Attainment in the Bill and Account Collection Industry by Gender, 2006-2010.



Source: U.S. Census Bureau [5]

The collection industry also employs a greater percentage of individuals with a disability than are represented in the overall labor force. As of 2013, the civilian labor force participation rate of individuals with a disability was 20.3% (representing 20% of the roughly 28.6 million individuals with a disability). [6] The total civilian labor force, as of 2014, was 155,922,000. Based on this figure, individuals with a disability account for roughly 3.7% of the labor force. However, as shown in Figure 5, individuals with a disability represent 7% of the collection industry.

Figure 5. Employees in the Bill and Account Collection Industry with a Disability, 2008-2010.



Source: U.S. Census Bureau. [7]

The collection industry is a diverse field, employing individuals across a broad range of sociodemographic groups. The vast majority of these individuals are also employed by small businesses working in their local communities. These small businesses are an important part of local economies, creating employment opportunities, generating tax revenue, and providing services for other area businesses.

Sources:

[1] U.S. Small Business Administration. 2014. *Frequently Asked Questions*.

[2] U.S. Small Business Administration. 2016. *Table of Small Business Size Standards Matched to North American Industry Classification System Codes*.

[3] ACA International. 2016. *Diversity in the Collections Industry: An Overview of the Collections Workforce*.

[4] Ryan, Camille and Kurt Bauman. 2016. "Educational Attainment in the United States: 2015." U.S. Census Bureau.

[5] U.S. Census Bureau. Detailed Census Occupation by Educational Attainment (5), Sex, and Race/ Ethnicity for Worksite Geography, Total Population Universe: Civilians employed at work 16 years and over; EEO Tabulation 2006-2010 (5-year ACS data)

[6] Bureau of Labor Statistics. 2014. *Persons with a Disability: Labor Force Characteristics News Release*.

[7] U.S. Census Bureau. Disability Employment 1. Detailed Census Occupation by Disability Status, Sex, and Race/Ethnicity, Total Population Universe: Civilian labor force 16 years and over; DOL Disability Employment Tabulation 2008-2010 (3-year ACS data).

APPENDIX
B

Findings from ACA International's 2016 Business Practices Survey

Purpose
To help with advocacy efforts related to the CFPB's debt collection rulemaking, ACA International commissioned a 2016 Business Practices Survey in August 2016. This report by the ACA Research Department describes the business practices of member organizations in an effort to assess the potential impact of additional regulatory measures on members and the industry.

Method
ACA International members that are either third party debt collection agencies or debt buyer members were invited to complete the web-based survey. Email invitations were sent to 6,210 individual association members.

The survey instrument was designed by ACA International's General Counsel. Development of the survey web site, broadcast email contacts, mailings, and tabulation were all handled by ACA International team members.

The data in this report was collected from August 15, 2016 – August 18, 2016. This report reflects responses from 446 members, representing a response rate of 7.2%.

The margin of error for percentages based on all 446 usable responses is ±4.47% at the 95% confidence level. This means that 95% of the time we can be confident that percentages in the actual population would not vary by more than 4.47% in either direction. The margin of error for percentages based on smaller sample sizes will be larger.

N = **446**
Sample population = **6,210**
Response rate = **7.2%**
Confidence level = **95%**
Margin of error = **±4.47%**

Discussion of Findings

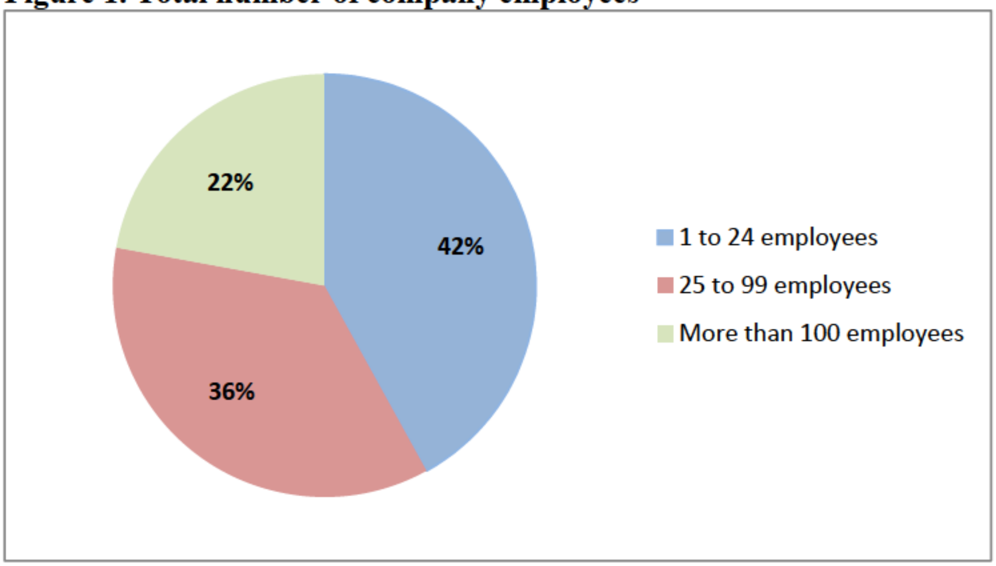
Organization Size

Respondents were asked to indicate the size of their company by both total employees and average annual receipts. The Small Business Administration (SBA) Office of Advocacy defines a small business as "an independent business having fewer than 500 employees." Additionally, the SBA has set the size standard at $15 million in average annual receipts for debt collection businesses.

Figure 1 shows the total number of employees for respondents' companies. Nearly half (42%) indicate that their organization has 24 or fewer employees; 78% of respondents indicated that their organization employs fewer than 100 employees.

Survey Question: *How many total employees does your company have?*

Figure 1. Total number of company employees

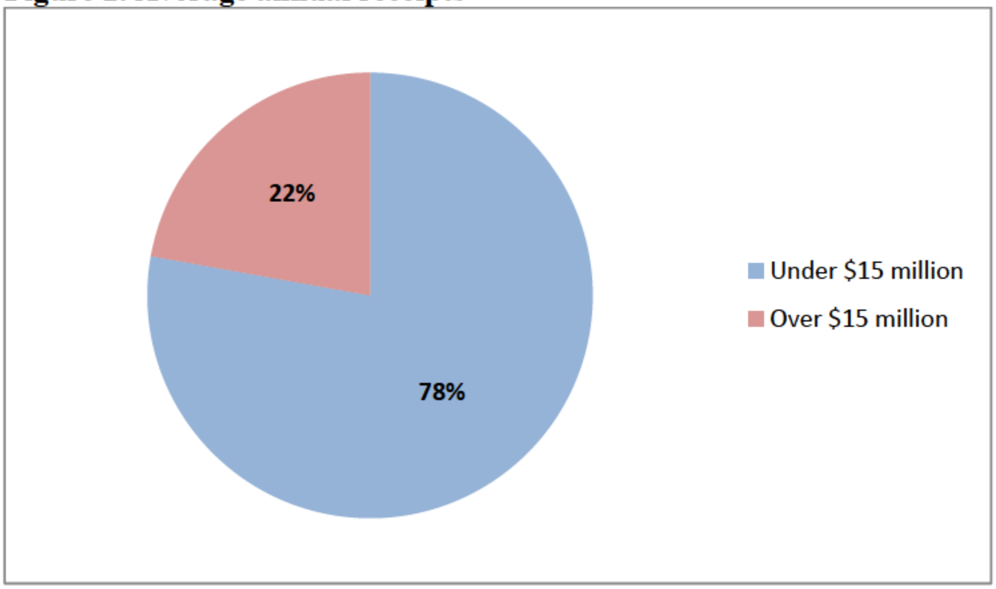


N = 443

Figure 2 shows the percentage of member organizations indicating whether they are above or below the SBA's $15 million threshold for annual receipts. Again, 78% of responding members indicate that their organization has under $15 million in annual receipts.

Survey Question: *Do your average annual receipts total:*

Figure 2. Average annual receipts

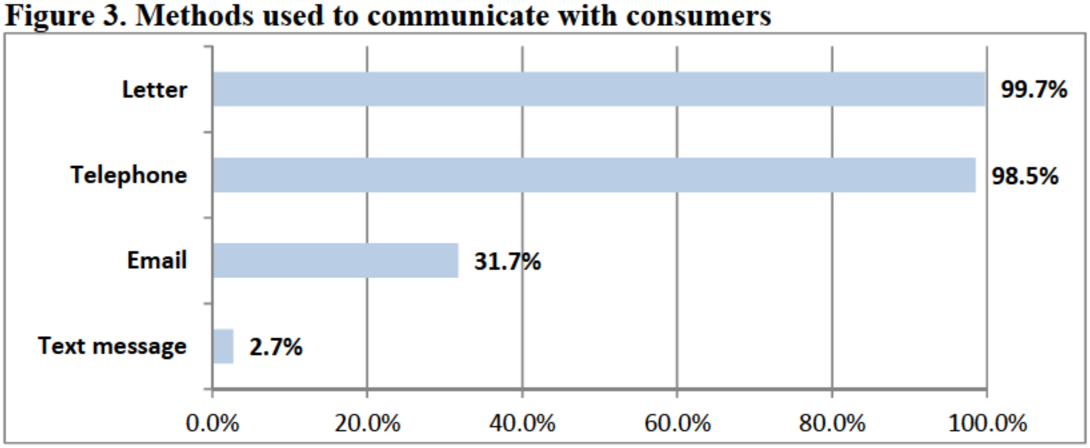


N = 424

Members were asked to indicate the methods they use to communicate with consumers about debt. Figure 3 shows that letters (99.7%) and Telephone calls (98.5%) are the most common methods used to communicate with consumers. A minority of respondents (31.7%) indicate that they use Email as a mode of communication. Only 2.7% of respondents report that they use text messaging to communicate with consumers.

Survey Question: *Which of the following methods do you use to communicate with consumers? (check all that apply)*

Figure 3. Methods used to communicate with consumers



N = 328

Table 1 shows the estimated cost of mailing an additional page of disclosures in conjunction with a validation notice. Respondents report that the average increase in cost for additional mailings would be $95,405. The median estimated increase in cost was $15,950.

Survey Question: *What would your annualized cost be if you were required to mail an extra page of disclosures along with your validation notice?*

Table 1. Estimated annualized cost to mail an additional page of disclosures with a validation notice.

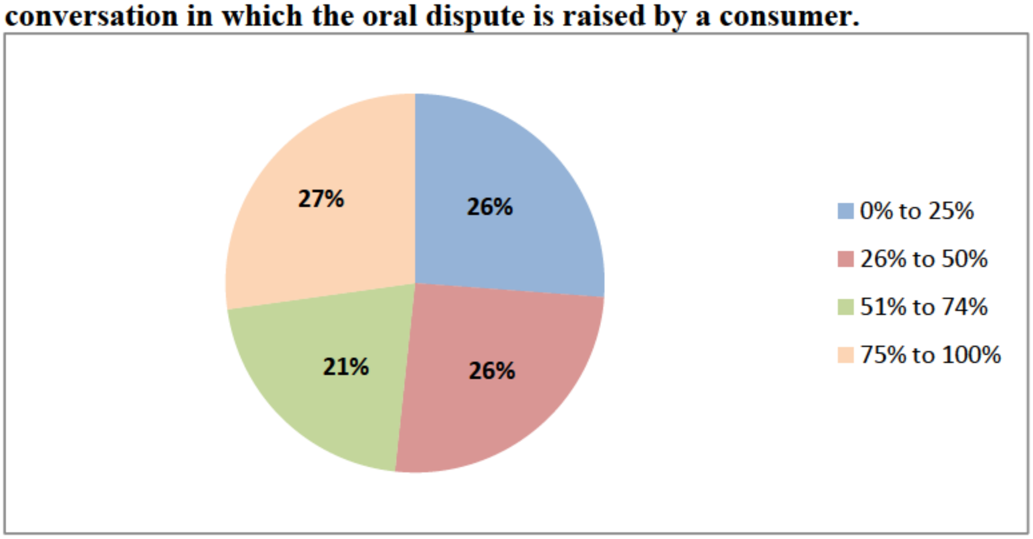
Mean	$95,405
Median	$15,950
	N = 209

Management of Disputes and Dispute Resolution

Members were asked about the types of disputes they encounter on a regular basis and how those disputes are typically resolved. Figure 4 shows the percentage of the time that a respondent is able to resolve an oral dispute during the conversation in which the oral dispute arises. Forty-eight percent (48%) of respondents indicate that they are able to resolve an oral dispute during the conversation in which the oral dispute is raised by the consumer between 51% and 100% of the time.

Survey Question: *What percentage of the time are you able to resolve an oral dispute during the conversation in which the oral dispute arises?*

Figure 4. Percentage of the time respondent is able to resolve an oral dispute during the conversation in which the oral dispute is raised by a consumer.

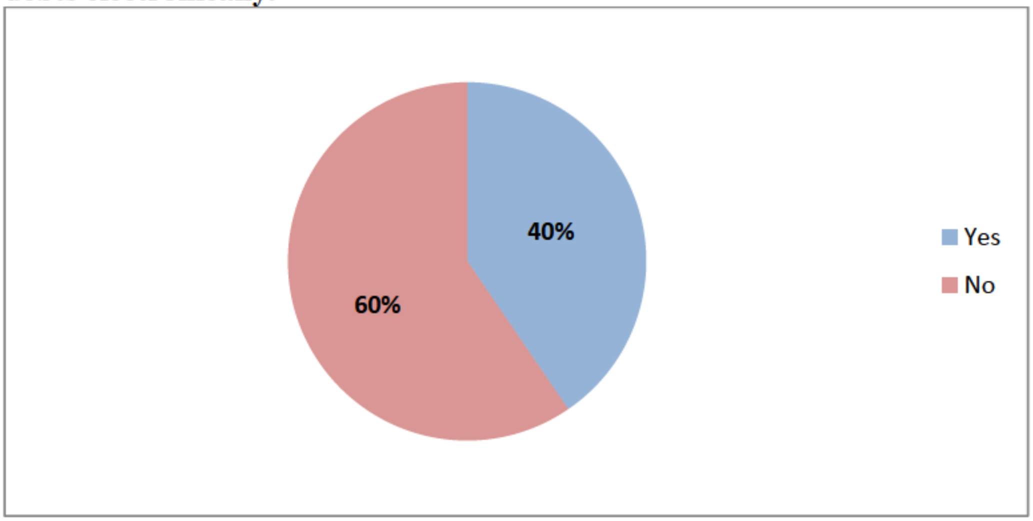


N = 294

Members were also asked whether their organization maintains a website that allows consumers to dispute debts electronically. Figure 5 shows that 40% of respondents indicate that their organization maintains a website with this type of dispute feature.

Survey Question: *Does your company have a website that allows consumers to dispute debts electronically?*

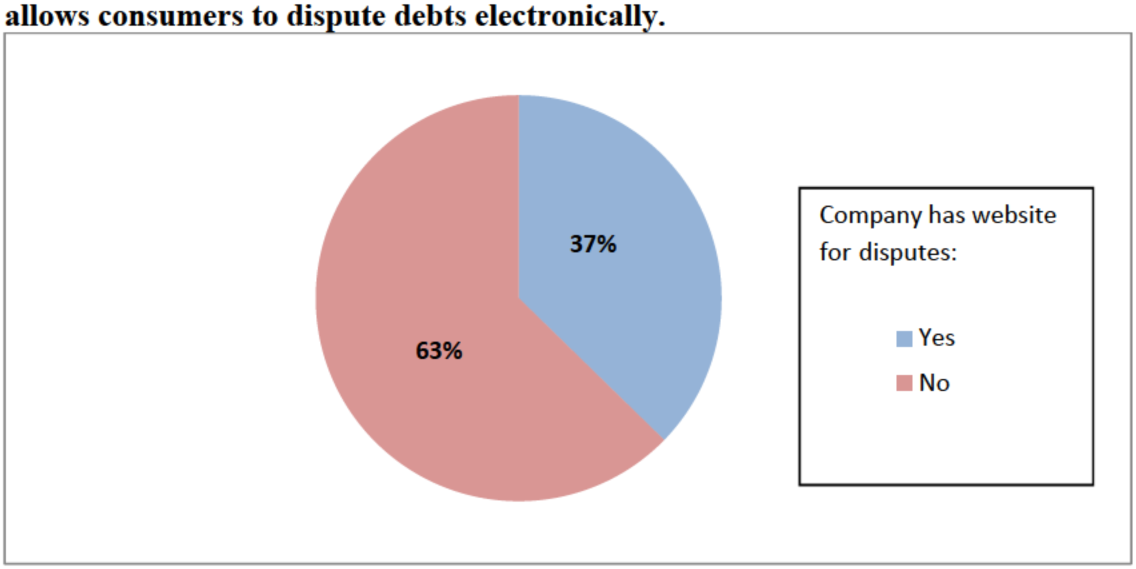
Figure 5. Percentage of companies which have a website that allows consumers to dispute debts electronically.



N = 299

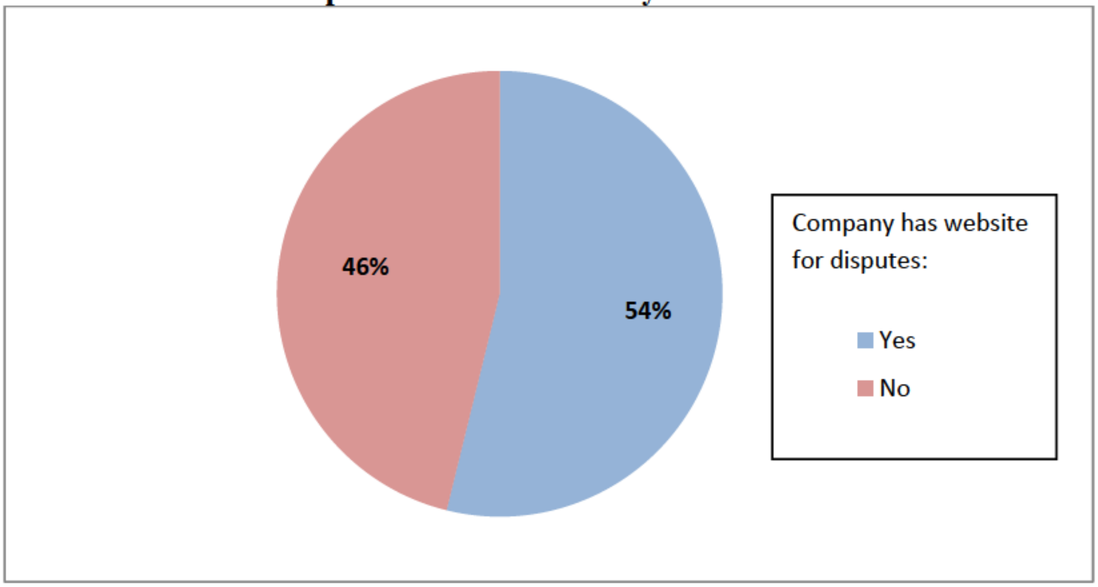
Figure 6 shows companies with average annual receipts under $15 million with a website that allows consumers to dispute debts electronically. Sixty-three percent (63%) of companies with average annual receipts under $15 million do not have a website that allows consumers to dispute debts electronically. Figure 7 shows companies with average annual receipts over $15 million with a website that allows consumers to dispute debts electronically. Forty-six percent (46%) of companies with average annual receipts over $15 million do not have a website that allows consumers to dispute debts electronically.

Figure 6. Companies with average annual receipts under $15 million with a website that allows consumers to dispute debts electronically.



N = 244

Figure 7. Companies with average annual receipts over $15 million with a website that allows consumers to dispute debts electronically.



N = 52

Similarly, members were asked what percentage of disputed debts they are unable to verify on an annual basis. Table 2 shows that, on average, respondents are unable to verify 14.5% of disputed debts; the median value for unverifiable disputed debts is 4.5%.

Survey Question: *What percentage of disputed debts, on average and annually, are you unable to verify?*

Table 2. Percentage of disputed debts, on average and annually, respondents are unable to verify.

Mean	14.5%
Median	4.5%
	N = 266

Table 3 shows the types of disputes as ranked by overall prevalence. Seventy-nine percent (79%) of respondents indicated that generic disputes with no information relating to the nature of what is being disputed are the most common type of consumer dispute.

Survey Question: *Rank the order of dispute types by prevalence from 1-4, with 1 representing the highest number of disputes and 4 representing the least number of disputes.*

Table 3. Type of dispute, ranked by prevalence (1 represents highest number of disputes; 4 represents least number of disputes).

Type of Dispute	Ranked Value 1	2	3	4
Generic disputes (i.e., disputes with no information relating to the nature of what is being disputed)	**79.20%**	14.96%	3.65%	2.19%
Disputes related to the amount owed	14.07%	**60.74%**	21.48%	3.70%
"Wrong consumer" disputes	3.05%	20.61%	**61.83%**	14.50%
"Wrong debt collector" disputes"	3.76%	2.63%	12.78%	**80.83%**

N = 277

Generic disputes also require just over three weeks to resolve at an average of 23 days, while specific disputes (those disputes relating to the amount owed, the wrong consumer, or the wrong debt collector) are typically resolved in just under two weeks at 13.46 days. (See Table 4).

Survey Question: *How many days, on average, does it take you to resolve the following types of disputes:*

Table 4. Average number of days required to resolve dispute, by dispute type.

Type of Dispute	Mean	Median
Generic Disputes (i.e. disputes with no information relating to the nature of what is being disputed).	23.07	10
Specific Disputes (i.e. disputes relating to the amount owed, the wrong consumer, or the wrong debt collector).	13.46	10

N = 255

Maintenance and Transmission of Information

Members were asked about the information systems they use and the ability of those systems to transmit data to and from clients. Table 5 shows the percentage of organizations that currently maintain software allowing for transmission of various types of consumer information received during the collection process back to the client, by function. Respondents indicate that the most common functionalities of their software systems include dispute information and details (56%), whether consumer is deceased and if so, date of death (67%), and oral or written cease communications request (66%).

However, respondents also indicate that their software systems are lacking a range of functionalities, including any time, place, or method of inconvenient communication (65%), whether the consumer was provided a Statute of Limitations disclosure (65%), whether consumer is an active duty servicemember and whether consumer has secured a rate reduction (67%), whether consumer applied for discharge of the student loan debt on a basis that imposes a collections pause and the date of application (82%), terms of any defaulted student loan rehabilitation agreement, number of payments made, any requested adjustment to the monthly payment amount (82%), and language preference (75%).

Survey Question: *Does your company currently maintain software that would enable you to transmit consumer information received during the collection process back to the client, including:*

Table 5. Percentage of organizations that currently maintain software allowing for transmission of consumer information received during the collection process back to the client, by function.

Functionality	Software Status		Response Count
	Yes	No	
Dispute information and details	56%	44%	255
Any time, place, or method of inconvenient communication	35%	65%	253
Whether the consumer was provided Statute of Limitations disclosure	35%	65%	252
Whether consumer is deceased and if so, date of death	67%	33%	253
Whether consumer is active duty servicemember and whether consumer has secured a rate reduction	33%	67%	252
Whether consumer applied for discharge of the student loan debt on a basis that imposes a collections pause and the date of application	18%	82%	233
Terms of any defaulted student loan rehabilitation agreement, number of payments made, any requested adjustment to the monthly payment amount	18%	82%	234
Language preference	25%	75%	250
Oral or written cease communications request	66%	34%	253

For those respondents indicating that their current software systems are lacking in some or all of the functionalities described in Table 5, the average estimated cost to implement or modify their software system for additional functionality is $73,339. The median estimated cost of modifying their systems for additional functionality is $30,000. (See Table 6).

Survey Question: *If you answered "no" to any of the above categories of information, what would be the approximate cost to implement/modify a system?*

Table 6. Estimated cost to implement or modify a software system for additional functionality.

Mean	$73,339
Median	$30,000
	N = 127

Members were also asked whether their organization maintains software allowing for the forwarding of consumer information received after an account is closed back to the client. Table 7 shows the percentage of organizations that currently maintains software allowing for this type of transmission. The majority of respondents report that they did have the ability to transmit payments (75%), bankruptcy discharge notices (62%), and disputes (59%) back to clients. However, the majority of respondents report that they do not have the capability to transmit identity theft reports (55%) or the assertion/implication of legally exempt income/assets (70%) back to clients.

Survey Question: *Does your company currently maintain software that would enable you to forward consumer information received after an account is closed back to the client, including:*

Table 7. Percentage of organizations that currently maintains software allowing for the forwarding of consumer information received after an account is closed back to the client, by information category.

Information Category	Software Status		Response Count
	Yes	**No**	
Payments	75%	25%	253
Bankruptcy discharge notices	62%	38%	253
Identity theft reports	45%	55%	252
Disputes	59%	41%	251
Assertion/implication of legally exempt income/assets	30%	70%	247

For those respondents indicating that their current software systems are lacking in some or all of the information capabilities described in Table 7, the average estimated cost to implement or modify their software system for additional functionality is $57,150. The median estimated cost of modifying their systems for additional functionality is $25,000. (See Table 8).

Survey Question: *If you answered "no" to any of the above categories of information, what would be the approximate cost to implement/modify a system?*

Table 8. Estimated cost to implement or modify a software system to transmit additional information.

Mean	$57,150
Median	$25,000
	N = 110

When asked about the potential response from small business clients if they were required to furnish additional documentation, 49.6% of respondents indicate that the small business client will have to invest additional resources to increase their ability to collect accounts receivable. An additional 32.1% of respondents indicate that the small business client will have to forego collections causing their accounts receivable to increase. (See Table 9).

Survey Question: *In speaking with your small business clients, if they had to provide documentation related to the date of default, the amount owed at default, payment histories, itemization of the debt, and the complete chain of title, would your clients:*

Table 9. Potential response of small business clients if required to provide documentation related to the date of default, the amount owed at default, payment histories, itemization of the debt, and the complete chain of title.

Small Business Response Categories	Response Percent
The small business client will have to invest additional resources to increase their ability to collect accounts receivable.	49.6%
The small business client will have to forego collections causing their accounts receivable to increase.	32.1%
Other	18.3%

APPENDIX C

ACA INTERNATIONAL WHITE PAPER

Methodological and Analytical Limitations of the CFPB Consumer Complaint Database

MAY 2016

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ACA INTERNATIONAL WHITE PAPER

Methodological and Analytical Limitations of the CFPB Consumer Complaint Database

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Introduction

This paper examines the methodological and analytical limitations of the data contained in the Consumer Financial Protection Bureau (CFPB) consumer complaint database. The findings suggest that due to a lack of a rigorous methodology and an inherent degree of bias in the data collection process, the data from the CFPB consumer complaint database have limited explanatory utility. The conclusions drawn from the data might speak to the experiences of some dissatisfied consumers, but are not generalizable to all consumers in the marketplace or to the behavior of any given segment of the financial services industry.

This paper addresses some of ACA International's concerns with the methodological and analytical limitations of the data being collected through the CFPB consumer complaint portal. This paper will examine specific concerns with the measures used to elicit and organize complaints, bias introduced into the data collection process, and the means by which complaints are categorized by industry.

Executive Summary:

» The CFPB's use of non-exclusive reporting categories allows for overlap in the complaint submission process creating confusion among consumers and leading to inaccurate categorization of complaints. As a result, the product categories are rendered poor measures of the industries they are designated to represent, and their validity is diminished.

» The CFPB relies on consumers self-selecting into submitting a complaint. Those individuals form a nonrandom sample of "aggrieved consumers," thus the data for any given category reflect only the disposition of those consumers while offering no real insights into the experience of non-aggrieved consumers, industry behavior, or the marketplace overall.

» The CFPB data is subject to confirmation bias, as the data are collected assuming financial services companies are bad actors through a portal designed to elicit complaints substantiating that claim. Those data are subsequently made publicly available as representative of industry behavior and consumer experiences.

» The problem of consumers misclassifying complaints or intending to complain about one product yet submitting a complaint for another product appears to be a reasonably common occurrence. Because of categorical constraints and lack of specific financial products, such as insurance, consumers submitting a complaint must choose the most closely related option. In the case of many billing disputes, whether with businesses, credit reporting agencies, or insurance companies, many consumers appear to select debt collection as a default. This overinflates the total number of complaints in the debt collection category while overlooking the underlying issues.

» The CFPB uses the data collected via the consumer complaint database to inform decisions on rulemaking, enforcement actions, and industry guidance. However, without rigorous and appropriate methodological practices in place, it is difficult to discern the veracity of the data collected or to use those data to make empirically informed decisions. Additionally, with the occurrence of misclassified complaints and overlapping categories, the overinflation of various product categories is inevitable.

The CFPB Consumer Complaint Database

The Consumer Financial Protection Bureau (CFPB) began soliciting and cataloging consumer complaints in July of 2011. The CFPB undertakes this task with the goal of gathering data to gain an understanding of the consumer financial marketplace and "do a better job supervising companies, enforcing federal consumer financial laws and writing rules and regulations." [1] As part of this process, the CFPB complaint database enables consumers to submit complaints across a range of financial service industries in an effort to facilitate communication and have individual grievances resolved.

The CFPB uses the data collected to inform decisions on rulemaking, enforcement actions, and industry guidance. [2] Additionally, the CFPB releases a series of monthly and annual reports using data collected from the consumer complaints portal. Often these reports form the foundation of subsequent media coverage of the financial services industry. There have been other reports suggesting that the data collection practices of the CFPB are flawed, resulting in complaints being duplicated, assigned to the wrong industry, or disseminating data that are unverified. [2] Given the importance of these data to the CFPB's decision-making processes and the public release of reports, many financial services organizations are concerned about the overall quality and integrity of the data being collected.

Categorical Non-exclusivity and Validity

During a Committee on Financial Services Hearing on the Semi-Annual Report of the Bureau of Consumer Financial Protection, Representative Dennis Ross asked CFPB Director Richard Cordray about the number of complaints concerning payday loans, particularly as this total was relatively small. Director Cordray responded that "what we find is when we look at debt, some of these complaints are simply misclassified; people think they are complaining about debt collection" when they should be complaining about some other financial service, in this instance payday loans. [3] This statement is concerning, as it calls into question the soundness of the CFPB's data collection practices and the accuracy of conclusions drawn from those data. This section will focus on two primary methodological concerns with CFPB data collection via the consumer complaint portal: the exclusiveness of complaint categories and the validity of those categories as measures.

The CFPB database essentially treats each product complaint as a variable, with the respective product categories serving as individual attributes of that variable. This is the initial stage where CFPB category designations become problematic. For the purpose of measurement, it is necessary that variable attributes are *mutually exclusive*, meaning that each observation must be classifiable within only a single attribute, not multiple attributes simultaneously. [4] The creation of variables with exclusive attributes is necessary because it ensures that the data are being collected with precision and that the appropriate attributes are being measured.

The product categories in the CFPB consumer complaint portal are not exclusive, and there is a high degree of overlap between them. There are 11 primary product categories on the CFPB complaint submission portal. These categories include *Mortgage, Payday loan, Student loan, Vehicle loan or lease, Other consumer loan, Bank account or service, Debt collection, Credit card or prepaid card, Money transfer or virtual currency, Credit reporting, and Other financial service*. Of these 11 primary categories, six also appear as sub-product categories under the primary product of *Debt collection* (See Table 1). This overlap of categories helps explain some of the confusion consumers may experience when trying to select the most appropriate category in which to file a complaint. It also calls into question the accuracy of complaint totals for a given category, particularly one that overlaps with half of the other product category options in the database.

Table 1. Overlap between Debt Collection Sub-products and Other Primary Products

Primary Product	Sub-product
Debt Collection	
	Credit card
	Medical
	Auto
	Federal Student Loan
	Non-federal Student Loan
	Mortgage
	Payday Loan
	Other
	I Don't Know

*Shaded sub-products also appear as primary product categories

A second issue with the use of the CFPB complaint database is the *validity* of the measures. In the context of data collection, "validity" refers to the degree to which a measure is an accurate representation of the concept it is designed to be measuring. That the product categories are lacking in exclusivity is an initial indicator that the validity of the measures may be questionable. For example, how does a consumer differentiate between the "debt collection" sub-category of federal student loans and the primary product category of "student loan" with any degree of certainty? Indeed, CFPB Director Cordray's own statement seems to provide some evidence that there is an issue with validity by suggesting that a consumer may submit a complaint intended to address payday loans as a debt collection complaint instead. Because the complaint is attributed to the total for debt collection, the CFPB fails to measure the consumer's dissatisfaction with payday loans. Thus, the claim undermines the measurement of both categories.

Bias in Data Collection and Reporting

Generally speaking, research bias refers to any systemic processes or procedures that lead to a distortion in the data generated. The data from the CFPB complaints database are subject to bias that limits their usefulness as indicators of consumer experiences or industry conduct. The most obvious form of bias in the CFPB data is *self-selection bias*. Self-selection bias refers to individuals selecting into a group biasing the data relative to that group's dispositions. [5] This manifests as a form of sampling bias as a specific population, those who desire to file a complaint about a financial service, is included in the sample while a second population, those who do not desire to file a complaint about a financial service, is excluded from the sample. As the CFPB relies on consumers self-selecting into submitting a complaint, those individuals essentially form a nonrandom sample of "aggrieved consumers," thus the data for any given category reflect only the disposition of those consumers while offering no real insights into the experience of non-aggrieved consumers, industry behavior, or the marketplace overall.

The second type of bias inherent in the collection and reporting of CFPB data is *confirmation bias*. Confirmation bias refers to the seeking out of evidence that supports or confirms a preexisting belief, while discounting or ignoring evidence that challenges that belief. [6] Collecting data through a portal labeled as a "complaint database" is designed to collect a very specific type of data that are only reflective of a negative experience. Thus, data are collected assuming financial services companies are bad actors, those data are made publicly available as representative of industry behavior and consumer experiences, and reports are published using those data to support the initial negative assumptions. [7]

Similarly, the release of the *Servicemembers 2015: A Year in Review* report, using the same CFPB complaint data, emphasized the increased rates at which servicemembers complained about debt collection relative to the general population. [8] This report was subsequently used to assert that "unscrupulous debt collectors have a special affinity for military personnel." [9] In each of these examples, only data from the complaint database were used to support the argument that debt collectors were engaging in bad practices. Without data from any source other than the complaints database, however, it would be difficult to arrive at any other conclusion.

Precision and Classification of Complaints

The problem of consumers misclassifying complaints, or intending to complain about one product yet submitting a complaint for another, is illustrated rather clearly in the consumer complaint narratives. A qualitative analysis of consumer complaint narratives submitted between January and February 2016 shows how these submissions often articulate a range of issues and grievances that are not necessarily reflective of the product category under which they are classified. While many of the complaints are actually about debt collection, a review of the narratives suggests that within the category there are a range of issues that are only tangentially related to debt collection, if at all. For those submissions without attendant narratives, there is no context for determining whether or not the complaint is relevant to the product category. Below we address three common types of complaints: Consumer disputes with business, insurance issues, and identity theft. All complaint narratives are presented exactly as they appear in the complaint database.

Consumer Dispute with a Business

One type of complaint narrative appears to describe disputes between a consumer and a business. The narrative below describes a disagreement between a cable service provider and a consumer, the service provider's claim on an outstanding debt, and the reporting of this debt to a credit reporting agency.

> *I cancelled my service after having them a year due to the lack of service of cable always going in and out. I called there customer service department and they really did not care requested a box and sent the cable box and control back and they are still saying I owe them like XXXX. That is not true and they are ruining my credit. I have called them and they do not even get a response from them. I have as well submitted a letter and they have not even sent me a letter to acknowledge that I wrote them.* (Complaint ID 1765352)

Similarly, some complaints appear to be focused on consumer dissatisfaction with a product or service. One consumer describes terminating a contract with a service provider because the consumer felt misled by the company and believed the service to be substandard.

> *I had a XXXX service and I finished the contract before time. They have a 2 years contact. I had to finish my service because first of all they lie to me about pricing, and the quality of service. First, they gave me a price and the bills charged me the double of the price offered to me. Second, they said that the service was the best even with rain or winds, signal never would be lost. That was a lie and they even had to take that commercial tv off. With a couple of drops of rain and a little bit of rain signal was lost for hours. I didn't like being insulted that way. So, I decided to terminate my service.* (Complaint ID 1755331)

Finally, some complaints appear to arise from interpersonal business transactions. The complaint below describes an individual applying for an apartment rental with another person. The complaint describes a situation where an application denial appears on the individual's credit report.

> *This debt was acquired by a individual who I was going to move with, so we filled out the forms for the apartment and he gave a deposit check/ by the way his name is on that account only, not only that the apartment application was denied because of debts on his credit not mine so I don't understand why they think they can now put this on my report when I was not denied the apartment as well as I did not give them the check so how the XXXX is this legal?* (Complaint ID 1755038)

Each of these complaints was categorized as a debt collection complaint, despite the fact that none of them articulate a specific grievance with a debt collection company or the debt collection process. These narratives do indicate that an outstanding debt was reported to a credit reporting agency by the initial business entity. They also indicate a billing dispute between the consumer and the business. However, within the CFPB complaint database there is no category for billing or business disputes, leaving consumers to select the best available option.

In the case of a claim where the consumer owes an outstanding debt, debt collection would appear to be the most reasonable product complaint category, even though the consumer's complaint itself is wholly unrelated to the debt collection industry.

Insurance Issues

Another type of complaint narrative focuses on outstanding debts, predominantly for medical services, that consumers believed should be, or were supposed to be, covered by insurance. These are debts that may be in collection; however, the root cause of the dispute is between consumers, their insurance companies, and their medical providers.

> *I had an outstanding medical bill from hospital emergency technicians. They said they did not receive insurance info. I resubmitted info 2 times to the billing company. I receive a collections notice for the amount. I get scared and pay the outstanding balance. I was assured by the collectors that I would be able to get a reimbursement from my insurance companies. I call my insurance and they said a claim was never filed. I call back and give the information so they can call the insurance company. A week passes and I call back and now they have no information on my account and hang up the phone after taking my money.* (Complaint ID 1778681)

Some consumers suggest that their medical service providers were negligent in filing the appropriate insurance claims and subsequently sending the outstanding debt to a debt collection company instead.

> *This bill was for a hospital medical emergency service of my child, who has medical insurance. The entity making this claim has failed to properly bill the correct medical insurance with the correct billing information, despite my attempts to ensure proper billing and payment by my insurance. According to my insurance they need to re-bill with the correct information.* (Complaint ID 1776776)

> *I had a medical bill that the provider has not bill my insurance till XX/XX/XXXX for the service that was given to me XX/XX/2015. They send it to collection agency while I was telling them to bill my insurance. After they received a payment from insurance, They are still asking me to pay a full balance.* (Complaint ID 1760796)

In other instances, the complaints stem from confusion about whether the consumer's benefits are in effect. Though again, this reflects a breakdown in the communication and billing processes between medical service providers and insurers.

> *The insurance company is responsible for this charge, I was and presently am a Federal employee and medical /dental insurance is extended 31 days after separation from employment. I left my job the same month I visited this dental office, they are aware of the 31 day extension and refuse to bill the correct party for this charge, the dental insurance company. I've regained my Federal employment status and hold the same insurance. They sent this account to collections in error. They need to bill the insurance company and remove the fraudulent charge off of all my credit reports, they have caused me a tremendous hardship.* (Complaint ID 1745129)

These complaints are all submitted to the CFPB database as debt collection complaints, and while all of the bills were sent to collection, the underlying issue and source of each consumer's grievance is neither the debt collection process nor the debt collection industry. Rather, each of these narratives clearly describes a consumer complaint focused on either a service provider or an insurer. The CFPB complaint database does not have a product category for insurance complaints again requiring consumers to choose the best available option. As the unpaid bill is sent to collection, it is an intuitive choice for the consumer to submit the complaint as a debt collection issue. This obscures the fact that the cause of the consumer's dissatisfaction is external to the debt collection industry, and because the consumer's options for complaints are constrained, it overinflates the overall total of the debt collection product category.

Reports of Identity Theft

The final type of complaint includes reports of identity theft as a key component of the consumer's complaint. These complaints are submitted by consumers who generally do not owe the outstanding debt but are victims of a crime, the debt having been incurred by some third-party using the consumer's identity. Indeed, consumers often discover the previously unknown debt when they are contacted by a debt collector or check their credit report and discover the unpaid balance. [10] The consumer narratives below all describe similar scenarios where consumers discover an outstanding balance incurred as a result of identity theft.

> *I had opened a cell phone account and all my information was stolen due to my purse getting stolen. I had found out that the cell phone bill had been accessed by someone pretending to be me. They had changed the address on the account and began making insurance claims on the account and also made a PIN so I was unable to access the account. I had filed a police report and went to a store to prove I was the real owner of the account. I had did everything I could as well as provided the name of the purse who stole my things and the creditor still went after me. I had disputed this information on my credit reports last year and everything was removed and then XX/XX/2015 the creditor had added it back onto my credit again.* (Complaint ID 1788618)

> *I am a victim of identity theft. My personal information was used to open an account at XXXX in XXXX 2012. I have already disputed this debt twice. I did not open or authorize this account, and I therefore request that it be closed immediately.* (Complaint ID 1764297)

> *I have several credit card acct on my credit that I was listed as an authorized user never seen are used the card before…I think someone might have my info.* (Complaint ID 1749934)

Identity theft presents a unique situation, and is included as a sub-issue on the debt collection complaint submission form. Nevertheless, submissions indicating that a debt is the result of identity theft are categorized as debt collection complaints. As these narratives suggest, many of the complaints are about the after-effects of identity theft – debts appearing on credit reports, creditors seeking payment on a balance, or sending the balance to collection. While it is important for the CFPB to account for individuals who have been the victims of identity theft, these types of complaints are not indicative of industry behavior or the practices of debt collectors. Instead, these complaints represent individuals who are victims of a crime where the responsible party is a criminal actor rather than the financial services industry.

Conclusion

As of March 2016, the CFPB consumer database had accumulated a total of 834,400 complaints. [11] This metric is often used to illustrate the efficacy of the CFPB's complaint process and the need for further monitoring of the financial services sector. However, without rigorous and appropriate methodological practices in place, it is difficult to discern what these data tell us. With the occurrence of misclassified complaints and overlapping categories, the overinflation of various product categories is inevitable. Beyond the methodological issues associated with the CFPB's data collection processes, the findings themselves are often presented in an entirely decontextualized fashion.

Product categories presented in the CFPB's reports are ranked based on the gross number of complaints received by category. This fails to account for the number of consumers in each industry segment and assumes an equivalent number of consumers across industries as disparate as debt collection, mortgages, payday loans, and student loans. It is estimated that the debt collection industry makes over one billion consumer contacts on an annual basis, of which complaints submitted to the CFPB represent less than a hundredth of a percent of all consumer interactions. [12, 13] Thus, when a CFPB report notes that debt collection was the most complained about product, this must be understood as a relative value that is indifferent to industry size or consumer base.

Finally, it is important to note that there is a difference between a rigorous and methodologically sound approach to data collection and a forum designed to elicit individual feedback about consumer dissatisfaction. The CFPB consumer complaint database functions as the latter without instituting any real quality control measures or verifying the factual basis of submissions. [1] The data gathered by the CFPB are often reported as representative of consumer experiences with a given industry and industry behavior in general. In light of the weaknesses of the CFPB data and data collection processes described in this paper the conclusions that can be credibly drawn from those data are limited at best.

Sources

[1] Consumer Financial Protection Bureau, Consumer Complaint Database

[2] Witkowski, Rachel. "Errors Abound in CFPB's Complaint Portal." *American Banker,* November 17, 2015.

[3] Committee on Financial Services Hearing. "Semi-Annual Report of the Bureau of Consumer Financial Protection." March, 16, 2016; Relevant testimony at 03:09:12.

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APPENDIX D

NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5797-13T2
A-0151-14T1
A-0152-14T1

MIDLAND FUNDING LLC CURRENT ASSIGNEE, [CITIBANK USA, N.A., ORIGINAL CREDITOR],

Plaintiff-Appellant/
Cross-Respondent,

v.

BRUCE THIEL,

Defendant-Respondent/
Cross-Appellant.

APPROVED FOR PUBLICATION

August 29, 2016

APPELLATE DIVISION

MIDLAND FUNDING LLC CURRENT ASSIGNEE, [CITIBANK CHILDREN'S PLACE, ORIGINAL CREDITOR],

Plaintiff-Appellant,

v.

LUISA ACEVEDO,

Defendant-Respondent.

MIDLAND FUNDING LLC CURRENT ASSIGNEE, [GE MONEY BANK, ORIGINAL CREDITOR],

Plaintiff-Appellant,

v.

ALISA JOHNSON,

Defendant-Respondent.

Argued March 15, 2016 – Decided August 29, 2016

Before Judges Fisher, Rothstadt, and Currier.

On appeal from Superior Court of New Jersey, Law Division, Somerset County, Docket No. DC-87-14, and Passaic County, Docket Nos. DC-1886-14 and DC-1151-14.

Lawrence J. McDermott, Jr., argued the cause for appellant/cross-respondent in A-5797-13, and for appellants in A-0151-14 and A-0152-14 (Pressler and Pressler, L.L.P., attorneys; Mr. McDermott, Steven A. Lang, and Michael J. Peters, on the briefs in A-5797-13; Mr. McDermott and Mr. Lang, on the briefs in A-0151-14; Mr. McDermott, on the briefs in A-0152-14).

Richard A. Mastro argued the cause for respondent/cross-appellant in A-5797-13 (Legal Services of Northwest Jersey, Inc., attorneys; Mr. Mastro, on the briefs).

Neil J. Fogarty argued the cause for respondents in A-0151-14 and A-0152-14 (Northeast New Jersey Legal Services, attorneys; Mr. Fogarty, on the briefs).

Yongmoon Kim argued the cause for amici curiae Consumers League of New Jersey and National Association of Consumer Advocates in A-0151-14 and A-0152-14 (Kim Law Firm, LLC, attorneys; Mr. Kim, of counsel and on the briefs).

The opinion of the court was delivered by

ROTHSTADT, J.A.D.

In these three appeals, which we calendared back-to-back and consolidated for purposes of this opinion, we are asked to determine the statute of limitations applicable to an action filed to collect debts arising from a customer's use of a retail store's credit card which use is restricted to the specific store. Plaintiff Midland Funding LLC, an assignee of the financial institutions that issued credit cards to store customers on behalf of retailers, argues the six-year statute of limitations that governs most contractual claims, N.J.S.A. 2A:14-1, is applicable under the circumstances presented, while defendants in each action, as well as amici curiae Consumer League of New Jersey and National Association of Consumer Advocates, argue the four-year statute of limitations, which governs contracts relating to the sale of goods, N.J.S.A. 12A:2-725, should control. In each of the cases, the trial court applied the four-year statute of limitations. Plaintiff challenges those decisions as well as the award to two defendants of statutory damages and fees under the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C.A. §§ 1692 to 1692p.[1]

[1] The notices of appeal in A-0151-14 and A-0152-14 indicate plaintiff is also appealing from the court's denial of its motions for reconsideration in those actions. However, because plaintiff's briefs do not address those denials, we consider its appeal from those orders abandoned, as an issue that is not briefed on appeal is deemed waived. N.J. Dep't of Envtl. Prot.
(continued)

The third defendant cross-appeals from the denial of his motion for summary judgment seeking a similar award under the FDCPA.

Having considered the parties' arguments, we hold that claims arising from a retail customer's use of a store-issued credit card — or one issued by a financial institution on a store's behalf — when the use of which is restricted to making purchases from the issuing retailer are subject to the four-year statute of limitations set forth in N.J.S.A. 12A:2-725. We also hold that if an action is filed after the expiration of this four-year period, the FDCPA requires the award of statutory damages and costs, absent a showing that the action was filed due to a "bona fide error" under the act. Accordingly, we affirm the application of the four-year statute of limitations in each case and the award of statutory fees and costs in two of the cases, but we reverse and remand the denial of those fees and costs in the other.

The orders under appeal were entered in response to summary judgment motions filed by defendants. The material facts contained in each matter's motion record were undisputed and can be summarized as follows.

(continued)
v. Alloway Twp., 438 N.J. Super. 501, 505 n.2 (App. Div.), certif. denied, 222 N.J. 17 (2015).

All three defendants obtained credit cards from specific stores, issued by unaffiliated financial institutions, that limited the cards' use to purchases from the specific store. Each of them defaulted in their payments. In each case, plaintiff acquired the debt by assignment and filed suit to recover the outstanding amount. Specifically, in June 2003, defendant Luisa Acevedo obtained a credit card from The Children's Place clothing store that was issued by Citibank and could only be used to purchase merchandise at that store. In 1998, defendant Alisa Johnson obtained a JCPenny credit card, issued by GE Money Bank, for use only at JCPenny stores. Defendant Bruce Thiel obtained a Home Depot credit card, issued by Citibank, for use only at Home Depot stores.

Each defendant used their card at the designated stores and made payments before eventually defaulting. Acevedo made her last payment on March 5, 2009, and was in default as of May 2009.[2] Johnson defaulted by December 2008, having made her last payment the previous month. Thiel made his last minimum payment

[2] The credit card account became designated as "charged off" as of October 2009.

on March 16, 2009, and was in default as of April 20, 2009, when he failed to make the next required minimum payment.[3]

Plaintiff filed suit against each defendant more than four years after their respective defaults, but within six years. Specifically, on February 25, 2014, plaintiff filed a complaint against Acevedo seeking to recover the $824.90 balance on her account. Plaintiff filed a complaint against Johnson on February 4, 2014, seeking to collect her outstanding balance of $747.05. As to Thiel, plaintiff filed a complaint on July 18, 2013, seeking to collect the $2340.77 outstanding balance. Each defendant filed a responsive pleading asserting that plaintiff's claims were barred by the four-year statute of limitations, N.J.S.A. 12A:2-725, and setting forth claims against plaintiff under the FDCPA. In May 2014, each defendant filed a motion for summary judgment seeking dismissal of plaintiff's complaint and an award of damages and fees under the FDCPA.

The Special Civil Part in Passaic County heard oral arguments on Acevedo's and Johnson's motions together. After considering counsels' arguments, the court granted both motions, dismissing the complaints and awarding each defendant one thousand dollars in statutory damages under the FDCPA. The

[3] Thiel made a few additional payments after this date, in the amount of forty dollars each, but none of these payments satisfied the minimum payment due.

court entered judgments in favor of Acevedo and Johnson and directed them to file separate motions for counsel fees pursuant to the FDCPA, 15 U.S.C.A. § 1692k(a)(3).

In a written decision, the court explained its reasons for applying the four-year statute of limitations. The court adopted our reasoning in an unpublished opinion, New Century Fin. Servs., Inc. v. McNamara, A-2556-12 (App. Div. Mar. 20, 2014) including our reliance upon the Supreme Court's opinions in Sliger v. R.H. Macy & Co., 59 N.J. 465 (1971), and Associates Discount Corp. v. Palmer, 47 N.J. 183 (1966), and our opinion in Ford Motor Credit Co. v. Arce, 348 N.J. Super. 198 (App. Div. 2002).[4]

Acevedo and Johnson filed motions for statutory counsel fees, which the court granted, awarding Acevedo $4250 in attorney fees and Johnson $7632.50. Plaintiff filed motions for reconsideration, which the court denied, rejecting plaintiff's argument that the court failed to consider that the credit cards

[4] In relying upon our unpublished opinion in McNamara, the court recognized that Rule 1:36-3 limited its authority to cite or rely upon McNamara, but it felt it appropriate to mention it for the purpose of demonstrating that "the[se] very same attorneys who are now before this [c]ourt argued the very same issues before the Appellate Division in McNamara" and, for that reason, relied on McNamara to demonstrate that plaintiff consciously proceeded to commence these actions when its timeliness was contraindicated. We see no error in the judge's reliance on McNamara for that sole purpose.

were issued to Acevedo and Johnson by unaffiliated financial institutions.

Thiel's motion for summary judgment was considered by the Special Civil Part in Somerset County. After the parties presented their arguments, that court also relied upon the holdings in Sliger, Palmer, and our decision in Docteroff v. Barra Corp. of America, 282 N.J. Super. 230 (App. Div. 1995), as well as the United States District Court's opinion in Tele-Radio Systems, Ltd. v. De Forest Electronics, Inc., 92 F.R.D. 371 (D.N.J. 1981), and granted Thiel's motion as it pertained to plaintiff's claim against him, but denied it as to Thiel's counterclaim under the FDCPA. The court, relying upon Beattie v. D.M. Collections, Inc., 754 F. Supp. 383, 394 (D. Del. 1991) found that plaintiff did not violate the act.

Plaintiff filed a notice of appeal in all three cases, and Thiel filed a cross-appeal from the denial of his motion for statutory damages and counsel fees under the FDCPA.

In all three appeals, plaintiff challenges the courts' treatment of "an agreement between a buyer and a third-party financier who is neither the seller nor an assignee of the seller to provide credit for the purchase of goods [as equivalent to] a contract for the sale of goods [that is] subject to the four-year limitations period of the [UCC]." It also argues that all three defendants were not entitled to summary judgment and, in the Acevedo and Johnson matters, that the court improperly relied upon our unpublished opinion.

In the Thiel appeal, plaintiff, relying upon the parties' responses to requests for admissions and Thiel's statement of material facts, further contends summary judgment was inappropriate and challenges the court's determination regarding plaintiff's claim that discovery was necessary before the motions should have been decided. In his cross-appeal, Thiel contends the court erred when it failed to award him damages and fees under the FDCPA, arguing the statute imposes strict liability and "[d]ebt collection matters initiated past the applicable statute of limitations violate the Act[,] entitling defendant to statutory damages and mandatory attorney fees."

"We review an order granting summary judgment 'in accordance with the same standards as the motion judge.'" Johnson v. Roselle EZ Quick LLC, __ N.J. __, __ (2016) (slip op. at 18) (quoting Bhagat v. Bhagat, 217 N.J. 22, 38 (2014)). "Such a motion will be granted if the record demonstrates that there is no genuine issue of material fact and 'the moving party is entitled to a judgment or order as a matter of law.'" Ibid. (quoting R. 4:46-2(c)).

"We review questions of law de novo, and do not defer to the conclusions of the trial . . . courts." Ibid. Which statute of limitations applies to a claim, and whether the filing of a complaint after that period has passed constitutes a violation of the FDCPA, are "purely legal question[s] of statutory interpretation." Ibid.; see also Town of Kearny v. Brandt, 214 N.J. 76, 92-94 (2013); Zabilowicz v. Kelsey, 200 N.J. 507, 512-13 (2009); J.P. v. Smith, 444 N.J. Super. 507, 520 (App. Div.), certif. denied, __ N.J. __ (2016).

Applying this standard, we find plaintiff's arguments regarding the inapplicability of the four-year statute of limitations under N.J.S.A. 12A:2-725[5] to be without merit, and we

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[5] Plaintiff argues N.J.S.A. 2A:14-1 should apply. That statute provides:

> Every action at law for . . . recovery upon a contractual claim or liability, express or implied, not under seal, or upon an account other than one which concerns the trade or merchandise between merchant and merchant, their factors, agents and servants, shall be commenced within 6 years next after the cause of any such action shall have accrued.
>
> This section shall not apply to any action for breach of any contract for sale governed by [N.J.S.A. 12A:2-725].
>
> [N.J.S.A. 2A:14-1 (Emphasis added).]

N.J.S.A. 12A:2-725, in turn, provides that "[a]n action for breach of any contract for sale must be commenced within four (continued) affirm substantially for the reasons expressed by the two motion judges. We add only the following brief comments.

"[I]n determining whether a contract is for 'sale of goods,' and thus covered by [N.J.S.A. 12A:2-725], a court must examine the whole transaction between the parties and look to the essence or main objective of the parties' agreement." Docteroff, supra, 282 N.J. Super. at 240. The basis for the four-year statute's applicability to store-issued credit cards was provided by the Court in Sliger, which affirmed the nature of the subject transactions as a sale of goods. See Sliger, supra, 59 N.J. at 467. In Palmer and Arce, the Court and the Appellate Division determined that the fact that a third-party creditor provided the financing for a sale of goods did not change the nature of the transaction as a sale of goods. See Palmer, supra, 47 N.J. at 187; Arce, supra, 348 N.J. Super. at 199-200.

The Special Civil Part judges also correctly determined there was no basis to deny summary judgment as to this issue in any of the three cases. Plaintiff failed to create any genuine issues of material fact regarding the statute of limitations. Although plaintiff argues that it should have been entitled to

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(continued)
years after the cause of action has accrued." N.J.S.A. 12A:2-725(1).

further discovery, it failed to meet its burden as the party seeking additional discovery to demonstrate how additional discovery would change the outcome of the case. See Badiali v. N.J. Mfrs. Ins. Grp., 220 N.J. 544, 555 (2015).

We also find no merit in plaintiff's contention that Thiel's partial payments, which were all less than the minimum amount required by his credit card agreement, tolled the running of the statute of limitations.[6] "A cause of action will accrue on the date that 'the right to institute and maintain a suit first arose,'" and "generally coincides with 'the date on which the statutory clock begins to run.'" Johnson, supra, __ N.J. at __ (slip op. at 30) (quoting White v. Mattera, 175 N.J. 158, 164 (2003)). "In an action on a sales contract, '[a] cause of action accrues when the breach occurs.'" Deluxe Sales & Serv., Inc. v. Hyundai Eng'g & Constr. Co., 254 N.J. Super. 370, 375 (App. Div. 1992) (quoting N.J.S.A. 12A:2-725(2)). In collection actions, the right to institute and maintain a suit arises on the date of default – the first date on which the debtor fails to make a minimum payment. See id. at 374-75. The fact that

[6] Plaintiff argues that Thiel's last payment was in February 2010, at which time the statute began to run. We disagree with both contentions as, according to Thiel's account statements, the payment made on that date was reversed on the same day. The last partial payment appears to have been made in December 2009, but, as discussed above, the statute had already begun to run.

Thiel made partial payments less than the minimum payment required after the date of default does not change the date of default, and thus does not change the date on which the cause of action accrued.

We turn to the trial courts' disparate treatment of defendants' FDCPA claims, and part company with the Somerset County Special Civil Part's determination that filing a time-barred action cannot be the basis for a claim under the act. We agree with the Passaic County Special Civil Part's decision that filing the action is automatically a violation, absent a showing that the complaint's filing was the result of a "bona fide error."

The purpose of the FDCPA is to protect consumers from "abusive debt collection practices by debt collectors . . . and to promote consistent State action to protect consumers against" such practices. 15 U.S.C.A. § 1692(e); see also Hodges v. Sasil Corp., 189 N.J. 210, 222 (2007). To prevail, a debtor must prove: "(1) she is a consumer, (2) the [party seeking payment] is a debt collector, (3) the . . . challenged practice involves an attempt to collect a 'debt' as the Act defines it, and (4) the [collector] has violated a provision of the FDCPA in attempting to collect the debt." See Douglass v. Convergent Outsourcing, 765 F.3d 299, 303 (3d Cir. 2014).

> Because the [FDCPA] imposes strict liability, a consumer need not show intentional conduct by the debt collector to be entitled to damages. However, a debt collector may escape liability if it can demonstrate by a preponderance of the evidence that its "violation [of the Act] was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error." [U.S.C.A.] § 1692k(c).
>
> [Rutgers — The State Univ. v. Fogel, 403 N.J. Super. 389, 392 n.2 (App. Div. 2008) (second alteration in original) (quoting Russell v. Equifax A.R.S., 74 F.3d 30, 33-34 (2d Cir. 1996)).]

See also Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich, L.P.A., 559 U.S. 573, 578, 130 S. Ct. 1605, 1609, 176 L. Ed. 2d 519, 525 (2010). However, "ignorance of the law will not excuse any person" from liability under the FDCPA, "even if the actor lacked actual knowledge that [the] conduct violated the law." Id. at 581-83, 130 S. Ct. at 1611-12, 176 L. Ed. 2d at 527-28.

There is no prohibition against a creditor seeking the voluntary repayment of a debt. Under New Jersey law, after the statute of limitations has run, a debt is not extinguished but is unenforceable in a court of law. Huertas v. Galaxy Asset Mgmt., 641 F.3d 28, 32 (3d Cir. 2011) (citing R.A.C. v. P.J.S., Jr., 192 N.J. 81, 98 (2007)). The expiration of the statute of limitations does not absolve the debtor of the debt owed, but gives the debtor a complete defense to the creditor's attempt to collect on the debt in a collection action. Ibid. Therefore, a debt collector does not violate the FDCPA by seeking voluntary payment of the debt, provided the collector "does not initiate or threaten legal action in connection with its debt collection efforts." Id. at 33.

A debt collector violates the FDCPA if "he [or she] threaten[s or commences] a lawsuit on a debt which [he or she] 'knows or should know is unavailable or unwinnable by reason of a legal bar such as the statute of limitations.'" Ibid. (quoting Beattie, supra, 754 F. Supp. at 393). Thus, a debt collector violates the FDCPA by initiating "a lawsuit on a debt that appears to be time-barred, without . . . having first determined after a reasonable inquiry that [the] limitations period has been or should be tolled." Ibid. (quoting Kimber v. Fed. Fin. Corp., 668 F. Supp. 1480, 1487 (M.D. Ala. 1987)). Where there is no evidence raised establishing that the creditor made a "bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error," the act is violated and sanctions may be imposed. See 15 U.S.C.A. 1692k(c); see also Fogel, supra, 403 N.J. Super. at 392 n.2; Kimber, supra, 668 F. Supp. at 1488-89; Jackson v. Midland Funding, LLC, 754 F. Supp. 2d 711, 714-16 (D.N.J. 2010), aff'd, 468 F. App'x 123 (3d Cir. 2012).

Our review of the motion record in these matters leads us to conclude that plaintiff knew or at least should have known its claims were time-barred. In Acevedo's case, her statement of material facts stated that plaintiff admitted in its answer to her counterclaim that it knew she had defaulted in 2009, which plaintiff again admitted in its response, but it failed to file suit until 2014. In the Johnson action, plaintiff admitted in response to a request for admissions that Johnson had been in default since December 2008, and it did not file suit until 2014. In Thiel's action, it was not disputed that Thiel defaulted by April 2009, and the complaint against him was not filed until July 2013, although plaintiff believed that a payment or two of less than the minimum amount owed tolled the running of the statute. Plaintiff's opposing submissions never raised any other issue as to why it failed to file within the appropriate limitations period, other than its contention that the six-year statute applied. It did not plead "bona fide error" as an affirmative defense, nor did it raise any issues as to what procedures it had in place to avoid its error or what reasonable inquiry it made into the applicable statute of limitations. Plaintiff simply operated under the wrong impression as to the applicable statute of limitation and became liable to defendants under the FDCPA, entitling them to damages, counsel fees and costs. See Jackson, supra, 754 F. Supp. 2d at 715 (holding creditor liable under the FDCPA for filing suit after expiration of applicable state's statute of limitations).

To the extent we have not expressly addressed any of plaintiff's remaining arguments, we find them to be without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Accordingly, we affirm the dismissal of plaintiff's complaints in all three matters and the trial court's award of damages and counsel fees to Acevedo and Johnson under the FDCPA; but we reverse the dismissal of Thiel's claim for the same award and remand to the trial court for entry of an order awarding damages and counsel fees.

Affirmed in part; reversed and remanded in part. We do not retain jurisdiction.

I hereby certify that the foregoing is a true copy of the original on file in my office.

CLERK OF THE APPELLATE DIVISION

SMALL ENTITY REPRESENTATIVE STONELEIGH RECOVERY ASSOCIATES' RESPONSE TO SMALL BUSINESS REVIEW PANEL FOR DEBT COLLECTOR AND DEBT BUYER RULEMAKING

Stoneleigh Recovery Associates, LLC (SRA) is a nationwide third party collection agency and debt buyer, located in Lombard, Illinois. Founded in 2007, SRA employs 75 individuals in three different states who provide for over 115 dependents. SRA employees service in excess of a billion dollars in outstanding receivables. This inventory includes multiple vertical market segments with diverse debt profiles, including healthcare, bankcard, finance, and automotive. SRA continues to earn an A rating with the Better Business Bureau. We achieved the Certified Professional Receivables Company designation by the Debt Buyers Association (DBA International). Additionally, SRA actively participates as members of the ACA International (ACA) and InsideARM's Compliance Professionals Forum.

As a representative of just one of the many small debt collection companies[1] and debt buyer[2] companies operating in local communities around the United States, SRA greatly appreciates the opportunity to participate in the Small Business Review Panel convened in relation to the CFPB potential rulemaking on debt collection. SRA applauds the CFPB for entering into the rulemaking process for third-party debt collection. The need for rules to clarify the Fair Debt Collection Practices Act (FDCPA) is critical to the future success of our business. The proposed rules should protect law-abiding debt buying companies and allow them to succeed in this highly competitive and specialized marketplace. SRA would like the opportunity to communicate with consumers using modern technology and model forms. Rulemaking can help alleviate the uncertainty surrounding the use of modern technology and eliminate the costs associated with litigation due to the lack of clarity. Additionally, new rules can deter the bad actors from engaging in activities that harm consumers and the industry's reputation.

The CFPB Outline of Proposals Under Consideration and Alternatives Considered (Outline),[3] if turned into a rule, would make great strides forward in adapting and clarifying the FDCPA to meet modern needs. SRA encourages and proposes additional

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[1] "The majority of debt collection companies are small businesses, with over 59 percent maintaining nine or fewer employees, and over 74 percent maintaining fewer than 20 employees." Ernst & Young, The Impact of Third-Party Debt Collection on the U.S. National and State Economies in 2013 at 18 (July 2014). According to the American Collector Association International (ACA), they have over 3,000 small business member companies.

[2] According to the Debt Buyer's Association International (DBA) over eighty percent of their membership is comprised of small businesses.

[3] Consumer Financial Protection Bureau, *Outline of Proposals Under Consideration And Alternatives Considered* (July 28, 2016) (Outline).

clarification to the outline under consideration so that the eventual proposed rule does not leave companies exposed to unclear and ambiguous regulation.

This written submission seeks to provide the requested information relating to the proposals under consideration, specifically: (1) details about the costs to our business and industry; (2) specifics concerning the time necessary to implement the required changes; and, (3) alternative proposals with clear unambiguous language, safe harbor provisions, and the needed flexibility to accommodate the different types of accounts in collection and the different types of debt collectors and debt buyers.

I. Initial Considerations: Hidden Costs and Flawed Assumptions

A. Failing to Define Key Terms or Provide Model Language Exposes Small Businesses to Significant Hidden Costs Not Considered

The Outline contemplates new rules implementing the Fair Debt Collection Practices Act (FDCPA)[4] and implicates other highly litigated statutes regulating our business.[5] The statutory schemes of the three main federal statutes that regulate SRA and the debt collection industry allow for consumer recovery so that even a technical violation can result in the annihilation of a small business. One class action law suit filed under any of these statutes can put a small business debt buyer or collection agency out of business.[6]

As proposed, the outline contains several areas, described in detail below, where either a disclosure would be required but no model language is contemplated or where model language is suggested that currently conflicts with well-established case law. Additionally, key terms such as “default” are proposed but no definition is provided. Any time a

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[4] The FDCPA, 15 USC §§1692 *et seq*, provides for statutory damages in the amount of up to $1,000. 15 USC §1692k(a)(2)(A) (2010). Any class action brought under the FDCPA is capped at one percent of a company’s net worth or five hundred thousand dollars, whichever is less. 15 USC §1692k(a)(2)(B).

[5] For example, the outline implicates the Telephone Consumer Protection Act (TCPA), 47 USC § 227, and the Fair Credit Reporting Act (FCRA), 15 USC §§ 1681 *et seq.* In the case of a willful violation of the FCRA, a furnisher can be liable for between $100 to $1,000 in statutory damages, actual damages, attorney’s fees and costs, plus punitive damages. 15 USC § 1681n(a)(1). Unlike the FDCPA, neither the TCPA nor the FCRA provide any cap upon statutory damages. The TCPA provides for statutory damages i of $500 for each offending telephone call. 47 USC § 227(b)(3). A court may treble these damages if it finds the violation was willful or knowing. *Id.*

[6] An informal DBA International member survey, conducted as part of SRA’s preparation for the arbitration SBREFA, found that seventy eight percent of respondents do not believe that their business can survive a class action law suit.

regulation fails to define key terms or leaves room for different interpretations, entities subject to the regulation are at risk.[7]

The estimated annual increase in litigation costs is up to $74,250.00.

Small businesses are more heavily burdened with the cost of defending civil litigation due to the uncertainty and ambiguity of regulatory requirements. The CFPB does not consider this cost of litigation that a small business would encounter as a result of unclear terms and the lack of model language in the current Outline. (See Table 1.)

TABLE 1: COST of Ambiguous Regulations

Item	Current Annual Legal Costs	Projected Annual Legal Costs if Proposal as Written Becomes the Final Rule
Average Total For Settlements	$75,000.00	$93,857.13 to $138,750.00
Average Outside Counsel Expenditure	$45,000.00	$55,500.00
Registered Agent	$4,975.40	$4,975.40
Errors & Omissions	$47,572.85	$47,572.85
General Liability Insurance	$5,829.00	$5,829.00
TOTAL	$178,377.25	$207,734.38 to $252,627.25
Percentage of Total Expenditures	2%	3.4%

SRA will likely receive 2-3 additional class action lawsuits and demands per year as a result of this unclear proposal or disclosure without safe-harbor language. This estimate is based on the average number of class action suits SRA receives per year involving letter language and information. (See Table 2).

The estimated cost of increased class action lawsuits regarding the proposed notices and written/oral disclosures is between $18,000 and $63,750.00 annually. The projected annual legal costs will increase by $74,250.00. (See Table 1).

[7] On June 18, 2015, the Federal Communications Commission (FCC) adopted its Declaratory Ruling and Order concerning the rules and regulations implementing the TCPA. The FCC attempted to clarify the definition of an autodialer; however, its definition has resulted in continued litigation over the meaning at immense cost to our industry.

TABLE 2: SRA LAWSUITS BY YEAR						
	2012	**2013**	**2014**	**2015**	**2016**	
Class Action Lawsuits	0	1	3	6		Total
		1	3	4		Involving Letter Language or Fields

SRA has never settled a class action lawsuit on a class basis.[8] On average, SRA spends more than twice as much to settle a class action lawsuit then an individual lawsuit or demand. Our average cost of settling a class action on an individual basis is $6,285.71. Our average cost of settling a class action on an individual basis after filing an answer and beginning discovery is $21,250. These numbers do not include defense attorney costs.

Due to our small size, we are forced to settle even frivolous lawsuits because we cannot afford the high costs to defend the lawsuits. It is highly unlikely that a court will order a plaintiff to pay for our defense costs as they are wary of deterring consumer litigation.[9]

This increase will result in legal expenses equaling 3.4 percent of SRA's expenditures. These increased litigation costs do not include the increase in errors and omissions insurance that would occur with additional suits. Our cost of errors and omissions insurance today is six times higher than in 2011 (see Table 3 & 4)

[8] ACA recently discussed this common problem in its Comment on the Proposed Rule on Arbitration Agreements:

> Class action lawsuits frequently get filed despite lacking the necessary criteria to move forward as a class. Oftentimes, such class filings are used strategically in hopes of increasing a settlement offer. And with nearly 70% of debt collection companies maintaining less than 20 employees, the resources often do not exist for companies to go through the time consuming and expensive process to successfully defeat class certification or to fight against meritless claims. Unfortunately, this means that this opportunistic strategy can be quite successful.

ACA, INTERNATIONAL, COMMENTS OF ACA INTERNATIONAL ON THE PROPOSED RULE ON ARBITRATION AGREEMENTS AND REQUEST FOR PUBLIC COMMENT, DOCKET NO. CFPB-2016-0020; RIN 370-AA51 (August 2016), http://www.acainternational.org/files.aspx?p=/images/40386/acacomments-arbitrationnprm-8-22-16-final.pdf (last visited September 8, 2016).

[9] *See e.g., Crail v. I.C. System, Inc.,* 2016 U.S. Dist. LEXIS 118868 (S.D. In. Sept. 2, 2016) (failing to award fees where counsel previously brought two other identical claims in two different cases in the same courthouse and lost all three times); *Mayhall v. Berman & Rabin, P.A.,* 13F.Supp.3d 978 (E.D. Mo. 2014).

TABLE 3: SRA'S ERRORS & OMISSIONS INSURANCE COVERAGE				
Policy Period	Insurance Company	Premium	Limits of Liability	Deductible
2011	National Union Fire Insurance Co.	$8,314.00	$1,000,000.00	$25,000.00
2012	National Union Fire Insurance Co.	$12,396.00	$1,000,000.00	$25,000.00
2013	Catlin Specialty	$22,447.00	$1,000,000.00	$50,000.00
2014	Catlin Specialty	$21,007.00	$1,000,000.00	$50,000.00
2015	AmTrust	$47,572.85	$5,000,000.00	$50,000.00

Table 4: 2015 Premiums by Limitation of Liability	
AmTrust 2015 Premium (not including surplus lines taxes and fees)	AmTrust 2015 Limit of Liability
$22,310.00	$1,000,000
$28,900.00	$2,000,000
$31,500.00	$3,000,000
$41,900.00	$5,000,000 ($500,000 sublimit on class actions)
$43,565.00	$5,000,000 ($1,000,000 sublimit on class actions)

It is critical that the CFPB's proposed rules contain clear definitions and unambiguous guidelines that do not leave our businesses open for law suits when genuinely attempting to follow the forthcoming regulations.

RECOMMENDATIONS AND ALTERNATIVE PROPOSALS

- **Define all key terms**
- **Provide model language for any required written or oral disclosure**
- **Clarify that use of model language provides a safe harbor**

SRA has identified in each of the sections below the terms that need to be defined and the model language that should be created. It is critical to the financial stability of all small businesses, that the proposal provide immunity from law suits for those businesses that use of the model language. It is not enough to state that model language is a defense to a law suit as SRA cannot afford to defend the law suit—SRA, and similarly situated businesses, need to be able to defeat the law suit prior to the summary judgement stage.[10]

[10] An informal poll of SRA's five favorite reasonably priced defense counsel around the United States showed the average cost of litigating until a court rules on a motion for summary judgment

B. The Possibility of Retroactive Application Exposes Small Businesses to Significant Hidden Costs Not Considered By The CFPB

The Outline does not discuss whether the rule will be applied retroactively or applied to accounts opened after a given date, and the CFPB declined to provide clarity on this question during the August 25 meeting. Nor does it address whether different provisions would have different effective dates (dates by which a company needed to comply). As a result, the CFPB does not calculate the cost of retroactive application of the rule. This cost will be crippling. For the accounts that SRA owns, it would be costly and/or impossible to obtain some of the data points required for review prior to collection and inclusion in an initial demand letter (particularly date of default, each charge of interest after default, and each payment after default). Therefore, our purchased account portfolio would be a complete loss because it would be impossible for us to determine, for example, "each charge for interest or fees imposed after default" as explained in more detail below. (See section II.A.1. Default, below.)

The estimated industry <u>loss</u> is <u>in excess</u> of $15 billion if the rules are applied retroactively.

The results of the DBA Survey[11] demonstrate that if applied retroactively, the cost of requirements like those in the Outline would be harmful industry wide. Respondents to the DBA Survey indicated that the loss of value of their portfolios would total $3,483,015,000. Applying this across the industry, and factoring in the DBA Survey response rate of 20 percent, a conservative estimate would be that the loss of portfolio value would be over fifteen billion dollars. Respondents indicated that if the data requirements were applied retroactively, 76 percent of respondents owning credit card portfolios and 71 percent of respondents owning non-credit card portfolios would experience "a complete loss" or would have "significant impact to the value of the portfolio."

<u>RECOMMENDATIONS AND ALTERNATE PROPOSALS</u>

- **Do not apply the rules retroactively.**

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to be $20,000.00. The respondents indicated that it can vary widely from $10,000 to $50,000 depending on the facts and witnesses.

[11] In August 2016, DBA conducted a survey of its debt buyer members regarding the proposed rules in the Outline. Twenty percent of those members receiving an invitation to participate in the survey answered all of the questions. Ninety-one percent of the respondents indicated they were small businesses as defined by SBREFA. The questions asked about the ability to comply with the proposed rules and the financial impact of the proposed rules. Because SRA has not purchased debt in over two years, SRA did not receive an invitation to participate in the DBA Survey.

- **The rules should come into effect on a date certain from the account being opened.**
- **Alternatively, the rules should come into effect for all accounts purchased after a future date certain.**

As the proposal contains specific information that needs to be kept and maintained from the outset of any default, the rules should apply to all accounts opened after a certain date giving the originating creditors the opportunity to gather the information on all accounts from the start date going forward. Creditors would then have the ability to pass the information along to subsequent purchasers and debt collectors.

Alternatively, the proposal could provide a future date certain by which all purchased accounts must comply. This would be similar to the California Fair Debt Buying Practices Act which applies to "debt buyer with respect to all consumer debt sold or resold on or after January 1, 2014."[12] The law passed in July 2013.

SRA recommends in each section below the time needed to set up our system or procures for compliance with each section of the Outline. (See also Appendix One). SRA believes that the date certain should allow the full time needed to set up our systems in order to comply. For example, if it would take six months for the validation notice to be set-up, we would request that this portion of the rule take effect 6 months after the rule's enactment. This would be similar to the New York Debt Collection Rules which allowed an extra eight months for companies to set up their systems to provide the additional substantiation information.[13] The New York Rules took effect in 2015.

C. The Information and Integrity Related Proposals Are Based on the Flawed Assumption that Debt Collectors and Debt Buyers Do Not Provide Consumers Enough Information

SRA's dispute rate is less than 1 percent. The rate is still less than one percent in states with laws that require we provide consumers with more information than the FDCPA requires (see Tables 5 and 6). For example, New York and California both recently changed their laws to provide more information to consumers. In both New York and California the dispute rates did not dramatically change—rise or fall—after the rule took effect (see Table 3 & 4 the year the law changed is highlighted blue).[14] Providing more information, therefore, does not help consumers identify their accounts.

[12] Cal. Civ. Code §1788.50(d) (2013).

[13] 23 NYCRR §1.7 (2014).

[14] *See* Cal. Civ. Code §1788.50(d) (2013); 23 NYCRR §1.7 (2014).

Table 5 California Dispute Information					
Year	Number of Accounts	Number of Disputes	Number of Paid Accounts After Dispute	Percent of Disputed Accounts	Percent of Paid Accounts After Dispute
2016	28,522	110	12	0.39%	10.91%
2015	57,797	55	4	0.10%	7.27%
2014	54,054	45	4	0.08%	8.89%
2013	76,917	96	4	0.12%	4.17%
2012	110,377	57	2	0.05%	3.51%

Table 6 New York Dispute Information					
Year	Number of Accounts	Number of Disputes	Number of Paid Accounts After Dispute	Percent of Disputed Accounts	Percent of Paid Accounts After Dispute
2016	69,383	242	23	0.35%	9.50%
2015	34,138	41	2	0.12%	4.88%
2014	28,279	23	3	0.08%	13.04%
2013	31,478	46	4	0.15%	8.70%
2012	37,096	33	2	0.09%	6.06%

Table 7 Overall Dispute Information					
Year	Number of Accounts	Number of Disputes	Number of Paid Accounts After Dispute	Percent of Disputed Accounts	Percent of Paid Accounts After Dispute
2016	847,139	2,508	240	0.29%	9.56%
2015	861,393	1,257	106	0.14%	8.43%
2014	756,875	540	33	0.07%	6.11%
2013	826,623	854	50	0.10%	5.85%
2012	762,535	484	21	0.06%	4.33%

The dispute rate remains under one percent because debt collectors provide enough information for consumers to identify their accounts. SRA's initial demand letter includes several pieces of information to help the consumer identify the account (see Table 8). It is in our interest for consumers to be able to identify their account. If consumers can identify their accounts from the information provided in the initial demand letter or phone conversation, then consumers are more likely to resolve the account.[15]

[15] As you can see from the percentage of accounts that pay after a dispute, consumers who dispute not pay their account (over 90 percent of consumers who dispute do not pay). This is discussed in more detail in Section III.A Time Barred Debt.

Table 8 Information Included in Initial Demand Letter			
Debt Buyer Accounts	Medical Accounts	SRA Purchased Accounts	Creditor Accounts
Original Creditor Original Account No. Current Creditor	Original Creditor Patient Account No. Service Date Current Creditor	Original Creditor Original Account No. Previous Creditor Current Creditor	Creditor Original Account No.

The CFPB conducted Consumer Survey does not refute that consumers receive sufficient information to identify their accounts. 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.

Additionally, and perhaps more critically, the DBA Member Survey indicated that 72 percent of respondents do not believe consumer response rates will go up with the increased notice requirements. Only 7 percent of respondents reported an increase in consumer response rates following the adoption of the 2013 California Fair Debt Buying Practices Act. Similarly, only 17 percent of respondents reported an increase in consumer response rates following the notice requirements mandated by the New York Department of Financial Services in its 2014 rules. No respondents reported an increase in consumer response rates following the adoption of the Asset Consent Order consumer notice.

Since the provision of additional information will have little impact, then it seems there is no justification for the sections of the Outline requiring additional information, especially information that would be difficult to determine and unhelpful to consumers (default date, each interest charge since default, each payment made since default—see Section IIA1 Default below).

<u>RECOMMENDATION AND ALTERNATE PROPOSALS</u>

- **Require information that is easy for a consumer to understand and a debt collector/debt buyer to provide**
- **Do not require information that does not help a consumer identify their account or that is difficult for a debt collector/debt buyer to determine (default date)**

D. The Information and Integrity Related Proposals Are Based on the Flawed Assumption that the CFPB Complaint Portal Data is Accurate.

The CFPB Complaint portal data is used by the Bureau to portray debt collection complaints inaccurately.[16] First, the overall number of complaints is inflated because the Bureau counts each complaint twice.[17] A consumer filing a complaint is asked "where this debt came from?" The consumer receives three choices: "same company," "different company," and "I don't know." When the consumer chooses "different company" the field for "submit a separate complaint against this company?" automatically has "yes" selected. In other words, unless the consumer chooses "no" the complaint will automatically also be sent to the different company. The same complaint is sent to both the debt collector and the "different company." This same complaint is counted as two complaints.

Therefore, of the 219,200[18] complaints attributed to debt collection, as many as half are duplicate complaints—one complaint from one consumer automatically sent to both the debt collector and the debt owner—but counted as two debt collection complaints.[19] If these duplicate complaints are removed then only 109,500 complaints should be attributed to debt collection.

Of these complaints, the CFPB does not remove from its complaint calculation those consumer narratives that are not complaints but instead inquiries or disputes. According to a survey of complaint data provided to the CFPB by DBA International, 44 percent of complaints are disputes and 5 percent of complaints are neither disputes nor complaints.

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[16] Jim McCarthy, former CFPB Senior Advisor to Consumer Response, Keynote Address at the InsideARM Larger Market Participant Summit in Washington, DC (April 22, 2015).

[17] Jim McCarthy, former CFPB Senior Advisor for Consumer Response, Keynote Address at the InsideARM Larger Market Participant Summit in Washington, DC (April 22, 2015).

[18] Press Release, CONSUMER FINANCIAL PROTECTION BUREAU, CFPB Monthly Complaint Snapshot Examines Debt Collection Complaints (March 19, 2016), http://www.consumerfinance.gov/about-us/newsroom/cfpb-monthly-complaint-snapshot-examines-debt-collection-complaints/ (last visited September 9, 2016).

[19] Jim McCarthy, former CFPB Senior Advisor for Consumer Response, Keynote Address at the InsideARM Larger Market Participant Summit in Washington, DC (April 22, 2015).

DBA International requires[20] that all of its certified companies register on the CFPB portal.[21]

An analysis of SRA's CFPB Portal complaints matches the DBA results. Over half of the "complaints" against SRA are not actually complaints—52 percent of SRA's "complaints" are disputes and 11 percent of SRA's "complaints" are inquiries. SRA received 94 "complaints" through the portal; 49 are disputes and 11 are inquiries.

An inquiry is when a consumer asks a question and does not complain about the business or its practices. For example, it is not a complaint when a consumer writes that they do not know if SRA is a legitimate company because the SRA logo does not appear on our envelope.[22] This type of portal submission should be classified as an inquiry—not a complaint.

A dispute, like an inquiry, is not a complaint when there is no complaint about the business or its practices. A dispute is a consumer right outlined in the FDCPA.[23] It is not a complaint that our company has mistreated the consumer or is not following the law. Of the 49 disputes consumers made through the complaint portal, none included a complaint about our business or practices.[24] Through the portal, SRA has received 12 generic disputes, 27 specific disputes, and 10 identity disputes. A specific dispute is when a consumer recognizes the account and disputes the balance. An identity dispute is when a consumer indicates the account is the result of fraud or identity theft.

If 49 percent of portal complaints are not complaints, then of the actual 109,500 debt collection complaints **there are only 53,655 true complaints against debt collection**

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[20]DBA INTERNATIONAL, RECEIVABLES MANAGEMENT CERTIFICATION PROGRAM GOVERNANCE DOCUMENT, Certification Standard 8 (August 2016), https://www.dbainternational.org/wp-content/uploads/Certification-Policy-version-4.0-FINAL-20160801.pdf (last visited September 8, 2016)..

[21] Due to DBA's stringent industry standards, it is not surprising that over 50 percent of DBA certified companies have never received a single complaint on the CFPB portal and over 90 percent have a statistical zero percent complaint rate.

[22] SRA has received this inquiry more than one time, but it counts as a complaint against us. The FDCPA prohibits debt collectors from putting anything on the outside of the envelope that would indicate the "debt collector is in the debt collection business or that the communication relates to the collection of a debt." 15 U.S.C. §1692(b)(5).

[23] 15 U.S.C. §1692g(b).

[24] In classifying our disputes, inquiries and complaints, SRA counted a portal narrative as a complaint when a consumer wrote in and disputed the balance but also noted that the SRA representative was rude.

companies,[25] in light of the fact that our industry reaches out to over 77 million consumers per year.[26] The total number of complaints received against our industry is exceedingly low (.06 percent). The CFPB portal data shows that debt collection complaints continue to decline.

Finally, non-routed complaints are used in calculating the total number of complaints in the industry. The CFPB stated in the 2015 Consumer Response Annual Report indicated that only 47 percent of all debt collection complaints were sent to companies for response.[27] This is because 42 percent were "referred to other regulatory agencies," 6 percent were found to be "incomplete" and 5 percent are "pending with the CFPB or consumer."[28] Nevertheless, these non-routed complaints (around 45,156) are used in the analysis of the industry.[29]

If these 45,156 non-routed complaints are removed from the calculations the debt collection complaints sent to companies for response (40,044) total less than the number of credit reporting and mortgage complaints.[30] If the non-complaints (inquiries and disputes) are removed the total number of complaints drops to 19,622 less than bank account or bank services and credit card complaints[31]. If the duplicate complaints are removed the total number of complaints drops to 9,810.78 less than the consumer loan complaints—and not in the top five types of complaint by volume.[32]

The CFPB should stop using these inflated numbers to describe the debt collection complaints and should not rely on these numbers to justify the proposed rules.

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[25] As of November 9, 2015, there have been 474,489 company responses to consumer complaints and, 98 percent of consumers receive timely responses from debt collection companies.[25]

[26] The CFPB's 2015 Annual Report on the FDCPA reports that over 77 million individuals had a trade line on their credit report which indicated they had some time of debt in collections.

[27] CONSUMER FINANCIAL PROTECTION BUREAU, CONSUMER RESPONSE ANNUAL REPORT JANUARY 1 – DECEMBER 31, 2015, at 15 (March 2016).

[28] See footnote 25, *supra*.

[29] Jim McCarthy, former CFPB Senior Advisor to Consumer Response, Keynote Address at the InsideARM Larger Market Participant Summit in Washington, DC (April 22, 2015).

[30] CONSUMER FINANCIAL PROTECTION BUREAU, CONSUMER RESPONSE ANNUAL REPORT JANUARY 1 – DECEMBER 31, 2015, at 7 (March 2016).

[31] See footnote 28, *supra*.

[32] See footnote 28, *supra*.

II. Information Integrity and Related Concerns

A. Initial Claims of Indebtedness

The SRA IT Department consists of two individuals, one of whom can design programming to ensure that SRA receives the "fundamental information" listed in Appendix to the Outline. SRA can also design automated programming to review the "fundamental information" for warning signs prior to sending a collection letter. However, there are several key problem areas so that as currently written it would be impossible to comply with the Outline: (1) using the term default; (2) providing each charge for interest, fees, or payments; (3) reviewing the complete chain of title for each account; (4) creating different methods to transfer information for each client-creditor.

1. Default is a Complicated Legal Term of Art

The CFPB's Outline indicates the proposed rules would require debt collectors and debt buyers to substantiate that an individual owes a debt and the amount that can be "legally" collected.[33] In addition to a representation from a creditor concerning the accuracy of the debt and the presence of no "warning signs," only when the debt collector is in possession of fundamental information will it be afforded a presumption that it has a reasonable basis to collect the debt (in addition to other requirements).[34] Among the fundamental information are "the date of default, the amount owed at default, the date and amount of any payment or credit applied after default; each charge for interest or fees imposed after default." (Outline Appendix C.)

The term "default" is a legal term of art. The concept of when an account moves from being delinquent to being in default is a highly litigated issue across the United States.[35] Even lawyers and judges do not all agree on its meaning in the context of the FDCPA.[36]
To determine when an account is in default an attorney must evaluate the contract underlying the obligation, the state law concerning default, and the case law for the

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[33] Outline, p. 7.

[34] Outline, p. 8.

[35] *See Alibrandi v. Fin. Outsourcing Servs. Inc.*, 333 F.3d 82, 86-87 (2d Cir. 2003); *Roberts v. NRA Grp., LLC*, F. Supp. 2d, 2012 WL 3288076, at *5 (M.D. Pa. Aug. 10, 2012); *Roberts v. NRA Grp., LLC*, Civ. A. No. 3:11-2029, 2012 WL 3288076, at *5 (M.D. Penn. Aug. 10, 2012) (citing *Alibrandi*); *Trapper v. Credit Collection Servs., Inc.*, No. 10-CV-00730-RJA-JJM, 2011 WL 5080244, at *2 (W.D.N.Y. Aug. 31, 2011); *Skerry v. Mass. Higher Educ. Assistance Corp.*, 73 F. Supp. 2d 47, 51-54 (D. Mass. 1999); *Jones v. Intuition, Inc.*, 12 F. Supp. 2d 775, 779 (W.D. Tenn. 1998).

[36] *Riffle v. Convergent Outsourcing, Inc.*, 311 F.R.D. 677, 683 (M.D. Fla. 2015) (Applying Delaware choice of law to determine that under certain consumer credit card agreements a cause of action accrues not when a payment is missed, but only when the creditor demands payment.)

particular jurisdiction. The legal analysis to determine a date of default is complicated and time consuming.[37]

It would be extremely costly for a small business to have to determine when an account in any given state went into default. To hire an outside counsel to advise on the initial determination of how each state would calculate default it would cost, on average, five hours of time per state (anywhere from $62,000 to $125,000 depending on the hourly billing rate). To continuously monitor the state default rates and court opinions each month it could cost anywhere from $1,750 (five hours per month) to $17,500 (1 hour per state each month). My outside counsel charges $350.00 per hour. My outside counsel wanted to be very clear that it is almost impossible to do this legal work on a generic level. You need to evaluate each account, the underlying contract, and the payment history in context with the state law.

After our attorney provides a generic list of how to determine default in each state, SRA would have to attempt to determine the date of default for each account. This would be an account level inquiry that will likely involve significant manual labor.

A large market participant recently told me they are still working to determine the date of default for every Vermont account over a year after the rule changed requiring the determination.[38] The company had a team of lawyers advise that the date of default in Vermont is the time a payment was due but not made. The initial creditor did not calculate this date—and did not pass it along in a data file with pertinent account information. Therefore, the company has been going back through the payment and billing records to calculate the date individually for each Vermont account. The law went into effect over a year ago and the company is still struggling to get the default date on all Vermont accounts. This same process will be required under the current Outline but for all fifty states.

The DBA Survey results found that small business debt buyers believe it will be impossible or difficult to obtain the proposed information to satisfy this requirement (see Table 9). If it is not possible to obtain the date then the accounts would become uncollectable.

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[37] See also CONSUMER RELATIONS CONSORTIUM, DEBT COLLECTION SBREFA OUTLINE ISSUE BRIEF: DATE OF DEFAULT (August 22, 2016) (attached as Appendix Five).

[38] Vermont changed their rules of civil procedure in July of 2015. *See* V.R.C.P. 9.1 (2015). The rule change requires the date of default and any amount of interest claimed post-default separately identified from the total balance. V.R.C.P. 9.1 (d) – (e).

Table 9 DBA Survey Data Percentage of Respondents Who Felt It Would Be Impossible or Difficult to Determine Information Concerning Default Amounts			
Type of Account	Amount Owed at Default	Date & Amount of Payments/Credits Since Default	Date & Amount of Interest/Fees Since Default
Credit Card	48%	68%	60%
Non-Credit Card	48%	55%	58%

Additionally, consumers often misunderstand terms like "default," or "discharged," so using these terms does not aid consumer understanding or the ability of a consumer to identify the account.

RECOMMENDATIONS AND ALTERNATIVE PROPOSALS

- **Choose easily recognizable data points that mean something to the consumer such as date of purchase, date of last payment, date of charge-off, date of service.**[39]
- **Do not select terms that are difficult to determine like "default" unless you provide a clear definition of the term.**
- **Do not apply the rule retroactively.**
- **Allow a minimum of one year set-up time.**

As mentioned above retroactive application of this requirement would have grave industry consequences. Respondents to the DBA Survey indicated that the retroactive application of these data requirements would result in a loss of value of their portfolios totaling $3,483,015,000. Applying this across the industry, and factoring in the DBA Survey response rate of 20 percent, a conservative estimate would be that the loss of portfolio value would be over fifteen billion dollars.

2. It is Time Intensive and Cost Prohibitive to Provide *EACH* Charge for Interest, Fees, or Payments and to Provide the Record of Each Payment.

The Outline specifically requires as part of the initial review each interest charge, each fee, and each payment. Finding a workable solution to allow SRA to receive this information and pass it back to the account owners is unlikely. For example, with a spreadsheet all the information for an account exists on a single row. You could have thirty columns or more used just for the payments made since charge-off.

[39] DBA INTERNATIONAL, RECEIVABLES MANAGEMENT CERTIFICATION PROGRAM GOVERNANCE DOCUMENT, Certification Standard 18 (August 2016), https://www.dbainternational.org/wp-content/uploads/Certification-Policy-version-4.0-FINAL-20160801.pdf (last visited September 8, 2016) (requiring all data to be measured from charge-off).

Our collection software does not have a field for this information. Realistically, our provider will not develop special fields for this information—as they have not developed special fields for the additional New York required information and that law went into effect in 2015[40]. In our system the information will have to be placed in this one big placeholder space.

While it would be possible to program to make sure that the information was dumped into this placeholder, it is not possible to validate the balance in the placeholder field—as the initial warn sign review would require. To validate the balance the computer would need each number for the calculation in a separate field so that the programming could validate the balance by comparing the balance due with the charge-off balance minus all payments. When it is in the placeholder space all the numbers are in one field.

Our IT person would attempt to create some kind of automated validation with the placeholder space.[41] This would add more time and cost with each placement. Because any account that did not validate would have to be manually checked. We estimate that between 10 to 25 percent of accounts would need to be manually checked. To manually validate the balance information, it would take on average 5 minutes per account depending on the number of payments, interest charges, and fees. Manually checking each account would require each payment to be subtracted, each interest assessment to be added, etc.

Estimated maximum annual cost to manually verify account balances is $324,000.

This estimated cost is the salary of nine additional non-revenue generating employees to manually verify the balance. The cost of nine employees is $324,000 per year. If less accounts need to be manually verified then we would need less employees. The costs were calculated using the following figures:

- 10 to 25 percent of accounts based on an average 85,000 accounts placed per month (yields 8,500 to 21,250 accounts to manually review each month)
- 5 minute average to manually review 8,500-21,250 accounts (42,500 -106,250 minutes or 88-221 days required per month to manually review)
- 8 hour work days, 25 working days per month

[40] It is not feasible for SRA to change collection software vendors either. Our largest customer requires that we use the current system because they also use the system, so we would only change if they changed.

[41] If he could not successfully create an automated way to validate the balance in the placeholder space then every single account would have to be validated. Instead of 9 additionally employees we would need 36 additional non-revenue generating employees. The cost would be over a million dollars and SRA would be out of business.

- 3.5 additional employees needed per month to review 8,500 accounts (88 days divided by 25 working days a month)
- 9 additional employees needed per month to review 21,250 accounts
- $15 per hour = $120 per day, $3,000 per month, $36,000 per year for one employee

The minimum estimated cost to add fields and programming to put every payment in our letters is $150,000.

An additional complication to providing every payment would be attempting to put this information in a letter to a consumer. SRA's letter file does not have any placeholders for this itemized payment information. Therefore we would not be able to put this information in a letter. We would need our collection software vendor to makes changes to both the data fields and the letter file (that pulls particular account information into a data file for our letter vendor). This would take several years to complete. We estimate their programming time would be around eight months start to finish, if the programming was their sole focus. The collection software company that we use does not have a large team to develop changes to the system, so it will take them significantly longer due to less manpower to complete the job. We also estimate that we would need to pay for the development team to focus solely on this project. The minimum cost the vendor would charge to develop the programming would be $150,000. We are not likely to change vendors, especially as our largest client uses the same system.

Once completed, we are not sure that it would be possible to comply with this requirement for accounts with over a certain number of payments. It would cause the letters to be very long.

ALTERNATE PROPOSAL FOR INITIAL FUNDAMENTAL INFORMATION

- **Use Total Payments, Total Interest, Total Fees.**
- **Itemization should be required only upon written or oral request.**[42]
- **Do not apply the rule retroactively.**

If Appendix C in the Outline is reworded to only require total payments since charge-off, total interest since charge-off, and total fees since charge-off we could comply easily with little time and expense.[43] Using the total would only require one field—fields that already exists in our collection software. Therefore, we can already validate these numbers when provided by our customers. We can also send this information in a letter file to be populated on letters. Adopting this proposal would involve no additional cost to SRA. In

[42] A handful of jurisdictions have itemization upon request requirements. *See, for example,* Wash. Rev. Code Ann. § 19.16.250(8)(c) (2016); Chicago, Ill., Municipal Code § 4-6-160(b)(2)(B) (2013).
[43] This is the approach adopted by the states of California and New York in the California Fair Debt Buying Practices Act and the New York Collection Rules.

circumstances where there is no charge-off, use dates and terms that are easy to identify and understand like date of last payment and date of service.

3. It is Time Intensive and Cost Prohibitive to Review *EACH* Chain of Title for *EACH* Individual Account

The Outline also requires that the initial review include the "complete chain of title from the debt owner at the time of default to the collector." (Outline Appendix C.) DBA International requires buyers to obtain the complete chain of title[44] as part of its certification program, it made its requirement prospective and part of the contract process rather than as part of an ongoing "initial review" of every single account.

As a debt collector the only way to know that our client has provided the complete chain of title for each individual account is to manually look at the document to ensure that we have both the original creditor and our client listed on the documents. If one if missing then we don't have the complete chain of title. This requires a manual review as there is no automated way to look at the chain of title. The way in which this requirement is written it appears that it applies to each account—not to each portfolio. Therefore, SRA would have to have employees manually open the chain of title for each account and double check that the chain is complete.

The estimated annual cost to review the chain of title is $504,000.

The estimated annual cost to review the chain of title for each account is based on the following figures:

- $504,000 per year, i.e., the cost of 14 extra employees if they make $15.00 per hour.
- based on 85,000 accounts placed per month
- 2 minutes, on average, to review the chain of title would take 2,834 hours per month
- 8 hour days, 25 working days in a month
- 15 employees working all day, every month

Even if the client had fields for the original creditor, first purchaser, and second purchaser there would still have to be manual review that the chain of title documents are complete, which would require a person to open the document and look to see that all parties in the chain are listed in the chain of title. SRA would need to hire 15 additional employees to work all day, every month to conduct this review.

[44] DBA INTERNATIONAL, RECEIVABLES MANAGEMENT CERTIFICATION PROGRAM GOVERNANCE DOCUMENT, Certification Standard 18 (c)(xiv), *supra* note 38.

ALTERNATE PROPOSALS FOR INITIAL CHAIN OF TITLE REVIEW

- **Do not require review of chain of title unless new client or account disputed**
- **Alternatively, only require review of the chain of title for each portfolio.**

The cost to review one chain of title for each portfolio would be significantly less. We only receive, on average, 25-30 portfolios per month that would have a chain of title. Reviewing the chain of title for each portfolio would only be an extra 60 minutes of work that could be completed by an existing employee when the new business is loaded into our collection software system.

4. **Need to Clarify Outline's Interaction with State Laws**

Several states and jurisdictions require SRA to provide more information than the FDCPA. Some of the states require the additional information upon request.[45] There is no guidance in the Outline about how the proposed rule would interact with state law.

If the Outline became the final rule, consumers that live in states that require additional information in the initial demand letter will receive several pieces of information that will likely be confusing. In New York for example, the consumer will receive the balance at the time of charge-off, the balance at the time of default, the amount of interest assessed since charge-off, the amount of interest assessed since default, any charges and fees assessed since charge-off, any charges and fees assessed since default, the payments made since charge-off and the payments made since default. *See* These numbers will be different because charge-off and default date are not the same date. The resulting letter with these 8 different amounts will be incredibly confusing.

RECOMMENDATIONS AND ALTERNATIVE PROPOSALS

- **Allow for compliance with more specific state laws to satisfy the obligations in the proposed rule.**
- **Alternatively, adopt a proposal similar to these state laws (i.e. New York and California).**
- **Change the proposal so itemization is available upon written or oral request.**

[45] Washington requires a debt collector to provide "the interest, service charge, collection costs, and/or late payment charges" added to the original obligation after the debt collector received the account for collection. Upon written request, the debt collector must obtain the amount of interest, service charges, collection costs or late payment charges added prior to the account's placement with the agency. Wash. Rev. Code Ann. § 19.16.250(8)(c) (2016).

5. **Missing the Small Business Creditors who will be Directly Impacted by this Outline Under Proposal**

An additional complication involves how each customer will require us to have different systems or methods to transfer the information required in Appendix C back and forth. This cost is difficult to determine because these transfer of information requirements are going to be obligations on my customers (the creditors who place accounts with SRA for collection). If they are unable to comply then they will not be placing accounts. SRA will lose customers, revenue and, depending on the number and amount of creditors impacted, will face disastrous consequences, i.e. going out of business. This is discussed in greater detail in the section above (section II.B. Review and Transfer).

<u>RECOMMENDATIONS AND ALTERNATE PROPOSALS</u>

- **Hold a panel or otherwise reach out and determine what impact the small business creditors believe the Outline will have on their business and their cost of credit and share that information with the small business debt collectors, debt buyers, debt collection attorneys and loan servicers**
- **Reconvene or otherwise allow, as part of the SBREFA process, the small business debt collectors, debt buyers, debt collection attorneys, and loan servicers to provide more detailed costs or timelines based on the information provided by the creditors**

B. Requirement to Review and Transfer Certain Information

SRA has different systems in place with each client to provide information obtained from consumers during the collection process. SRA provides each client with different information in a different format—each client requests certain pieces of information to be transferred back and each client provides the format in which the information should be provided. Most of our clients we send a flat file to exchange data, whether it is an excel spreadsheet or text file. Our IT Director custom programs each flat file or text file for each customer with the required information. Some of our clients have their own portal where we manually enter the information that they request. These portals are not places where you can upload all the information at one time, they are more time intensive because it is nothing that can be programmed it must be manually entered.

The key areas of concern we see with the Outline's requirement to review and transfer information are: (1) the in-house changes required to record and transfer the information listed in Appendix E to the Outline (2) the client changes required to record and transfer the information listed in Appendix E to the Outline; (3) the system sophistication of our small business creditors lacking the ability to support the transfer of information and data proposed; (3) the ability to transfer consent received from a consumer should be obtained and transferred along with any inconvenient time, place or communication methods; (4) the retroactive application of the Outline would be unduly burdensome and costly.

1. **In-House Changes Required to Record and Transfer Certain Information**

SRA obtains almost all of the information listed in Appendix E of the Outline, but we are not set up to record all of the data points listed in a way that can be easily transferred. We would have to make several programming changes in order to notate the information in a way that it could be transferred. We attempt to address each of the items that would be complicated or problematic to further explain the, feasibility, cost and set-up time required to comply.

Whether the debt was disputed in writing or orally 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.
SRA honors oral and written disputes, meaning that SRA treats an oral dispute identical to a written dispute under the FDCPA. When a consumer disputes the account is placed in the dispute status. This status field is a field in our collection software system that we can export easily. The date and method of the dispute are in the account notes. SRA has a result code that a collector or admin employee selects that denotes whether the consumer made a written or oral dispute. This information is not currently transferred. Additional programming would be required to transfer the date and method of dispute.

For written disputes the details of the dispute are not recorded. They are classified as a dispute and put in a dispute status. Fraud and identity issue have a specific status code that is easily and currently transferred. It would be an incredibly onerous to attempt to enter the details of the dispute; the majority of written disputes that we receive are several pages long with several assertions (including sovereign nation claims and constitutional demands) but these long disputes are generic disputes.

The details of oral disputes are noted in the account notes and the account is placed in the dispute status. The details in the notes are not currently transferred in a data file. Our account notes are always provided but the information in each notation is not automatically imported into our client's systems. The only simple way to classify the disputes would be to create result codes that match the types of disputes identified in the Outline's Appendix D. This would only require three additional result codes: generic dispute, disputed amount, disputed agency right to collect.

All the documents a consumer submits are attached to the account and forwarded to the client. Once in a while a specific dispute requesting itemization or some other issue comes through the compliance department. The compliance team might request specific information from a client so that we can properly validate the account based on the specific nature of the dispute. This information is briefly described in the account notes. Any information provided to the consumer is attached to the account. Here again we would need to create result codes to facilitate the ability to transfer this information electronically to our clients. The smaller number of result codes the better, we would prefer to use the dispute classifications in Outline's Appendix D. These result codes would have to be programmed.

The date that SRA mails validation is included in the account notes. There would have to be additional programming to ensure that the date is transferred pursuant to the requirement.

Any time, place, or method of communication that the consumer stated is inconvenient.
Any time a consumer tells SRA not to call a particular number the number is updated as BAD in our collection software system. BAD is used for multiple situations including when we reach a wrong number or a non-working number. In order to differentiate why the number is BAD we would have to create different codes to pass back to our clients so they would know if the consumer told us not to call the number or if it was a wrong number.

If a consumer, or their employer, tells us not to contact them at their place of employment the collector marks the phone number as BAD and choses an account restriction, like "no calls at work." The account restrictions show up in a special window that each collector can view when accessing an account. The current account restrictions are: dispute, no calls to home, no calls to third party numbers, no calls to work, no letters, letters to attorney only. This information is also in the account notes, but we are not currently transferring this back to our clients. Additional programming would have to be done to transfer this information.

When a consumer says do not call me from 10:00AM to 1:00 PM SRA does not have a field for the time restriction. The collector would update this information in the account notes, but there is no specific field. The only way to keep the data in a way that could be transferred would be to have a result code "time restriction" with an associated note field. After selecting time restriction, the second step would be entering the specific restriction in the associated note, (i.e. no calls after 5:00 PM). The client would have to have a way to accept this information—to both identify the result code and read the note to determine the restriction. Our collection software system does not accommodate this type of data. It is too early to determine how long it will take to develop this because it has to be something that can flow back and forth to the client. It also has to be seamless to the collector—something easy to enter into the system as part of their collection call routine.

Whether the consumer is an active duty service member and whether the consumer has secured an interest rate reduction pursuant to the SCRA.
If a client requests, SRA uses an active duty military scrub (a vendor who identifies consumers that are in active duty service). If the scrub reveals that the consumer is on active duty then different things occur depending on our client requirements. One client requests that we close and return the accounts. There is a military status closure code. This information is easily exported.

The cost of the scrub can be expensive depending on how often the scrub is required to be conducted. It costs $0.03 per account. We receive on average 85,000 accounts each month. The yearly cost to scrub only upon placement would be $30,600.00. If regular scrubbing would be required it could cost over $360,000.00 per year. This is expensive in light of the fact that most of our clients do not charge interest.[46] Additionally, we close all accounts with AFPO addresses. Therefore, we only use the scrub upon request once at the time of placement.

2. Client Changes Required to Record and Transfer Certain Information

Right now our clients send over a list of phone numbers. The way we determine the validity of a number is by calling the number. Under the proposal, our clients cannot send over the numbers alone each number must be accompanied by an explanation. This explanation would have to be in a separate field. There would have to be an unlimited number of fields for each different number and an additional field for the explanation about the number. To keep it manageable, we would have to set a cap at around thirty phone numbers. The numbers would never be removed from the account—even wrong numbers or third party numbers—otherwise SRA would find these "bad" numbers in the initial skip-tracing process and would call them to determine if they were good or bad.

The hardest part will be reprogramming all of our imports. Depending on what the client choses, the programming might have to be completed every single time we receive a new placement file because the format will be different every single time based on whether there are two phone numbers provided or thirty numbers associated with an account. Some will take 15 minutes to program, some will take hours. It is something that would have to be done each day, unless the client chose to have a set number of fields, such as 30 new fields for numbers and 30 additional fields for the explanations of each number. The cost associated would be permanent and continuous until the customer develops one standard format that would be the same every time.

The average estimated yearly cost to gather and transfer data is $49,595.

The DBA Survey responses reflect that the costs associated with the data transfer section of the Outline will be ongoing and high. A majority (79 percent) think there will be an ongoing cost associated with transferring the required data back and forth between originators, debt buyers, and third party agencies as envisioned by the CFPB. Of the 21 percent of respondents who thought it would be a one-time cost, 82 percent felt it would be greater than the $3,800 estimated by the CFPB. A majority (61 percent) of respondents couldn't even begin to estimate the annual cost of compliance. Of the 39 percent that did attempt to estimate the cost of compliance the average of their responses was $46,459 per year.

[46] The SCRA interest rate reduction only comes into play for accounts the consumer entered into before joining the military.

In speaking to a large market participant debt collector, we learned more about the potential costs to meet client system requirements. This debt collector just integrated to a client system which holds additional information and data to be transferred back and forth. The one time cost to integrate was hundreds of thousands of dollars. The annual cost will be $125,000.00 per year because the company needed to hire one full additional staff member in the IT department and hand out additional duties to both office support and business associate staff.

3. Small Business Creditors Do Not Have Systems to Support the Transfer of Information and Data Proposed

SRA services accounts for many small business creditors such as local credit unions, small businesses that provide materials or services to consumers, medical clinics and dental offices. In order to collect and transfer back the data contemplated in Appendix E to the Outline; however, our clients' record keeping systems would need to support these additional fields and support the ability to transfer this data back and forth. Because many of our smaller business clients do not have sophisticated collection software systems, they do not currently have the capability to track these additional data points. Compliance with the Outline might be too cumbersome as they may not have the resources or personnel to undertake developing a system and too expensive as they may not have the financial ability to purchase a collection software system. Imagine your local doctor's office; they do not have a system set up to pass back and forth much of the information in Appendix E to the Outline, such as; when the debt was disputed; the time place and method of communication that the consumer stated is inconvenient; the name and address of any attorney who is representing a consumer in connection with the debt, etc. These are records that SRA keeps for them in our account notes, but the only way to access this information would be for them to manually review the account notes or to develop/purchase our collection software system—if they purchased a different collection software system, then there would be the additional costs associated with either having the two systems speak to each other or having SRA setup the desired process and system to transfer the required information in a manner the customer requires.

These concerns exist for many of our large clients, as well. For example, many of our automotive finance clients do not have sophisticated collection software systems. This is one reason why these businesses turn to SRA to provide collection services in the first place. One major concern is that in order to comply, these businesses, large and small, will decide to conduct all collection activity in-house or will reduce the number of collection agencies they use to simplify the time and work needed to transfer the information listed in Appendix E to the Outline back and forth. This is one major reason why it is very important to hear from the small business creditors about the impact of this rule, so that the flow-through impacts and costs can be assessed.

4. Any Consent Received from a Consumer Should be Obtained and Transferred Along with Any Inconvenient Time, Place or Communication Method

For the same reasons that the CFPB Outline requires any inconvenient time, place or communication method to be transferred to the account owner and onto subsequent debt collection companies, so should consent to call at convenient times on convenient phone numbers or consent to communicate by email and text message. It is less burdensome for consumers for many reasons if this information is transferred. Consumers will not have to continuously repeat their preferred methods of communication to new debt collectors. Consumers can avoid the delay and initial contact attempts when a new debt collector receives their account—the debt collector will be able to rely on the information the consumer provided to the previous agency and contact the consumer in the manner in which the consumer prefers to be contacted.

5. Retroactive application would result cause significant financial hardship.

If the transfer of data proposal is applied retroactively, SRA would most likely be forced out of business. We would have to manually go back through our open and closed accounts and reach through the account notes to pass the required information back to the account owners.

For example, to track the phone number and the status of each number we would have to go back through the account notes to determine why a collector identified a number as BAD. It could be BAD for several reasons, including but not limited to, wrong numbers, inconvenient numbers, location information call completed,[47] disconnected number, other state rule prohibits a call,[48] cease and desist request, consumer represented by an attorney. If the notes do not indicate the specific reason why the number has been marked as BAD, we would have to pull the call recording and listen to the call to determine the reason the collector marked the number as BAD. Then we would have to put that information into the newly developed field for this information (so the field with the new classification needs to have already been developed).

The retroactive application of the data transfer rule would cost SRA in excess of $29,988,000.00.

We estimate that this would take at least 10 minutes per account, some accounts could take much longer depending on the age of the account and the call recording system that we were using at the time the collector marked the number as bad. Understanding that 10

[47] When we contact a third-party for a location information call under 15 U.S.C. 1692(b). Once we speak to the third party we no longer call the number again.

[48] For example, Florida does not permit calls to a consumer's home.

minutes per account is a very low estimate of the actual amount of time it would take, the cost would be approximately $29,988,000.00 per year. This estimated cost is the salary of eight hundred additional non-revenue generating employees to manually review accounts and classify the information. The costs were calculated using the following figures:

- 85,000 accounts placed per month, 1,020,000 placed per year
- 10 minute minimum average to manually review 1 million accounts (20,833.33 days required to manually review)
- 8 hour work days, 25 working days per month
- 833 additional employees needed per month to review 1 million accounts (20,833 days divided by 25 working days a month)
- $15 per hour = $120 per day, $3,000 per month, $36,000 per year for one employee

RECOMMENDATIONS AND ALTERNATIVE PROPOSALS

- **Apply any proposed rule about data transfer from a date going forward as retroactive application would impose significant additional costs.**
- **Do not require the method of dispute/cease and desist request (whether orally or in writing) to be transferred—what matters is the fact of dispute or cease and desist not the form of how the consumer conveyed the request.**
- **Permit consent to call to transfer to future agencies just as inconvenient time, place or method must transfer.**
- **Allow two years to set up the necessary infrastructure to comply the transfer of information requirements**

C. Validation Notice

SRA very much appreciates the inclusion of a sample validation letter in the Outline (see Outline, Appendix F) especially as the letter attempts to convert the complicated validation notice text of the FDCPA, 15 U.S.C. 1692(g) into plain, simple language.

However, there are a few areas of concern based on the current rules that courts across the country have established.

1. Make Clear that Use of the Model Cannot Be the Basis for FDCPA Liability

The proposed rule needs to include language to make clear that the use of the Model is deemed to comply with the FDCPA and that the use of the Model and its content cannot serve as the basis for FDCPA liability. This will help debt collectors avoid claims that the model language in the letter violates the FDCPA.

For example, the sample validation letter references an interest-bearing account. The federal courts have created mandatory "safe harbor" language that must be included on any letter where the balance sought will change.[49] This language is:

> As of the date of this letter, the balance due on the account is <current>. Because interest fees and other charges added to the account may change the total owed from day to day, the amount due on the day you pay may be greater. If you pay the amount shown above, an adjustment may be necessary after we receive your payment, in which event we will inform you of any other amount due.[50]

This language is not on the sample validation letter. This interest language has been added to the revised validation samples (see Appendix Four). However, if it was intent not to include it then adding a safe harbor provision to the proposal will reduce the litigation cost we will face if the interest language is not added to the final version.

2. Date Certain

The CFPB sample validation letter contains a date certain by which a consumer must send a written dispute. The sample validation letter is dated December 12, 2015 and requires the dispute to trigger validation requirements to be dated by January 11, 2016. Since the FDCPA provides 30 days for the consumer to dispute in writing, the dates on the sample letter presume it will only take one day to mail. It will take more than one day for any mailed letter to arrive at its destination. Further, the FDCPA provides that the consumer has 30 days from receipt of the 1692g disclosures to dispute the debt.[51] Providing a date certain will result in FDCPA claims when a letter arrives later than one day after the date of mailing. Mail delays are frequent and unpredictable. We have provided alternate language in Appendix Four attached to this letter.

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[49] *Miller v. McCalla Raymer, Cobb, Nichols & Clark*, 214 F.3d 827, 876 (7th Cir. 2000); *Avila v. Riexinger & Associates*, LLC, 817 F.3d 72, 76 (2d Cir. 2016). We cannot use this language on non-interest bearing accounts for the same concerns relating to claims that it would be false and misleading. *See Kolganov v. Philips & Cohen Assocs.,* 2004 US Dist LEXIS 7069 (E.D.N.Y. 2004).

[50] Some agencies attempted to add the words "if applicable" to the disclosure: "If applicable, interest, fees, and other costs may be added to your account." This resulted in FDCPA law suits claiming the letter to be false and misleading, confusing or a misrepresentation, especially in cases where interest, fees, and other costs were not being added to the account. The Seventh Circuit found that the addition of the word "may" did not violate the FDCPA. *Taylor v. Cavalry Inv., L.L.C.,* 365 F.3d 572, 574 & 575 (7th Cir. 2004) (describing the claim as "downright frivolous"). Nevertheless, these claims continue even in the Seventh Circuit. *See, for example, Davis v. United Recovery Sys.,* 2014 WL 5530142 (S.D. Ind. 2014); *Toction v. Eagle Accounts Group, Inc.*, 2015 WL 127892 (S.D. Ind. 2015); *Crail v. I.C. System, Inc.*, 2016 U.S. Dist. LEXIS 118868 (S.D. Ind. Sept. 2, 2016).

[51] 15 U.S.C. § 1692g(a)(3); see *Ellis v. Solomon & Solomon, P.C.,* 591 F.3d 130, 134 (2d Cir. 2010)

3. Out of Statute Accounts

The Outline includes language for accounts that have passed the statute of limitations. The sample letter does not contain this out of statute disclosure. The out of statute language has been included in the revised samples found in Appendix Four.

4. State Disclosures

The sample validation letter is addressed to a Virginia resident. Virginia does not require any additional disclosures. The District of Columbia, New York City, and 18 states require disclosures on letters. California, New York and Massachusetts have particularly long disclosures.

Certain state disclosures are required to be on the front of the letter.[52] Wisconsin requires an additional notice on the front of the letter if their required language is going to appear on the back of the letter: "Notice: See Reverse Side for Important Information."[53]

New York City requires it's out of statute disclosure to be placed adjacent to the information about the amount owed.[54] This disclosure must also be in a different color.

Certain state disclosures are required to be in a specific font size.[55] Certain state disclosures are required to be capitalized.[56]

The revised samples in Appendix Four include an example addressed to a California consumer and an example formatted for a consumer residing in New York City.[57] The samples meet the individual state and city requirements as outlined above.

5. Different Debt Types

The current sample validation letter is for a charged-off credit card account. The information appearing on this letter is not applicable to all debt types. SRA would request sample validation letters for all different debt types, including, but not limited to, medical, telecommunication, utility, and automotive finance.

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52 Mass. Regs. Code. tit. 940 § 7.07(24); N.M. Admin. Code § 12.2.12.9.

53 Wis. Admin. Code § DFI-Bkg 74.13(1).

54 6 R.C.N.Y. 2-191(b)(2010).

55 *See* Conn. Gen. Stat. Ann. §§ 36a-805(a)(14); Mass. Regs. Code. tit. 940 § 7.07(24).

56 *See* Colo. Rev. Stat. Ann. § 12-14-105(3); Mass. Regs. Code tit. 209 § 18.14(e); 6 R.C.N.Y. 2-191(b); Wis. Admin. Code § DFI-Bkg 74.13(1).

57 Unfortunately, the second revised letter in Appendix Four is addressed to a consumer in California but is supposed to be addressed to a consumer living in New York City. The text on this letter is the text required for New York and New York City.

The sending the proposed validation sample on all accounts would increase our letter costs by $315,750.00 per year.

This increased cost is the total increased cost SRA would have to bear to comply with mailing the sample validation letter on all accounts, including the increased litigation costs if the proposal does not include language to make clear that the use of the Model is deemed to comply with the FDCPA and cannot serve as the basis for FDCPA liability.

<u>The additional cost to SRA to send letters on every account is $252,000.00 per year.</u>
This number represents the additional cost to SRA to send an initial demand on accounts that we do not currently send initial demand letters. The total cost per initial demand is $0.63 cents per legal-sized letter (including postage and tracking).[58] SRA does not send an initial demand letter on accounts that receive a law collection score. For the accounts with lower collection scores, we only send a letter after we speak with a consumer. So far in 2016, we have not sent letters on 265,950 accounts. We estimate that we do not send letters on around 400,000 accounts per year.

If the Outline requires us to send a letter to every account, then SRA increased costs would include the cost to letter the accounts that we do not normally letter at placement. Our currently monthly placement average is 85,000 accounts, for about 1 million accounts per year. The total letter cost if we would have to letter every account would be $630,000.00 per year.

<u>The annual cost to SRA to defend additional class action law suits over the sample validation notice is between $18,857.13 to $63,750.00 per year.</u>
The litigation risk is explained in detail in Section I.A. Hidden Costs. The concerns with the sample validation letter and missing language is explained above in Section II C Validation Notice.

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[58] At the three different letter vendors that SRA has used our letter templates must be formatted for the longest amount of text that could be on a letter. Therefore, to properly price the cost of the sample validation letter SRA had to add all language that could go on the sample. When a disclosure is not required there is a blank space on the letter. The text of the letter cannot change size when there is less text on the letter to fill in the blank space. It must always be formatted the same—for the longest amount of text. The sample validation letter with the longest amount of text would have to be printed on legal sized paper. Legal sized paper is more expensive to print than standard paper. Revised Appendix F shows two samples of states with the largest amount of text to demonstrate the required paper and font size to fit everything that could be required on the validation letter.

The retroactive application cost industry wide is estimated to be in excess $15 million.[59] The current information (such as date of default) would be impossible to provide on older accounts.[60]

The set up time required is 3 to 6 months.
If the information required to be put on the letter is easy to determine and acquire from our clients then 3 months for set-up, testing, and state approval.[61] If the information is difficult for our customer to determine and/or acquire one year or more.

RECOMMENDATIONS AND ALTERNATIVE PROPOSALS

- **Do not require letters be sent automatically upon placement**
- **Make Clear that Use of the Model Cannot Be the Basis for FDCPA Liability**
- **Create approved samples for other types of debts**

D. Statement of Rights

The additional costs to business, unnecessary environmental cost, and lack of benefit to the consumers are all reasons to modify the statement of rights proposal so that the notice is posted instead on our website and not mailed to consumers.

In October 2014, the CFPB issued a final rule amending the Regulation P under Gramm-Leach-Bliley Act removing the requirement to send an annual privacy notice to consumers under certain circumstances.[62] In so doing the CFPB recognized the unnecessary burden on the company and environment, finding that "eliminating the annual notice would reduce approximately 63,197 hours of burden for the roughly 43,000 entities subject to the proposed rule, amounting to an approximate $3 million reduction in burden annually."[63]

[59] Respondents to the DBA Survey indicated that the loss of value of their portfolios would total $3,483,015,000. Applying this across the industry, and factoring in the DBA Survey response rate of 20 percent, a conservative estimate would be that the loss of portfolio value would be over fifteen billion dollars.

[60] See e.g., 31 C.F.R. 1020.22(a)(3)(a)(ii) limiting record retention of customer to five years; 12 CFR 1026.25 providing a two year retention period for Truth in Lending disclosures.

[61] Five states require pre-approval of letters prior to use: Connecticut, Idaho, Maine, New Mexico, and Nevada. Many states charge for this review.

[62] 12 CFR 1016 (2014).

[63] CONSUMER RELATIONS CONSORTIUM, DEBT COLLECTION SBREFA OUTLINE ISSUE BRIEF: ENVIRONMENTAL IMPACT AND EFFECTIVENESS OF PROPOSED CONSUMER STATEMENT OF RIGHTS (August 23, 2016) (attached as Appendix Two).

The same concerns apply to the proposed statement of rights.

> On average, the additional required notices, across the collection industry, will amount to the consumption of 4.3 million pounds of paper and produce 205,000 bags of solid waste. Production and shipment of the statements will result in approximately 8,100 tons of greenhouse gas emissions entering the atmosphere annually, which is the equivalent to destroying 63 acres of forest or approximately 210,000 trees.[64]

SRA already has much of the information contained on our website, including a link to the CFPB's website and DBA International's consumer resources page.[65] Our website contains a dispute section where consumers can dispute on-line or request us to stop calling a particular phone number and contains a payment portal where consumers can log on and make a payment without having to speak to a representative. We could add a link to the CFPB's statement of rights page at little to no cost.

Sixty-six percent of DBA Survey respondents felt that the new notices will result in consumers being more confused about their rights, and 31 percent felt the new notices will not make a difference in a consumer's knowledge of her rights.

The estimated cost to send the statement of rights on all accounts is $160,619.81.

<u>The increased cost of the initial demand letter would be $50,000.00 per year.</u>
The cost to include the Statement of Rights with each initial demand letter is $0.05 per insert. If we are not required to send an initial demand on every account then the cost of the initial demand letter with the insert would be $30,000.00. Letter costs, normally 8 percent of our total expenses, would rise to approximately 14 percent of our expenses under the Outline (assuming all other expenses remain the same).

The DBA Survey results found the cumulative cost of adding an additional page was estimated to be $6,277,000. Factoring in the 20 percent response rate, a conservative estimate would be that the cost of adding an additional page would be over $25 million annually when spread across the industry.

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[64] Consumer Relations Consortium, Debt Collection SBREFA Outline Issue Brief: Environmental Impact and Effectiveness of Proposed Consumer Statement of Rights (August 23, 2016).

[65] DBA International, Receivables Management Certification Program Governance Document, Certification Standard 14, at 28 (August 2016), https://www.dbainternational.org/wp-content/uploads/Certification-Policy-version-4.0-FINAL-20160801.pdf (last visited September 8, 2016).

The increased cost of sending this letter on accounts we own that have already received a validation notice is $95,124.33.
As a debt buyer who collects on our own accounts, we would have to send this notice on the accounts that are not closed. We have 150,991 active accounts. It costs us .63 cents to mail each letter, including postage and tracking.

The increased cost of resending the insert every 180 days is $15,495.48 per year.
The cost to mail one letter is $0.63 cents per letter, including postage and tracking. Most accounts are recalled if we do not have any collections within the first 180 days of placement, so we would not sending a second notice of rights to the majority of accounts. From March 2015-March 2016 we had 532,357[66] accounts placed, but after 180 days only 34,271 accounts were still open.[67] These open accounts were all paying accounts, that is, accounts where the consumer was making regular monthly payments toward a settlement or outstanding balance. There is no utility in sending a statement of rights notice to people who have acknowledged their obligation and are making payments. Based on the current number of accounts in a payment plan status (12,298), the estimated cost of resending the notice to these accounts would be $7,747.74 every six months.

Letter costs, normally 8 percent of our total expenses, would rise to approximately 14 percent of our expenses under the Outline.

The average cost to staple together the initial demand and statement of rights is $5 million.
The safest way to ensure that the statement of rights is enclosed in each initial demand and therefore, to avoid a suit for failure to enclose would be to staple. The cost to staple is five dollars per letter—that is more than eight times the cost to mail each letter. This cost would effectively end our debt collection operations. If we stapled, letter costs would rise to 60 percent of our total expenses—stapling costs more than our payroll expenses. Instead, we would not staple and face the increased litigation risk of claims of failure to enclose the required statement of rights. This litigation risk would be $18,857.13 to $63,750.00 per year as explained in Section I.A. Hidden Costs above.

RECOMMENDATIONS AND ALTERNATE PROPOSALS

- **Remove the insert requirement.**
- **Require the statement of rights be posted on a debt collector's website, not mailed to consumers.**

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[66] This year we are on track to service 1 million accounts. Our average monthly placement in 2016 has been 85,000 accounts.

[67] After 30 days 47,118 accounts were closed, between 30 and 60 days 57,956 were closed.

- **Require a sentence on the sample validation letter notice referring to the notice of rights found on either the CFPB website or debt collector's website.**
- **Remove requirement to resend every 180 days.**
- **Make clear that the statement of rights does not have to be stapled.**
- **Add a safe harbor sentence to the statement of rights: "We are required by certain states to notify consumers of the following rights. The list below does not contain a complete list of the rights consumers have under state and federal law."**

E. Foreign Languages

SRA already can provide letters in Spanish. SRA applies the trigger-based method, which is consistent with California requirement, after we initiate collections in Spanish we can send the Spanish initial demand. We are in the process of programming all of our letters into Spanish based on a new client requirement.

The cost to translate all of our letters into Spanish using a California Court Certified Spanish Interpreter, to meet the Nevada requirement that translations be completed by a Court Certified Interpreter, cost $1,453.9.

It would be a cost burden to require that every initial demand have a Spanish version on the back of the letter. Assuming that it is possible it would cost SRA an additional .04 cents per letter. If we are required to letter every account it would cost $40,000 to have the Spanish translation on the back of the letter. The trigger based option would have no cost burden as we already have Spanish letter costs.

It can take a bit longer to set up Spanish letters due to the need to use a court certified Spanish interpreter, test programming, and send the letter for pre-approval in the required jurisdictions (Connecticut, Idaho, New Mexico, Nevada, and Maine).

RECOMMENDATION AND ALTERNATIVE PROPOSALS

- **Spanish letters should be sent when SRA initiatives communication with the consumer in Spanish.**
- **Only have requirements for Spanish speaking consumers.**

III. Other Consumer Understanding Initiatives

A. Time-Barred and Obsolete Debt

1. Written Notice

SRA already provides a written notice on all letters sent to accounts that have passed the statute of limitations in the state where the consumer lives. We provide two different out of statute notices, one for accounts that are still eligible to be reported to the credit reporting agencies and one for accounts that can no longer be reported. The language we use is:

> **The law limits how long you can be sued on a debt. Because of the age of your debt, the current creditor will not sue you for it. In some states making a partial payment may revive the current creditor's ability to sue to collect the remaining balance. If you do not pay the debt, the current creditor, may report it to the credit reporting agencies as unpaid for as long as the law permits this reporting.**

> **The law limits how long you can be sued on a debt. Because of the age of your debt, you will not be sued for it and it will not be reported to any credit reporting agency. In some states making a partial payment may revive the current creditor's ability to sue to collect the remaining balance.**

Most of this language is taken directly from the Asset Acceptance Consent Order. *U.S. v. Asset Acceptance,* Case No. 8:18-cv-00182-JDW-EAJ (US Dist. Fla.) (Consent Order Jan. 2012).

The notice also includes language concerning the possibility that a partial payment may revive the statute of limitations period due to a flurry of recent litigation over settlement letters in states where a partial payment revives the statute of limitations. *See McMahon v. LVNV Funding LLC*, 744 F.3d 1010 (7th Cir. 2014); *Buchanan v. Northland Group*, 776 F.3d 393 (6th Cir. 2015); *compare Daugherty v. Convergent Outsourcing*, 2015 U.S. Dist. LEXIS 78950 (S.D. Tx. 2015)(currently consolidated with other cases on appeal).[68]

Providing the notices above still results in FDCPA law suits. For example, we have received attorney demand letters stating the above language violates the FDCPA because it is false or misleading when provided to a consumer in a state where a partial payment alone does not revive the statute of limitations.

We are also at risk for a law suit if the notice is placed on an account that is in statute. This type of incorrect calculation claim is bound to arise because of both the complexity of the legal analysis and the lack of clarity in the state statutes and law. The calculation of the statute of limitations is as equally complicated as the determination of the date of default.

[68] In line with DBA Certification Standard 12, for our purchased accounts SRA follows the mantra once out of statute always out of statute. *See* DBA INTERNATIONAL, RECEIVABLES MANAGEMENT CERTIFICATION PROGRAM GOVERNANCE DOCUMENT, Certification Standard 14, at 28 (August 2016), https://www.dbainternational.org/wp-content/uploads/Certification-Policy-version-4.0-FINAL-20160801.pdf (last visited September 8, 2016).Even in a state where a partial payment would revive the statute of limitations, SRA does not use a partial payment to revive the statute of limitations.

First, each state has separate laws on various statutes of limitation periods and different statutes are applied to the different asset classes. In some states whether a particular asset class falls under the written or oral statute of limitations law is an open question of law. For example, a New Jersey court of appeals just held that the statute of limitations for a credit card debt would be governed by the four year sale of goods rate not the six year contract rate, previously thought to apply to credit card accounts. *Midland v. Thiel, et al.*, 2016 N.J. Super. LEXIS 118 (N.J. Super.Ct. App. Div. August 29, 2016). While the case is on appeal, which rate should I apply to New Jersey credit card accounts in our office? If I apply the four year period but the New Jersey Supreme Court disagrees with the lower court's logic and applies the six year period, then all the notices I sent out were incorrect.

Second, which state's statute of limitation applies to an account is also a question of law. Whether a state has a borrowing statute, whether the terms and conditions of the contract or obligation has a choice of law provision, whether the location where the charges, services, or loan occurred is different from where the consumer now resides are all considerations that factor into the analysis.

The cost of putting an out of statute disclosure on our letters is already incorporated into our compliance and legal budgets.

2. **Oral Notice-**

SRA does not currently provide a statute of limitation notification when speaking with consumers over the phone. We also close out of statute accounts in states that require an oral disclosure.[69]

The major reason we do not give the disclosure is because SRA does not want representatives to be giving what could be construed as legal advice or discussing the legal process when a consumer asks a question about the notification. Inevitably, any time the notice is given questions will be asked. SRA is not a debt collection law firm and our representatives are not attorneys.

Another reason, at least for the states that require an oral notification, the notification is very long. So, after getting through the initial identification questions (which are difficult to get consumers to discuss because our representatives must confirm a consumer's personal identification information) and the Mini-Miranda and call recording notice it is too hard to keep a consumer on the phone for another minute to read through the out of statute disclosure.

If the CFPB is going to include an oral disclosure in the proposed rule, the CFPB must provide the language to be used. If not, SRA will face increased litigation.

[69] Three states require an oral disclosure: Massachusetts, New Mexico, and New York. *See* Mass. Regs. Code. tit. 940 § 7.07(24); 23 N.M. Admin. Code § 12.2.12.9; NYCRR §§ 1.1-1.7. New York City also requires an oral disclosure. N.Y. Rules, Tit. 6, § 1-05.

3. Consumer Written Acknowledgement Before Accepting Payments on Out of Statute Accounts

Requiring a written acknowledgement before accepting payments on out of statute accounts is effectively a ban on the collection of out of statute accounts. Consumers do not return written acknowledgement forms. If debt collectors cannot accept payments without a written consent form and consumers do not return the form then debt collectors cannot collect on out of statute debt. A debt is still valid and collectable in the vast majority of states even after the statutory period for the filing of a law suit has expired.[70] *See Freyermuth v. Credit Bureau Servs., Inc.*, 248 F.3d 767, 771 (8th Cir. 2001); *Huertas v. Galaxy Asst. Mgmt.*, 641 F.3d 28, 33 (3rd. Cir. 2011). Many of the DBA Survey respondents (49 percent) indicated that they continue to seek voluntary payments after the statute of limitations has expired.

Out of statute debt owners can validate these accounts with account level documentation to satisfy the validation requirements to resume collections under the FDCPA. These legitimate accounts should not be rendered uncollectable just because the state statutory deadline to file a lawsuit has passed. To do so would result in unintended consequences that will harm consumers, including creditors filing lawsuits prior to the expiration of the statute of limitations that the creditor would normally not file.[71]

The proposed written acknowledgement requirement works as a de facto ban on the collection of out of statute accounts because the majority of consumers do not return consent forms. SRA requires written acknowledgement before running pre-authorized payments by debit card to comply with the Electronic Funds Transfer Act. For every 15 acknowledgements that we send out to consumers, we only receive 4 back from a consumer—a 27 percent response rate (or a 73 percent non-return rate). This is common across the industry, 95 percent of DBA Survey respondents believe consumers will not provide written acknowledgement of receiving a time-barred debt and obsolesce disclosure notice.

A written acknowledgement requirement would result in a loss of 73% or more of SRA's purchased out of statute debt and of 15% of customer's placements.

[70] Only a handful of states have banned the ability to collect on out of statute accounts, including Wisconsin, Mississippi, and North Carolina.

[71] *See* DBA INTERNATIONAL, WHITE PAPER, OUT-OF- STATUTE DEBT: WHAT IS A SMART, BALANCED, AND RESPONSIBLE APPROACH? at 2 (June 2015) (attached as Appendix Three).

A written acknowledgement requirement would result in a loss of 73 percent or MORE of our purchased out of stat debt.

In the context of out of statute accounts it is likely that the non-response rate will be even higher. But even if the non-response rate is same for out of statute accounts as it is for EFTA written acknowledgement forms, the results would be devastating to our existing out of statute accounts. Seventy three percent of our out of statute accounts would not be collectable.

A written acknowledgement requirement would result in a loss of 15 percent or MORE of our customer's placed out of statute accounts.

The written acknowledgement requirement would impact SRA's revenue from the accounts our customer's place with us. Of the accounts our customers place 21.8 percent are out of statute accounts. If we don't get a written acknowledgement form back (consistent with the failure to respond rate of the EFTA written acknowledgement) then 15 percent of the accounts placed last year (116,939 accounts) would be uncollectable.

We spoke to a third party debt collection company that is a large market participant. The company indicated that 55 percent of their open volume of third time placement accounts[72] is out of statute. The volume accounted for about 20 percent of the company's 2015 revenue. Therefore, under the Outline if their return rate is similarly low this revenue will decrease by 74 percent.

An out of statute written acknowledgement required will cost $211,603.43 in additional letter charges.

It will cost an additional $211,603.43 to send written acknowledgement forms.
Not only will we be losing revenue from the accounts rendered uncollectable by a written requirement, but we will have increased expenses at the same time. Last year 21.8% of accounts (160,191) placed by our customers were out of statute debt. The cost to mail one acknowledgement form would be $100,920.00 ($0.63 per letter), not including an additional $8,009.55 ($0.05 per insert) to insert a second copy for the consumer to keep.

The majority of SRA's purchased accounts are out of statute accounts (150,991). To mail each of these accounts two written acknowledgement forms it would cost $95,124.33 (0.63 per letter) for one form, plus an additional $7,549.55 ($0.05 per insert) to insert a copy for the consumer to keep.

[72] Accounts that had been placed with two other debt collection companies prior to being placed with this debt collector.

RECOMMENDATIONS AND ALTERNATIVE PROPOSALS

- **Provide scripted language for an oral out of statute/obsolescence disclosure.**
- **Provide model language for a written out of statute/obsolescence disclosure.**
- **Include a good faith provision that will prevent liability from errors in calculation of the statute of limitations.**
- **Do not require written authorization prior to ability of debt collector to accept a payment on an out of statute accounts.**
- **Do not apply this provision retroactively, instead apply the provision against any account opened or purchased after a future date (like January 1, 2017).**

SRA already provides a written out of statute and credit reporting notice. The Outline will require an oral notification as well. SRA records all of our phone conversations. We will have the copy of all letters with the notice and the tape of the phone conversation as proof that SRA complied with providing consumers the out of statute notice. The written acknowledgement requirement is redundant after the written and oral notification. In light of this proof that the consumer has been advised about the out of statute nature of the account and the low return rate on written acknowledgement forms, the requirement should be abandoned.

Additionally, it is very likely that if this written acknowledgment (acting as a de facto ban on out of statute collection) comes to pass that the result will be an increase in lawsuits before accounts pass the statute of limitation. Debt buyers will no longer be able to selectively sue based on a consumer's ability to pay, instead to protect their asset they will have to sue all accounts before the statute of limitations elapses.

IV. Collector Communication Practices

A. The Contact Caps Will Put SRA Out of Business

On average, SRA contacts the right party in only 4.65 percent of accounts (see Table 10).

Table 10 Right Party Contact Rate Per Year	
Year	**Right Party Contact Rate**
2015	4.65%
2014	3.40%
2013	3.58%
2012	2.78%
2011	3.64%

SRA's revenue comes from these accounts—the consumers we are able to reach.

The proposal establishes a 6 call per week cap prior to reaching the right party. After reaching the right party the Outline establishes a three call per week cap. Under these caps it will take longer for SRA to reach the right party and will have a dramatic impact on our revenue.

It will take SRA 165 days to reach the right party under the proposed 6 attempts per week cap; five times longer than the current 33 day average to reach the right party.

It takes SRA an average of 33 days from the date of placement to get the right party on the phone. With a 6 call per week cap it would take us at least five times as long to get the right party on the phone based on our calling averages.[73] Therefore, under the Outline, it would take SRA 165 days to get the right party on the phone. This impacts our ability to generate revenue. Prime placements are only placed with our office for four months (120 days). These higher paying accounts would be recalled before we even were able to reach the right party. These placements are our bread and butter. Without the ability to reach the right party on these accounts prior to recall, SRA would go out of business.

B. It Will Take Two to Three Years to Develop the Technology Necessary to Comply with the Contact Caps.

Another concern with the contact caps is programming our communication platform and letter system to ensure the caps are followed. SRA spoke at length with our communication platform vendor. Even though it is a very sophisticated system, with the ability to lock-out collectors from making calls when current call caps are met, the vendor said it would take two to three years to program the system to meet the Outline's requirements. The reason is two-fold. First they will have to internally develop whatever programming they think their systems would need to meet the requirements and then take the time to implement the requirements and teach all their clients how to use the newly developed restrictions. Once they have developed the programming and taught the clients, then they will have each client demanding individualized programming based on the way in which each client operates as every client uses the system a bit differently. The vendor will have develop, implement, and test modifications and specifications on an individual basis. This does not take into account the time that will be needed to work through any bugs.

The second issue is programming the restrictions across different type of communication methods. Since the communication restrictions proposed cover all communications—voice

[73] SRA policies and procedures allow for a maximum three calls to each phone number on an account in any given day, unless a state law is more restrictive. So, if an SRA representative calls in the morning and the phone number is busy or there is no answer, the representative can call back later. If we speak to a party, no more calls can be made to the number on the same day. If a message has been left on a voice mail message, no more calls can be made to the number on the same day. No matter how many phone numbers are associated with an account, no more than nine calls can be made attempting to reach the right party in a given day.

calls, texts, emails and letters all count against the 6 calls per week—the communication platform vendor needs to know when the letter vendor sends a letter. Right now if the Massachusetts call cap has been met the phone system will not permit any more calls to be dialed. It does not account for whether or not a letter has been mailed (because that is not a requirement) but mostly because the letter system and phone system are two different vendors that do not communicate with each other. And each of the communication platform vendor's client's use different letter vendors and different collection software companies. Since the restrictions need to work on both systems, so that my collector is systematically stopped from requesting a letter to be mailed if the six attempts have been reached, the systems must speak to each other—probably through the collection software system.

RECOMMENDATIONS AND ALTERNATIVE PROPOSALS

- **One call per day, per available number on an account.**
- **Inbound calls do not count against the cap.**
- **Consumer requested outbound calls (when a consumer asked to be called at a particular time or location) do not count against the cap.**
- **Calls to the consumer's attorney (or power of attorney or credit card consolidation company representative) do not count against the cap.**
- **Letters do not count against the cap**
- **Text message and email does count against the cap, unless the consumer requests the text message or email. If requested the text message or email would not count against the cap.**
- **No more than one message per day, per available number.**

V. Potential Impact on Stoneleigh Recovery Associates and Other Small Businesses

SRA's business model, along with the business model of most small businesses, is to set high compliance standards in line with the local, state and federal laws regulating our business. SRA continue to invest in and grow our compliance management system as demonstrated by the estimated yearly compliance expenditures in Table 11. This commitment to high standards is a part of our operating philosophy and the ethical principles upon which SRA was founded. Without this philosophy we would not be successful and it would be difficult to attract customers.

TABLE 11 SRA'S ESTIMATED COST OF COMPLIANCE		
Item	**One Time Fixed Costs**	**Additional Yearly Costs**
Compliance Department		
Employees		$196,400.00
Training and Education		$6,133.00
Conferences		$15,279.32
Membership & Materials		$9,480.00
Licensing & Bonds		$70,422.96
Compliance Systems		
First Communication Platform	$81,179.33	
Second Communication Platform	$102,000.00	$96,000.00
Voice Analytics	$135,000.00	
Scrubs (BK, Litigious)		$11,095
Cell Phone Scrubs		$1,188.00
Third Party Auditor		$30,109.28
IT Protections		
Firewall	$5,000.00	$2,000.00
Antivirus Software		$2,000.00
Content Filter	$15,000.00	$4,000.00
Data Backup		$15,000.00
Disaster Recovery Facility		$12,000.00
Fire Suppression System	$16,000.00	$1,000.00
Generator	$35,000.00	
Log Monitoring Service		$15,000.00
SQL Encryption at Rest		$33,000.00
Internal Penetration Testing		$10,000.00
External Penetration Testing		$5,500.00
Vulnerability Scanning		$8,600.00
Cyber Insurance		$8,500.00
Video Cameras	$4,000.00	
Building Alarm		$1,000.00
Electronic Key Locks	$5,000.00	
Legal Costs		
Average Yearly Settlements	$75,000.00	
Average Outside Counsel Costs	$45,000.00	
Registered Agent		$4,975.00
Errors & Omissions		$47,572.85
General Liability Insurance		$5,829.00

The total costs of compliance with the Outline as proposed will increase our operating expenses by $1.2 million dollars per year and simultaneously decrease our revenue by limiting our ability to contact consumers and voiding 73 percent of our purchased out of statute inventory (see Appendix One). This puts us at risk of being in violation of our loan covenant.

SRA has a covenant as part of our loan agreement. The bank regularly evaluates SRA's financial position; our profitability; and our liquidity to ensure that SRA's financial situation does not deteriorate during the term of the loan. If the bank determines our financial health is at risk, the bank can declare a loan covenant default and require a forbearance agreement. This not only impacts our current financial situation, if the bank were to demand immediate repayment on the loan, but impacts our future ability to access credit.

SRA provides debt collection services to many small businesses around the country. These businesses include medical offices, dental offices, service providers, private pre-schools, and credit unions. These businesses do not have the expertise or resources to collect on the outstanding accounts, but without repayment of the outstanding accounts these businesses are at risk of closing their doors. The value SRA provides to these similarly situated small business should not be underestimated. A recent ACA White Paper explained:

> In 2013, third-party collection companies returned $44.9 billion to creditors. This return to creditors represents an average savings of $389 per household, as businesses were not compelled to compensate for lost capital through increased prices.[74]

Our great fear is that SRA will not be able to sustain the additional costs and decreased revenue if the proposed Outline is not revised. Unfortunately, with extensive additional costs the small businesses that comprise the majority of businesses in our industry are failing. As industry participants close their doors or consolidate, we could be left with three to four large collection agencies.[75] These agencies do not service the small businesses who are in need of a debt collector to collect on a few accounts only. The

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[74] Josh Adams, PhD, ACA INTERNATIONAL WHITE PAPER, THE ROLE OF THIRD-PARTY DEBT COLLECTION IN THE U.S. ECONOMY at 2 (January 2016), http://www.acainternational.org/files.aspx?p=/images/38130/aca-wp-role3rdparty.pdf (last visited September 9, 2016).

[75] Wal-Mart is a prime example due to their supply chain management advancements, local and regional companies could no longer compete due to the reduced price point. Although optimization occurred, employees at the entry and mid-level positions suffered due to focus on "stock performance" which dehumanizes the relationship between employee and company.

reduced competition will also have an impact on consumers who often benefit from having local debt collectors and debt buyers.[76]

In evaluating our proposal, we request careful evaluation and consideration of our recommendations and alternate proposals. These suggestions and alternatives will not result in the dramatic cost implications outlined above, but will ensure the same principles the CFPB sought to achieve in regulating the debt collection industry.

[76] *See* DBA INTERNATIONAL, WHITE PAPER, THE VALUE OF RECEIVABLES ON THE SECONDARY MARKET at 10 (April 2016), http://www.dbainternational.org/wp-content/uploads/DBA_white_paper_value_of_resale.pdf (last visited September 9, 2016).

Appendix One

Projected Likely Impacts of Proposals Under Consideration				
Proposal	**Collection Agencies and Debt Buyers**		**CFPB Estimate**	**Difference**
	Yearly Cost Estimate	**Time Estimate**		
Transfer of information prior to collection and information review	**$540,000-$828,000** Not Included: • Small programming costs included in CFPB estimate • Determining what "default" date is for every account • Retroactive application =complete loss of purchased portfolios INDUSTRY WIDE • $15 billion loss across debt buyer industry if applied retroactively	2-3 years	• < $1,000 for programming • $1,200 to $2,800 for programming to establish warning sign system • Moderate ongoing costs to substantiate in cases where fundamental information missing and to review for an respond to warning signs • Moderate ongoing costs of ceasing collections until substantiation is completed	**$540,000-$828,000** INDUSTRY WIDE **$15 billion** (if applied retroactively)
Transfer of certain information at and after subsequent debt placement	**$49,595 per year** Included • One time programming costs • One time changes to way data and dispute documentation is maintained Not Included • Retroactive application = catastrophic cost **$29,988,000** (one portion of data identification and transfer) • Loss of business if creditor client's systems cannot comply	2-3 years	• 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	**$49,595 per year** Retroactive application costs for SRA in excess of **$29,988,999.**

Validation Notice	**$270,857.13-$315,750.00** Included: • Cost to letter every account • $18,857.13 to $63,750.00 in litigation risk Not Included: • Cost for state approval • Minimal set up costs included in CFPB estimate • Retroactive application =complete loss of purchased portfolios INDUSTRY WIDE • $15 billion loss across debt buyer industry if applied retroactively	3-6 months	• $1,000 to set up new validation notice format (including programming costs, and systems to track 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	**$270,857.13-$314,750.00** INDUSTRY WIDE **$15 billion** (if applied retroactively)
Statement of Rights	**$160,619.81** Including: • Sending to all accounts placed • Resending insert every 180 days • Sending inserts to all purchased accounts Not Including: • Stapling cost $5,000,000.00 • Cost of increased litigation $18,857.13 to$63,750.00 • Environmental costs	3 months	• $.05 -$.10 per account to add a page to the validation notice mailing • Additional mailing costs when consumer requests additional copies • Possible increased costs from consumers increased exercise of rights	**$130,619.81** Difference includes: • Cost to send to accounts not lettered • Cost to send to purchased accounts that already received initial demand • Cost to resend to accounts after 180 days
Foreign language – Spanish language backer option	**$40,000.00** • $0.04 per notice to letter all accounts	6 months	• $0.05 to $0.10 per notice	CFPB estimate is more expensive. **There will be no additional cost if we can use the trigger based option.**

Time-barred debt requirement: Consumer written acknowledgement before collecting debt that is time-barred and obsolete (but still valid and owed)	**$211,603.43** Including • $0.63 to mail letter • Mailing of two copies of acknowledgement form Not Including • If applied retroactively the cost = LOSS 73% purchased out of statute accounts	3-6 months	• Set up system to determine when acknowledgement is required • $0.05-$0.10 = cost of one extra page in each validation notice mailing • Potentially large reduction in collections of debt that is both time-barred and obsolete	**.53 cents per letter mailed** INDUSTRY WIDE LOSS of 73% of Out of Statute Account
Contact Caps	**TOTAL LOSS OF PRIME REVENUE** • Shift ability to reach right party from 33 to 165 days • Prime accounts recalled after 120 days	2-3 years	• Moderate one time and ongoing costs to review systems and monitor compliance • No impact on calling practices for smaller clients • Impact on practices for larger client that all more calls	**TOTAL LOSS OF PRIME REVENUE**

Appendix Two

Debt Collection SBREFA Outline Issue Brief: Environmental Impact and Effectiveness of Proposed Consumer Statement of Rights
August 23, 2016

The CFPB's Outline of Proposed Rules for Debt Collection recommends that collection agencies provide each individual in collections with an additional sheet of paper containing the statement of rights in all initial communications. Further, collection agencies will be required to provide a duplicate copy of the initial communication disclosure and statement of rights six months after the first communication is sent to the consumer. According to a 2014 study conducted by the Urban Institute, approximately 77 million people have debts in collections in the United States.[1] If the CFPB's proposal is implemented in the final rulemaking, it will result in approximately 154 million additional sheets of paper that collection agencies will be required to send consumers within the first 180 days of collection.

Requiring an additional 154 million sheets of paper to be sent to consumers annually will have a substantial impact on the environment. On average, the additional required notices will amount to the consumption of 4.3 million pounds of paper and produce 205,000 bags of solid waste. Production and shipment of the statements will result in approximately 8,100 tons of greenhouse gas emissions entering the atmosphere annually, which is the equivalent to destroying 63 acres of forest or approximately 210,000 trees.[2]

Further, there is little evidence that paper notices are effective in prompting consumers to exercise their rights. In 2001, the Gramm-Leach-Bliley Act required tens of thousands of financial institutions to send nearly a billion privacy notices to consumers informing them of their privacy rights and allowing the consumer to opt-out of the sharing of their financial information with third-parties.

Despite sending the notices, the industry experienced only a small response from consumers. Data from the trade publication *American Banker* shows the approximate percentage of customers who exercised the opt-out provision was only 5 percent.[3] According to testimony from Professor Fred Cate "this appears to be consistent with response rates to other privacy-related opt-out opportunities, such as the Fair Credit Reporting Act's opt-out provisions applicable to prescreening and sharing credit reports with affiliates; the Direct Marketing Association's mail, telephone, and e-mail opt-out lists; and other company-specific lists."[4] This emphasizes that paper notices may not be an effective method to engage a consumer in exercising their rights. As stated by former FTC Chairman Timothy Muris:

[1] http://www.urban.org/research/publication/delinquent-debt-america
[2] See calculator at http://payitgreen.org/business/green-calculators/footprint-calculator
[3] Lee, W.A. 2001. "Opt-Out Notices Give No One a Thrill." *American Banker* (July 2001)
[4] http://www.banking.senate.gov/02_09hrg/091902/cate.htm

> The [] experience with Gramm-Leach-Bliley privacy notices should give everyone pause about whether we know enough to implement effectively broad-based legislation based on notices. Acres of trees died to produce a blizzard of barely comprehensible privacy notices. Indeed, this is a statute that only lawyers could love— until they found out it applied to them.[5]

Recently, the CFPB amended the annual notice requirement of Regulation P of the Gramm-Leach-Bliley Act. The amendment provides an exception to the requirement that financial institutions send an annual notice describing their privacy policies and practices to their customers. Pursuant to the Paperwork Reduction Act, the CFPB analyzed the potential paperwork burden the amendment is likely to have on the financial industry. In its analysis the CFPB notes that eliminating the annual notice would reduce approximately 63,197 hours of burden for the roughly 43,000 entities subject to the proposed rule, amounting to an approximate $3 million reduction in burden annually.[6]

Similar analysis should be conducted with the CFPB's additional validation notice and statement of rights proposal. The increased requirement for collection agencies to send additional notices is likely to increase the paper work burden placed on regulated entities and create additional regulatory burden for the CFPB. With evidence showing that these notices will have little impact on whether a consumer exercises his or her validation rights, the increase in burden on both the industries and the environment is unreasonable and the CFPB should not implement the proposed additional paper notice requirement.

[5] Timothy J. Muris, Former Fed. Trad Comm'n Chairman, Remarks at the Privacy 2001 Conference: Protecting Consumers' Privacy: 2002 and Beyond (Oct. 4, 2001), *available at* http://www.ftc.gov/public-statements/2001/10/protecting-consumers-privacy-2002-and -beyond

[6] https://www.federalregister.gov/articles/2014/10/28/2014-25299/amendment-to-the-annual-privacy-notice-requirement-under-the-gramm-leach-bliley-act-regulation-p

Appendix Three

DBA International White Paper

OUT-OF-STATUTE DEBT:
WHAT IS A SMART, BALANCED, AND RESPONSIBLE APPROACH?

June 2015

DBA
INTERNATIONAL
SETTING THE STANDARD FOR RECEIVABLES MANAGEMENT

EXECUTIVE SUMMARY

Not since 1977, the year of the Fair Debt Collection Practices Act's enactment, has our nation had an important opportunity to rewrite the rules for debt buying and debt collection. Preserving the ability of companies to collect out-of-statute debt (OSD) with appropriate protections without a lawsuit (referred to as "non-adjudicative collection of OSD") will improve the consumer credit economy and enhance protections for consumers.

What is out-of-statute debt?
OSD is a debt which can no longer be collected through the courts because the time period (the statute of limitations) during which that type of legal claim can be litigated has expired. These time periods are set by state, not federal, law. For consumer debt, OSD time limits vary from three to 10 years, depending upon the state and the type of consumer debt (credit card, auto, medical, etc.). The national average statute of limitation period is 5.1 years.

The OSD Market Benefits Consumers
The OSD market provides an important opportunity for consumers to pay their debts, especially for consumers who, due to economic hardship, need more time to do so. Additionally, because OSD paper is by definition "older," OSD paper is customarily priced at a discount. This discount gives debt buyers an opportunity to settle the debt with the consumer for an amount that is very attractive to the consumer.

DBA International estimates that annually, tens of billions of dollars are collected on OSD. That substantial return helps to keep the price of credit affordable for consumers. It also promotes the availability of credit to lower-income consumers.

Proposals to ban OSD have unintended consequences impacting consumers
Some states have adopted OSD statute-of-limitation periods that are limited to three years or fewer. However, an outright ban on OSD collection would have the following unintended and adverse consequences for consumers.

- Prohibition of non-litigation-related collection on OSD increases the number of lawsuits brought against consumers resulting in a judgment rather than working out a payment plan.
- An outright OSD collection ban would increase the interest rate offered to most consumers, even those who pay their bills on time.
- Consumers who have defaulted and passed the applicable statutory period would no longer be able to repair their credit score by making voluntary payments on their obligations because the creditor's right to receive payments cease to exist.
- Low-income consumers would be disproportionally harmed as lenders would almost inevitably restrict the availability of consumer credit for those consumers who pose the highest default risk.
- Consumers would face potential tax increases. Debt buyers and lenders are required to issue 1099-c statements to consumers, arising from the cancellation of the OSD. Consumers will, in many circumstances, owe taxes on the difference between the amount of the now uncollectable debt and the minimum amount for which the 1099-c must be provided ($600.00).

Appropriate OSD Reforms
DBA International supports appropriate and reasonable CFPB reforms to implement both an effective OSD notice regime and a prohibition on re-tolling OSD.

- DBA supports a policy that once a consumer debt is OSD, it is always OSD.
- DBA supports providing consumers with effective notices about all material elements of their loan or debt.
- DBA also strongly advocates that a valid debt should continue to be collectible after the running of a statute of limitations, although not collectible through litigation.

What is not needed

DBA International is also clear about what is not needed. The law is explicit and comprehensive that out-of-statute debt cannot be sued upon. The CFPB, the FTC, and various State Attorneys General conclude that attempting to sue on OSD is a violation of existing law. DBA's self-regulatory certification standards prohibit suing on out-of-statute debt.

INTRODUCTION

Recently, out-of-statute debt (OSD) has received considerable attention. In particular, that attention has raised a key question – should the Consumer Financial Protection Bureau (CFPB) impose new restrictions on the collection of valid but out-of-statute debt?

This report provides an analysis of the debt buying and collection industry and looks, in particular, at three aspects of the out-of-statute debt issue: (1) the law related to OSD; (2) the adverse public policy consequences of a ban on the collection OSD; and (3) DBA's recommendations for OSD collection reform.[1]

OSD is a debt which can no longer be collected through the courts because the time period (the statute of limitations) during which that type of legal claim can be litigated has expired. These time periods are not set by federal law and, rather, are set by state law. For consumer debt, OSD time limits vary from three years to ten years, depending upon the state and the type of consumer debt (credit card, auto, medical, etc.). The national average statute of limitation period is 5.1 years.[2]

OSD is not a debt forgiveness benefit. OSD does not make a valid debt invalid. OSD does not mean that the debtor no longer owes the debt. And, OSD does not mean that the debt can no longer be collected – the debt simply can no longer be collected through litigation.

Indeed, the concept of out-of-statute debt was never intended to provide consumers who owe a legitimate debt with a lottery type windfall that turns a valid loan into a gift. OSD is an evidentiary rule, intended to promote the use, in litigation, of fresh documentation; the reliance in court upon recent memory; and the avoidance in court of older claims clogging the judicial system.[3]

The OSD market provides an important opportunity for consumers to pay their valid debts, especially for consumers who, due to economic hardship, need more time to repay. In order to improve the consumer credit economy and enhance protections for consumers, DBA believes that federal regulators should, as discussed below: (1) confirm the need for all OSD collections to contain clear and reasonable OSD notices; and (2) ban retolling. Adding these two best practices to the current prohibited practices will enhance the consumer safeguards without crippling the ability of the debt industry to assist consumers in paying their legitimate debts.

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[1] DBA International (DBA) is the nonprofit trade association that represents the interests of more than 575 companies that purchase or support the purchase of performing and nonperforming receivables on the secondary market. DBA continually sets the standard in the receivables management industry through its grassroots advocacy, conferences, committees, taskforces, publications, webinars, teleconferences, and breaking news alerts. DBA provides its members with extensive networking, educational, and business development opportunities in asset classes that span numerous industries. Founded in 1997, DBA International is headquartered in Sacramento, California.

DBA's Receivables Management Certification Program and its Code of Ethics set the "gold standard" within the receivables industry due to its rigorous uniform industry standards of best practice which focus on the protection of the consumer. DBA launched its Certification Program in March of 2013. The program certifies both debt buying companies and debt buying professionals. The goal of the program is to provide additional consumer protections through the adoption of uniform industry best practice standards and to maintain high levels of educational awareness.

Under the Certification Program, certified debt buyers must comply with all applicable law including the law as it relates to the collection of out-of-statute debt. This includes Standard 12 which prohibits the use of litigation to attempt to collect out-of-statute debt.

[2] DBA has reviewed statutes of limitation as they apply to the majority of the population in the 50 states.

[3] See, Tyler T. Ochoa and Andrew J. Wistrich, "The Puzzling Purpose of Statutes of Limitation", 28 Pacific Law J, 453 at pp. 500-509 (1997).

THE DEBT BUYING INDUSTRY

Who are Debt Buyers and What Do They Do?
Debt buyers are companies that purchase consumer debt from originating creditors or from other debt buyers. The types of consumer debt that are purchased can differ dramatically, based upon the contractual agreement—revolving credit card debt, auto debt, medical debt, etc.—not to mention other factors, such as whether the debt is performing or nonperforming; whether payment guarantees have been made by third parties; or whether collateral has been provided.

When a debt buying company purchases an account from a creditor, the debt buyer purchases essentially all rights, benefits and liabilities associated with the debt. Debt buyers are debt collectors under the Fair Debt Collection Practices Act 15 U.S.C. §§ 1692-1692p (FDCPA) when they purchase consumer debts that are in default.

Debt buyers employ thousands of people nationwide and operate in all 50 states. While most debt buying companies are privately held small businesses that operate on a state or regional basis, there are also a number of larger privately held companies, as well as publicly traded companies. The largest debt buying companies each employ over 1,000 people.[4]

Debt Buying and Debt Collecting Provide Important Benefits to the Economy and to Consumers
In July, 2014, ACA International, a national trade association representing third party collection agencies, released the E&Y Report.[5] The report found that the collections industry returned about $44.9 billion to creditors in 2013.[6] This cumulative economic return was equal to 1.9 percent of all US corporate profits before tax and

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[4] Debt collectors (unless they are also debt buyers) do not own the debts which they collect. Collectors are retained by originating creditors and/or debt buyers. Third party collectors are fully regulated under the FDCPA. According to a report by the Federal Reserve Bank of Philadelphia, debt collection agencies employ more than 140,000 people and recover more than $50 billion each year. Fedaseyeu and Hunt, "The Economics of Debt Collection: Enforcement of Consumer Credit Contracts" Federal Reserve Bank of Philadelphia (March, 2014) at pp. 9-10 ("Philadelphia Fed Report"). Other estimates are corroborative. An Ernst & Young Report done for the American Collectors Association International (ACA) found direct employment in the range of 148,000 and the total direct and indirect employment in the range of 302,000 jobs. See, *The Impact of Third-Party Debt Collection on the National and State Economies,* July 2014, at p. 2 ("E&Y Report").

[5] It is important to emphasize that the elimination of the sale and collection of OSD would make a great deal of the existing consumer debt, either held by first party creditors or sold on the secondary market, worthless. This would have a material adverse impact on the entire debt industry which employs hundreds of thousands of people and would eliminate the positive aspects that can come from the secondary market's increased flexibility to provide consumer's lower interest rates, smaller monthly payments over a longer period of time, and discounted settlements to resolve their legal obligations and repair their credit..

[6] DBA has worked hard but has not succeeded in developing a reliable methodology for determining an exact number for the out-of-statute debt collected each year. DBA is not alone. Neither the CFPB nor the FTC, nor other industry and academic sources, have been able to develop such a methodology.

The FTC Structure Report (pp. 14-15) estimates that, in 2008, debt buyers purchased $72.3 billion in consumer debt. Much more consumer debt was not purchased by debt buyers because it was held and worked by first party issuers and/or their collectors; or because it was already in the hands of debt buyers; or because it was health care or student loan debt, as opposed to debt buyers' preferred type of debt – credit card debt (about 75 percent of debt purchased by debt buyers is credit card debt (FTC Structure Report, p. 15).

Using the FTC purchase number, it would not take very many years before debt buyers owned and were collecting upon hundreds of billions of dollars in consumer debt. According to the E&Y Report, about $45 billion is collected on and returned to creditors (and, indirectly, to consumers and the economy) each year (E&Y Report at Executive Summary (i)). Given the amount of OSD in the pipeline and an average statute of limitations of five years, it would hardly be surprising if at least half of the debt collected each year was OSD. It may be much more and informal estimates by DBA members of their own experience place it at much more.

3.1 percent of before tax profits of all US domestic, nonfinancial corporations.

The OSD market is important and beneficial to the consumer credit economy and, indeed, beneficial to consumers. First, DBA estimates that tens of billions of dollars are collected on out-of-statute debt every year. That very substantial return helps to keep the price of credit affordable for consumers. This return also promotes the availability of credit to lower income consumers.[7]

Second, because OSD paper is, by definition, "older", OSD paper is customarily priced at a discount. This gives debt buyers an opportunity to settle the debt with the consumer for an amount that is very attractive to the consumer.

Third, it is no longer correct—if it ever was—that there are systemic consumer protection abuses associated with OSD.[8] The FTC Structure Report suggests that there are abuses, but that report is based upon data collected in 2009—six years ago. Today, information is available to debt buyers so that OSD can be validated and the amount owed can be broken down by principle, interest and fees and communicated to the consumer. Further, the name of the originating creditor is far less likely today to be missing or unavailable than was the case years ago.[9]

Three factors support the conclusion that debt buyers are obtaining more relevant information today than was previously the case. First, legal changes, including new state statutes (see, the California Fair Debt Buying Practices Act), require sellers to provide enhanced information. Second, CFPB regulatory oversight, including both enforcement and supervision, is changing the expectation regarding the documentation that must be obtained. Third, industry reform including, in particular, DBA's Certification Program (see Standard 18), is requiring debt buyers to seek and obtain more information and documentation.

Finally, it is a truism in the debt industry that the vast majority of consumers want to pay their valid debts. For example, a 2010 study and consumer survey of debtors who received an OSD notice found that "knowing that the debt was out-of-statute influenced the debt repayment plan chosen by the consumer, but knowing that the debt was out-of-statute did not otherwise impact consumer behavior."[10] In other words, consumers still wanted to pay their debt.

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[7] Zywicki, *The Role of Debt Collection in the Ecosystem of Consumer Credit,* 2015 (unpublished manuscript) ("Zywicki"). The FTC debt buyer report, based on 2009 data, does not provide definitive data about the prevalence of OSD. The FTC Report does suggest, however, that a significant percentage of debt purchased by debt buyers from originating creditors is OSD (perhaps 20 percent) and a higher percentage of debt purchased from other debt buyers is also OSD (perhaps 40 percent). Of course, as the debt is worked, a higher percentage of the debt subsequently becomes OSD. (See, F*ederal Trade Commission: The Structure and Practices of the Debt Buying Industry,* January 2013("FTC Structure Report"), at pp. 42-44).

[8] DBA member firms are debt buyers who are engaged in complying with standards at or above the requirements of the state and federal laws impacting their business. While there are bad actors in the debt industry, they are the minority and are consistently being weeded out by self-regulatory initiatives and by state and federal agencies. Those bad actors are not DBA members or, when bad actors are discovered, they do not remain DBA members for very long. DBA is also working with, and has been very supportive of, the FTC's very successful efforts to identify and prosecute rogue collectors and unlawful collection activity.

[9] The FTC's 2013 Structure Report states, "the Commission's analysis reveals that the debt buyers usually had all the information that the FDCPA currently requires debt buyers to provide consumers in validation notices at the beginning of the collections process…" at p. 36.

[10] T. Goldsmith and N. Martin, "Testing Materiality …What Information Matters When Collecting Time Barred Debt", Consumer Finance Law Quarterly Report 64(4), Winter 2011 at p. 373.

Of course, consumers may sometimes need additional time and forbearance because of economic hardship, medical problems or other personal problems. Out-of-statute debt gives consumers the time that they need. Simply stated, OSD allows consumers to pay off the debt that they acknowledge and very much wish to pay off. Consumers do not want to turn a valid debt into a gift. United States public policy should not want to do that, either. Rather, our public policy should respect the integrity of the bargain between consumers and their lenders.

Consumer Complaints about Debt Buying and Collecting

The total raw number of consumer complaints against debt buyers and debt collectors is frequently cited as evidence of a systemic problem within the debt collection industry. The raw number of complaints, however, is deceiving. A recent DBA analysis of Federal Trade Commission (FTC) data, for example, indicates that an actual majority of the complaints received by the FTC are against unknown or fictitious entities – often a sign of fraudulent criminal activity.[11]

Furthermore, the following statistics demonstrate that very few consumers ever experience a default status on their credit card or loan (which usually occurs when an account is 180 days past due) and rarely have any experience with the collections process.

- Approximately 95 percent of all consumer debt is paid off on time.
- According to the Fair Isaac Corporation, less than half of all consumers have been reported as 30 or more days late on a payment.
- Only three out of ten consumers have ever been 60 or more days late on a payment.
- Only two out of ten consumers have ever been 90 or more days late on a payment.[12]

As these statistics suggest, only a small percentage of consumer accounts ever wind up in collection. There is too much complexity, however, for DBA to provide a specific number or percentage for the amount of debt in collections. What kind of consumer debt? How is the debt owned? How is it being collected? The CFPB estimates that, in 2013, about 30 million Americans had debts in collection. It is not clear what the CFPB means by "debts in collection". The FTC has recently stated publicly that about 15 percent of the public has debt in collections with an average balance of about $5,000.00.[13]

It is important to recognize, however, that the collections process is not only a recognized and regulated activity, but, when conducted properly, represents a fair and reasonable process for consumers. As an example, of all the contacts that debt buyers and debt collectors have with consumers each year, only 0.002 percent of those consumers complain to the FTC.[14]

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[11] DBA member firms are complying with standards at or above the requirements of state and federal law impacting their business. While there are bad actors in the debt industry, they are the minority and are consistently being weeded out by self-regulatory initiatives and by state and federal agencies.

[12] DBA International, "The Debt Buying Industry – A White Paper", January 8, 2015, p. 4, relying on data provided in the FTC Annual Report 2010: Fair Debt Collection Practices Act, April 2010. Inasmuch as the vast majority of consumer debt purchased by debt buyers is credit card debt, we have included here only statistics for credit card debt. The statistics for health care debt, student debt, and even auto debt are different but less relevant for debt buying.

[13] See, transcript of remarks by Jessica Rich, Director of the FTC's Bureau of Consumer Protection, at an FTC, New York State Department of Financial Services, and CFPB debt collection dialogue in Buffalo, NY on June 15, 2015.

[14] Federal Trade Commission, Annual Report 2010: Fair Debt Collection Practices Act.

WHAT IS THE LAW GOVERNING OUT OF STATUTE DEBT?

A statute of limitations is an affirmative defense to a judicial claim for enforcement of a debt. It is sometimes said that it is designed as a shield for litigants, not a sword.[15] Thus, a statute of limitations only becomes relevant in the event that litigation has been commenced by a creditor against a consumer. Like any affirmative defense, if the statute of limitations is not raised by the consumer, it is waived.[16]

Judicial Collections and Determining When a Debt is OSD

It is important to put litigation into context as a collection tool for consumer debt. Debt buyers almost always purchase consumer debt for a discounted amount.[17] The FTC, for example, estimates that, on average, debt buyers pay four cents on the dollar for credit card debt.[18] As should be expected, the amount of the discount varies depending upon the type of consumer debt; its age; the extent to which collection efforts have already been made; and, sometimes, other factors such as the consumer's location. Because the debt buyer's investment is discounted, debt buyers have an ability, and an incentive, to settle with the consumer for an amount that represents only a small percentage of what the consumer owes. This is, by far, the debt buyer's preferred method to collect and settle on consumer debt.

By contrast, litigation is an expensive and time consuming way to collect a consumer debt. Most consumer credit card debts are for relatively small amounts. Lawyers are expensive, and, if a debt buyer is not careful, legal fees and court costs may frequently exceed the amount which the consumer owes. As a result, it is estimated that perhaps less than five percent of consumer debt is collected through litigation.[19]

In a recent poll of all DBA debt buyer members, not a single member responded that they knowingly or intentionally file lawsuits after the expiration of the applicable statutes of limitation. Although, as noted, the statute of limitations is an affirmative defense that, in almost all states, must be raised by the defendant or it is waived, it is improper to knowingly file OSD suits and wait to see if the defense is pled. DBA members have adopted rigorous policies and procedures to assure that a suit is filed only before the expiration of the applicable statutes of limitation.

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[15] See, Norgart v. Upjohn Co., 21 Cal. 4th 583, 603 (1995).

[16] See, Minton v. Cavaney, 56 Cal. 2nd 576, 581 (1961).

[17] FTC, Reporting a Broken System: Protecting Consumers in Debt Collection Litigation and Arbitration.

[18] CFPB Annual Report 2014 at p. 7 ("CFPB Report").

[19] This is very much an estimate and needs further qualification. DBA surveyed its members regarding judicial collections. One of the largest debt buyers reported that their judgment balances represent 7.75 percent of their total collected balances. Further, this buyer reported that its judgment balances represent 3.35 percent of its total accounts. Finally, they reported that as to "fresher paper" (acquired in the last three years), court judgments represented 18.25 percent of total collected balances and 12.6 percent of total accounts.

With this debt buyer's experience in mind, it may well be that a five percent number is right only when comparing legal judgments with the number of accounts owned. If the revenue generated by legal collections is compared with total revenue from all collections, the correct percentage of legal collections may be higher. One of the large, publicly traded debt buyers, Encore, reports "legal collections" in the range of 49 percent. They define "legal collections", however, as any collections by a law firm. This includes collections arising from a validation letter; from calling; and from correspondence and other communications. Only a portion of "legal collections" are attributable to an actual judgment.

Regardless of the exact percentages, the CFPB has expressed the view that the percentage of judicial collections has grown (CFPB ANPR Statement, 78 Fed. Reg. 67848, Nov. 12, 2013).

When litigation is used, attorneys representing debt buyers know that a debt which is older than the applicable statute of limitations does not constitute a valid claim. Attorneys are officers of the court, and by bringing an invalid claim, the attorney is violating the canons of ethics.[20] Attorneys simply are not going to risk their license, livelihood, credibility and reputation by intentionally suing on OSD debts. Combine this with the DBA's prohibition on knowingly suing on an out-of-statue debt, and the reality is that an extraordinarily small percentage of out-of-statute debts find their way to court.[21]

DBA and the debt buying industry recognize that state law controls whether a debt is OSD. A debt owner's attorney must know that the debt is, in fact, out-of-statute under the applicable state law. This can be a complex determination. In many instances, multiple causes of action are pled with multiple statutes of limitation. Moreover, the majority of suits involving debt buyers or debt collectors that are sued on OSD concern intricate legal issues upon which there is relatively little guidance from the courts.

For instance, the application of choice of law provisions, both contractually and statutorily, to determine which statute of limitation applies, has been heavily litigated for years. Choice of law conflicts could implicate the statutes of limitation in the states where the consumer resides, where the transaction occurred, where payment is due, where the consumer made the decision not to pay, or where the creditor is based, assuming yet another jurisdiction is not designated in the contract. Moreover, the standards for starting the out-of-statute clock vary from state to state; the circumstances under which a statute of limitations clock may be suspended (tolled) vary from state to state; and the actual amount of time allowed under a state statute varies among states.[22]

OSD Legal Protections

Recently, both the FTC and the CFPB, along with legislatures in several states, have acted to enhance consumer protections associated with attempts to collect on out-of-statute debt. In 2012, for example, the FTC's Consent Decree in Asset Acceptance asserted that it can be an unfair and deceptive practice for a party collecting an out-of-statute debt not to inform the consumer, in writing, that the debt is, in fact, out-of-statute and can no longer be collected through litigation.[23]

In August of 2013, the 7th Circuit, in Delgado v. Capital Management Services, endorsed a FTC and CFPB position articulated in their amicus brief, holding that a time limited settlement offer to a consumer debtor on an out-of-statute debt could imply that once the time limit is exceeded, the debt owner could sue, even if the letter did not include a threat of litigation.[24] (But, the 7th Circuit did endorse the ability of a debt collector to seek repayment of time-barred debt but, of course, not through litigation.)

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[20] American Bar Association, Canons of Professional Ethics, Canon 22.

[21] DBA's Debt Buyer Certification Program states, "A Certified Company shall not knowingly bring a lawsuit on a debt that is beyond the applicable statute of limitations; however, a Certified Company may continue to attempt collection beyond the expiration of the statute provided there are no laws and regulations to the contrary."

[22] Critics also claim that suits have been filed after the applicable statute of limitations has run based on an oral contract, even though the suit was, or should have been, in fact, based upon a written contract/credit card agreement. The issue of whether credit card debt is subject to a written or oral contract statute of limitations (to the extent a state has such separate statutes of limitation) has been decided in some, but not all, jurisdictions.

[23] United States v. Asset Acceptance, LLC, No. 8:1d-cv-00182-T-27EAJ (M.D. Fla., Jan. 31, 2012) ("Asset Acceptance").

[24] Delgado v. Capital Management Services, LP, Number 13-20130 (7th Cir. August 4, 2013).

More recently, in Buchanan v. Northland Group Inc., No. 13-2523 (6th Cir. March 5, 2014), the 6th Circuit ultimately agreed with Delgado that a collection letter that does not explicitly notify the consumer that the debt is out-of-statute could be misleading. The opinions in Delgado and Buchanan by the 6th and 7th Circuits, however, are at odds with holdings in the 3rd and 8th Circuits. Nevertheless, there appears to be an emerging trend that debt collectors should affirmatively disclose to consumer debtors that a debt is out-of-statute.[25]

Another complexity associated with collecting out-of-statute debt arises when a consumer takes an action, such as making a partial payment, that has the effect of "tolling" the running of the statute of limitations so that a new statute of limitations clock begins. A consumer's reaffirmation of a debt or a consumer using an account to make a new charge may also retoll the statute.

DBA supports providing consumers with effective notices about all material elements of their loan or debt.[26] DBA also opposes the retolling of OSD. DBA, however, very much believes that a valid debt should continue to be collectible after the running of a statute of limitations but, of course, not collectible through litigation.

THE ADVERSE CONSEQUENCES OF BANNING THE COLLECTION OF OSD

Senator Sherrod Brown (D-OH), the Ranking Member of the Senate Banking Committee, has called for a ban on the collection of OSD.[27] The CFPB, to its credit, has never suggested, through its ANPR or otherwise, that they would or should consider such a ban. In fact, in the CFPB's ANPR, they posed eleven questions about out-of-statute debt. Not one of those questions addressed or related to an outright ban.

There can be little doubt that an outright ban on the collection of OSD would have unintended but, nevertheless profoundly adverse, consequences for consumers. As noted earlier, some states have adopted statute of limitation periods that are limited to three years or less. Thus, any prohibition on the non-adjudicated collection of OSD would almost certainly create a rush to the courthouse and substantially increase the number of lawsuits brought against consumers.

Professor Todd J. Zywicki, an expert on consumer debt, has emphasized that the CFPB should, under no circumstances, ban the collection of OSD. Zywicki points out that a change in law to forbid the collection of out-of-statute debt would be, "likely to have one major unintended consequence that would be heavily harmful to consumers: it would be likely to increase the number of lawsuits against debtors to enforce debts. Although there appear to be no empirical studies on whether the propensity to file lawsuits increases immediately before the expiration of the statute of limitations, common sense suggests that is the case. Thus...one unintended consequence would likely be more lawsuits against consumers that could otherwise be avoided."[28] Certainly, debt buyers' current flexibility to work through a consumer's difficult financial circumstances would be eviscerated.

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[25] See, Donald Maurice, "Appeals Decision Supports CFPB-FTC View on Out-of-Statute Debt Collection" at Inside Arm, March 17, 2014 and, see, "West Virginia to Require New Disclosure for Out-of-Statute Debt", ACA International News, June 6, 2014.

[26] DBA does not, however, support a requirement that debt buyers provide a "warning notice" as a debt approaches OSD status.

[27] Letter to Richard Cordray from Sherrod Brown dated June 4, 2013. The National Consumer Law Center (NCLC) has also called upon the CFPB to adopt an outright ban on the collection of out-of-statute debt. See, NCLC, "Zombie Debt: What the CFPB Should Do About Attempts to Collect Old Debt", January 2015 at p. 5 ("NCLC Paper").

[28] Zywicki at p. 74.

A further unintended, but very likely adverse, consequence for consumers arising from an outright ban on the collection of OSD would be an increase in the price (the interest rate) of credit offered to most consumers, even those who pay their bills on time. Collection costs would go up in order to manage distressed debt in a shortened time period. In addition, lenders would recoup less money from charged-off and defaulted debt through negotiated settlements or the sale of debt. This would recalculate the cost benefit equation arising from consumer lending and, inevitably, raise costs and reduce availability. This increased price would help to compensate credit card issuers and other lenders for the cost that would occur once a debt became OSD if the debt could no longer be collected in any manner.

A third unintended adverse consequence for consumers who have defaulted on their credit obligations and who have passed the applicable statutory period is that they would no longer be able to repair their credit score by making voluntary payments on their obligations because the creditor's right to receive payments from the consumer would be "extinguished". The legal "right" to collect voluntary payments beyond the statute of limitations is recognized by the Federal Trade Commission and by over 45 states. The elimination of this legal right would mean that consumers would be left with no way to repair their credit history in the time between the expiration of the statute of limitations and the seven year reporting period on credit reports. The negative mark on a consumer's credit score would remain with no means for the consumer to address the problem. Imagine the hardship for consumers who got their life back together following a financial difficulty but who find out that they would have to wait years for the next realistic opportunity to obtain credit.[29]

A fourth unintended and adverse consequence for consumers, particularly low income consumers, would be that lenders would almost inevitably restrict the availability of consumer credit for those consumers who pose the highest risk of default. Professor Zywicki characterizes this as "regressive distributional effects"—"low-risk and higher-income borrowers who can provide collateral may avoid many of the costs of a less-efficient debt collection regime, whereas higher-risk and low-income borrowers will not".[30] The Philadelphia Fed Report reaches the same conclusion.[31]

Finally, another unintended and adverse consumer consequence would be the potential increase in taxes for consumers who have an out-of-statute debt that can no longer be collected. Debt buyers and lenders will have to issue 1099-c statements to consumers, arising from the cancellation of the OSD. Consumers will, in many circumstances, owe taxes on the difference between the amount of the now uncollectable debt and the minimum amount for which the 1099-c must be provided ($600.00). Thus, a consumer who owed an OSD amount of $5,000.00 would have taxable income, potentially, of $4,400.00 but would not have received the commensurate revenue with which to pay any resulting tax. This would particularly harm lower income consumers.[32]

---

[29] Most large debt buyers report a payoff or a settlement of consumer debt to the national credit bureaus. Most small debt buyers do not. Those debt buyers that do report do so presumably on the theory that reporting encourages repayment and is, therefore, worthwhile, notwithstanding the reporting burdens and risks.

Although common sense suggests that paying off or settling an outstanding collection account helps to improve credit reports and scores, there is little research or granularity associated with this proposition. The association between resolving a collection account and improving a credit score is further blurred by the fact that most consumers have dozens of credit scores. These scores track differing criteria. Thus, the best that can be said is that satisfying an outstanding collection item is usually good for a consumer's credit report and credit score.

[30] Zywicki at p. 75.

[31] See, Philadelphia Fed Report at p. 27.

[32] It is also important to note that elimination of right and remedy to collect OSD undercuts the provisions of the United States Bankruptcy Code which are designed to provide the type of relief needed by consumers who find themselves in extreme financial circumstances.

Therefore, it is not unusual under current practice for consumers to receive 1099-cs from debt buyers. If, however, OSD was deemed uncollectible, literally millions of consumers would abruptly receive 1099-cs with, in most cases, resulting tax liability.

Furthermore, consumers who owe money to the Internal Revenue Service (IRS) frequently find that the IRS is a harsh creditor. The IRS charges very high interest rates. The IRS does not have to comply with the FDCPA; there is a long statute of limitations on taxes owed to the IRS; and the IRS has the ability to place tax liens on property. Plus, unpaid taxes are not dischargeable in bankruptcy.

APPROPRIATE OSD REFORMS

First, we should be clear about what is not needed. The law is explicit and comprehensive that out-of-statute debt cannot be sued upon. Both the CFPB and the FTC (not to mention various State Attorneys General) conclude that attempting to sue on OSD is a violation of the FDCPA and of UDAAP. The CFPB and the FTC have demonstrated a willingness and a capacity to vigorously enforce this prohibition.[33] DBA's self-regulatory certification standards prohibit suing on out-of-statute debt. Custom and usage throughout the debt industry establishes that suing on OSD has all but disappeared.

Providing a notice to consumers when OSD is being collected is also an increasingly established practice. Indeed, both the CFPB and the FTC have taken the position that, in many cases, it may be a violation of the FDCPA and an unfair and deceptive practice to fail to provide consumers with an appropriate notice.

Some consumer groups have argued that, regardless of how clear or conspicuous a notice may be, it is impossible to craft a notice regarding a debt's OSD status that can provide consumers with effective information.[34] Putting aside the paternalistic aspects of this argument, there is simply no empirical support for this argument. Consumers are accustomed to receiving notices with respect to all manner of purchases and services, as well as legal communications. There is no reason, whatsoever, to believe that a clear, conspicuous and brief notice would not work effectively to put consumers on notice that a debt is OSD.[35]

Another OSD reform that is rapidly becoming established prohibits retolling a consumer debt based upon a consumer's partial payment of an existing OSD debt. Here, too, a clear, conspicuous and brief notice should work effectively.

DBA supports appropriate and reasonable CFPB reforms to implement both an effective OSD notice regime and a prohibition on retolling OSD. DBA supports a policy that once a consumer debt is OSD, it is always OSD.

Finally, some groups have argued that debt buyers and collectors should be required to disclose to a consumer that their payment of an out-of-statute debt will not improve their credit score. The great majority of debt

[33] See, CFPB's Amicus Brief, March 2014, in Buchanan v. Northland and August 14, 2013 in Delgado v. Capital Management Services. See, the FTC's August 7, 2014 complaint against CreditSmart, LLC.

[34] NCLC Paper at pp. 9-10.

[35] The FTC's Consent Decree in Asset Acceptance prescribes just such a notice: "The law limits how long you can be sued on a debt. Because of the age of your debt, we will not sue you for it. If you do not pay the debt, we may continue to report it to the credit reporting agencies as unpaid." Consent Decree at p.13. Or, as DBA discusses in DBA's ANPR response, the CFPB could prescribe an OSD notice and post the notice online.

buyers do not, in fact, report to the national credit reporting systems. For those that do, a disclosure that the payment of a debt that is OSD will not improve their credit score may well be, in and of itself, misleading and deceptive. As discussed, the effect that payment on out-of-statute debt may have on a credit score is complex and variable, and depends upon the type of score that is at issue; on the consumer's credit profile; and on numerous other factors. Requiring a disclosure regarding the credit reporting effect of paying off out-of-statute debt may well do more harm than good.

CONCLUSION

Not since 1977 (the year in which the Fair Debt Collection Practices Act was enacted) has our nation had such an important opportunity to rewrite the rules for debt buying and debt collection. Preserving the non-adjudicative collection of OSD, with appropriate protections (reasonable notices and a ban on revitalization and retolling), will improve the consumer credit economy and enhance protections for consumers.

- This approach will assist consumers in paying off their debts and doing so for an amount that is afford able and attractive.
- This approach will help creditors recoup losses on charged-off debt, thereby promoting the availability of consumer credit.
- This approach will encourage the pricing of consumer credit at attractive rates that will help to support the consumer credit economy.
- This approach will encourage the availability of credit to all segments of consumers, including those who are most in need of credit.[36]

Simply stated, the approach discussed in this paper, for all of the reasons discussed in this paper, would be a smart, balanced and responsible way for the CFPB to rewrite the rules for the collection of out-of-statute debt.

ABOUT DBA INTERNATIONAL

DBA International (DBA) is the nonprofit trade association that represents the interests of more than 575 companies that purchase performing and nonperforming receivables on the secondary market. DBA's Receivables Management Certification Program and its Code of Ethics set the "gold standard" within the receivables industry due to its rigorous uniform industry standards of best practice which focus on the protection of the consumer. DBA provides its members with extensive networking, educational, and business development opportunities in asset classes that span numerous industries. DBA continually sets the standard in the receivables management industry through its highly effective grass-roots advocacy, conferences, committees, taskforces, publications, webinars, teleconferences, and breaking news alerts. Founded in 1997, DBA International is headquartered in Sacramento, California.

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[36] Of course, with the exception of a few states, non-adjudicative collection of OSD is currently the norm. However, as discussed earlier, adjudicative collections before a debt has reached OSD status may be growing. Perhaps this growth, if any, is a result of concerns that non-adjudicative collection of OSD could be banned or sharply limited. Establishing that non-adjudicative collection of OSD will not be restricted may not only avoid a rush to court and preserve current market practices, but may encourage greater reliance on non-adjudicative collections with all of the resulting consumer benefits.

Appendix Four

East West Group
P.O. Box 121212 Pasadena, CA
91111-2222

December 12, 2015

Ms. Mary Smith
2323 Park Street, Apartment 342
San Diego, CA 92108

East West Group
(800) 123-4567
8am to 8pm EST, Monday to Saturday
www.nsgrp.com

Account Summary

Our information shows:
You had a Main Street Store credit card from Bank of Rockville with account number XXXX-XXXX-7891. 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**

Reference: 564-345

East West 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.

How can you dispute the debt?

Write to us in 30 days 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 30 days, 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 in the next 30 days 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, go to our website at www.nsgrp.com, 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.

As of the date of this letter, the balance due on the account is <current>. Because interest charges added to the account may change the total owed from day to day, the amount due on the day you pay may be greater. If you pay the amount shown above, an adjustment may be necessary after we receive your payment, in which event we will inform you of any other amount due.

The law limits how long you can be sued on a debt. Because of the age of your debt, the current creditor will not sue you for it. If you do not pay the debt, the current creditor, may report it to the credit reporting agencies as unpaid for as long as the law permits this reporting.

As required by law: You are hereby notified that a negative credit report reflecting on your credit record may be submitted to a credit reporting agency if you fail to fulfill the terms of your credit obligations. The state Rosenthal Fair Debt Collection practices Act and the federal Fair Debt Collection Practices Act require that, except under unusual circumstances, collectors may not contact you before 8 a.m. or after 9 p.m. They may not harass you by using threats of violence or arrest or by using obscene language. Collectors may not use false or misleading statements or call you at work if they know or have reason to know that you may not receive personal calls at work. For the most part, collectors may not tell another person other than your attorney or spouse, about your debt. Collectors may contact another person to confirm your location or enforce a judgment. For more information about debt collection activities, you may contact the Federal Trade Commission at 1-877-FTC-HELP or www.ftc.gov.

You may request records showing the following: (1) that the current creditor, listed at the top of the letter, has the right to seek collection of the debt; (2) the debt balance, including an explanation of any interest charges and additional fees; (3) the date of default or the date of the last payment; (4) the name of the charge-off creditor and the account number associated with the debt; (5) the name and last known address of the debtor as it appeared in the charge-off creditor's or debt buyer's records prior to the sale of the debt, as appropriate; and (6) the names of all persons or entities that have purchased the debt. You may also request from us a copy of the contract or other document evidencing your agreement to the debt. A request for these records may be addressed to: East West Group P.O. Box 121212 Pasadena, CA 9111-2222.

Reference: 564-345

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 *East West Group*. Include the reference number 564-345.

East West Group
P.O. Box 121212 Pasadena, CA
91111-2222

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December 12, 2015

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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**

Total amount of debt due as of charge-off: $1,249 59.
Total amount of interest accrued since charge-off: $50.00.
Total amount of non-interest charges or fees accrued since charge-off: $0.00.
Total amount of payments made on the debt since the charge off: $50.00

Reference: 564-345

East West 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.

How can you dispute the debt?

Write to us in 30 days 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 30 days, 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 in the next 30 days 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, go to our website at www.eastwestgroup.com, 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.

As of the date of this letter, the balance due on the account is <current>. Because interest charges added to the account may change the total owed from day to day, the amount due on the day you pay may be greater. If you pay the amount shown above, an adjustment may be necessary after we receive your payment, in which event we will inform you of any other amount due.

Debt collectors, in accordance with the Fair Debt Collection Practices Act,15 U.S.C. section 1692 et seq., are prohibited from engaging in abusive, deceptive, and unfair debt collection efforts, including but not limited to: (i) the use or threat of violence; (ii) the use of obscene or profane language; and (iii) repeated phone calls made with the intent to annoy, abuse, or harass.

If a creditor or debt collector receives a money judgment against you in court, state and federal laws may prevent the following types of income from being taken to pay the debt: (1) Supplemental security income, (SSI); (2) Social security; (3) Public assistance (welfare); (4) Spousal support, maintenance (alimony) or child support; (5) Unemployment benefits; (6) Disability benefits; (7) Workers' compensation benefits; (8) Public or private pensions; (9) Veterans' benefits; (10) Federal student loans, federal student grants, and federal work study funds; and; (11) Ninety percent of your wages or salary earned in the last sixty days.

We are required by regulation of the New York State Department of Financial Services to notify you of the following information. This information is NOT legal advice: Your creditor or debt collector believes that the legal time limit (statute of limitations) for suing you to collect this debt may have expired. It is a violation of the Fair Debt Collection Practices Act,15 U.S.C. section 1692 et seq., to sue to collect on a debt for which the statute of limitations has expired. However, if the creditor sues you to collect on this debt, you may be able to prevent the creditor from obtaining a judgment against you. To do so, you must tell the court that the statute of limitations has expired. Even if the statute of limitations has expired, you may choose to make payments on the debt. However, be aware: if you make a payment on the debt, admit to owing the debt, promise to pay the debt, or waive the statute of limitations on the debt, the time period in which the debt is enforceable in court may start again. If you would like to learn more about your legal rights and options, you can consult an attorney or a legal assistance or legal aid organization.

This collection agency is licensed by the New York City Department of Consumer Affairs, license number: 1274118

Reference: 564-345

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 *East West Group*. Include the reference number 564-345.

East West Group
P.O. Box 121212 Pasadena, CA
91111-2222

Appendix Five

Debt Collection SBREFA Outline Issue Brief: Date of Default
August 22, 2016

Summary

In its July 2016 SBREFA Outline of Proposed Rules, the CFPB makes the "date of default" a necessary data point to be obtained, monitored, disclosed to consumers, and used as a reference point for actions that occurred after such default. The date of default is not defined in the proposal.

Presently, the "charge-off date," or the date that a debt is removed as an asset on the creditor's financial records, is more commonly provided to debt collectors by their creditor clients or the seller of the debt. While the period of time that transpires before a debt is charged off varies by creditor and by type of debt, the charge-off date is commonly used in most industries (but not all) as a snapshot of a debt at a certain point in the life cycle of the debt.

The date of default is generally not used for such purposes and, in many cases, is neither provided nor easily determined by debt owners. [1] If a date of default is not an easily determined and validated data point, or is simply a data point that is not provided by the client and left to the collector to figure out, the proposal to use this as a reference point as described below could lead to mass confusion among industry members and consumers alike.

How is the date of default used in the CFPB proposal?

Pre collection

Required to obtain and review the following information (Appendix C):

- Account number at time of default
- Date of default
- Date and amount of any payment or credit after default
- Interest or fees imposed after default
- Chain of title after default

Validation notices

The date of default also appears in the proposed validation notice requirements (Appendix F):

- The name of the creditor at the time of default
- The account number with the default creditor;
- The amount owed on the default date
- An itemization of interest, fees, payments, and credits since the default date

[1] In the case of purchased debt, the subsequent buyer would not necessarily know how the original creditor might have determined the date of default.

Responding to Generic Disputes.

Required to respond with the following documentation (Appendix D):

- 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.

Responding to Specific Disputes.

Required to respond with documentation showing (Appendix D):

- 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

Responding to a Dispute as to the Wrong Collector.

Required to respond with documentation showing (Appendix D):

- 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;

The challenge with using the date of default as a reference point

The contract underlying the debt will control the exact date that a consumer is in default. Contracts underlying consumer debts come in all shapes and sizes. Some contracts are explicit on when a default occurs; some are silent. There are also debt owners -- in the health care services field for example – that don't have any formal contract with the consumer. Often it takes interpretation and an attorney's training to determine the exact date that a consumer went into default. [2] Perhaps for this reason, many debt owners currently do not supply collectors with the date of default, nor use it as a reference point.

In the credit card industry, a default can mean more than a missed minimum payment. Consumers can be in default for failing to abide by other terms of their agreement, by exceeding their credit line, or if the credit card issuer simply believes the consumer is unwilling or unable to pay their debts on time.

[2] The term "default" is not defined in the FDCPA. Courts examining when a debt goes into default emphasize the distinction between outstanding debt and debt in default, recognizing that the former only transitions to the latter "after some period of time," and that the transition must be determined on a case-by-case basis. Alibrandi v. Financial Outsourcing Services, Inc., 333 F.3d 82, 87 (2nd Cir. 2003) ("Although judicial decisions and regulations reflect inconsistent periods of time preceding default, they all agree that default does not occur until well after a debt becomes outstanding.")

The following are some examples of the definitions that credit card issuers use for default:

> Bank of America:
> "You will be in default of this Agreement if: (1) you fail to make any required Total Minimum Payment Due by its Payment Due Date; (2) your total outstanding balance exceeds your Total Credit Line; (3) your Bank Cash Advance balance exceeds your Cash Credit Line; or (4) you fail to abide by any other term of this Agreement." [3]
>
> Chase:
> "Your account will be in default if: 1) You do not pay at least the minimum payment when due; 2) You exceed your credit limit; 3) You fail to comply with this or other agreements with us or one of our related banks; or 4) We believe you may be unwilling or unable to pay your debts on time; you file for bankruptcy; or you become incapacitated or die."[4]
>
> Capital One:
> "You will be in default if: (1) you do not make any payment when it is due; (2) any payment you make is rejected, not paid or cannot be processed; (3) you exceed a credit limit; (4) you file or become the subject of a bankruptcy or insolvency proceeding; (5) you are unable or unwilling to repay your obligations, including upon death or legally declared incapacity; (6) we determine that you made a false, incomplete or misleading statement to us, or you otherwise tried to defraud us; (7) you do not comply with any term of this Agreement or any other agreement with us; or (8) you permanently reside outside the United States." [5]
>
> American Express:
> "We may consider your Account to be in default if: ● you violate a provision of this Agreement, ● you give us false information, ● you file for bankruptcy, ● you default under another agreement you have with us or an affiliate, ● you become incapacitated or die, or ● we believe you are unable or unwilling to pay your debts when due." [6]

In the online lending space, the lender's discretion can come into play when determining a date of default. Here is one example:

> "We may declare you to be in default of this Agreement at any time if: (a) you fail to make a payment as required by this Agreement or (b) anything else happens that causes us in our sole discretion to reasonably believe that the prospect of your Elastic Account being repaid is impaired."[7]

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[3] https://www.bankofamerica.com/content/documents/visa-mastercard-classic-gold-platinum-world-en.pdf
[4] https://www.chase.com/content/feed/public/creditcards/cma/Chase/COL00055.pdf
[5] https://www.capitalone.com/media/doc/credit-cards/Credit-Card-Agreement-for-Consumer-Cards-in-Capital-One-N.A.pdf
[6] https://www.americanexpress.com/us/content/pdf/cardmember-agreements/green/Green_06_30_New.pdf
[7] https://www.elastic.com/terms-and-conditions/

As it relates to medical debt, most healthcare providers do not currently provide any date of default. There is no regulation defining when a medical debt goes into default, and often the agreement entered into between patient and hospital specifies only that "the bill is due at the time of service." The calculation of a date of default in that industry is complicated by the various sources of payment (insurance, Medicare, etc.), which have different timeframes for payments.[8] The aging of the debt is not consistent and they generally use the date of services rendered, date of discharge, or the date a patient is determined to be self-pay to age the accounts.

Even if a default could be easily identified, which in many cases it cannot, the question becomes which default date will be used as a reference. During the lifecycle of a debt, a consumer may default on a debt and cure the default several times over. This is especially common with credit card debt where consumers may be in default one month, cure a default the next month, and fall back into default at some later point in time. Consumers also may pay off a portion of the outstanding balance. The question becomes whether the original date of default should be used or a default that occurred at some later point. Without a clear standard definition that works for all debt types, the "date of default" could mean several different dates in the lifecycle of the debt and debt collectors would not know which one to use as the reference point, i.e. first date default, last date of default, etc.

Proposed Solution

The charge-off date, a reference point commonly used today in the collection industry, would offer a better reference point. While the timing of when a debt owner charges-off debt will vary (120 days, 180 days, etc.), it is a fixed point in time when the debt owner removes the account from the asset side of its financial records. At this fixed point in time, the debt owner takes a snapshot of the debt, and the actions taken on the account before and after that date (as would be required under the CFPB's proposal) can more accurately be determined. This would be less confusing to all involved, including the consumer.

The charge-off date is also a fixed point in time where most credit card issuers choose to stop charging interest and fees, meaning that the balance does not increase after that point. This would seem to be in line with the SBREFA Outline's requirement to justify interest and fees charged after a certain point in time.

Contrast that with a default date, which can change by interpretation of a contract and can change depending which default date is used. The charge-off date also has the advantage that it is a definition currently being used as a snapshot in time for a debt, as opposed to the date of default, which is not.

[8] See e.g. Church v. Accretive Health, Inc., No. CV 14-0057-WS-B, 2015 WL 7572338, at *7 (S.D. Ala. Nov. 24, 2015), aff'd sub nom. Mahala A. Church, Plaintiff - Appellant, v. Accretive Health, Inc., Defendant - Appellee., No. 15-15708, 2016 WL 3611543 (11th Cir. July 6, 2016).

Moreover, the debt collection industry has demonstrated in large part that it can use the charge-off date as a reference point as required under the New York Department of Financial Services rules. While not all industries use a charge off date as a reference point, it is a reference point that at least the vast majority of consumer debt collectors are familiar with today.

In sum, the charge-off date would provide a better reference point to describe events that occurred before and after a certain point in time to the consumer. The industry in large part already takes that snapshot in time. Changing that snapshot in time from the charge off date to a date that is difficult to determine and not currently provided in many cases, would cause confusion to industry members and consumers alike.

Date: 09-09-2016

To: Lauren S. Weldon
Counsel – Office of Regulations
Consumer Financial Protection Bureau

From: Rance Willey
Chief Executive Officer
Troy Capital, LLC

RE: SER Written Comments Concerning Items Reviewed During SBREFA Process 08-25-2016

Dear Ms. Weldon:

I would again like to thank the CFPB and the other government agencies that were in attendance at the SBREFA meeting for providing me the honor and opportunity to discuss the rule making items under consideration. As a 38 year veteran in the industry with significant backgrounds with large major creditors and large debt buyers, in addition to the small company I now serve as the CEO for, I believe I am well qualified to present credible input into the matters being considered.

To that end and in addition to the verbal contributions I made on 08-25-2016, I have some written remarks to make concerning several of the items discussed. I will from time to time reference the documents the CFPB went through with the SER's and will be as brief as possible.

Accordingly, please consider the following:

Initial Claims of Indebtedness

A set of requirements to include the date of "default", the amount of the default, and the amount of any post default payments in the information a debt collector should have access to (see Appendix C) is a major concern because:

- The definition of what constitutes a "default" and the practical application of the rules for dealing with a "default" varies greatly from product type to product type, from one legal interpretation to the next within the judicial processes, and most critically, from one company to the next within the broad spectrum of credit granting entities in virtually every industry in which credit granting might come into play.
- "Defaults" that occur prior to the date of "charge-off" can, in nearly all credit scenarios, be corrected or "cured" by paying an account back to a "current" status, so long as such payment is made prior to the date of charge-off, foreclosure, repossession, etc. In other words, a consumer's account may go into and out of "default" multiple times.
- Based on the foregoing, obviously the date and amount(s) surrounding default status would easily become confusing for the least sophisticated consumer to deal with and would create unnecessary peril for debt collectors endeavoring to decipher a series of defaults while trying to legitimately collect a debt.

(this section continued on next page)

- While the date and amount of "charge-off" has routinely been provided by and to debt owners across nearly all industries and even when there is a chain of multiple owners, adding or replacing that information with a requirement of providing "default" information would virtually render most debt owners" (beyond the original creditor) portfolios a complete loss since that information would not be obtainable retroactively and prospectively most likely would be very difficult to substantiate in such a way as to be useful to the least sophisticated consumer while still providing "safe harbor" for the debt collector or debt owner providing such information.
- It is not an exaggeration to state that if the "default" information being considered becomes a requirement then in excess of 70% of the debt buyers in business today would effectively be put out of business immediately. Accordingly and obviously, it is strongly believed that the cost to satisfy the "burden" of the use of such alternative information does not alleviate this significant concern.
- It is therefore strongly suggested that the date and amounts involved with a defined "charge-off" be continued to be used as the main reference point for establishing facts about a given debt. The concept of charge-off is well entrenched in nearly all industries, in the interpretation and application of civil statutes affecting debt collection, and most importantly, in the minds of even the least sophisticated consumers.

<u>Review and Transfer of Certain Other Information</u>

- In over-simplified terms, if the information delineated in Appendix E were to become a requirement, nearly all individual consumer account level information would have to be transferred each time a debt was placed with a debt collector or sold to a debt buyer. The same would be true for each time an account was moved from one entity to another.
- The cost would be untenable for small debt owners since they do not have the comparatively large volume inventory totals that garner volume related discounts from companies that provide such services to debt owners. In fact, about 79% of the small DBA members surveyed indicated there would be an ongoing annual cost of at least $46,500 to comply with such a requirement.
- Furthermore, if such a requirement were put in place for previously purchased accounts (much of the Appendix E information wasn't provided at the time of sale), the industry estimates in total that a loss of at least $15,000,000,000 would occur.
- The question of how to handle previously obtained judgments would also have to be addressed if such a requirement were put in retroactively.
- It is suggested that perhaps more research is in order on this subject because there are many legal questions that will arise that go well beyond the intention of providing debt collectors with more complete consumer information. For example, there are privacy considerations, data security questions, attorney-client privilege questions, and many other areas of potential conflict or concern that would quite likely arise if Appendix E were essentially adopted verbatim.

<u>Litigation Disclosure</u>

- There is little if any evidence to suggest that additional disclosures of any sort have a material and positive effect on consumers' reactions. In the case of an "intent to sue" disclosure or notice this most certainly has been demonstrated to be the case by virtue of consumers' lack of reaction to being served a Summons and Complaint when being sued, given that over 70% of judgments granted are done so by default, i.e. uncontested. **<u>It should be clearly understood that the lack of contesting a law suit on the consumers' part is not because of the associated costs. Nearly all consumer protection attorneys do their work on a contingency basis, i.e. if they don't prevail against the debt owner or collector, the consumer owes them nothing. If they do prevail, it is the debt owner or collector who pays, not the consumer.</u>**
- It is known to cost a small debt owner/buyer about $800-$1,000 for every notice or disclosure change that is required. That is because there are so many different and often conflicting interpretations and applications of rules and laws in the various courts and jurisdictions, that a legal review in each state by competent and knowledgeable counsel is required to minimize the potential for adverse legal action when implementing a change to an existing letter.
- Once changes are approved if letters lengthen to where an additional page becomes a requirement, then on a per letter generated basis, a small debt buyer could expect to see a cost increase anywhere from $0.20-$0.70, again because small debt owners/buyers do not have volume to leverage for rate concessions from vendors. Debt collection compliance costs have risen dramatically over the past few years, eroding margins. These added costs are significant because they are incurred in every account and do not reduce pre-existing compliance costs. It is therefore likely these costs will be disproportionately severe to small entities and will it unprofitable for them to continue operations.
- The use of the legal approach gets some unwarranted criticism because there is a misconception concerning the associated expense to the consumer, but more importantly, the use of the legal approach is not responsible for the vast majority of consumer complaints that appear in the CFPB's complaint portal. On the contrary, the use of the legal approach assures the consumer of fair, impartial, and just outcome as to the validity of the associated debt, the amount owed, and how and when the debtor will be required to complete a repayment plan. In short, the legal process avoids most of the issues that result in complaints from consumers today.

<u>Prohibition on Transferring Debt and Record Keeping</u>

- A number of CFPB enforcement actions and the DBA certification process has helped rectify most of the past concerns in this area. The challenge has never been the transfer of debt in and of itself. Rather, the documentation that needs to be provided in conjunction with a debt transfer was, prior to actions taken by the CFPB and the certification process, in need of better controls.
- As a result of the aforementioned, the industry is demonstrating today that it is capable of effectively and consistently managing the debt transfer processes by ensuring that all pertinent information and documentation is transferred with the actual accounts.

Cost of Credit for Small Debt Collectors or Small Debt Buyers

- Without going into an elongated explanation, the simple answer is "yes" the changes under consideration can and will hurt small businesses' ability to secure credit for the simple reason that the changes mandate expense increases without ensuring any upside to net revenue, even if such upside resulted from lower compliance related costs, including defending against fewer complaints.
- All businesses, larger or small, that use credit, have financial covenants they must meet or exceed on an ongoing basis in order to maintain affordable and viable credit terms.

Alternatives to Communications and Additional Proposals under Consideration

- As was frequently and passionately stated by numerous SER's at the SBREFA meeting, the American consumer , as the CFPB has rightfully recognized and acknowledged, is not using the same modes of communication as they did when the FDCPA was crafted. Accordingly, within its ability and authority to do so, the CFPB is urged by small collection entities (and large ones also I am sure) to put forth rules that embraces the communications technology that is so deeply woven into nearly every waking minute of everyone's daily life.
- Through the use of the communications technology that the American consumer clearly prefers to use, much greater clarity concerning the "rules" can be achieved without the years of law suits that take place now in order for a suboptimal outcome of inconsistency to be achieved. Through more preferred and therefore more effective communication with consumers, debt owners and debt collectors can operate in a "safe harbor" and consumers will ultimately benefit from an improved credit climate over the long term.

CFPB Debt Collection Proposal Outline

TrueAccord response, August 2016

About TrueAccord

TrueAccord's mission is to become the platform of choice for financial rehabilitation. We aim to change the debt collection process using technology, so consumers can take care of their debt at their own pace, while getting the help they need to get back on their feet. TrueAccord is a licensed collection agency, offering a service using a proprietary collection engine. We work with eCommerce companies, lenders and issuers.

The financial services industry is undergoing a radical shift as it increases its focus on digital technology, customer preference, and an emphasis on great user experience, and debt collection will not be excluded. TrueAccord applies innovative technology to debt collection and we have seen the major benefits that this approach brings. We know that carefully built expert-based automation can replace the majority of actions currently handled by human collectors. We are proving that a better, more targeted experience that cuts out commission-based collection agents creates a virtuous cycle for consumers as well as creditors.

Executive summary

We reviewed the CFPB's proposal outline with great interest. As advocates of stronger consumer protection in debt collection, we believe that the proposal is an important, positive development for millions of Americans that will root out many of the worst abuses in this industry. Additionally, we very much appreciate the CFPB's efforts to engage in productive dialogue with a wide variety of stakeholders to help ensure the Bureau develops the best final rules possible.

Since the CFPB's outline is so forward-looking, our response will focus on the last mile: helping make sure it further clarifies several important points that will help provide greater regulatory certainty for innovators in this space, and does not put unnecessary or unintended burdens on the use of email and other modern forms of communications.

We recognize that the debt collection process can be inherently stressful and challenging for consumers. However, the most widely used methods currently employed by debt collectors – repeated phone calls that disturb a person's entire home, combined with costly litigation – only exacerbate those issues.

The manner in which consumers communicate has changed dramatically since Congress passed the Fair Debt Collection Practices Act (FDCPA) nearly 40 years ago. Today, many consumers prefer to conduct their business online and through email, text messages, or even social media. A significant number of people who grew up in the age of the Internet and smartphone actually view those technologies as much less intrusive and more convenient than a phone call[1]. As such, we believe the CFPB's efforts to clarify in its proposal that debt collectors can use modern forms of communications – while still maintaining appropriate protections related to those technologies in order prevent harassment and abuse by unscrupulous actors – is an extremely positive step that will help produce better outcomes for consumers.

That said, it is also important to note that the power of inertia in the debt collection market is incredibly strong. Without clear guidance, collectors and creditors will stick to known tools – calls and litigation – and shy away from using new technology that delivers a better experience for consumers. Accordingly, our response addresses several areas where we believe additional clarifications will help debt collectors responsibly pursue innovations that are beneficial for consumers.

Our response touches on the following points. We believe:

- **Using emails:** the Bureau should consider clarifying that using emails does not violate the FDCPA, that emails are considered letters for the purpose of collection communication, and offer additional guidance, for example, regarding sending times. We provide empirical evidence showing that emails reduce contact frequency and lead to better consumer protection compared to calls.
- **Using text messages:** the Bureau should consider clarifying the use of text messages in a way that does not violate the FDCPA and TCPA, as well as allow including links in the body of the text. We provide empirical evidence that text messages reduce contact frequency and drive consumer contacts.
- **Using online disputes (eDisputes):** the Bureau should consider mandating an online option for FDCPA disputes, to facilitate an easier and clearer process for consumers. We provide evidence and discussion of the superior consumer experience with eDisputes, leading to better awareness of consumers' rights and better understanding of their debts.
- **Distilling contact frequency guidelines:** the Bureau should consider clarifying that engaging with technology (clicking a link, replying to an email) can be considered an exception to the proposed limits on contact frequency, since the consumer is engaged in live conversation. We provide evidence that contacting consumers in a timely manner, following their engagement, greatly improves response rates and will support reducing contact frequency.
- **Consumer consent:** the Bureau should consider clarifying that using emails and text messages does not require extra consent, or that prior consent can be transferred to debt buyers and

[1] The supreme court agrees. See Reno v. American Civil Liberties Union,117 S.Ct. 2329, 2343 (1997)("The District Court specifically found that "[c]ommunications over the Internet do not 'invade' an individual's home or appear on one's computer screen unbidden. Users seldom encounter content 'by accident.").

collectors, if required and given. We provide evidence on how New York State's demand for specific consent to email renders email unworkable for debt collection - thus stifling potentially beneficial innovation.

The use of technology in debt collection

Based on the proposal, we understand that the Bureau is aiming for a fundamental change in debt collection practices. It seeks to reduce abuse, limit contacts, and give consumers more choice. It also recognizes that limiting collection activity or the use of some tools, may result in unintended and negative consequences for consumers. For example, the current ambiguity surrounding whether or not debt collectors can leave voicemails creates a perverse incentive for debt collectors to call frequently rather than simply leave a message. Increased costs in the collection process may also lead to a sharp increase in litigation, a process that is already unfolding in many states, as described by several sources including Propublica[2].

This proposal pulls the rug out from under collection shops that have operated in the exact same manner for decades and engaged in consumer abuses. However, without providing a cost-effective alternative for the tools that the proposal takes away, many debt owners and collection companies will likely adopt more litigious tactics. Allowing collectors to use 21st century technology in the collection process will mitigate many of these negative consequences, while improving consumer protection even further.

Technology improves the debt collection experience

The proposal signals a material change for the collection industry. At the same time, the Bureau is aware that limiting collectors too much may have unintended consequences for consumers. We propose that the Bureau embrace the use of technology in debt collection as a way to overcome the changes it is proposing and allow collectors to succeed financially while serving consumers in a compliant manner. TrueAccord's empirical data shows that using a multi-channel, digital-first approach yields significant benefits for consumers and collectors. The technology leveraged by our approach (including email, text messages, machine learning algorithms, and online marketing tools) is common in other industries and is widely available to collectors who choose to pursue a similar approach.

We see three major advantages from using a multi-channel, digital-first approach to collections: 1) increased consumer protection, 2) overall reduction in contact frequency, and 3) reducing consumer

[2] https://www.propublica.org/article/so-sue-them-what-weve-learned-about-the-debt-collection-lawsuit-machine

friction, all while meeting or exceeding traditional collection rates. Based on the benefits laid out in this section, we find it clear that moving to a technology-based collection process is an important way to achieve the Bureau's vision for changing the debt collection process for the better.

Better consumer protection

Consumers react positively to choosing their preferred channel to engage, and when given the choice of channel, are less likely to complain about the collection process. Many dislike phone conversations since they are disruptive, and make consumers feel judged. The TrueAccord system, which reaches out to consumers via different mediums for communication, significantly reduces consumer complaints; over the past 12 months, we have serviced more than 600,000 consumers while seeing only 15 complaints on the CFPB portal (just 0.0025 percent of consumers).

Furthermore, technology allows us to ensure better compliance with consumer protection laws by 1) enhancing the dispute process and 2) relying on code-driven compliance.

eDisputes enhance the dispute process used by the majority of the industry today. Consumers get immediate feedback that their dispute has been received, are shown data in an easy to access manner, and have a written account of their dispute from the first click. eDisputes reduce postal mail communication to zero and eliminate data-related complaints. Appendix A describes the eDisputes experience and benefits.

Code-driven compliance is enabled by our digital-first approach. Controls are easier to implement when the collection process is based on written communication and online interaction. The TrueAccord system uses pre-written and pre-approved communications, and has a Compliance Firewall component that enforces Federal, State and city-level requirements regarding disclosures, contact frequency and communication timing. Moving away from the call center model, more than 90% of communication with consumers is machine-controlled, simplifying compliance at scale. Appendix B describes Code-Driven Compliance.

Reduced contact frequency and change of tone

Using technology in collections reduces contact frequency and reduces the extent to which collectors use stern or demanding tones when talking to consumers. TrueAccord contacts consumers 3 times per week on average, across all channels and contact methods, before and after establishing a working contact method. Our system reduces call volume by up to 95 percent, both in coverage (the overall percent of consumers who ever get called) and intensity (the number of times each consumer is called). Additional contacts are only triggered in a response to consumer interaction with our system. Consumers choose when to engage and through what channel, and can get help at any time of the day if they use our autonomous online experience.

Because the vast majority of TrueAccord's communications to consumers are automated and therefore pre-written, they can be reviewed by management and counsel to ensure they are not overly unpleasant or demanding to consumers. This creates a more positive experience for the consumer. Because such a relatively small portion of TrueAccord's communication is agent-driven, agents at TrueAccord do not make a commission on their collection volume. This changes their incentives to focus on helping the consumer. Each agent manages about 40,000 accounts, thanks to the system's scalability and autonomous collection actions. Our data demonstrates that collections operations can be profitable without the commission compensation model, which puts the individual collector in direct conflict of interest with the consumer they're interacting with. There is a harmonious interaction between technology-driven collections and incentivizing agents to help consumers, rather than squeeze pennies from the few consumers who pick up the phone. We, therefore, propose that the Bureau consider banning commission-based compensation for agents.

Meeting or exceeding traditional collection rates

Traditional collectors may oppose technology, claiming it will not perform as well as call centers, and as the Bureau noted, a significant reduction in the effectiveness of collection processes may yield increased litigation. Our data show, however, that our system outperforms traditional collectors by 30% in a growing numbers of segments, and up to 300% in some cases. With the CFPB's new proposal, we expect that gap to grow.

Clarifying the use of technology in debt collection

Emails

Emails are an effective tool for debt collection. 60% of consumers in a given cohort open at least one email from TrueAccord, and 25% click a link to review their options. Emails are asynchronous, offer easy opt-out mechanisms and suppression mechanisms for consumers (unsubscribe and the "spam" button) and are heavily policed by email providers. Using emails therefore significantly reduces the chances of abuse by collectors.

Consent: we ask that the Bureau clarify that no extra consent is required in order to email a consumer. The Bureau could define that emailing is only allowed to email addresses that the consumer provided to the original creditor, debt owner or collector[3], and all other emails require consent. TrueAccord proposes that work email addresses be treated like work phone numbers, rather than be limited further. Without this clarification, debt owners and collectors will continue to be apprehensive about email due to perceived litigation risk, resorting to other means that can be less desirable for consumers[4]. In New York State, where State law requires that collectors get consent to email consumers directly from the consumers, liquidation performance is 14 times lower than in other states. Asking for extra consent clearly renders email unworkable.

Content: we propose that the Bureau clarifies that electronic mails are identical to postal mail, content wise, for the purpose of debt collection. Subject lines and FROM: fields will be treated like the envelope, while the content of the email is treated like the content of a letter. Alternatively, since accessing an email inbox requires a password, the Bureau could define that email access is limited enough to allow disclosures of the existence of debt in the subject line. While sending millions of emails per year, TrueAccord has not received a single complaint regarding third party disclosure in emails.

Sending times: the one exception to treating emails like postal mail would be sending hours. We support the Bureau's proposal to define the email's sending time and the determining time for the purposes of compliance with the FDCPA.

Sending limits and triggering events: the Bureau's contact limit proposal makes sense, as a hard limit with acceptable exceptions. We propose that a consumer's engagement event – such as clicking a link and viewing an offer on the collector's website – should be considered a live conversation, and will allow the collector to send a "reactive" email to the consumer, in close succession to the consumer's action. This reactive email should not be counted for the purpose of contact limits, and can be sent outside FDCPA hours since it is part of a live conversation.

Since the consumer has already engaged, even if outside FDCPA hours, sending them a single email in response to their actions will not be inconvenient. This is proven by data: reactive emails are effective. Open rates are 25.3% on average compared to 16.3% for other emails, and 13% of those review their options in response to any given reactive email compared to 9.37% in response to a regular emailed

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[3] Our data shows that consumers tend to disregard emails to inboxes they have not shared with the creditor – engagement rates plunge to almost 1/10th of other emails.

[4] In phone calls, the ACA and ABA have already provided opinions that the Bureau's proposal means that emails require direct consent form the consumer. The industry as a whole is split around this question, and traditionally tends to be conservative. This approach renders emails almost useless for collections.

communication. At the same time, reactive emails do not trigger complaints from consumers. Both proposals allow the collector to respond to consumer interest, and replace calls with consumer friendly communication based on their choice.

We propose further clarification for the concept of “live conversation” that the Bureau has defined. Since “live conversation” via email can take time and span many exchanges, contrary to a live phone call, we propose that the Bureau define that as long as the consumer continues to respond to a collector’s messages via email or text, the collector can continue responding, and those responses will still be considered part of the same “live conversation”, even if a few days apart within the same week. If not defined this way, the collector may be unable to respond to a consumer in a timely manner since it would not be clear if this is a second conversation in a given week.

Opt out: we propose that the Bureau mandates CAN SPAM-like requirements for a clear mechanism to opt out of receiving email messages from the collector and revoke consent. 3.3% of consumers who are emailed by TrueAccord choose to opt out of email communications this way.

Text messages

The mobile device has quickly become a tool of choice for many in the US. Consumer preference is strongly shifting towards device use in all walks of life. 49% of the traffic on TrueAccord’s website is from mobile devices and tablets, while 45% of payments are made on a mobile device.

Text messages also create a halo effect together with other channels. When emailed for a long period and then texted, consumers are four (4) times more likely to pay compared to those who weren’t texted. This cross-channel halo effect further reduces repeat attempts to contact the consumer, promoting the Bureau’s goal.

Consent: we propose that the Bureau clarifies that text messages can be used without consent given directly to the collector. The Bureau should preempt the TCPA for certain text messages, specifically no-cost messages, and clarify that those do not require express consent.

Safe harbor: we propose that the Bureau develops simplified, safe harbor wording for sending text messages to consumers. We propose that these messages allow several components: 1) the phone number they are texted from can be called to reach the collector, 2) the message allows for some variability in text, while adhering to a structure similar to the Bureau’s proposal for voicemail, and 3) the message can contain a link to a web page, as long as that web page contains all disclosures required from collection communication. This proposal reduces perceived legal risk when texting, a risk that currently makes text message less desirable for collectors, while highly desirable for consumers. 6% of consumers who are texted by TrueAccord click a link in the message.

Opt out: similarly to email, we propose the Bureau mandates opt out mechanism for text messages, such as replying with “STOP” to stop all text messages to the subscriber.

Social media

Social media websites (Facebook, Instagram, and others) have quickly become a major communication channel for many consumers. Communicating with consumers on social media raises various compliance questions, but can be very effective, if only for the halo effect described for text messages and calls earlier. This will further serve to reduce contact frequency, while responding to consumer preference. We propose that the Bureau develops safe harbor language or similar guidelines for communicating with consumers on social media, to facilitate the use of that channel as another avenue to establish contact with the consumer, while limiting abusive or deceptive practices.

Consumer consent

The Bureau’s discussion of consumer consent (section V.D) was helpful, but also created ripple effects through the industry. The collection industry may not embrace this new technology unless there is additional clarification that emails and text messages can be used without specific consent. Section V.D can be understood as suggesting that no consent (e.g. consent to be contacted via cell phone) can be passed to subsequent debt buyers or collectors. We propose that the Bureau clarify that this only relates to communications that would otherwise violate the FDCPA. We propose further, that the Bureau clarifies that no prior consent is required in order to email a consumer regarding a debt.

The Bureau can help consumer friendly innovation by clarifying what consent means in the context of an online website, in those cases where consent is needed. We propose that using an online form will also be considered providing and memorializing consent. For example, providing contact methods or defining contact parameters (such as time and place) that are acceptable to the consumer, in an electronic form that the consumer then submits through a website or phone application. This will simplify the consumer experience and let collectors provide better service to consumers using online websites.

Response to the CFPB's proposal

Proposals to prohibit unsubstantiated claims of indebtedness

We recommend that the Bureau adopt a "reasonable review" standard to allow sampling of accounts before initiating collections. Paired with placing responsibility on debt owners to provide data and represent that it exists, we expect instances of collection attempts without substantiation to be minimal to non-existent.

Some debt data does not include phone numbers: we recommend that the Bureau consider how newer types of products may alter the information available to the debt owner. With newer eCommerce and other services debt, it is common for consumers to only provide an email, city and zipcode. In these cases, there will be no phone number available or even a street address. 7.83% of accounts in TrueAccord's system have a working email but no working (or even known) phone number. Including a phone number as a requirement to substantiate will prevent collection attempts on these accounts, potentially leading to unintended consequences such as increased litigation or credit bureau reporting.

Warning signs

We have encountered areas that would benefit from additional review. Cost wise, we anticipate this requirement to add significant cost to collectors, unless properly automated by appropriate technology[5]. We believe the costs described in the proposal are understated given the need to classify and identify responses from consumers and issues in the dispute process, requiring investments in both headcount and technology.

We further believe the definition of warning signs can be clearer in order to better guide collectors in compliance. The definition of "excessive disputes" bears clarification, as portfolio and product types can be new to a specific agency. With no central repository or guidance on what's considered excessive, agencies will be left to guess. The Bureau should consider providing guidelines on what may be considered excessive disputes.

[5] Please review Appendix A for a discussion of our eDisputes experience, and Appendix B for a discussion of Code Driven Compliance, including a feedback module that allows TrueAccord to collect input from consumers in the collection process.

Claims post dispute

The amount of consumer complaints regarding the dispute process makes it clear that the dispute process is broken. The amount of manual work makes it a large expense for collectors, who in turn stick to the letter of the law. The Bureau's proposal is an important step towards simplification, but we propose taking the process one step further beyond tear off forms in postal mail.

Mandating eDispute: we recommend that the Bureau mandate a mechanism to allow the collection and handling of disputes and consumer feedback electronically, rather than relying on postal mail. Postal mail is burdensome, costs money that consumers in debt may not have, and is opaque compared to an online process. Without guidance from the Bureau, collectors will stick to known practices that reduce their ability to detect warning signs as well as provide less than ideal consumer protection and experience.

eDisputes improve consumer experience: using eDisputes significantly reduces response time, keeps consumers informed, makes compliance much more straightforward and provides excellent recordkeeping. Appendix A elaborates on the current eDisputes experience at TrueAccord and its benefits for both consumers and collectors[6]. TrueAccord sees no disputes sent via postal mail, while consumers use the online experience more frequently to ask for more information. This is a consumer protection win.

eDisputes promote data transfer: moving to online disputes facilitates transferring data between collectors regarding consumers who have disputed previously. We anticipate ongoing cost savings for collectors from reduced litigation and collection costs, as they do not initiate attempts on consumers who dispute and whose dispute was not resolved. We propose defining that based on this transfer of data, "duplicate disputes" apply across collectors, so that if a consumer disputes with collector A and receives debt substantiation, filing the same dispute with subsequent collector B will be deemed duplicate.

Lack of standards for data transfer: this requirement to transfer dispute data may open up a new avenue for litigation costs for collectors. We propose that the Bureau defines a baseline data set to be transferred to prevent various, and conflicting, standards organically emerging in the industry.

[6] We estimate that 10% and up to 25% of collectors' time could currently be spent on processing and responding to disputes. The majority of this spend is eliminated with an online experience.

Miscellaneous matters

Disputes out of the 30-day window: TrueAccord accepts requests for more information from consumers even after the 30 day period. 54% of overall requests for information are received after the first 30 days. We propose that the Bureau define a category for those, in order to enable consumers to ask for information they should get to be informed in the debt collection process. A baseline set of requirements that resembles, but does not mirror the requirements for disputes will dramatically improve consumer protection while placing a reasonable burden on collectors.

Verbal disputes: 0.4% of disputes that TrueAccord handles is verbal, received over the phone. It is an extremely low proportion, since our eDisputes experience is very easy. TrueAccord handles those as written disputes. Defaulting to a postal mail process is not beneficial for consumers. Requiring written disputes makes more sense, from a consumer perspective, if the collector is required to provide a convenient online experience to enable that.

Identity theft claims: we propose that the Bureau standardizes a process for consumers to report being a victim of identity theft. 32.28% of disputes that TrueAccord handles are identity theft claims. The industry organically developed varying processes for identity theft, frustrating consumers. TrueAccord asks for the FTC affidavit for identity theft, but this request often leads consumers to the CFPB's complaint portal. An online process to document claims of identity theft would greatly simplify the process for consumers and collectors alike.

Proposal to require review and transfer of certain information

Under 5% of the accounts that are placed with TrueAccord include account notes, and only one of our debt owners asks for notes when accounts are retracted. Even when provided, those notes are unstructured and often do not effectively expose information that collectors should be aware of.

We support the proposal to not affirmatively require collectors to get notes from previous collectors, other than specific events in the account, such as payments and disputes. We believe requiring collectors to get notes will place an unnecessary burden on collectors, one which does not have a consumer protection benefit.

Validation notice and statement of rights

Debt collection is a stressful process, no matter how friendly or helpful the collector may be. It is important to educate the consumer on their rights, but do so in a way that lets them actually "hear" the communication. Language that is taken verbatim from the FDCPA, such as the "mini-miranda", often induces stress and prevents consumers from fully participating in a useful exchange.

Experimenting with disclosure language: we propose that in developing new language to convey consumers' rights, the Bureau experiments with various wording of notices. Adding another statement of rights may have the opposite effect by overwhelming the consumer with text. We understand and support the Bureau's purpose, but suggest that the additional page will have a slight negative impact on collectors via rising costs, while not making a difference in terms of consumer protection.

Safe harbor text: we propose that when finalized, the proposed text be defined as safe harbor text that preempts state laws and other case law. The current language in the proposal raises certain issues. It may be construed as overshadowing the consumer's right to dispute in the first 30 days since the receipt of first communication. It may be perceived as misleading if the collector provides a breakdown of interest and fees, without noting that the account does not accrue fees, in a state that forbids those. Creating disclosures that may subject collectors to high litigation costs is likely to have undesired consequences such as increase in litigation.

LEP Requirements: when dealing with non English speaker requirements, collectors may find themselves with the same issue. Given the cost to translate messages and the possibility of different translators creating slightly different translations, we support the first alternative to LEP consumers, where the Bureau will develop compliant disclosures. Other solutions will expose collectors to litigation and will yield unfriendly disclosures, partly developed by the courts[7].

Collector communication practices

Contact frequency and leaving of messages

Limited content voicemail

Our data show that voicemails are ineffective in driving callbacks and effective resolution of the collection process. Voicemail's ability to replace repeat calling, on its own and without the use of other communication methods, is unclear. At TrueAccord, there is no observed upside in payment rate

[7] Refer, for example, to the litigation process that created the "Foti" and "Zortman" voice mail messages.

compared to calling the consumers proactively, if there is a Right Party Contact. Voicemails let a small percentage of consumers engage on the phone when the time is right for them, but it is still not a favorite medium.

We propose that the Bureau defines a multi-channel approach to collections, where failed phone contact attempts are not replaced solely by voice mails. TrueAccord data show that alternating between channels, especially when lowering contact frequency, contributes to consumer responsiveness through a "halo effect". For example, when a collector emails a consumer and follows up with a text message, the consumer is four (4) times more likely to pay, compared to the email alone. When instead of a text message, the collector follows up with a call, the chances of payment are two and a half (2.5) times higher than emails alone.

Proposed voicemail language: we respectfully suggest that there may be an opening to testing other language that offers more context, even by disclosing that the caller is a debt collector (while not disclosing the existence of a debt). More context increases consumer response, leading to less repeat attempts.

Restricting contacts

TrueAccord uses its multi-channel platform to significantly reduce the number of consumer contacts, while providing better consumer protection and better results. TrueAccord currently communicates with consumers an average of 2.5 times per week, with as few as one communication monthly, and as many as 8 communications[8]. TrueAccord limits contacts per account, even if the consumer has multiple emails or phone numbers. Most (92%) of those communications are via email. We have seen call volume reduced by up to 90% as our system learns how to best communicate with consumers.

Technology will help collectors reduce contact frequency: an average collector handles 800-1000 active accounts, while a TrueAccord collector handles up to 40,000 with the system's help. This technology is available to purchase from multiple vendors, and does not need to be developed in house, implying reduced upfront costs as well.

We would like to highlight two areas where we propose further clarifications from the Bureau's final rule. When defining contact frequency, the Bureau should consider how some of its definitions may impact non-phone communications.

The definition of "live conversation": with phone, consumer calls in during business hours, talks to an agent, and the call concludes when it is terminated. Email conversations are different: the

[8] This latter number includes emails sent in response to consumer actions or communications.

consumer and a collector may exchange multiple emails over a span of several days. 65% of consumer interactions with our operations team are via emails, and 80% of these conversations span more than one email exchange. A similar argument can be made for text messaging. The Bureau should consider clarifying that these exchanges, as long as the consumer stays engaged and responds to a previous message, constitute a single "live conversation" for the purpose of counting contact attempts.

Reactive communication: the second is the scope of actions required to rebut the bright line guidelines for number of weekly contacts. TrueAccord separates between "proactive" communications - communications that are aimed at initiating an interaction with the consumer - and reactive communications - ones made in response to consumer activity on our website. Consumers can only interact with collectors via phone during business hours, however 13% of consumer interactions with TrueAccord's system happen outside of FDCPA calling hours. When they do so, and drop off the website, we may choose to interact with them immediately using one email message. That email message is reactive - it is sent in response to consumer action, implying that they require help.

We propose that the Bureau defines an acceptable "trigger" event that will be sufficient to rebut the bright line limits it proposes to impose on weekly contact attempts. Alternatively, the Bureau should consider defining a consumer's engagement with an online system to initiate a live conversation, which can be held outside FDCPA hours. This will enhance collectors' ability to respond to consumers when those consumers want to engage.

Special contact limits for emails: we propose that the Bureau consider different contact limits for emails, as an alternative or in addition to our proposal regarding a "trigger" event. Emails are different than phone conversations in that they have a built in penalizing mechanism that allow consumers to control email communication. Consumers can unsubscribe from communication or mark a message as spam, and that is outside of the collector's control. If too many consumers mark the collector's emails as spam, email providers will penalize all of its messages. Email programs provide filtering mechanisms that allow consumers to block any email from the collector, even without indicating to the collector that they unsubscribed or marked their message as spam.

When collectors use emails wisely, consumers respond: 35% of consumers who would respond to TrueAccord do so within 3 weeks, and 95% do so within 45 weeks. We propose that emails be restricted to 6 communications per week, across all emails on a given account, as long as the consumer is not in a live conversation with the collector. This will encourage the industry to use emails.

General time, place, and manner restrictions

We let consumers engage on their own time: 13% of engagements with our system happen outside FDCPA hours, 15% of payment arrangement are set in those hours, and 14% of payments. This model reduces the need for phone calls and puts control in the hand of the consumer.

Inconvenient places

Emails may be excluded: we propose that the Bureau consider whether some communication methods, such as email, should be subject to the limitation for inconvenient places. Unlike phone calls, consumers can choose to not read or even download emails to a mobile device as a way to limit their availability. Therefore, unlike phone calls or even text messages, email can be perceived as completely in the consumer's control. As a result, if a consumer reads an email, it is by definition a convenient time and place for them to read the email. One could compare email to postal mail in this case: postal mail may be sent to consumers when they are at inconvenient places; because email and postal mail are similar in the degree of consumer control, we propose that emails be treated similarly.

Consumer agreement to be contacted: the proposal's definition of "affirmative agreement" from the consumer to engage in conversation fits a phone conversation. We propose that the Bureau expands the definition to allow consumers to affirmatively agree to being contacted via email or text. We propose that a consumer responding to an email or text (by clicking a link, texting or emailing back, and so on) and discussing payment arrangements or otherwise responding in any way that is not a request to stop communication, is in fact agreeing to continue communications.

Consumers agree to continue communicating: if the consumer responds to an email or text that they are in an inconvenient place, the collector should be allowed to respond once to such a statement with a request to continue communication with the consumer - to which the consumer can choose not to respond, respond in the negative, or respond in the affirmative. This mimics the collector's ability to do so on a phone call, but in a less intrusive manner.

Making this clarification will simplify email and text communication with the consumer while in inconvenient places, place control of communication methods firmly in the hands of the consumer, and will help keep collectors away from phone calls.

Duration of consumer stay in inconvenient places: we propose that the Bureau clarifies how the collector may find out or decide that the consumer has left an inconvenient place, and collection attempts may resume. Hospital stay can unfortunately be lengthy, and consumers may visit daycare centers daily. This information may not be provided to the collector and lacking clear guidelines, may lead to violations and unneeded harassment of the consumer. This is another use case where email and other non-intrusive communication methods are valuable tools to reduce collection communication impact on the consumer.

Inconvenient contact methods

When using email or text, we propose that the Bureau mandates a CAN SPAM-like unsubscribe mechanism requirement on emails, and a similar one for text messages. 3.3% of consumers who receive an email from TrueAccord ask to be unsubscribed.

Work emails: 11% of consumer emails in TrueAccord's database are work emails, according to our ever-updating identification logic. These emails show the same response and liquidation rates as personal emails, and over the past 12 months, we have had zero (0) complaints regarding emailing consumers at work while sending approximately 80k emails a month. Based on these numbers, and given that emails can be equated to calling consumers at their workplace, we propose that the Bureau reconsiders its ban on work email addresses. We propose that work emails be treated like work phones, that may be recorded by the employer, and that contact only be forbidden if the collector knows or should have known that the consumer is not allowed to receive personal emails at work.

We propose that consent to be emailed at work be transferred between collectors, without the need to get special consent directly from the consumer for every new collector. Based on our analysis of NY State email usage after their introduction of specific consent for emails, specific consent for every collector renders emails unattractive for collection activity, since email response rates drop by a factor of 14. Since the Bureau seeks to reduce communication frequency and use less intrusive communication channels, such as email, we propose adjusting the proposal to encourage the use of those channels.

Conclusions

When responding to the proposal, we focused on providing our perspective on the use of innovative technology and how it can be leveraged to benefit the consumer. We have seen that using technology in debt collection can improve outcomes for consumers and for collectors, and we therefore believe that the CFPB's proposed rule is a significant step in the right direction. In our response, we outlined several suggestions to the proposed rule, to further clarify several important points that will help provide greater regulatory certainty for innovators in this space. We also recommended considerations that can help prevent unnecessary or unintended burdens on the use of email and other modern forms of communications.

We appreciate the opportunity to engage in dialogue with the CFPB, around the current proposal and through Project Catalyst. We also appreciate the Bureau's outreach to the industry and various stakeholders. We believe that the CFPB's proposal is a huge step towards stronger consumer protection and a more disciplined debt collection industry.

Appendices

Appendix A: eDisputes

Digital Disputes

Technological advances haven't altered the landscape of communications in debt collections. Whether spoken or written, words and their meanings are the most important part of the collector and debtor relationship. An important, but not often discussed part of the collections process is the consumer's ability to question the validity of a debt. Referred to by the industry and the Federal Trade Commission (FTC)/Fair Debt Collection Practices Act (FDCPA) as "a dispute,"[1] the process is often the first tool[2] available to a consumer when a collector presents them with an overdue balance.

> An important, but not necessarily often discussed part of the collections process is the consumer's ability to question the validity of a debt.

As important as it is, the dispute process has many downsides that render it problematic for consumers and collectors. We need to rethink disputes for the 21st century.

The dispute process isn't working for consumers

Consumers who may owe debts are often confused, angry and scared - sometimes unaware of the full details of what they owe and to whom. Though the FDCPA was written to protect the average American consumer, the mini Miranda and debt validation notice are written in formal language, copied verbatim from legal guidance. As a result, consumers tend to skip over reading the information or misunderstand the language, leading them to miss remedies immediately available to them. For example, consumers often miss the allotted 30-day dispute window after the initial communication, during which they can dispute the debt.

Even if consumers respond within the 30-day window, the actual dispute process is frustrating. It requires writing, printing and mailing a letter in a time when most households don't have printers, envelopes or stamps handy. Secondly, it often requires letter tracking which imposes additional complexity and charges on an already indebted consumer. Finally, when (often weeks or months later) the requested information arrives, it is frequently incomplete or confusing; leaving the consumer unsure of how to proceed.

The dispute process isn't working for collectors, either

The process is as opaque to the collector as it is to the consumer. While respecting the 30-day window and not pressuring consumers to pay early, a collector is never quite sure whether a dispute is en route. This leaves a long period - days and often weeks - in which the consumer knows that a dispute has been put in the mail, but the collector might still lawfully contact them. This creates a legally ambiguous situation that often leads to complaints.

Managing consumer responses is often difficult. Mailed disputes take time to process and sometimes don't arrive at their destination. They often don't correctly capture the consumer's intent and many contain errors. FDCPA disputes are the industry standard, so consumers often resort to submitting general debt dispute language instead of sharing with the collector more details regarding their financial situation (e.g., reporting a bankruptcy) or providing feedback (e.g., reporting a negative customer service experience with the creditor).

Created to provide clear information to consumers, it hasn't evolved to keep up with today's communication technologies.

Thus, the dispute process as it exists today may actually impede the quality of communication between the debtor, the creditor and the collector. Additionally, since the process requires difficult to track manual paperwork, many agencies struggle to properly report dispute data. This can lead to FDCPA and Fair Credit Reporting Act (FCRA) violations. Worst of all, due to the onerous and lengthy dispute procedures, collectors often suspect consumers that enter into the dispute process are either procrastinators or chronic debt evaders. This prejudice prevents them from effectively working with the consumer to address the legitimacy of the dispute.

These circumstances arise because the current dispute process is broken. Created to provide clear information to consumers, the process hasn't evolved to keep up with today's communication technologies. As the system stands, collectors fear it, consumers misunderstand it and both end up frustrated - as evidenced by increased dispute-related litigation and complaints to the CFPB. The major pitfalls of the current dispute process and its place with other types of debtor communication suggests a better option exists. We offer the digital dispute as the solution.

Impact of a broken process

In May of 2015, 26% of CFPB complaints[3] came from consumers who claimed the debt in question wasn't theirs, 13% came from consumers who claim they've already paid the balance and 6% from reported attempts to collect an incorrect amount. These amount to a whopping 45% of total complaints to the CFPB. Even if a percentage of these consumers would have complained to the CFPB anyway, there are still thousands of complaints due to the limitations of an outdated process. The dispute process creates meaningful compliance and legal risk for collectors and creditors, while unnecessarily reducing liquidation rates.

The current dispute process is an opaque convention that leaves consumers and collectors wanting. Given recent technological advances of much more complex processes, such as loan and college applications, the current debt dispute process does not resolve as many questions as it should. The fact it has lead to a large number of compliance violations underpines the need for a robust alternative to this broken process.

Not all disputes are the same

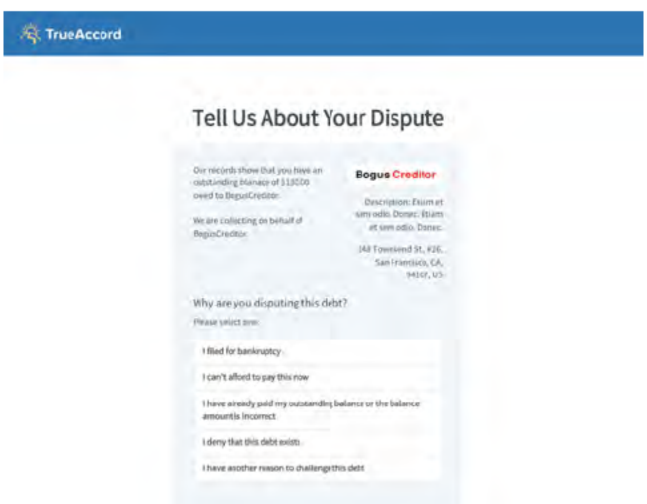
Reasons for disputes go beyond wanting more information about a debt: they range from wanting to report a bankruptcy, to being a victim of identity theft to being able to complain about an inferior product or bad customer service experience. Disputes are often about letting consumers air grievances related to the debt, while acknowledging responsibility (e.g., the need to share that they did not receive the level of goods or service they were expecting). The current FDCPA dispute process is, by design, rigid and narrow. It ignores the nuances of debt acknowledgement and repayment.

The dispute process should introduce interactivity and negotiation. It should recognize that consumers' view of their personal responsibility is rarely black and white.

A 21st century dispute process should allow consumers to self-identify and report their concerns, facilitating the path to debt balance negotiation.

Introducing digital disputes

The TrueAccord Digital Dispute Center is accessed through the system's outbound communications and payment pages, allowing consumers who wish to dispute, to easily do so. Filing a TrueAccord digital dispute is a self navigating experience that allows a consumer, through a few predesigned questions, to report their circumstances or issues.



Does offering an easier way to dispute mean more consumers will do so? Possibly. We believe this leads to better dialogue; allowing TrueAccord to compliantly collect from more consumers, while also drastically improving their experience.

TrueAccord's digital dispute process allows consumers to self-identify and report their concerns, facilitating the path to debt balance negotiation.

The Digital Dispute Center is also a one-stop shop for consumers to share their situation or ask questions about their debt. Here, consumers can report bankruptcy before filing, tell us they have been a victim of identity theft, report customer service woes, or request more information about their debt and how it originated.

Depending on what they tell us, additional relevant fields may be exposed. For example, when filing for bankruptcy, a consumer can leave their lawyer's details or their case ID. If reporting identity theft to TrueAccord, they will also receive information about reporting identity theft to the FTC. And finally, when asking for more information about the debt, they can access all information available to TrueAccord. They can also request additional information from the creditor. This entire digital dispute process is achieved with several clicks of a button.

At TrueAccord, moving disputes into the digital realm helps streamline data allowing for better accountability. Simplifying the debt collection process with digital disputes makes sense in a landscape of shifting consumer communications preferences, automating data collection and increasingly sophisticated digital technologies.

Digital dispute statistics

Three to five percent of consumers dispute debts using the digital dispute process - this includes the "expanded" definition of disputes (i.e., ID theft, bankruptcy, etc...). This number and the composition of disputes fluctuate across portfolios. Using the online process, consumers dispute earlier: the average dispute is logged after 14.7 days with disputes being logged as early as one day after initial contact.

The most popular reason for dispute is Debt is Invalid with 31% of disputes; following is Debt is Already Paid with 28%; Reporting Bankruptcy with 24% and Identity Theft with 16%.

Tracking post-dispute performance of consumers confirms the hypothesis that making this process easier is good for consumers, collectors, and creditors: 20.5% of consumers who file a dispute make a partial of full payment within 60 days of filing. Counterintuitive? Not really. TrueAccord has adapted the digital dispute process over the past few years and has come to realize a few important advantages it has over the traditional method of accepting and processing disputes.

With a digital dispute, there is no question whether the consumer's dispute has been accepted and is being handled.

Quick turnaround time

In today's world, consumers expect a fast response. In the case of disputes, quick turnaround time benefits both collectors and consumers. Currently, sending a letter to an agency and receiving debt verification can take several months; at the very least, 30 days or more for the initial dispute to come in and, often, additional weeks for processing.

With digital disputes, 76% of disputes are received within 21 days of the first communication. Response time can be as short as minutes to a couple of days (in circumstances when additional information from the creditor is required) - saving the consumer weeks - while allowing the conversation to continue. The process is also platform agnostic: 25-40% of TrueAccord's traffic is from mobile devices and tablets, depending on the product being serviced.

Using online and real-time communication tools keeps the conversation alive. Once a consumer receives debt verification, TrueAccord's system can offer immediate ways to resolve the balance. Keeping the consumer's attention while also giving them an opportunity to air their concerns through the digital dispute process has resulted in a 20%+ conversion rate.

Digital disputes are more convenient and encourage transparency

Consumers only need access to the internet to be able to dispute and they'll receive instant feedback from the system no matter what time of day they file (12% of digital disputes are filed during nights and weekends, not during regular business hours). With a digital dispute, there is no question whether the consumer's dispute has been accepted and is being handled. Consumers get an email when their dispute is received and can follow its progress. The digital dispute process facilitates document exchanges where appropriate: if a consumer is a victim of identity theft, they can easily upload a formal complaint to the system.

This immediate feedback is important for collectors as well. Digital platforms provide rich information feeds that inform intention beyond what the consumer explicitly says. Tracking the consumer's browsing patterns through the dispute process and observing browser or program interaction can infer implicit needs. Knowing that a consumer wants to dispute, even if they haven't formally done so, means fewer complaints and lower legal risk. At TrueAccord, we've estimated a 50% drop in complaints compared to a traditional agency (statistically, our complaint tally is close to zero).

Instead of being a tool to delay collections, digital disputes turns the dispute process into an essential engagement tool, enabling transparency and debtor communications.

Better documentation, Better data

Digital disputes allow immediate and accurate capture of data. No human intervention is required to stop collections when a dispute is filed - the digital process automates it. Similarly, all information is captured in writing, including timestamp and IP address. We'll know who disputed and when. Creditors find this feature incredibly helpful for auditing and quality control. Digital tracking is more accurate and easier to process than even the most sophisticated (and expensive) voice call analytics software.

Tracking consumer dispute data also simplifies reporting to bureaus and comes in handy when selling a debt; there is no ambiguity about whether a consumer disputed, when they did so and what documentation was provided as a result of the exchange. This is also makes FCRA dispute investigations simpler to handle.

Bottom line

The prescribed FDCPA dispute process is an essential pipeline of debt collection. However, lack of technological automation means the current process can be slow, opaque and cumbersome for both consumers and collectors. This is frustrating to consumers, drives CFPB complaints and is a big contributor to compliance risk. The industry needs to do better.

Digital disputes are an effective alternative to the industry-standard dispute process. They are transparent to both consumer and collector. Instead of being a tool to delay collections, digital disputes turns the dispute process into an essential engagement tool, enabling transparency and debtor communications. Every company that deals with collections needs to investigate the benefits of an online, digital process. TrueAccord certainly can't imagine going back.

Learn more about TrueAccord

To learn more about TrueAccord's solutions email us at: sales@trueaccord.com or visit us at: https://www.trueaccord.com

[1]https://www.ftc.gov/enforcement/rules/rulemaking-regulatory-reform-proceedings/fair-debt-collection-practices-act-text#80

[2]http://www.consumerfinance.gov/blog/debtcollection/

[3]https://data.consumerfinance.gov/dataset/Consumer-Complaints/s6ew-h6mp?

Appendix B: Code Driven Compliance

Code Driven Compliance

Machine Learning-based Collection Systems set New Standards in Compliance Management

Debt collection compliance is a moving target

Compliance is top of mind for the debt collection industry. Highly regulated at the State and Federal levels, collectors are subject to dozens of laws and regulations that govern every aspect of their operations. A highly litigious culture based on strict liability laws means a constant threat of lawsuits, resulting in shifts in courts' interpretations of various statutes. To pile on, debt collectors are subject to active enforcement and rulemaking activity and attention by lawmakers, leading to ongoing updates in debt collection laws.

> While compliance pressure mounts, the industry hasn't changed it's traditional operating model.

While compliance pressure mounts, the industry hasn't changed its traditional operating model. Hundreds and thousands of human operators use dialers to continually ring up those in debt. They spend hundreds of hours discussing sensitive issues with customers, and are often compensated with a commission on debt repayments. This model has survived TCPA rulings, enforcement actions, class actions and dramatically soaring legal and compliance costs. Its combination with a rapidly changing regulatory environment is a challenge that many lenders and collectors are struggling with. Compliance officers at these companies are trying to solve an extremely hard optimization problem: how to design and implement a control structure that effectively detects and mitigates compliance exposure, while optimizing on compliance resource allocation and exposure.

In this white paper, we review a code-first approach to compliance. Developed as part of a machine learning-based alternative to debt collection via large call centers, it solves the major pain points the industry is facing with regulators and legal experts.

Shrinking the workforce to reduce exposure

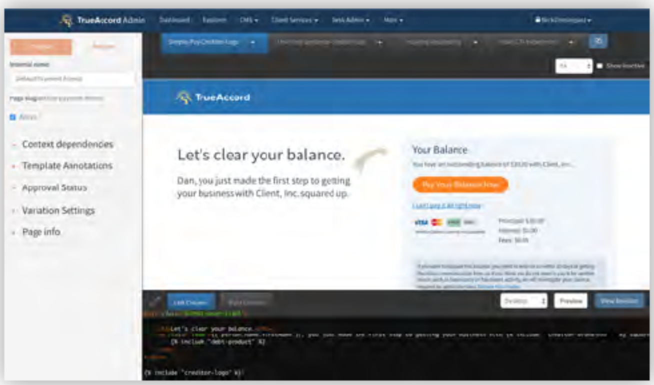
Being a first line collector is a hard job. While best performing agents make high salaries thanks to the commission structure, most collectors make below-average salaries while dealing with negative emotions all day long. Collectors turn over often, and hiring new collectors is an ongoing challenge. New and existing collectors need to be trained and retrained on constantly changing and specific compliance requirements. Updating a small team on changes is easy, but most national collectors and lenders employ hundreds and thousands of collectors.

Leveraging our autonomous collection engine and heavy investment in automation, TrueAccord collectors preside over more than 40,000 cases per person. Since a machine handles most communications, collectors focus on escalation and cases that the machine doesn't have an answer for. This means a significantly smaller team – reducing the headcount investment and simplifying training and retraining needs.

Controlling the content of all communications

Human to human interaction over the phone poses a challenge: humans can be baited, made angry, caught off guard. Every call is a vulnerability. Machines, however, don't fall prey to baiting tactics: they don't get tired or lose focus. More importantly, they don't improvise or go off script: every communication used in the TrueAccord system is pre-written.

The TrueAccord Content Management System contains all proactive communications used in the process.

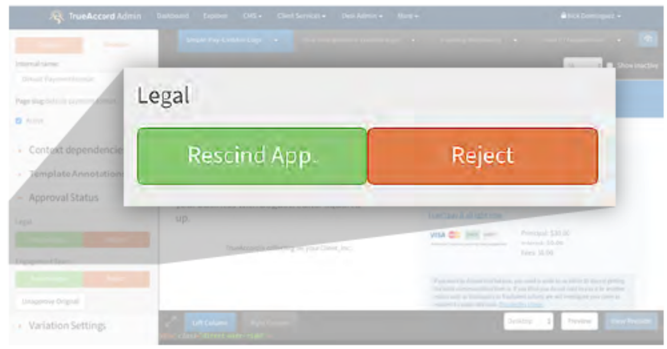


TrueAccord CMS

It allows quick editing and customization of content, A/B testing of various components, and more. While this system has robust content editing functions, it also has strong controls.

Role-based approvals increase compliance

Every new content item created and every change to existing content requires approval by both the legal and operations departments.



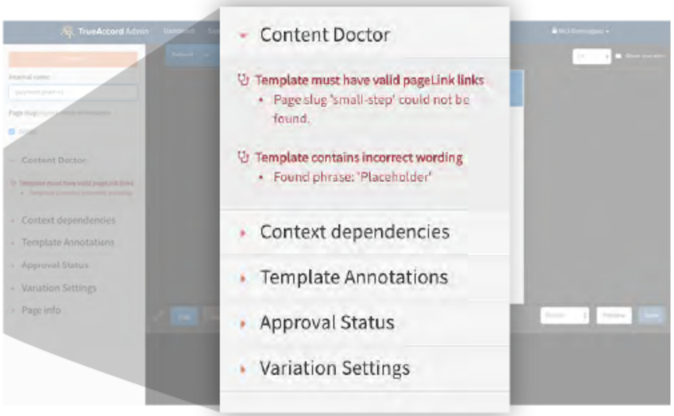
CMS Page Content Approval

Legal and Ops can approve content, reject, or rescind their approval if needed. Code controls track all changes made to the content and prevent it from being used without the approval of the required parties. This model allows excellent auditability while making sure that all communications with customers are predictable and pre-approved.

Content Doctors detect common mistakes

Those who create and approve content can make mistakes while writing content: typos, wrong use of words and macros, and so on. These mistakes can lead to bad user experience, and sometimes to compliance violations.

As an extra layer of defense, our system leverages the Content Doctor, which plays a role in identifying problems with pre-written content: broken links, wrong references, incorrect wording, typos, and more. The Content Doctor runs within the CMS and surfaces alerts when it detects a problem.



CMS Content Doctor

Instrumentation: easy detection and response in real time

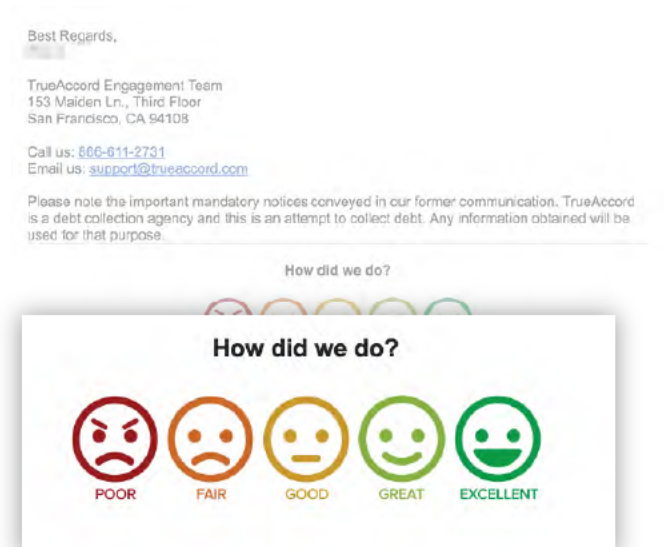
One of the major risk management challenges with phone-heavy communications is understanding exactly what happened on a call. Speech analytics software is expensive and limited in its functionality. Collector reporting after the fact is often partial and unstructured. The result is thousands of man-hours spent listening to recordings and manually scoring quality. TrueAccord uses manual quality assurance where needed, but that is rarely the case. Since most communications are pre-written and delivered by code, customer behavior and interactions are much easier to track and respond to.

Event-based compliance monitoring

Every action the customer does is tracked by the TrueAccord system. Every email opened, link clicked, page viewed on the website, or interaction with an agent are saved in real time in the collection engine. Structured data enables rule-based compliance tracking at scale: compliance personnel can look for keywords in multiple written communications at the same time, instead of listening to individual recordings in the hopes of detecting a violation.

Shortening the feedback loop

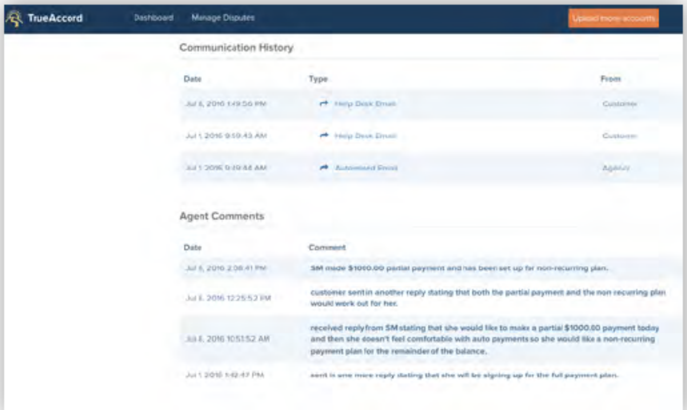
Call tracking requires reporting from collectors at the end of the call, and listening to calls after the fact (or in some cases, individually while they happen). In the TrueAccord system, real time, event-based tracking enables real-time detection and response. In addition, if a customer is upset or can't find what they need, a robust online experience allows them to express their frustration in real time. Providing feedback in the moment enables a supervisor to respond and resolve the issue before it escalates into a compliance problem.



Customer Email Feedback Options

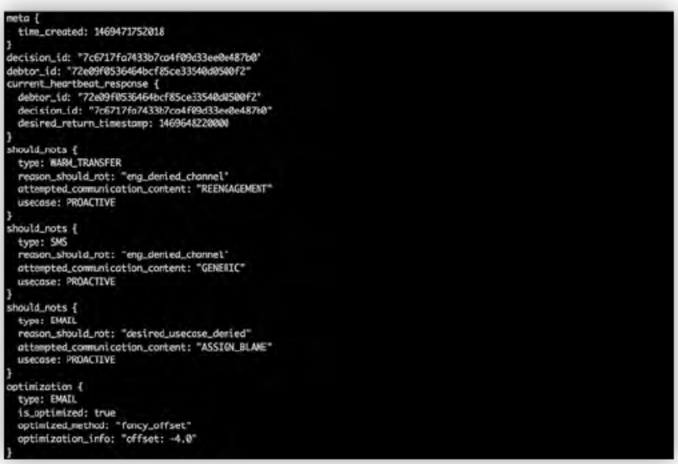
Auditability

All data is stored in one location and is available for audit via a specialized QA dashboard.

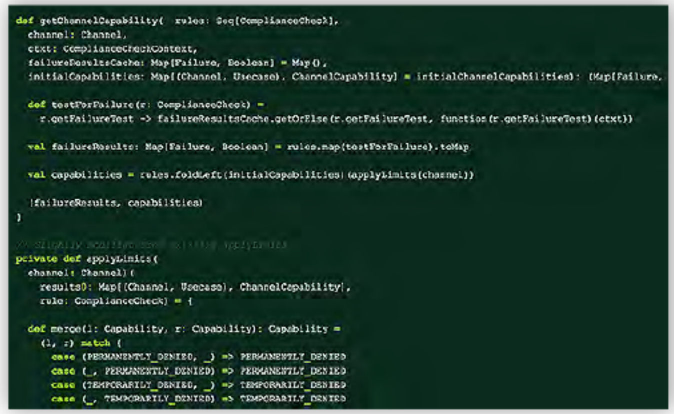


QA Dashboard

Auditing collection activity becomes much simpler work, in a single interface, allowing the auditor to not only follow what happened but also why it happened, as all of the system's decisions and reasons for its communication decisions are also stored in TrueAccord's database



Customer Decision Log



Compliance Firewall Rule Set

Last line of defense: the compliance firewall

Even though communications are pre-written and triggered by code, the system includes one more layer of defense – the Compliance Firewall. This component serves as the last check for every communication request, enforcing a broad set of rules to make sure communications are compliant.

- It validates that all required disclosures have been added to every communication according to location, whether it's initial communication or not, and so on.
- It validates time of day and day of the week for each communication to make sure it doesn't violate Federal or State laws.
- It checks prior communications with the customer to make sure the system isn't messaging the customer too often.

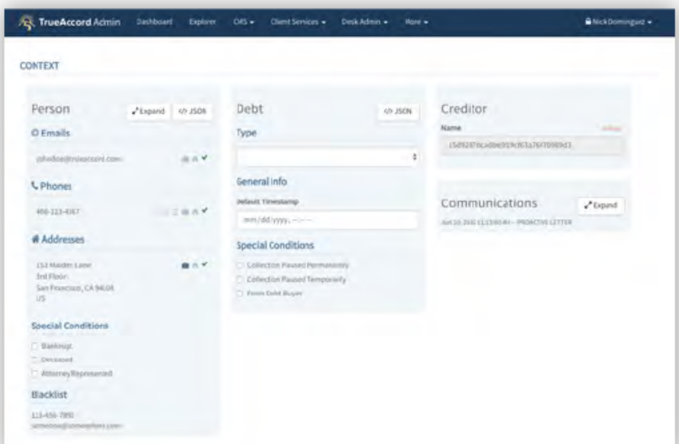
Easy change propagation

The Compliance Firewall is a single repository of collection compliance rules.

Since all rules are concentrated and enforced in one place, changes in regulation (e.g. reduced frequency of calls to work phones in Massachusetts or a change in disclosure language) can be update with a single code push rather than retraining collectors.

Predictability

Since communication is pre-approved and all compliance rules are located in the Compliance Firewall, it becomes easy to predict the system's behavior. Compared to a human opeartor, if the system is coded to follow a certain plan of communication, it will follow that plan predictably and won't deviate. A system component called the Probe

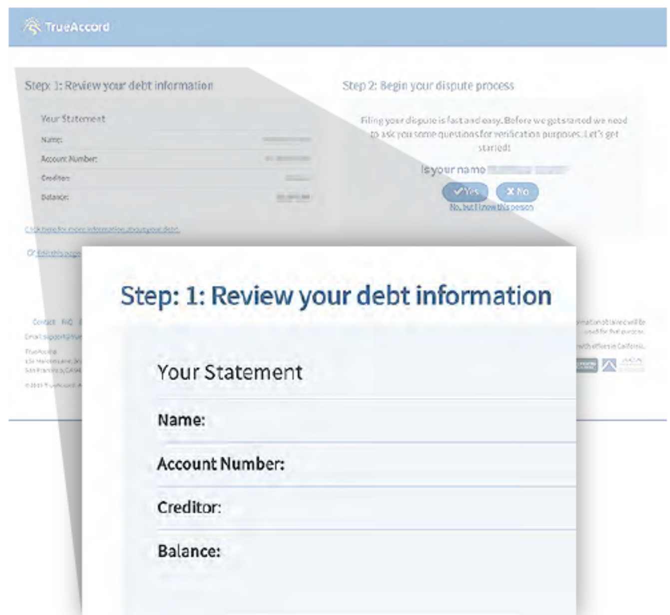


TrueAccord Probe

lets compliance personnel test that predictability. Using a simple menu, team members can create test scenarios for the system based on customer details and use case, and see the actual communication they would get. The Probe significantly reduces the guessing game in compliance management compared with a large call center.

e-Dispute Management

TrueAccord moved the FDCPA dispute process into the digital realm to streamline data and simplify accountability. The process to file a TrueAccord digital dispute lets a customer report their circumstances or issues easily and early through a self-help experience. The digital dispute process provides a response to the customer indicating that they were heard, and keeps track of all communications related to the dispute for downstream FCRA and FDCPA compliance. This function significantly reduces complaints and misunderstandings in the dispute process. For a deeper review, read our [eDisputes White Paper](#).



eDispute Flow

Summary

Moving to digital first and machine learning-based collections provides an excellent opportunity to digitize, modernize, and simplify compliance controls. It creates an environment where communication is pre-approved, communication plans are predictable, and customer feedback is easy to track and follow up on in real time.

The results are clear:

- TrueAccord sees close to no complaints or legal exposure from several years of collection operations and tens of millions of customer interactions.

- Implementing regulation- and case law-driven changes takes hours instead of weeks or months.

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- Relatively small Legal and Operations departments manage highly scalable collection efforts.

Contact us at sales@trueaccord.com to learn more about our offering and how it can work for you.

Appendix C: Machine learning based collections

How can computers collect better than humans?

TrueAccord | Blog

When we started working on our patented collection engine, Heartbeat, the industry told us: you'll fail. Computers can't collect. Humans do. The best you can do with automated communications is to drive inbound calls, so human collectors can "seal the deal". Fast forward 18 months since our launch, and Heartbeat beats call-center based agencies in a growing number of segments. It turns out that computers collect debt pretty well. How come?

Debt collection is a numbers' game. Consumers are ready and able to pay at different times, react to different stimuli, and need varying levels of support in the process. Teaching a machine to respond to these needs was historically more expensive than hiring humans, but as technology improves and compliance requirements grow, this is changing rapidly.

Humans are great at acting on intuition and responding to a changing situation. We act well based on partial information, guesses, slight changes in tone of voice and intonation. Good sales people do so without thinking. Humans are great at identifying and understanding corner cases and responding to complex inquiries. Machines can't learn these things unless explicitly taught, and many of these skills are nuanced and complicated. Machines are "robotic", for better and worse, and can't have empathy.

Humans do have downsides, too. We are susceptible to biases. We make decisions based on the few past examples we remember and ones that fit what we believe. Collectors fixate on high balance accounts, worry about missing their goals, fight with their significant other and lose focus. Machines do not. Machines don't forget a thing, and they always take as much data as available into consideration. Machines don't talk back or get angry.

Historical attempts failed because they either tried to replace humans with even lower-paid humans, or tried to automate and get rid of humans altogether. We realized that a hybrid approach was the best one: machines make accurate decisions based on historical data when available, and learn from humans when not. Humans understand corner cases. We had to create a combination of a strong engine, and a team of experts to continuously improve it.

How does that work? When Hearbeat doesn't "know' what to do with a customer, it defers to our team of experts in San Francisco. They resolve the issue for the customer, and also give enough input so

Heartbeat will know how to deal with the same situation in the future. The combination allows us to hit incredible productivity rates, while beating other “robotic” and passive “payment gateway” solutions.

Can machines collect? They can, and apparently many who are in debt prefer their targeted approach. When you think about the user experience, the ease of use and the automation, it’s actually not that surprising.

Source: http://blog.trueaccord.com/2016/05/how-can-computers-collect-better-than-humans/

Stop the hiring craze: How TrueAccord reached 30,000 cases handled per agent

TrueAccord | Blog

Hiring collectors is one of the biggest challenges in collections and recoveries. Most collection processes are manual and require extensive training: the low, commission based salaries and the adversarial nature of the job lends itself to high turnover. Once agents are trained and working, collection managers must keep them up-to-date on debt collection regulations, as well as implement quality controls. One ill-trained agent’s compliance violations can put an operation at risk due to the many regulations that govern the US collection and recovery process. This results in a big investment in human resources. It’s no surprise this is one of the biggest line items for any collection operation. Beyond payroll and training, turnover results in low morale, often hurting organizational cohesion.

TrueAccord agents aren’t traditional collectors. While trained in every aspect of collection compliance, this team of experts is tasked with resolving complex cases and tuning our machine learning system. Their compensation doesn’t have a commission component. The team’s name, Customer Engagement, hints at its consumer-first focus. Even with a highly qualified group of agents, growing linearly with placed volume can still hurt the company’s cost structure and prevent TrueAccord from continuing to provide long-tail or low-balance collections. We realized we needed to find a scalable way to grow, so approached the solution in two different ways.

Scaling with decision automation

The technology platform that underlies TrueAccord’s system is programmed to replace many human decisions with machine-based ones. Replacing the call center paradigm with a machine based one has many benefits, chief among them is, far less need for humans to be involved in the process. The patent-pending engine that powers the collection platform, Heartbeat, tracks consumer interactions with collection communications; notes their browsing pattern on the website and uses historical data to decide what its next action should be. Heartbeat handles follow-ups on failed payments and promises to pay, triggering communications on its own. It even asks for an outbound call, when deemed to be the best course of action.

In this model, agents stop being collection tacticians making micro decisions while handling talk-offs. They are, instead, collection strategists – deciding what the general course of action should be, resolving difficult cases and teaching the machine how to improve. This is a fundamentally different way to handle collections – from human-heavy to expert-based automation.

Scaling with process automation

Another advantage of a machine-based, digitally focused system is streamlined process automation. Dispute handling is a great example of this in practice. Traditionally, disputes under FDCPA guidelines are received in writing, via postal mail, within a certain window of time after the initial consumer communication. This highly manual and inefficient process; consumers mail disputes that may get lost in the mail or through paper-heavy process and turnaround is, at the very least, several weeks. Given how expensive it is to process disputes, collectors sometimes choose to discourage them, as much as possible, while processing the minimum required by law. The danger of this strategy is that the savings in manpower may be eclipsed by the cost of legal violations.

Compare that process with eDisputes. Since the platform is automated, adding a conspicuous link to an online dispute experience is very easy. Consumers are asked a few questions, identify their issue and get an immediate notification of a dispute receipt. If required, the client is pinged for verification, after which they can upload documents via the platform and those are then presented to the consumer in an easy to understand interface. In-house agent involvement in this process has been reduced to almost zero. And indeed – the percent of disputes filed via direct mail has dropped by almost 100%, while consumers get a more compliant, easy to access response to their dispute.

Bottom line – getting to 30k

TrueAccord considers technology first. We set out to build a platform and system that continues to scale as more clients trust us with their business. We invested in a platform that relies on expert agents rather than a large call center, using data to replicate their best decisions at scale. Then, based on our evolving understanding of collection needs and how consumers use the platform, we continue to add automation to replace work that was previously manually done. In 2014, each of our Customer Engagement agents handled 10-15k active cases; this year, the number has already surpassed 30k, yet we are far from perfect optimization. This means we'll continue to be able to offer clients flexible collection plans, handle low amount accounts and high-touch accounts effectively. We are poised to manage attractive pricing models. And, as a bonus, a system that involves less human-to-human interaction is leaps and bounds more compliant than one that relies on commission-based phone calls. It's a win for all parties involved.

Source: http://blog.trueaccord.com/2015/12/stop-the-hiring-craze-how-trueaccord-reached-30000-cases-handled-per-agent/

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Sept. 9, 2016

Via e-mail: lauren.weldon@cfpb.gov

Small Business Advisory Review Panel Members
On Debt Collector and Debt Buyer Rulemaking
c/o Consumer Financial Protection Bureau
1700 G Street, N.W.
Washington, DC 20552

Re: Written Comments of Small Entity Representative William E. Hopkinson

Dear Members of the Small Business Advisory Review Panel:

Thank you for selecting me to serve as a small entity representative (SER) in the Small Business Advisory Review Panel (SBAR) process for the Debt Collector and Debt Buyer Rulemaking. I appreciate the opportunity to provide feedback on the potential impacts of the proposed regulations on small businesses and to offer regulatory alternatives to minimize the costs and burdens associated with the proposals under consideration.

1. Background

I am President and CEO of Valley Credit Service, Inc., in Charlottesville, VA. My company is a third party debt collection agency with three offices and 22 employees. Our focus is primarily on medical debt, with lower concentrations in government, retail and real estate debts. Valley Credit Service was started by my father in 1966, and it has a long-standing relationship with our community, based on respect and a problem-solving approach. VCS's sister company, which divested from third party debt collections in 2013, was established by my great-grandfather in 1920. CBC now provides early-out services to creditor-clients. Our industry has many good players who try hard to help consumers, but we are subject to outdated federal regulations, conflicting court decisions, and frivolous, costly lawsuits. The most helpful course the CFPB can take, in adopting new regulation, is to make it pragmatic and clear-cut, while minimizing adverse impacts on small businesses.

2. General Comments

I understand the complexity and scope of the effort the CFPB has taken on, and while I provide comments below on specific points, several general observations are worth noting at the outset.

- The absence of first parties from the SBAR process makes it difficult to know what specifically will be involved with the information integrity part of the proposal. Without that participation, we are speculating on what information will be available and are handicapped in providing useful feedback on the workability of the proposals or reasonable alternatives. From my experience, available account information differs significantly by different types of debt, and the Bureau will have to spend considerable time learning these differences and fine-tuning this part of the rule to take them into account. As just one example, medical debt is heavily influenced by HIPAA requirements, and healthcare providers are very hesitant to share protected information; the CFPB will have to recognize these limitations and other product-specific factors in writing new requirements.

- The reality that a "one size fits all" approach will not work is true not just for the information integrity requirements, but more broadly throughout the rule. Specific approaches or flexibility will have to be built into the proposals to ensure their workability in the real world.

- The Bureau must be careful that in limiting collector contacts to protect consumers from harassment, it does not go too far and reduce opportunities to resolve outstanding debt, thereby harming consumers. A pragmatic approach is needed to ensure a positive outcome.

- Clarity is very important in setting new regulatory requirements. A number of terms and obligations in the Outline of Proposals are vague, and unless they are clarified and compliance safe harbors provided, the result will be unproductive, increased litigation and higher costs for all.

3. Specific Concerns

- Among the more specific concerns I have with the proposal is the lack of bright lines in the Bureau's warning signs provisions. By providing a list of non-exclusive examples of warning signs at the time of placement and throughout the life of the account, the proposal opens the door to after-the-fact claims – and protracted litigation – that a collector "should have known" there was a problem. If the Bureau elects to go down this path, it must provide a set list of warning signs and a safe harbor if a collector satisfies its duty to check all these factors.

- The proposal would add considerable cost and bulk to required notices sent to consumers. One way to mitigate this burden is to amend the "Consumer Statement of Rights" proposal so the regulatory requirement is met if the notice sent to the consumer refers him or her to the CFPB's website, the agency's website or makes the Statement available upon written request. This will save costs while using modern technology or less burdensome approaches to make consumers aware of their rights.

- As noted above, communications with consumers benefit them by providing opportunities to resolve disputes and settle outstanding debt, helping consumers clear their credit records and avoid litigation. The call frequency caps should not count contacts such as inbound contacts, wrong numbers, or contacts that do not cause the phone to ring. Equally, they should not include letters, communications at the request of the consumer, or attorney notifications.

- The proposal must be clearer with respect to "debt parking." Some explanation must be provided as to what is required in providing notice to the consumer. If the requirement extends to documenting that the consumer ***received*** the notice versus mailing the notice, it will mean significant cost and penalties for a debt collector that is reducing communication and using credit reporting for the debt.

4. Additional Feedback

At the end of the SBAR meeting, you asked for any additional feedback. I have two comments.

- The CFPB complaint portal needs revamping so that complaints are properly categorized for the industry in which the complaint belongs. Someone at the CFPB should be required to review each complaint and determine if that complaint has any validity or if it is simply someone complaining. For instance, someone may complain that they received a call at their place of employment. The portal should then ask, "Does your employer prohibit personal communications at your work site?" Then, if the answer is YES; "Have you notified the agency your employer does not allow such calls?" Then, if YES; the complaint is flagged as a possible violation. Otherwise, if the answer is NO; "We will file your complaint. However, it is highly suggested you contact the agency to inform them of your employer's policy not to accept personal phone calls at work." This is specific and educates the consumer. Another issue is when a consumer complains about Debt Collection and the complaint is that the dentist didn't fix their tooth. This is not a debt collection complaint that has anything to do with FDCPA or state consumer laws. This is obviously a quality of service complaint in the dental industry and should be reclassified by CFPB staff.

- A second question raised at the end of the meeting concerned what state requirements apply to collectors' obligations on call frequency. I urge the Bureau to conduct a full review of existing requirements, both to understand the extent and variety of obligations already in place and to consider state approaches as a potential model for federal regulation. I have by no means done an exhaustive review, but I was able to find the following provisions in the West Virginia regulations:

  "(d) Calling any person more than <u>thirty times per week</u> or engaging any person in telephone conversation more than <u>ten times per week</u>, or at unusual times or at times known to be inconvenient, with intent to annoy, abuse, oppress or threaten any person at the called number. In determining whether a debt collector's conduct violates this section, the debt collector's conduct will be evaluated from the standpoint of a reasonable person.

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 eight o'clock antemeridian and before nine o'clock postmeridian, local time at the consumer's location."

Conclusion

The Bureau has the opportunity to bring about improvements in the rules governing debt collection, but this power must be exercised carefully and responsibly if it is to achieve the goals of benefitting consumers while minimizing burden on small entities, small creditor entities included. The new rules must place a premium on certainty and clarity, to maximize compliance and avoid frivolous lawsuits. And the rules must be pragmatic, based on a well-developed understanding of the variety of products and services and the complexities in this field. I appreciate the opportunity to provide feedback on the proposals and remain available if the CFPB should decide to reach out for small business input in the future.

Sincerely,

William E. Hopkinson

Debt Collector & Debt Buyer Rulemaking SBREFA Panel Outreach Meeting

Larry Zimmerman

Zimmerman & Zimmerman, P.A.

Written Remarks

FIRM OVERVIEW

Larry Zimmerman is partner in the woman-owned law firm, Zimmerman & Zimmerman, P.A. Our firm is a traditional law practice with three attorneys and six support staff. Though we practice law, we are also "debt collectors" under the Fair Debt Collections Practices Act.

Our clients are primarily local to Kansas including small businesses, small financial institutions, medical providers, and municipalities including school districts. We appear in person on behalf of our clients in Kansas's 105 counties and three tribes and our office doors are open to over 500 consumer walk-ins each month. Our firm's attorneys and staff serve or have served in a variety of capacities in the community including on boards for women and minority business outreach, consumer and housing credit counseling, and as *pro bono* consultants to indigent legal aid groups.

We have experience representing the largest credit card issuers and debt buyers. It was important for creditors to use local firms. Consumers, courts, and regulators appreciated the arrangement because we were nearby, accessible, and human as opposed to far-away, automated call centers.

Creditors are now asked to regulate their lawyers and the lawyers are asked to provide ever increasing levels of legal counsel to unrepresented consumers. That has up-ended traditional attorney-client relationships and state regulation of attorneys. Where we used to provide independent legal representation, outside counsel is now called on to simply implement creditor-drafted procedures. Measuring compliance with the creditors' procedures requires daily, weekly, monthly, and semi-annual audits that are simply too expensive for small firms to complete and too expensive for creditors to conduct for more than a few regional or national firms.

We have, therefore, left that market segment to large entities. Consumers, courts, and regulators are now further away from the lawyer collecting and resolving issues requires more time, more navigation of automated menus, more work with non-lawyer staff, and more opportunity to be lost in the shuffle.

This consolidation has stifled our access to capital as a small business. Many of the proposed rules (e.g. contact caps) will accentuate that difficulty. The outlay required for equipment and programming to comply will require credit. That credit is now harder to obtain as the value of our collateral (number of accounts available for collection and the collectability of those accounts) shrinks. Our firm is reviewing alternative practice areas in direct response to the costs associated with proposed rules.

GENERAL FINANCIAL IMPACTS

As preface to the rulemaking process regarding debt collectors, the Consumer Financial Protection Bureau notes:

> "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."[1]

We agree with this statement. We disagree that credit card issuers and buyers provide a model for all creditors laboring under the Fair Debt Collections Practices Act. The proposals impose substantial burdens on a variety of entities who find themselves covered under the Act including this non-exhaustive list of examples:

- A small business that received a check on a closed account;
- A landlord discovering damage to a rental apartment;
- A dance teacher whose student's monthly auto-pay links to an overdraft account;
- A municipality providing water service to a non-payer of a final bill; and
- A public school district enrolling a student online where payment was never sent.

Because these small entities lack in-house counsel, on-site IT divisions, and teams of auditors in every state that a credit card issuer or debt buyer might have, they rely heavily on the professional, independent legal advice of our firm. With an acceptable ratio of risk to revenue, we can provide representation. Conversely, if the risk or overhead of new rules runs too high, we must decline. Turning away viable, reasonable business negatively impacts our small business, our small business clients, and our community.

INFORMATION INTEGRITY AND RELATED CONCERNS

Our firm serves as legal counsel to clients with a broad range of business expertise and capacity. Most clients will possess the majority of the information addressed in Appendix C.[2] Several key exceptions that are commonly arise.

- **Last Known Telephone Number.** Not all clients have a last known telephone number for a consumer. It should be noted that telephone numbers are not particularly valuable in establishing a reasonable basis for a claim of indebtedness.

  For example, a land line is a telephone number for an entire household and not necessarily relevant to a claim against a particular member. A mobile number seems more directly relevant

[1] Consumer Financial Protection Bureau, *Small Business Review Panel for Debt Collection and Debt Buyer Rulemaking,* July 28, 2016, 1
[2] Ibid, Appendix C, 1

to establishing the identity of a specific debtor. We recognize that high reassignment rates for mobile numbers render them an imperfect verifier of identity.

- **Account Number.** Smaller creditors in particular may not use any account number for their consumer accounts. In many such cases, the consumer name alone is the identifier.

- **Date of Default.** This can be difficult to determine in many cases outside a formal loan agreement. For example, if an individual writes a worthless check on a closed account, there is a date of the check but not a date of default. Fitting the concept of default to medical services can also be imperfect.

  Even in formal loan contexts, the date of default may impose complexities because multiple dates of default may occur, especially where a consumer previously cured a default or continued making partial or sporadic payments.

- **Each Interest Charge.** Many creditors lack computer systems to calculate and apply interest. They do, however, have a statutory right to claim it under state law. In an instance like that, the attorney would not be in possession of each interest charge but has actually created it based on the application of the law to the client's facts.

Allowing an attorney to acquire reasonable support for an initial claim for indebtedness through other means or elements seems a viable fix if executed with sufficient flexibility to allow all creditors and their attorneys to comply with sufficient certainty to ensure compliance. The proposal notes, "However, the collector would bear the burden of justifying its alternative approach."[3] Therein lies the hazard to the attorney. The attorney bears all of the risk and with risk comes substantial and significant costs.

Where our client does not maintain records to support all of the fundamental elements identified by the Bureau, the presumption for establishing reasonableness falls exclusively on the attorney. For an account for any creditor in which the fundamental elements identified by the Bureau are not available, the presumption for establishing reasonableness would rest on the attorney. That would inevitably be a question of fact inescapable through summary judgment resulting in significantly increased risk of claims or litigation. Given that such accounts generally involve lower balances and occasional accounts, the added risk renders legal assistance less justifiable in these cases leaving small businesses fewer options in obtaining counsel. (It also presents thorny ethical problems for our firm under our Rules of Professional Conduct and commentary. For example, our Comment 1 to Rule 1.3 mandate that, "A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and may take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor." Potential conflicts between our firm's bottom line and a client's right to representation on a legally valid claim can present issues under K.R.P.C. 3.2 as well.)

Smaller clients lacking one or more of these elements might still: attempt to collect on their own, retain counsel who is not a debt collector under the Act, or proceed *pro se* in the appropriate court. In each of these alternatives, the consumer's avenue to resolve an account will be through an unlicensed and

[3] Ibid.

potentially unregulated entity. Each of these options potentially increases risk to consumers and may foreclose their options for remedy.

Waiver of Revival

Consumers regularly work with our firm to voluntarily repay accounts. Many of those consumers are able to pay, want to pay, and are making an effort to pay though the rate of repayment is less than contemplated by contract or their original agreements with the creditor. These consumers often want to avoid litigation and a resulting judgment but their proposed plan for repayment would result in payment in full after the applicable statute of limitations.

Under state reviver statutes, the creditor may accept a prolonged repayment arrangement without fear of the debt becoming time-barred. Both consumer and creditor avoid the costs of litigation, the consumer avoids a judgment, and the creditor is ultimately made whole.

The Bureau proposes to preempt state statute on revival of the statute of limitations based on payment or written acknowledgment of the debt. That attempted preemption will negatively impact these debt-paying consumers.

Should the Bureau proceed in preempting the state statute on reviver, then the motivation to negotiate a prolonged repayment schedule is significantly impaired. The creditor is against the clock and must sue in spite of on-going payment to protect the claim. The consumer experiences additional costs of litigation and the impacts of a judgment. A statutory option for the consumer will be foreclosed.

Restrictions on Debt Collection Contacts with Consumers

Of all the proposed rules, none invites so much concern as the rules restricting contacts or attempted contacts with consumers. While our firm does not use auto-dialers or engage in concentrated letter and call campaigns, we are attorneys who regularly meet with consumers by phone and in person and we spend a considerable amount of time answering questions and assisting consumers with their accounts.

For consumers in need where “time is of the essence” or where a consumer has a legal right to contact, the austere limits proposed are particularly harmful. A review of our own phone calls for two years indicates that a steady six percent of telephone contacts involve consumer-initiated contacts seeking assistance with a specific problem which require exceeding the caps proposed by the Bureau. The consumers’ problems are not solved or questions answered where a contact cap prevents us from assisting. The consumer’s ability to choose contact, to obtain assistance, and to conduct their own affairs is foreclosed.

Alternative – Exemptions

We propose that there are a handful of exceptions which would preserve consumer's ability to obtain assistance without our needing to fear exceeding an arbitrarily established cap.

1. Contact initiated by a consumer is not counted against the cap.
2. Contact in response to a consumer request is not counted against the cap.
3. Contact initiated by a consumer's attorney or agent is not counted against the cap.
4. Contact related to litigation or post-judgment remedies (including but not limited to legal notices, discovery, and orders) are not counted against the cap.
5. Contact required by state or federal statute or rule are not counted against the cap.

There are several concrete examples of each that our firm addresses on a weekly basis anywhere from 75-100 times. In each case, the consumer wanted to and needed to exceed the proposed caps and benefited therefrom.

1. Consumer Initiated Contact.

Example 1: Consumer calls on Monday to make a payment. Consumer then calls on Tuesday to confirm the payment processed. Consumer calls again on Friday to revise her payment plan schedule. (Three confirmed consumer phone contacts.)

Example 2: Consumer appears at court and makes agreement to pay. Consumer leaves court and drives two miles to our office to make payment. Consumer returns next day to obtain copy of satisfaction of judgment. (Three confirmed consumer live contacts.)

Example 3: Consumer calls on Monday to offer settlement. Consumer calls on Tuesday to see client response (a counter offer). Consumer calls back on Tuesday to counter the client offer. Consumer calls Thursday to confirm offer was accepted. Consumer calls Friday to make the settlement payment. (Five confirmed consumer phone contacts.)

2. Response to consumer request.

Example 1: Consumer is trying to close on a house. Consumer calls on Monday to advise she needs a written payoff balance on a judgment so she can close on a house. We fax a copy of the payoff balance as requested. Consumer calls later on Monday to make a payment and asks for a fax of the receipt. We fax receipt. Consumer calls on Tuesday asking for a letter indicating the account is paid in full. We fax letter. Consumer calls on Thursday asking for a copy of a satisfaction of judgment. We fax satisfaction. (Eight confirmed consumer contacts.)

Example 2: Consumer visits office on Monday asking for copies of documents supporting the debt. We provide them. Consumer calls on Tuesday to ask questions about documents. Consumer calls on Wednesday to offer a payment arrangement that is accepted. Consumer wants written statement of arrangement. We send payment plan agreement letter. (Four confirmed consumer contacts.)

3. **Consumer Attorney or Agent.**

   Example 1: Consumer's attorney sends notice on Monday of bankruptcy by email. Consumer's attorney then calls on Tuesday to ask whether any of client's claim is post-petition. We send consumer's attorney documentation breaking out pre- and post-petition components on Tuesday. We see attorney at court and discuss the case and documents in detail. (Four confirmed consumer contacts.)

   Example 2: Consumer faxes a written authorization to speak to investigator on Monday (attorney is applying for job requiring security clearance). Investigator requests copies of judgments and balances on Monday. We send the response to investigator on Tuesday. Consumer calls on Wednesday to pay in full. Investigator calls on Friday to confirm all judgments were paid. We fax letter saying as much on Friday. (Six confirmed consumer contacts.)

4. **Litigation or post-judgment remedies.**

   Example 1: Consumer has a pretrial setting from which he needs excused. We discuss possible reschedule dates on Monday. Court indicates conflict and proposes a new date altogether. We contact consumer on Monday to verify availability. Court orders us to serve notice of the new pretrial date and we do so on Tuesday. We send proposed pretrial questionnaire on Wednesday. Consumer completes and replies on Thursday. (Five confirmed consumer contacts.)

   Example 2: Consumer is subject to bank garnishment and we send notice of garnishment and right to request hearing on Monday. Consumer files request and serves copy on us in person on Tuesday. She provides documents showing her share of ownership of funds in the account on Wednesday. On Friday, we meet in person at hearing before the judge to dismiss all but her share of the funds garnished. (Four confirmed consumer contacts.)

5. **Contact required by state or federal statute.**

   Example: State law requires a specific notice at a specific time on claims based on a check written on a closed account. We send that notice on Monday. A second account from a separate creditor is placed with us so we send a 1692g initial communication on Tuesday. A third account from a third creditor is placed and so we send its 1692g initial communication on Thursday.

Any suggestion that our office could obtain a written or oral waiver at the first contact to allow contacts above the proposed caps would be impractical. None of the examples experienced in our review were obvious or apparent from the first consumer-initiated contact that there would be continued, cap-exceeding contact throughout the week. Additionally, when focused on resolving a specific and discrete issue, consumers often feel frustrated or suspicious of requests for a waiver of rights as a pre-condition of assistance.

ALTERNATIVES – TECHNOLOGICAL

We have consulted with two software/hardware vendors regarding technological solutions to enforcing call caps. In each case, the vendors could not render an estimate for programming required to effectuate the inbound and outbound call-blocking required by the cap.

At the moment, our firm uses stand-alone collection management servers and phone servers. We benefit by this approach because no possible confusion arises under the TCPA that our system constitutes an auto-dialer. Altering that configuration to connect the two introduces new exposure under the TCPA. To date, we have not independently explored nor retained counsel to review that exposure.

The two proposals for a new phone system to integrate the collection management system and the phone system were for $40,000 (all new phone hardware) and $25,000 (an <u>attempt</u> to use our existing phone system). Additionally, we received a bid of $3,000 – 5,000 for reprogramming our collection management software to complete the integration. The amount varies depending on the vendor selected and does not include a $350/hour overage for firm-specific modifications. Vendor selection impacts price as some interfaces are already created (though firm-specific mapping is required) while other vendors require a one-off creation of the interface.

That initial cost of $30,000 to $45,000 solves <u>only</u> the integration component. Implementing software controls to block over cap inbound or outbound calls poses more significant problems. We approached two vendors with the base rules in the proposal and after two weeks of discussion, the vendors were unable to provide an estimate. Both vendors estimated at least 18-24 months for the project to draft the project scope, program components, test, and deploy a final product. Neither would commit that the finished product could guarantee a specific percentage of accuracy having never attempted this level of integration before and both expressed concern about “downstream” liability under the Bureau’s rules citing to Global Connect’s experience.

Both of the above vendors properly fall under the description of small entities with, respectively, five and 300 deployments of their software. We selected both vendors for existing compatibility and knowledge of our present system. Practicalities prohibit migrating to a new system to enable a third vendor to attempt a bid. A similarly sized firm which migrated from one comparable provider to a new one spent over $100,000 in data conversion, licensing, and installation five years ago. The operational impact of that migration created a financial loss for the fiscal year of installation.

ALTERNATIVES – MANUAL

One comparably sized firm contacted has adopted a purely manual approach which would potentially enable compliance with the caps. This firm has an undisclosed physical facility and all public access is prevented. Though we cannot move our location, we could alter our entrance for a cost of $5,000 to bar public access allowing us to stay under the one live contact limit. (Our firm sees over 500 walk-in visits by consumers per month.)

This firm resolves the phone contact component by directing all inbound calls to voice mail. Inbound callers obtain no live interaction. This policy allows the firm to review the message and evaluate whether a call may be returned. This manual system required addition of a second attorney at a cost of $55,000 per year to assist in review.

This firm received negative reactions to this approach. Consumers who might ordinarily require one call for an easily answered question now involve a minimum of two calls – the inbound and the return call. In practice, call volume more than doubles as it takes multiple attempts to eventually connect consumer to attorney. Additionally, many consumers express unhappiness with the voice mail approach and call multiple times.

Courts question the firm's approach expressing concern that the attorney is not more available to consumers from whom he seeks to collect. Some courts end up frustrated as consumers call the court for information knowing a live human will be on the line and assuming the court can obtain information needed.

We believe this approach could ensure contacts remain under proposed caps but at significant cost in managing the increased contact volume. We believe it would also increase disputes, complaints, and a perception that our firm is illegitimate.

Time, Manner, Place Restrictions

The Bureau is considering four categories of locations that are presumptively inconvenient for consumers: medical facilities, places of worship, places of grieving, and childcare centers.[4] There are two concerns with this proposal – an operational concern and a consumer choice issue.

We anticipate that this presumption will ultimately be expected by the consumer bar and regulators to require an affirmative step by our firm to prove we could not have known we were calling the consumer at an inconvenient place. Specifically, we anticipate vendors will create databases of phone numbers associated with the four excluded zones and proving we did not know the number dialed to be presumptively inconvenient will require evidence that we scrubbed our phone number database against one of these vendor products. It is impossible to guess at the moment how much such a service might cost but current scrubs for mobile numbers, reassigns, and disconnects indicate such a product will ultimately exist.

More significantly, the presumption increases risks for our firm in cooperating with consumers who choose to communicate from one of the excluded zones. The following examples are from regular, actual experiences of our firm:

- Consumer at a rehabilitation hospital used his "long, boring days of recovery" to work with creditors to negotiate payments and settlements on his accounts;
- Consumer, employee of a church, sought information related to an account; and

[4] Ibid., 29-30

- Consumer, owner of a daycare, solicited payment confirmation.

After 25 years in this practice area, I have never seen a collector deliberately contact a consumer at one of the excluded zones in an attempt to collect a debt. We have frequently contacted consumers and been contacted by consumers who we discover later to be in one of the excluded zones. The practice has always been to politely say, “I’m sorry; is this an inconvenient time?”

That would be prohibited under the proposed rule most likely forcing an abrupt disconnect – even in instances where the consumer might want to continue if prompted with information about the purpose of the call.

The alternative in our view is to allow the consumer to retain choice in establishing inconvenient place. As a second alternative, allow the lawyer to prompt the consumer with information about the purpose of the call so the consumer is fully informed prior to making a decision to terminate the call.

RECORDKEEPING

The Bureau is considering a rule which would require our firm to retain documentation, including phone calls, for three years after our last communication with the consumer about a debt.[5] This presents two cost-related issues for our firm related to court documents and telephone calls.

COURT DOCUMENTS

Our firm retains most but not all file-stamped, court documents. All courts within our state accept electronically filed documents and maintain imaging systems of documents filed. We currently rely on that system of record to retain some documents rather than securing all of them on internal systems. While we have an internal record that said documents were filed, received, and processed, it’s not clear that we would not also have an obligation to obtain and retain local copies of documents currently entrusted to the courts.

RECORDED PHONE CALLS

Our firm records all phone calls and currently retains for one year – the statute of limitations under the Fair Debt Collections Practices Act. Retention beyond that one year becomes a complex IT issue.

Our collection management system is not integrated with our call recording system. The recorded calls are stored in a separate database organized by date and time of the call. This makes retention for one year an easily automated event.

Retaining all calls for three years past the last communication (of any sort) would require indefinite retention of all call recordings. For example, Jane Doe calls on September 1, 2016 for a balance. Ms. Doe then makes regular payments and we provide receipts for seven years until the account is paid in full. In that scenario, the September 1, 2016 call must be retained until September 1, 2026. And

[5] Ibid., 35

because that call is lumped into a database of all calls of September 1, 2016, every single call from September 1, 2016 must also retained until 2026 to ensure compliance.

One year worth of call recordings currently consumes one terabyte of storage. The cost of that terabyte of storage is minimal but supporting it is significant. The entire terabyte must be backed up onsite and offsite. Each year another terabyte of storage and backup is added. The additional cost of storage and backup the first year is approximately $5,000 more the than currently paid and would increase by $3,000 every two years thereafter as the volume of calls retained increases. Because of how our calls are index (by date and time), there is no conceivable time any of the storage could “roll off” and be overwritten.

The data contained within the call recordings presents a compelling and ever-expanding data target as well. As the target expands, the interest in attacking it would increase. Measuring that is difficult but costs of data security insurance usually relates to the size of the target insured and multiple terabytes of data is many times what we insure now.

Our firm would have to reconsider recording phone calls to eliminate the risk and costs associated with indefinite storage. Terminating call recording would actually impact consumers the most. We use call recording to audit compliance internally but the most common cause of our retrieving a call recording is to answer a consumer or regulator dispute or question. In the six years we have recorded calls, we have never had a request to produce a call outside of our one year retention period.

SUMMARY

Consumers deserve the lawful, respectful, and consumer-oriented collection efforts that our firm provides. A key component of that is our focus on ensuring:

1. That consumers’ choices factor into how an account is handled; and
2. That our consumers can reach nearby, accessible, and professional lawyers and collectors.

Rules that require, aid, or encourage consolidation of the collection industry toward large, national firms reliant on automated systems will ultimately not serve those goals.

Additionally, creditors with a legal right to collect should not be discouraged from obtaining legal counsel by forming all businesses into the mold of a national credit card issuer or debt buyer. Rules which increase the risk or reduce the reward of accepting a small business’s accounts ultimately impacts consumers as well as the creditor seeks recovery through other, unregulated means.

We appreciate the opportunity to share examples experienced in our own practice and to contribute in some small way to ensuring our chosen area of practice continues to be a vibrant part of our community and economy by helping consumers regain their financial footing.

Appendix B

Final Report of the Small Business Review Panel for the Debt Collector and Debt Buyer Rulemaking

List of Materials Provided to Small Entity Representatives

In advance of the Panel's Outreach Meeting with SERs, the Bureau provided each of the SERs with the materials listed below.

1. Small Business Advisory Review Panel for Debt Collector and Debt Buyer Rulemaking: Outline of Proposals under Consideration and Alternatives Considered (*See Appendix C*)

2. Small Business Advisory Review Panel for Debt Collector and Debt Buyer Rulemaking: Discussion Issues for Small Entity Representatives (*See Appendix D*)

3. Small Business Advisory Review Panel for Debt Collector and Debt Buyer Rulemaking: Panel Outreach Meeting Presentation Materials (*See Appendix E*)

4. Fact Sheet: Small Business Review Panel Process

Appendix C

Final Report of the Small Business Review Panel for the Debt Collector and Debt Buyer Rulemaking

Outline of Proposals under Consideration and Alternatives Considered

July 28, 2016

SMALL BUSINESS REVIEW PANEL FOR DEBT COLLECTOR AND DEBT BUYER RULEMAKING

OUTLINE OF PROPOSALS UNDER CONSIDERATION AND ALTERNATIVES CONSIDERED

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

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[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.

- <u>Definition of dispute</u>. 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;

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[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

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[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

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[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.

- <u>Time-barred debt disclosure</u>. 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.

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[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

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[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.

[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

[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

[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

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[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 debt

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

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[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.

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[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)

Table of Contents

15 USC 1601 note

§ 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.

15 USC 1692c

§ 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, notwithstanding 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 alleged 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

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[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.

- <u>Generic disputes.</u> 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]

- o 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

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

- <u>Action-item "tear-off" on the validation notice</u>. 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]

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[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.

cfpb Consumer Financial Protection Bureau

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.)

Appendix D

Final Report of the Small Business Review Panel for the Debt Collector and Debt Buyer Rulemaking

Discussion Issues for Small Entity Representatives

SMALL BUSINESS REVIEW PANEL AND COST OF CREDIT CONSULTATION FOR DEBT COLLECTOR AND DEBT BUYER RULEMAKING

DISCUSSION ISSUES FOR SMALL ENTITY REPRESENTATIVES

To help frame the small entities' discussions on issues before the SBREFA Panel and on cost of credit matters, we list questions below on which the CFPB seeks your advice, input, and recommendations. For a summary of the proposals under consideration, please see the "Outline of Proposals under Consideration and Alternatives Considered" (Outline of Proposals or Outline). You may find it helpful to refer to the Outline of Proposals as you think about these questions.

Please note that the questions below are designed to assist you in identifying the type of information you may need to participate effectively in the discussion with the Panel and other small entity representatives (SERs). We recognize that some of these questions may not apply to your business. When a topic is relevant to you, please discuss it based on either your experience or your knowledge of the experience of other small entities in your line of business. It may also be useful to provide specific examples of issues that have arisen in your debt collection activities.

The Panel would like to understand the potential economic impacts of the Bureau's particular proposals in the Outline of Proposals. The Bureau welcomes any quantitative information you may choose to provide in response to these questions, either during the meeting or as written comments submitted **by September 9**. While company-specific information is helpful to the discussion, we understand you may wish to respond in a manner that protects your company's proprietary information, as your information may be included in a document made available to the public.

As you prepare for the discussion, please consider the following general issues:

- The potential effects of the proposed requirements and alternatives on your company's systems, operations, staff resources, and compliance costs, as well as the potential impact on your ability to collect debts.
- The amount of time you would need to change your systems or operations, train your staff, or take other actions to comply with the proposals under consideration.
- The potential benefits that may result from the proposals, which may include cost savings, time savings, or reduced litigation risk.
- How your or other small companies' anticipated compliance costs may differ from those of larger entities, and how the characteristics of small companies compared to larger companies may contribute to these differences.

I. Background on the Debt Collector and Debt Buyer Rulemaking

The Outline of Proposals covers a wide variety of debt collection acts and practices. As described in the Outline, the proposals under consideration are geared toward developing standards and requirements so that: (1) only debt collectors with the legal right to collect do so; (2) debt collectors seek the right amount from the right consumer; (3) consumers receive understandable and useful information about their rights and the debt collection process; and (4) debt collectors communicate with consumers in a respectful, lawful, and consumer-oriented manner. The proposals under consideration also focus on clarifying areas of uncertainty in applying the FDCPA.

II. The SBREFA Process and Purpose of Questions

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

These questions are intended to guide discussion during the Panel meeting. As you review the questions, please think about the benefits and costs of the proposals under consideration, including whether a proposal under consideration would require a change to your current practices. If so, also please think about what type of one-time or ongoing costs will specifically result from the change, as well as whether there are alternatives to the proposals under consideration that you believe would accomplish the same objectives but impose fewer burdens on small businesses. The questions below generally track the organization of the Outline for ease of reference.

III. Information Integrity and Related Concerns

A. Proposal under consideration to prohibit unsubstantiated claims of indebtedness (Outline pp. 6-13)

The Bureau is considering a proposal to clarify that whenever a debt collector asserts that a specific consumer owes a particular debt, the collector must have reasonable support for making such a claim. To facilitate compliance, the Bureau is considering articulating steps collectors can take to establish reasonable support for such claims in specific contexts.

- **Initial claims of indebtedness (Outline pp. 8-9)**

The Bureau is considering articulating that a collector can obtain reasonable support for its claims of indebtedness in part by: (1) obtaining and reviewing a specific list of fundamental information about the debts it is collecting; and (2) obtaining a written representation from the debt owner regarding the accuracy of the information it provided. The Bureau also is considering requiring collectors to perform an initial review of any information relied on for "warning signs," or indications that information may be inaccurate or missing and, if any "warning signs" are found, to take additional steps (such as reviewing copies of underlying account-level information) that would result in the collector having a reasonable basis for its claims of indebtedness.

1. What information do debt owners currently provide when placing or selling debts? What

representations do debt owners make to you about the accuracy of the information they place with or sell to you?
2. What information do you review before contacting consumers?
3. Would you be able to obtain and review the list of fundamental information identified in Appendix C of the Outline? If not, what alternative information would you review? Would you recommend adding or subtracting any category of information from the list in Appendix C of the Outline because of cost or similar considerations? If so, why?
4. Before you start collection, do you currently review the information received? How do you conduct that review, *e.g.,* manual or computerized review?
5. If you conduct a review, does this review include looking for any warning signs that the information associated with an individual account or portfolio is inaccurate or inadequate, and what warning signs do you look for? What steps do you take when you discover a warning sign? Would you recommend adding or subtracting any warning signs from the examples on page 8 of the Outline?
6. What changes, if any, would the proposals under consideration require you to make to your operations and systems? What are the amount and type of costs and benefits associated with any such changes?

An alternative to the current proposal would be for collectors to obtain and review copies of all the original account-level documentation that may be required to verify the debt before commencing collection activity.

1. How frequently do debt owners provide original account-level documentation when placing or selling debts? How frequently do you review original account-level documentation prior to collecting a debt?
2. What changes would such an alternative proposal cause you to make to your operations and systems? What are the amount and type of costs and benefits associated with any such changes?

- **Claims of indebtedness following the appearance of a warning sign during the course of collections (Outline pp. 9-10; Appendix C)**

The Bureau also is considering a proposal to require that debt collectors continue to look for warning signs that may arise during the course of collection and take additional steps to resolve any such warning signs before resuming collection.

1. During the course of collection, do you currently review individual accounts or portfolios for warning signs, and if so, what warning signs do you look for and what steps do you take when you discover a warning sign? Do you regard any warning signs as more or less likely to indicate inaccuracies in the information?
2. What changes, if any, would the proposals under consideration require you to make to your operations and systems? What are the amount and type of costs and benefits associated with any such changes?

- **Claims of indebtedness following a dispute (Outline pp. 10-12; Appendix D)**

The Bureau is considering specifying that collectors can obtain reasonable support for their claims of indebtedness and 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 of the Outline, and conclude that it provides a reasonable basis for further claims of indebtedness. A "dispute" would be defined as any 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. This obligation would apply regardless of whether the dispute met the requirements (written and within 30 days) for a dispute under section 809 of the FDCPA.

The requirement to reasonably support claims of indebtedness before resuming collection activity would apply to subsequent collectors. 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.

The proposal under consideration would also clarify that, in response to a timely written dispute, a collector is required to provide a consumer with certain documentation related to the dispute, as described in Appendix D of the Outline. The proposal under consideration also would require the collector to notify the consumer if the collector decided against responding to a timely written dispute because it determined that a dispute was duplicative. If a consumer submitted a timely written dispute and the collector transferred the account without having verified it, then the subsequent collector would be prohibited from collecting without first addressing the dispute.

1. What steps do you currently take to respond to:
    a. Disputes that meet the requirements (written and within 30 days) of FDCPA section 809? How does the documentation or information you provide differ from the information described in Appendix D?
    b. Oral consumer disputes or disputes submitted more than thirty days after receipt of a validation notice?
2. Are there types of specific disputes that would not fall into the categories detailed in Appendix D of the Outline (*e.g.*, dispute as to the amount of debt, dispute as to wrong consumer, dispute as to wrong collector)? If so, what are they and how prevalent are they?
3. What is your current practice when you receive duplicative disputes or disputes unrelated to the validity of the debt or the collector's right to collect?
4. Do you currently receive information from prior collectors about whether an account has been disputed and whether the dispute has been addressed? Do you currently take any steps to address any outstanding disputes when a debt is transferred to you? What information or documentation do debt owners make available to collectors in response to disputes?
5. What changes, if any, would the proposals under consideration require you to make to your operations and systems? What are the amount and type of costs and benefits associated with any such changes?

- **Claims of indebtedness made in complaints filed in litigation (Outline p. 12)**

The proposal under consideration would require debt collectors to have reasonable support for claims of indebtedness made in complaints filed in court. The proposal under consideration would specify that collectors can establish reasonable support for such claims by obtaining and reviewing all of the documentation specified in Appendix D of the Outline.

1. What steps do you take to review information or documentation before filing a complaint in litigation? Do you ever use affidavits, and if so, under what circumstances do you use them (*e.g*. only when documentation is unavailable)?
2. What changes, if any, would the proposals under consideration require you to make to your operations and systems? What are the amount and type of costs and benefits associated with any such changes?

B. Proposal under consideration to require review and transfer of certain other information (Outline pp. 13-15)

The Bureau is considering a proposal to require that prior collectors provide certain information to subsequent collectors or creditors, and that subsequent collectors obtain and review this information before contacting consumers. As described in Appendix E of the Outline, this information would consist of 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 Bureau also is considering a proposal to require debt collectors to forward certain information received from consumers after the collector has returned the debt to the debt owner or sold it to a subsequent debt buyer.

1. What information related to FDCPA rights or other federal laws (*e.g*., SCRA) do you obtain when you receive a debt and what information related to these rights or laws is transferred when you return a debt to the creditor or sell debt to a debt buyer?
2. Would you recommend adding or subtracting any types of information from the list in Appendix E of the Outline? If so, why?
3. What is your policy if consumers contact you about debt that you have returned to the creditor or sold to a subsequent collector? Specifically, how do you process: (1) payments submitted by consumers; (2) bankruptcy discharge notices; (3) identity theft reports; (4) disputes related to such accounts; 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? Is there any other information that you currently forward after you have sold or returned the debt?
4. What changes, if any, would the proposals under consideration require you to make to your operations and systems? What are the amount and type of costs and benefits associated with any such changes?

C. Alternatives to Information Integrity Proposals

1. One of the goals of the proposals under consideration related to information integrity is to ensure that debt collectors are collecting the right amount from the right consumers. Do you have views on alternatives for the Bureau to achieve this goal that may impose fewer burdens on small entities?

D. Validation notice and statement of rights

- **Validation notice (Outline pp. 15-16; Appendix F)**

The Bureau is considering a proposal to require that validation notices contain enhanced and clarified information about the debt and the consumer's rights, along with an action-item "tear off," as described in Appendix F of the Outline. Debt collectors that use a model notice the Bureau provides would be considered to have complied with the rule's content requirements for a validation notice.

1. What information about the debt and about consumer rights do you currently include on the validation notice? What information listed in Appendix F of the Outline do you *not* currently include on the validation notice?
2. Do you provide information on the validation notice or in other communications about merchant-brand information for retail credit card debt?
3. Do you currently provide consumers with a tear off or some other mechanism to facilitate exercise of the dispute right or the right to ask for information about the original creditor? To facilitate payment of the debt?
4. What changes, if any, would you need to make to your operations and systems in response to a requirement that validation notices contain the information set forth in Appendix F? What are the amount and type of costs and benefits associated with any such changes?
5. What changes, if any, would you need to make to your operations and systems in response to a requirement that validation notices contain an action-item tear off? What are the amount and type of costs and benefits associated with any such changes?
6. If the Bureau prepares a model validation notice, are you likely to use it? Do you anticipate that you would need to modify a model validation notice? If so, how do you anticipate that you would modify it?
7. What are the amount and type of costs and benefits, including potential reduced litigation risk, of the CFPB providing a model validation notice?
8. What are the amount and type of costs and benefits that may result from the "tear off," including potential cost-savings from more specific disputes?

- **Statement of Rights (Outline pp. 15-16; Appendix G)**

The Bureau also is considering a proposal to require debt collectors to provide consumers with a one-page statement of rights document (the "Statement of Rights"), as described in Appendix G of the Outline. Debt collectors that use a model statement of rights document the Bureau provides would be considered to have complied with the rule's content requirements for a statement of rights. Debt collectors generally would provide the Statement of Rights in the same mailing as the validation notice. The Bureau is also 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.

1. Other than the information that may appear in the validation notice that you send to consumers, do you currently provide any additional information to consumers about their rights under the FDCPA and other consumer protection laws?
2. What changes, if any, would you need to make to your operations and systems in response to a requirement that you provide a Statement of Rights in the same mailing as the validation notice? What are the amount and type of costs and benefits associated with any such changes?
3. What changes, if any, would you need to make to your operations and systems in response to a requirement that you offer, in the first communication made more than 180 days after the consumer received the initial Statement of Rights, an additional copy of the Statement of Rights? What are the amount and type of costs and benefits associated with any such changes?
4. If the Bureau prepares a model Statement of Rights, are you likely to use it? Do you anticipate that you would need to modify a model Statement of Rights? If so, how do you anticipate that you would modify it?

- **Non-English language requirements (Outline pp. 16-17)**

The Bureau also is considering whether to adopt one of two alternative proposals related to the use of translated validation notices and Statements of Rights. The first alternative would require debt collectors beginning collection on an account to provide translated versions of those documents if: (1) the collector's initial communication with the consumer took place in a language other than English or the 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 translated versions of the validation notice and Statement of Rights in the relevant non-English language. The second alternative would require debt collectors to provide a Spanish translation on the back of every validation notice and Statement of Rights.

1. Do you currently communicate with consumers in languages other than English? Do you currently provide consumers with any non-English written materials? What costs did you incur to obtain or develop these non-English written materials?
2. What changes, if any, would each alternative proposal require you to make to your operations and systems? What are the amount and type of costs and benefits associated with any such changes?
3. Do you prefer one alternative to the other based on cost and other considerations? Why?

- **Credit reporting requirements (Outline pp. 17-18)**

The Bureau is considering a proposal that would prohibit debt collectors from furnishing information about debts to consumer reporting agencies unless they have communicated directly about the debt to the consumer. This communication would usually take place through the validation notice.

1. Do you currently furnish information about consumers to consumer reporting agencies? Do you currently furnish that information before sending the consumer a validation notice or contacting the consumer in some other way?
2. What changes, if any, would the proposals under consideration require you to make to your operations and systems? What are the amount and type of costs and benefits associated with any such changes?

IV. Other Consumer Understanding Initiatives

A. Litigation disclosure (Outline p. 18-19)

The Bureau is considering a proposal that would require debt collectors to provide consumers with a brief "litigation disclosure" in all written and oral communication in which they represent, expressly or by implication, an 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 they fail 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 the Bureau's toll-free telephone number.

1. Do you currently provide consumers with any type of information about intent to sue or about litigation more generally? What information do you provide and in what form do you provide it? Under what conditions and how often do you provide this information?
2. What changes, if any, would the proposals under consideration require you to make to your

operations and systems? What are the amount and type of costs and benefits associated with any such changes?
3. What are the amount and type of costs and benefits that would result if the Bureau were to provide model language for the litigation disclosure?

B. Time-barred debt and obsolete debt (Outline pp. 19-22)

- **Time-barred debt disclosure**

The Bureau is considering a proposal that would require debt collectors to disclose, when they seek to collect a time-barred debt, that they cannot sue to recover on the debt. The Bureau is considering whether collectors should be required to make this disclosure only if they knew or should have known that the debt was time-barred, or whether collectors should be strictly liable—*i.e.*, liability would attach regardless of collectors' state of knowledge. (As with other provisions of the proposed rule, the bona fide error defense under FDCPA section 813(c) would be available to debt collectors.) The proposal under consideration would require debt collectors to include the disclosure in the validation notice and in the first oral communication in which they request payment, although the Bureau also is considering whether to require the disclosure at additional intervals. A subsequent collector would not be permitted to sue on a debt as to which an earlier collector provided a time-barred debt disclosure.

1. Do you currently take steps to determine whether a debt is time-barred before contacting consumers? What are the costs and challenges of determining whether a debt is time-barred?
2. Do you currently collect time-barred debt? If you collect time-barred debt, do you disclose the debt's time-barred status to the consumer? If so, when and how do you make this disclosure?
3. What changes, if any, would you need to make to your operations and systems in response to a requirement that you provide a time-barred debt disclosure in the validation notice and in the first oral communication in which you request payment? What are the amount and type of costs and benefits associated with any such changes? Do you anticipate that providing a time-barred debt disclosure will reduce collections?
4. What changes, if any, would you need to make to your operations and systems in response to a requirement that you provide a time-barred debt disclosure in every written and oral communication in which you seek payment on a time-barred debt? What are the amount and type of costs and benefits associated with any such changes?
5. What are the costs and challenges of the two knowledge standards the Bureau is considering *(i.e.,* whether a collector should be required to make this disclosure only if it knew or should have known that the debt was time-barred, or whether a collector should be strictly liable)?
6. If the Bureau prepares a model disclosure, are you likely to use it? What are the amount and type of costs and benefits that may result from model language, including potential benefits from reduced litigation risk?

- **Obsolescence disclosure**

The Bureau is also considering whether to require debt collectors seeking payment on time-barred debts to disclose whether or not the debt is also obsolete—*i.e.*, whether or not it is generally too old to appear on the consumer's credit report. The proposal under consideration would require that the disclosure appear in the validation notice, although the Bureau is also considering whether to require it at additional intervals.

1. Do you currently furnish information about the debts you collect to consumer reporting agencies? Do you currently determine whether the debts you collect are obsolete? How do you make this determination?
2. Do you currently collect time-barred debt that is also obsolete? If so, do you disclose to the consumer whether or not the debt is obsolete?
3. What changes, if any, would you need to make to your operations and systems in response to a requirement that you disclose in the validation notice whether or not a time-barred debt is also obsolete? What are the amount and type of costs and benefits associated with any such changes?
4. What changes, if any, would you need to make to your operations and systems in response to a requirement that you disclose whether or not a time-barred debt is also obsolete in every written and oral communication in which you seek payment? What are the amount and type of costs and benefits associated with any such changes?
5. If the Bureau prepares a model disclosure, are you likely to use it? What are the amount and type of costs and benefits that may result from model language, including potential benefits from reduced litigation risk?

- **Revival of time-barred debt**

Consumers may revive a time-barred debt under some states' laws if they make a payment on it or acknowledge that the debt is theirs. The Bureau is considering whether to prohibit debt collectors from collecting time-barred debt that can be revived under state law unless they waive the right to sue on the debt.

1. Do you currently collect time-barred debt in a jurisdiction in which debts can be revived? If so, do you disclose to the consumer that the debt can be revived? If so, how and when do you make this disclosure?
2. If a consumer makes a payment on a time-barred debt, acknowledges a time-barred debt in writing, or takes a similar action that could revive the debt under State law, do you treat the debt as having been revived? For example, do you sue or threaten to sue on the debt?
3. What changes, if any, would the proposals under consideration require you to make to your operations and systems? What are the amount and type of costs and benefits associated with any such changes?

- **Consumer acknowledgment before accepting payment on debt that is both time-barred and obsolete**

The Bureau is also considering a proposal to prohibit debt collectors from accepting payment on debt that is both time-barred and obsolete until they obtain the consumer's written acknowledgement of having received a time-barred debt disclosure and an obsolescence disclosure. Under this proposal, a debt collector could include a separate document, in the same mailing as the validation notice, for consumers to acknowledge receipt of these disclosures.

1. What changes, if any, would the proposals under consideration require you to make to your operations and systems? What are the amount and type of costs and benefits associated with any such changes? How would the costs of requiring a written acknowledgment differ from the costs of requiring a verbal acknowledgment?

- **Alternatives related to Validation Notice, Statement of Rights, and Credit Reporting**

1. Some of the goals of the proposals under consideration related to disclosures are to ensure that consumers recognize the debt being collected and understand the debt collection process and their rights. Do you have views on alternatives for the Bureau to achieve this goal that may impose fewer burdens on small entities?

IV. Collector Communication Practices

A. Contact frequency and the leaving of messages

- **Limited-content voicemails and other messages (Outline p. 24)**

The Bureau is considering a proposal that would exclude limited-content messages conveyed via voicemail or other methods from the definition of "communication" under the FDCPA such that the FDCPA section 807(11) disclosure would not be required as part of the limited-content. Such messages could include **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.

1. Do you currently leave voicemail or other messages for consumers? If not, why not? If so, do you limit the content of those messages? If so, what is the content and how, if at all, do you memorialize that content (*e.g.*, by recording phone calls, keeping handwritten records)?
2. What changes, if any, would the proposal under consideration require you to make to your operations and systems? What are the amount and type of costs and benefits, including potentially reduced litigation risk, associated with any such changes?

- **Restricting debt collection contacts with consumers and location contacts (Outline pp. 24-28)**

The Bureau is considering proposing regulations to govern the frequency with which debt collectors may contact or attempt to contact: (1) consumers who owe or allegedly owe debts; and (2) third parties to obtain location information about such consumers, as permitted under FDCPA section 804. The proposals under consideration would set different numerical limits depending upon whether collectors have "confirmed consumer contact," and the limits would apply regardless of the communication channel used (*e.g.*, telephone, mail, email). The numerical limits under consideration for consumers are listed in Table 2 of the Outline (p. 26), and the limits for third parties are listed in Table 3 of the Outline (p. 28).

Regarding the proposal under consideration to limit debt collection contacts with consumers:

1. What are your current practices regarding frequency of contact with consumers?
   a. Before establishing contact with a consumer, how many pieces of contact information (*e.g.*, home phone number or email address) are you likely to have for that consumer? Of those, how many likely are reliable (*i.e.,* current and accurate for that consumer)?
   b. Do you currently have policies or procedures to limit the number of times that you attempt to contact a consumer about an account?
      - If so, what are the limits and for what time period do the limits exist (describe the relevant time period, *e.g.,* per day, per week, or per month)?
      - Who imposes the limits (*e.g.,* creditor, state law, or self-imposed)?
      - Do the limits differ depending on whether you have established contact with the consumer who owes or allegedly owes the debt?

    c. On average, how often do you attempt to contact a consumer about an account, both before and after establishing contact with the consumer who owes or allegedly owes the debt (describe the relevant time period, *e.g.*, per day, per week, or per month)?
    d. What contact methods do you currently use when attempting to contact consumers (*e.g.*, phone, email, text messages, etc.)? If you do not currently use methods other than phone calls, why not?
    e. How, if at all, do you monitor the number of phone calls placed to a consumer? To the extent that you use contact methods other than calls, how, if at all, do you monitor the number of those contacts?
    f. On average, how many contact attempts are required before reaching a consumer for the first time?
2. How, if at all, would you expect the consumer contact caps under consideration to affect your ability to establish contact with a consumer?
3. What changes, if any, would the consumer contact caps under consideration require you to make to your operations and systems? What are the amount and type of costs and benefits associated with any such changes?
4. What amount and type of costs and benefits would you incur if the contact caps applied per consumer, rather than per account? Would these costs and benefits differ for types of debt for which multiple accounts per consumer might be especially common (*e.g.*, student loan or medical debt)?
5. As discussed in the Outline, the Bureau is considering caps that would apply on a weekly basis. What advantages or disadvantages, if any, would there be from a cap that applied to a different timeframe (*e.g.*, daily or monthly) instead of, or in addition to, weekly?
6. As discussed in the Outline, the Bureau is considering two alternative standards for determining compliance with the contact caps: a rebuttable presumption and a hard cap. The hard cap could be structured either as a simple hard cap, or as a modified hard cap (*i.e.*, with exceptions for contacts above the cap). What are the amount and type of costs and benefits associated with each of these approaches?

Regarding the proposal under consideration to limit location contacts:

1. What are your current practices regarding third-party contacts to acquire location information?
    a. Do you currently have policies or procedures to limit the number of times that you attempt to contact any one individual to acquire location information for a consumer? If so, what are the limits (describe the relevant time period, *e.g.*, per day, per week, or per month)? Who imposes the limits (*e.g.*, creditor, State law, or self-imposed)?
    b. How often do you attempt to contact any one individual to acquire location information about an account (describe the relevant time period, *e.g.*, per day, per week, or per month)?
    c. How, if at all, do you monitor the number of location contacts to a third party?
2. What changes, if any, would the location contact caps under consideration require you to make to your operations and systems? How, if at all, would separate caps that apply to consumer contact attempts and location contact attempts require additional changes? What are the amount and type of costs associated with any such changes?
3. What additional costs or benefits, if any, would arise if the contact caps applied per third party, rather than per account?

B. General time, place, manner restrictions

The Bureau is considering proposals to clarify FDCPA section 805(a) regarding the times and places at which collectors may communicate with consumers in connection with the collection of debts. The proposals under consideration include: (1) specifying how a debt collector determines a consumer's location for the purpose of communication times when the debt collector has conflicting location information for the consumer; and (2) clarifying that newer technologies, such as email or text messaging, generally may be used to contact consumers, and that contact through a newer communication method (*e.g.*, email) occurs at the time the communication is sent, not when the consumer sees or opens it. The proposals under consideration also would: (1) designate four categories of places as presumptively inconvenient if the collector knows or should know that the consumer is at one of the places; (2) specify that consumers may limit communications through particular methods (*e.g.*, a cell phone number, workplace number, email, text) as well as at particular times or places; and (3) generally prohibit collectors from contacting consumers through an email address that collectors know or should know is a workplace email unless the consumer has given consent for such contact directly to the collector.

- **Inconvenient times (Outline p. 29)**

1. What is your current practice for deciding where a consumer is located if you have conflicting location information for that consumer (*e.g.*, a mailing address in one time zone and a phone number in a different time zone)? Do you currently attempt to contact consumers only at times that would be convenient in all of the locations?
2. What changes, if any, would the proposal under consideration require you to make to your operations and systems? What are the amount and type of any costs or benefits associated with any such changes?
3. To the extent that you currently use a different approach for contacting consumers if you have conflicting location information (*e.g.*, by limiting contact attempts to only one of the possible points of contact), how much additional time would it take you to establish an initial contact with the consumer under the proposal under consideration?
4. To the extent that you currently contact consumers using newer technologies, such as email or text messages, what is your current practice for determining whether consumers contacted via these methods are contacted at convenient times?
5. What changes, including changes to systems or processes or staff training, would the proposal under consideration regarding contacts through newer technologies require? What are the amount and type of costs associated with any such changes?

- **Inconvenient places (Outline pp. 29-31)**

1. Do you currently restrict contact with consumers who you know are located at any particular types of places? If so, what are those places?
2. What changes, including changes to systems or processes or staff training, would the proposal under consideration require? What are the amount and type of costs and benefits associated with any such changes?
3. Would it be burdensome or costly to refrain from contacting consumers at the places identified in the Outline? Would it be more burdensome or costly to refrain from contacting consumers at some of these places? If so, which places and why?
4. Do you currently contact servicemembers when you know that they are in military combat zones or at qualified hazardous duty postings? If not, how do you proceed if you learn that you have contacted a servicemember who is in such a place (*e.g.*, continue to contact, place on a do-not-contact list, proceed to litigation)? What are the amount and type of costs and benefits that would result if these places were considered to be presumptively inconvenient?

- **Inconvenient communication methods (Outline p. 31-32)**

1. What is your current practice for responding to consumer requests not to be contacted through particular communication methods (*e.g.*, via a particular phone number)?
2. What changes, including changes to systems or processes or staff training, would the general proposal under consideration regarding inconvenient communication methods require? What are the amount and type of costs and benefits associated with any such changes?
3. If you email consumers, do you currently contact or attempt to contact them using their workplace email addresses? If not, how do you monitor whether you are using a workplace email address?
4. How frequently would a workplace email address be the only piece of contact information that you have for a consumer when you are trying to establish contact with the consumer?
5. What changes, if any, would the proposal under consideration regarding workplace email addresses require you to make to your operations and systems? What are the amount and type of costs and benefits associated with any such changes?

C. Issues concerning decedent debt

- **Status of surviving spouses, parents, and personal representatives (Outline pp. 32-33)**

The Bureau is considering proposals to clarify that surviving spouses are "consumers" under section 805(d) of the FDCPA, as are personal representatives of a decedent's estate. The Bureau's proposals would clarify how the FDCPA's communication requirements apply to these consumers.

1. To the extent that you collect debts of consumers who have died, do you currently contact surviving spouses to collect debts? Do you contact anyone else other than estate executors and administrators seeking payment on debts?
2. What changes, if any, would the proposal under consideration require you to make to your operations and systems? What are the amount and type of costs and benefits associated with any such changes?

- **Waiting period for decedent debt (Outline pp. 33-34)**

The proposals under consideration would establish a presumptively inconvenient period of time for contacts with relevant parties after a consumer's death.

1. How frequently do you evaluate accounts or portfolios to determine if the debtor has passed away and what are the costs of this evaluation?
2. If you collect debts of consumers who have died, do you currently observe a waiting period before beginning either collections communications or location communications? If so, how long are the waiting periods, and do they run from the date of death or the date of placement?
3. What are the amount and type of costs and benefits, including from changes to your processes or systems, that would result from a 30-day waiting period? From a 60-day waiting period?
4. Relative to a shorter (*i.e.*, 30-day) waiting period for all methods of contact, what are the amount and type of costs and benefits of a longer (*i.e.*, 60-day) waiting that permitted only

certain methods of communication (*e.g.*, written)?
5. What are the amount and type of costs and benefits, if any, that you would incur to comply with the proposals under consideration regarding consumer consent during the waiting period?
6. What are the amount and type of costs and benefits that you would incur if a 30- or 60-day waiting period applied to location contacts, in addition to the costs of a waiting period applied to contacts seeking payment of the debt? Would these costs or benefits differ depending on whether such a location contact waiting period permitted contacts via mail?

D. Consumer consent (Outline pp. 34-35)

The Bureau is considering a proposal to outline what collectors must do to obtain consent from consumers to waive certain rights under the FDCPA. The proposal under consideration would require that, to obtain consent, the collector must: (1) clearly and prominently disclose the subject matter of the consent; (2) obtain consent directly from the consumer; and (3) memorialize the consent.

1. Please describe your current practices for obtaining and memorializing consumer consent (*e.g.*, consent to speak with third parties, consent to communicate with the consumer after 9 p.m.).
2. What changes, if any, would you need to make to your operations and systems to disclose clearly and prominently what consumers are consenting to? What are the amount and type of costs and benefits associated with any such changes? Can the Bureau minimize any such costs by specifying, *e.g.*, when and how collectors should make the disclosure?
3. What changes, if any, would the proposal to require memorialization of consent require you to make to your operations and systems? What are the amount and type of costs and benefits associated with any such changes?

V. Additional Proposals

A. Prohibition on transferring debt to certain entities or in certain circumstances (Outline p. 35)

The Bureau is considering a proposal to prohibit debt owners 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.

1. Do you currently place or sell debt? If so, do you vet, or otherwise perform due diligence on, those with which you place debt or to which you sell debt? If so, what does your vetting process consist of? What are you looking for in the vetting process?
2. Are you subject to any type of vetting process by creditors or sellers of debt? If so, what does it consist of?
3. What changes, if any, would the proposals under consideration require you to make to your operations and systems? What are the amount and type of costs associated with any such changes?
4. Should the two categories of impermissible transferees described above be expanded? Should they be narrowed? Should categories be added?

B. Recordkeeping (Outline pp. 35)

The Bureau is considering a proposal to require that debt collectors retain records documenting the actions they take with respect to a debt for three years after their last communication or attempted communication (including communication in litigation) with the consumer about the debt. This would include all records the debt collector relied upon for the information in the validation notice and to support claims of indebtedness, as well as all records related to the debt collector's interactions with the consumer.

1. What types of records do you currently maintain and for how long?
2. What changes, if any, would the proposals under consideration require you to make to your operations and systems? What are the amount and type of costs and benefits associated with any such changes?

C. Alternatives to Communications and Additional Proposals under Consideration

1. One of the goals of the proposal is to reduce the potential for harassing or abusive communications and to provide clarity to some of the FDCPA's provisions. Do you have views on alternatives for the Bureau to achieve this goal that may impose fewer burdens on small entities?

VI. Additional questions for discussion at the Panel and for particular consideration if you provide written feedback

1. Were there any sections of the Outline of Proposals that have not been addressed and on which you would like to comment?
2. Are there any other federal or state laws that you believe may duplicate, overlap or conflict with the proposals under consideration?
3. What are the most difficult and/or costly operational steps for compliance with the proposals under consideration? What are those costs in terms of staff time, wages, and other expenses?
4. Do you believe that the cost of credit to small entities may increase as a result of any of the proposals under consideration, and if so, which of the proposals would increase cost of credit to small entities? Are there alternatives to those proposals that would accomplish the CFPB's objectives without increasing the cost of credit to small entities?
5. How much time do you believe would be required to adjust systems and processes based on the proposals under consideration? Which, if any, of the proposals under consideration would be particularly difficult or time-consuming to implement?

Appendix E

Final Report of the Small Business Review Panel for the Debt Collector and Debt Buyer Rulemaking

Panel Outreach Meeting Presentation Materials

Debt Collector and Debt Buyer Rulemaking

SBREFA Panel Outreach Meeting

August 25, 2016

Consumer Financial Protection Bureau

Agenda

Time	Item
9:00 - 9:30 AM	Welcome, Introductions, and Overview
9:30 - 10:30 AM	Information Integrity and Related Concerns - Initial claims of indebtedness - Claims of indebtedness following a dispute - Claims of indebtedness made in complaints filed in litigation
10:30 - 10:45 AM	Morning Break
10:45 AM - Noon	Information Integrity (continued) & Consumer Understanding Initiatives - Review and transfer of certain other information - Validation notice and Statement of Rights - Litigation disclosure
Noon - 12:45 PM	Working Lunch
12:45 - 1:15 PM	Consumer Understanding Initiatives (continued) - Time-barred debt and obsolete debt
1:15 - 2:45 PM	Collector Communication Practices - Contact frequency and leaving of messages - General time, place, and manner restrictions - Issues concerning decedent debt - Consumer consent
2:45 - 3:00 PM	Afternoon Break
3:00 - 3:45 PM	Additional Proposals & Cost of Credit Discussion - Prohibition on transferring debt & recordkeeping - Cost of credit discussion
3:45 - 5:00 PM	Additional Feedback
5:00- 5:30 PM	Closing Remarks

Welcome, Introductions, and Overview

Welcome and Introductions

- Consumer Financial Protection Bureau (CFPB) welcome and opening remarks
- Small Business Administration (SBA) Office of Advocacy welcome and opening remarks
  - Darryl L. DePriest, Chief Counsel for Advocacy
- Introduction of SBREFA Panel
  - Dan Sokolov, CFPB (Panel Chair)
  - Jennifer Smith, SBA Office of Advocacy
  - Shagufta Ahmed, Office of Management and Budget (OMB), Office of Information and Regulatory Affairs
- Introduction of Small Entity Representatives and agency staff

Your Role in the SBREFA Process

- You have been selected as a small entity representative ("SER"). A SER is a representative of a small entity that will likely be subject to the requirements of a proposed rule under consideration by the CFPB. At today's meeting, we seek your advice, input, and recommendations regarding the questions raised in the Discussion Issues.
  - SERs' participation in the rulemaking process helps to ensure that the CFPB is made aware of the concerns and issues specific to small entities.
  - The Panel (CFPB, SBA, and OMB) uses your input to prepare a report that includes your verbal feedback and written comments and the Panel's findings on alternatives to minimize costs and burden on small entities.
  - The report is made part of the public rulemaking record and is considered by the CFPB as it develops its proposed rule.
- Some questions may not apply to you or your business. When a topic is relevant to you, please discuss it based on your experience or knowledge of the experience of other small entities in your line(s) of business.

Providing Additional Feedback

- Written Comments
  - You are not required to submit any written materials to the Panel. Should you wish to do so, you may provide them to us today or email them to lauren.weldon@cfpb.gov no later than 5 p.m. on **Friday, September 9**.
  - Your responses may be included in a public report, so you may wish to frame your responses in a manner that protects your company's proprietary information.

Background on SBREFA Proposals Under Consideration

- The proposals under consideration are geared toward developing standards and requirements so that:
  - Only debt collectors with the legal right to collect do so;
  - Debt collectors seek the right amount from the right consumer;
  - Consumers receive understandable and useful information about their rights and the debt collection process; and
  - Debt collectors communicate with consumers in a respectful, lawful, and consumer-oriented manner.

General Issues to Consider

- During the discussion, we ask that you focus your comments on these general topics:
  - The potential effects of the proposed requirements and alternatives on your company's systems, operations, staff resources, and compliance costs, as well as the potential impact on your ability to collect debts.
  - The amount of time you would need to change your systems or operations, train your staff, or take other actions to comply with the proposals under consideration.
  - The potential benefits that may result from the proposals, which may include cost savings, time savings, or reduced litigation risk.
  - How your or other small companies' anticipated compliance costs may differ from those of larger entities, and how the characteristics of small companies compared to larger companies may contribute to these differences.

Information Integrity and Related Concerns

Initial Claims of Indebtedness

- Do debt owners provide the list of fundamental information identified in Appendix C?
- What is the frequency of debt owners providing account-level documentation?
- What representations are made by debt owners?
- What are your processes with regard to:
  - Review of information? Review of warning signs? Steps taken after warning sign discovered?

Claims of Indebtedness Following a Dispute

- Do you receive information from prior collectors (or transfer information) about:
  - Whether an account has been disputed?
  - Whether the dispute has been addressed?
- How does your dispute process differ from the review of documents described in Appendix D, with respect to:
  - Timely written disputes?
  - Oral or untimely disputes?
- Do you receive types of specific disputes that would not fall into the categories in the Outline?
- What would be the impact of the Outline's approach to duplicative disputes and disputes unrelated to the validity of the debt or the right to collect?

Claims of Indebtedness Made in Complaints Filed in Litigation

- What steps do you take to review information or documentation before filing a complaint in litigation?
- Do you use affidavits? If so, when or in what context?
- Feedback on the outline's approach to review of documents prior to litigation.

Morning Break

10:30 AM – 10:45 AM

Information Integrity (cont’d) and Consumer Understanding Initiatives

Consumer Financial Protection Bureau

Review and Transfer of Certain Other Information

- What steps would you have to take to ensure information listed in Appendix E is:
  - Obtained when receiving a debt?
  - Transferred when returning a debt to the creditor or selling debt to a debt buyer?
  - Is there information that should be added or subtracted by Appendix E?
- What information do you receive or forward after the debt has been returned or sold?
  - Does the information differ from that identified in the Outline?

Alternatives to Information Integrity

- Feedback on alternatives to ensure that debt collectors are collecting the right amount from the right consumers and that impose fewer burdens on small entities?

Validation Notice and Statement of Rights

- Validation Notice
  - Steps you would have to take to include information:
    - About the debt?
    - About consumer rights?
    - Listed in Appendix F?
    - Merchant-brand information?
    - Tear off or similar mechanism?
  - Usefulness of model validation notice?
- Statement of Rights
  - Any information currently provided (other than in validation notice) to consumers about:
    - FDCPA rights?
    - Rights under other consumer protection laws?
  - Usefulness of model statement of rights document?

Non-English Language Requirements and Furnishing

- Non-English Language Requirements
  - Any current non-English communications with consumers?
  - Feedback on alternatives under consideration:
    - Initial non-English communication or language-preference information and Federal Register publication of translation
    - Mandatory Spanish translation on reverse
- Furnishing
  - Any new steps required to ensure communication to consumers before furnishing?
    - Validation notice?
    - Another method?

Litigation Disclosure

- Any information currently provided to consumers about:
  - Intent to sue?
  - Litigation generally?
- Usefulness of model disclosure?

Consumer Financial Protection Bureau

Alternatives to Consumer Understanding

- Feedback on alternatives that could ensure that consumers recognize debt and understand their rights, while imposing fewer burdens on small entities?

Working Lunch

Noon – 12:45 PM

Consumer Understanding Initiatives (cont'd)

Time-Barred Debt Disclosure

- Do you:
  - Currently determine whether a debt is time-barred? Currently collect time-barred debt?
  - If so, disclose debt's time-barred status? How and when? Effect on collections?
- Frequency of disclosure:
  - Validation notice and first oral communication requesting payment?
  - Every written and oral communication requesting payment?

Time-Barred Debt and Obsolescence Disclosures

- Time-barred debt
  - Alternative knowledge standards under consideration:
    - Know or should have known
    - Strict liability
  - Usefulness of model disclosure?
- Obsolescence
  - Does determining and disclosing obsolescence raise any separate issues?

Other Issues Related to Certain Time-Barred Debts

- Revival of time-barred debt
  - Currently collect time-barred debt that can be revived? If so, disclose that debt can be revived? How and when?
  - If consumer takes action that revives debt, do you treat debt as revived?
- Consumer acknowledgment of debt that is both time-barred and obsolete
  - Costs of written acknowledgement versus oral acknowledgement?
- Alternatives to time-barred debt initiatives
  - Alternatives that may achieve the same goals while imposing fewer burdens on small entities?

Collector Communication Practices

Limited-Content Voicemails and Other Messages

- Current practices regarding voicemail and other messages?
  - Do you leave messages? If not, why not?
  - If so, is content limited? If so, to what?
  - How, if at all, is message content memorialized?
- Feedback on limited-content message under consideration

Restricting Debt Collection Contacts with Consumers

- Current practices regarding frequency of contact with consumers:
  - Before contact, how many pieces of consumer contact information? How many are reliable?
  - Currently limit consumer contact attempts per account? If yes:
    - Describe limits, including any relevant time periods
    - Who imposes?
    - Vary depending on consumer contact status?
  - Current number of actual attempts per account (per relevant time period) when trying to establish contact? Contact methods used? If telephone only, why?
  - Monitor number of contacts and contact attempts? If yes, how? Any differences between methods of contact?
  - Total number of contact attempts before first contact?

Restricting Debt Collection Contacts with Consumers (cont'd)

- Feedback on consumer contact caps under consideration:
  - Ability to establish contact with consumer?
  - Limits per-consumer versus per-account? Depend on type of debt?
  - Weekly versus monthly, daily, or another time period? Some combination of these?
  - Rebuttable presumption versus hard cap?

Consumer Financial Protection Bureau

Limiting Location Contacts

- Current practices regarding location contacts:
  - Currently limit attempts to contact a third party? If yes:
    - Describe limits, including any relevant time periods
    - Who imposes?
  - Current number of actual attempts to third party (per time period)?
  - Monitor number of attempts to a third party? If yes, how?
- Feedback on location contact caps:
  - Separate consumer and location contact caps
  - Per third party versus per account

Inconvenient Times, Places, and Communication Methods

- Regarding inconvenient times, current practices for:
  - Conflicting location information?
    - Effect of proposal under consideration on time to make first contact?
  - Determining time of communication when using newer technologies?
- Current practices for avoiding communications at inconvenient places?
  - Burdens of specific places on list?
  - Feedback regarding servicemembers?
- Regarding communication methods, current practices for:
  - Using workplace email addresses (if not used, how monitored)?
  - How often is workplace email the only contact information for a consumer?

Consumer Financial Protection Bureau

Issues Concerning Decedent Debt

- Status of surviving spouses, parents, and personal representatives
  - Currently contact surviving spouses to collect? Anyone else other than estate executors and administrators?
- Current practices regarding decedent debt
  - Monitor accounts for deceased debtors? How? Costs?
  - Currently observe waiting period?
    - If yes, how long? For collection communications, location communications, or both? From date of death or date of placement?
  - Feedback on proposal under consideration and alternatives:
    - 30 days versus 60 days
    - 60 days with written communications permitted sooner
    - Waiting period for location contacts
    - Complying with consumer consent requirements

Consumer Consent

- Current practices for obtaining and memorializing consent for communications that otherwise would violate FDCPA
  - Clear and prominent disclosure of subject matter
  - Guidance regarding when and how disclosure should be made
  - Other issues?

Afternoon Break

2:45 PM – 3:00 PM

Additional Proposals and Cost of Credit Discussion

Prohibition on Transferring Debt and Recordkeeping

- Debt transfer
  - Currently place or sell debt? If so, vet transferees? If so, what does process consist of?
  - Subject to vetting process by creditors or sellers? If so, what does process consist of?
  - Should categories of impermissible transferees be:
    - Expanded? Narrowed? Supplemented?
- Recordkeeping
  - What types of records do you currently maintain? For how long?

Consumer Financial Protection Bureau

Alternatives to Communications and Additional Proposals under Consideration

- Two of the goals of the proposals under consideration are to reduce harassing or abusive communications and to provide clarity related to other FDCPA provisions.
  - Do you have views on alternatives for the Bureau to achieve these goals that may impose fewer burdens on small entities?

Impact on the Cost of Business Credit

The Regulatory Flexibility Act requires the CFPB to consult with the SERs regarding any projected increase in the cost of credit for small entities that would result from the proposals under consideration, and on alternatives that minimize any such increase.

Cost of Credit for Small Businesses

- The proposals under consideration would apply to debt collectors and debt buyers subject to the FDCPA (*i.e.*, those collecting consumer debts).
- Nevertheless, some consumers may use loans that are primarily intended for consumers for business purposes. If the proposals were to affect the cost of credit for consumers, it could indirectly affect the cost of credit for some small businesses.

Cost of Credit for Small Debt Collectors or Small Debt Buyers

- The proposals under consideration could potentially increase the costs or reduce the revenue of small debt collectors and small debt buyers. This could, in turn, impact the perceived creditworthiness of these entities and thus increase their cost of credit.

Cost of Credit for Small Businesses

- Do you collect on loans that are used to finance small businesses?
  - If so, what percentage of your loans fall into that category? What is the average amount of the credit extended on such loans?
  - Would the proposals under consideration make it more difficult to collect such loans? If so, please describe this impact and any feasible alternatives to the proposals that you would recommend to minimize that impact.
- Are there particular aspects of the proposals under consideration that may impact the cost of credit for small businesses other than debt collectors and debt buyers? Which aspects and why?

Cost of Credit for Small Debt Collectors and Debt Buyers

- Do you use lines of credit or other finance sources to fund your business?
- Do you anticipate that the proposals under consideration will affect the availability or cost of these funding sources to you? If so, please describe the effects that you anticipate, your basis for anticipating them, and any feasible alternatives to the proposals under consideration you would recommend to minimize the effects.

Additional Feedback and Closing Remarks

Additional questions for discussion and for particular consideration if you provide written feedback

1. Were there any sections of the Outline of Proposals that have not been addressed and on which you would like to comment?

2. Are there any other federal or state laws that you believe may duplicate, overlap, or conflict with the proposals under consideration?

3. What are the most difficult and/or costly operational steps for compliance with the proposals under consideration? What are those costs in terms of staff time, wages, and other expenses?

Additional questions for discussion and for particular consideration if you provide written feedback (cont'd)

4. Do you believe that the cost of credit to small entities may increase as a result of any of the proposals under consideration, and if so, which of the proposals would increase cost of credit to small entities? Are there alternatives to those proposals that would accomplish the CFPB's objectives without increasing the cost of credit to small entities?

5. How much time do you believe would be required to adjust systems and processes based on the proposals under consideration? Which, if any, of the proposals under consideration would be particularly difficult or time-consuming to implement?

Closing Remarks

- Closing Remarks: David Silberman, CFPB
- Information Regarding Written Comments
  - You are not required to submit any written materials to the Panel. Should you wish to do so, you may provide them to us today or email them to lauren.weldon@cfpb.gov no later than 5 p.m. on Friday, September 9.
  - Your responses may be included in a public report, so you may wish to frame your responses in a manner that protects your company's proprietary information. If you would like to provide confidential business information to support your comments, be sure to follow the guidance that we will provide.