February 27, 2014

VIA ELECTRONIC DELIVERY TO REGULATIONS.GOV

Ms. Monica Jackson
Office of the Executive Secretary
Bureau of Consumer Financial Protection
1700 G Street, N.W.
Washington, DC 20552

Re: Comments on the Advance Notice of Proposed Rulemaking on Debt Collection, Regulation F (Docket Number CFPB-2013-0033-0001; RIN: 3170-AA41; 12 CFR Part 1006; Federal Register Number 2013-26875)

Dear Ms. Jackson:

ACA International ("ACA") files this comment on behalf of its nearly 5,000 members worldwide in response to the Bureau of Consumer Financial Protection's ("CFPB") Advance Notice of Proposed Rulemaking related to debt collection ("ANPR").

In the ANPR, the CFPB seeks comments and information about debt collection practices as it considers rulemaking related to debt collection. In proposing rules related to debt collection, ACA strongly encourages the CFPB to strike an appropriate balance between protecting consumers from harmful practices and ensuring that the consumer debt collection market functions in a fair, transparent, and competitive manner without undue burden on legitimate debt collection businesses.

ACA strongly supports efficient and effective rules and regulations that will help consumers fulfill their financial goals and responsibilities while maintaining the facilitation of the credit market. ACA members strive to provide financial management assistance to consumers in a responsible way. As

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such, ACA believes that respectful, two-way communication is critical for transparency and dispute resolution. Any rules created should also recognize the interaction between and among various entities in the collections and credit cycle, including consumer reporting agencies, creditors, account owners and debt collectors, with each entity in the chain responsible for those matters in which they have the most control and influence.

Specifically, ACA encourages the CFPB to recognize that the debt collection market is extremely varied in the types of debts being collected and the nature and size of our nation's debt collectors encompasses a broad scope. Although the credit and collections industry comprises a relatively small space in the entire consumer financial services arena, the client base serviced by industry members is highly diverse, from large corporations to local Main Street service providers — all of whom have a vested interest in customer retention, particularly in the case of small business creditors. From medical debt to student loan debt, mortgage debt to credit card debt, unpaid check to unpaid government fees, or a single bill from a local business, the differences incident to each type of debt require a thoughtful and nuanced regulatory approach. New rules must also accommodate the differences and roles of market participants and provide a flexible framework in which legitimate debt collectors can maintain their vital role in the credit cycle.

When imposing additional regulatory requirements on industry participants, ACA also urges the CFPB to appropriately tailor those requirements to the specific circumstances for which any perceived problem exists. When regulations that are overly broad in application are used as a blunt tool in remediating perceived consumer harm, the businesses that are subject to those regulations are often adversely impacted and unduly burdened. Regulatory precision is essential to ensure a healthy and vibrant market.

The CFPB notes the need to address consumer protection concerns given the high volume of complaints received regarding debt collectors. The CFPB's 2012 Annual Report on the FDCPA stated that 30 million individuals had a debt that was subject to the collections process while 142,743 complaints were filed with the FTC regarding debt collectors in 2011. Importantly, the CFPB noted that not all complaints comprise a legal violation – as a matter of fact, the CFPB's own definition of a "complaint" includes a consumer's expression of mere dissatisfaction. Given that in 2011, over 29.8 million Americans with debts in collections did not file complaints, the percentage of consumers who filed complaints with the FTC *was less than one-half of 1% of all consumers with debts in collections*. In 2013, the CFPB's Annual Report on the FDCPA notes that the volume of complaints *declined* by 13.4%, to 125,136 complaints, despite an overall rise in debt holders, with household debt increasing in the third quarter of 2013 alone by $127 billion.[1] The CFPB acknowledges as well that the number of complaints received corresponds to "only a small fraction of the overall number of consumers contacted." While debt collection complaints comprise a mere fraction of a percentage point of the number of consumers with debts in collections, third-party debt collectors are highly committed to resolving consumer complaints. According to the 2012 Better Business Bureau report on Complaint Inquiries and Statistics, third-party debt collectors resolved 86% of the consumer complaints received – higher than the national average of 77% for all other businesses.

Also, ACA strongly encourages the CFPB to address outdated, unnecessary or unduly burdensome legal requirements under the federal Fair Debt Collection Practices Act ("FDCPA"), commensurate with the CFPB's authority. Since the FDCPA was enacted in 1977, a number of significant technological and telecommunications innovations have altered consumer preferences and methods

[1] Federal Reserve Bank of New York, Quarterly Report on Household Debt and Credit Report, November, 2013.

in which information is obtained that allow consumers to interact with the larger financial economy. Moreover, the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") changed the legal landscape for regulating the delivery of financial services to consumers. In the credit and collection industry, the advent of debt buying as a further means of debt recovery has also impacted the manner in which industry participants provide and deliver financial services. Although the legislative history of the FDCPA included a call for it to be revisited and modernized as appropriate, the law has not been significantly updated or modernized since its inception. As a result, where regulatory uncertainty exists within the statute, the judicial arm, charged with interpreting and applying the FDCPA, has rendered a legal patchwork of federal and state case law that is highly inconsistent among jurisdictions.

Finally, ACA requests that the CFPB strive for maximum clarity in any forthcoming regulations to ensure the regulatory compliance obligations of industry participants are certain, and to develop model language, disclosures, forms and examples of compliant behavior, whenever practicable, in order to create appropriate "safe harbors" from regulatory enforcement and private civil litigation that seeks to exploit legal and regulatory uncertainty to the detriment of debt collectors.

As the CFPB proceeds in its consideration of the efficacy of proposed rules related to debt collection, ACA respectfully requests due consideration be given to the comments on the ANPR, as listed below.

I. Background on ACA International

ACA International is the trade association for credit and collection professionals. Founded in 1939, and with offices in Washington, D.C. and Minneapolis, Minnesota, ACA represents nearly 5,000 members, including credit grantors, collection agencies, attorneys, asset buyers, and vendor affiliates.

ACA members range in size from small businesses with a few employees to large, publicly held corporations. These members include the very smallest of businesses that operate within a limited geographic range of a single town, city, or state, and the very largest of national corporations doing business in every state. The majority of ACA members, however, are small businesses, collecting rightfully owned debts on behalf of other small and local businesses. Approximately 2,000 of the association's 5000 members maintain fewer than ten employees, and more than 2,500 of the members employ fewer than twenty persons.

As part of the process of attempting to recover outstanding payments, ACA members are an extension of every community's businesses. ACA members work with these businesses, large and small, to obtain payment for the goods and services already received by consumers. In years past, the combined effort of ACA members has resulted in the annual recovery of billions of dollars — dollars that are returned to, and reinvested by, businesses, and dollars that would otherwise constitute losses on the financial statements of businesses. Without an effective collection process, the economic viability of these businesses, and, by extension, the American economy in general, is threatened. Recovering rightfully-owed consumer debt enables organizations to survive, helps prevent job losses, keeps credit, goods, and services available, and reduces the need for tax increases to cover governmental budget shortfalls. Indeed, a study published by the Federal Reserve Bank of Philadelphia found that "strict" regulations which impede the ability of debt collectors to operate

effectively results in a reduction in the supply of credit, which in simple economic terms, forces all Americans to pay higher prices to compensate for uncollected debt.[2]

In 2011, Ernst &Young conducted a study[3] to measure the various impacts of third-party debt collection on the national and state economies. In addition to recovering rightfully-owed consumer debt totaling $44.6 billion in 2011 alone, the study found that third-party debt collectors directly provided over 148,000 jobs and $5 billion in payroll. When factoring in jobs created indirectly, those numbers doubled to 302,000 jobs and $10 billion in payroll. The study also concluded that third-party debt collectors paid $509 million in state and local taxes and $495 million in federal taxes. The total state and local tax impact of third-party debt collectors was $1 billion, and the total federal impact was $970 million.

II. Comments of ACA International

With respect to the particular questions contained in the ANPR, ACA offers the following comments:

TRANSFER AND ACCESSIBILITY OF INFORMATION UPON SALE AND PLACEMENT OF DEBTS

Information Transferred Between Debt Owners and Debt Buyers or Third-Party Collectors

Q1. What data are available regarding the information that is transferred during the sale of debt or the placement of debt with a third-party collector and does the information transferred vary by type of debt (e.g., credit card, mortgage, student loan, auto loan)? What data are available regarding the information that third-party debt collectors acquire during their collection activities and provide to debt owners?

The information provided during the sale or placement of a debt is agreed to by contract between the parties involved in the sale or placement, and varies by the type of debt being sold or placed.

For debt that is placed with a third-party collector, the basic data that accompanies the account generally includes most or all of the following: name, last known address and telephone number, interest rate/APR, Social Security Number, date of birth, the date and the amount of the last payment made, current balance, and the date of account opening or date of service. If a judgment has been granted, proof of such judgment would customarily be included. In some instances, third-party debt collectors have direct access to the debt owner's records regarding the debt, including access to any documents, contracts, or other underlying agreements.

Additional information may be included based on the type of debt subject to transfer. For example:

- Credit card debt placements may include past statements or date of last charge, as well as any charge-off amounts.

[2] Working Paper No. 13-38, "Debt Collection Agencies and the Supply of Consumer Credit," Viktar Fedaseyeu, Federal Reserve Bank of Philadelphia, May 20, 2013.

[3] Ernst &Young, *The Impact of Third-Party Debt Collection on the National and State Economies*, February, 2012, *available at* http://www.acainternational.org/files.aspx?p=/images/21594/2011 acaeconomicimpactreport.pdf.

- Student loan debt may include additional background documents, pursuant to the documentation required for obtaining such loans, including identifying information regarding family members and/or co-makers.
- Mortgage and automobile loan debt may include original contracts and other documents provided at the time of sale.
- Medical debts typically include any medical insurance carrier, amount of insurer payment, and signed HIPAA releases. Hospitals collecting debts customarily have access to more debtor information than ambulatory or other service providers, based on the required intake forms.
- Utilities debts may include the start and disconnect dates of services provided.
- Services sold by a reseller, such as mobile telephone, cable TV or satellite TV, may also include the name of the dealer from whom service was contracted and information about the equipment the consumer received related to the service.

In cases when debt is sold, information may be either unavailable or difficult to obtain, particularly when the buyer lacks a direct relationship with the original creditor, and especially when debt has been purchased and sold multiple times. Many debt buyers routinely have access to additional documentation. For older debts, however, original creditors may no longer be in business, and the underlying contract may be unavailable.

With regard to information that third-party debt collectors may acquire during collection activities and pass along to debt owners, such information would largely depend on the business agreement between the parties, the type of debt and collection services provided, and applicable law. Typically, any disputes or validation requests received (including fraud or identity theft notification) would be relayed to the debt owner for review and resolution, with collection efforts for the account placed on hold until such dispute is resolved. Additionally, updated contact information received would be provided to the debt owner.

The credit and collections industry is also mindful of the flow of personally identifiable and sensitive information. Given the increased chance of security and data privacy issues when sensitive documentation is passed along, collectors seek to balance the need for information with the consumer's expectations of privacy and security.

Q2. Does the cost of a debt that is sold vary based on the information provided with the debt by the seller? Are there certain types of debts that are not sold, such as debts a consumer has disputed, decedent debt, or other categories of debt?

In all cases, the price is a function of the amount expected to be collected - greater likelihood of collection will render a debt more valuable and garner a higher price. Although the price of a debt that is sold can be affected by the quality of accompanying documentation regarding the original sale, it is merely one factor in the cost. Additional price and value factors that are generally considered include the age of the debt/original account, location of the debtor, presence of a judgment, and whether such debt has previously been placed for collection.

Older debts usually sell at a lower price than newer debts. Debt buyers may also choose to pay more for a debt for which statements are available at the time of sale as the costs of locating the consumer and collecting the debt may ostensibly be less.

Debts that are not typically made available for sale include debt that is the subject of fraud or identity theft, discharged in bankruptcy, and decedent debt. No legitimate debt buyer has an interest in intentionally contacting a wrong party or seeking a wrong balance, especially given the costs of doing so.

Q3. The OCC recently released a statement of best practices in debt sales which recommends that national banks monitor debt buyers after sales are completed "to help control and limit legal and reputation risk." What monitoring or oversight of debt buyers do creditors currently undertake or should they undertake after debt sales are completed or after debts are placed with third parties for collection?

Debt owners routinely retain the right to audit a debt buyer's records regarding accounts sold and the debt buyer's compliance with the underlying sales agreement. Debt owners also routinely retain the right to "buy back" accounts for which continued collection efforts could create legal or reputational risk for them.

Banking institutions, the largest 19 of which combined have sold nearly $37 billion in charged-off debt annually[4] in recent years, are further expected by their prudential regulators to have compliance and risk management policies and procedures governing debt sales and monitoring of third-party vendors, including collection agencies.

Q4. If debt buyers resell debts, do purchasers typically receive or have access to the same information as the reseller? Do purchasers from resellers typically receive or have access to information or documentation from the reseller or from the original creditor? Do conditions or limitations on purchasers from resellers obtaining information from the resellers or the original creditors raise any problems or concerns?

If a debt buyer resells debts, purchasers typically receive or have access to the same information as the reseller. In some instances, however, data access can become more restrictive over time given contractual requirements in the underlying debt sale agreement and/or the data retention policies of the original creditor.

Information Related to FDCPA Provisions

Q5. To what extent do debt owners transfer or make available to debt buyers or third-party collectors information relating to: Disputes (e.g., that a debt had been disputed, the nature of the dispute, whether the debt had or had not been verified, the manner in which it was verified, and any information or documentation provided by the consumer with the dispute); unusual or inconvenient places or times for communications with the consumer (e.g., at the consumer's place of employment); cease communications requests; or attorney representation? What would be the benefits and costs of debt buyers and third-party collectors obtaining or obtaining access to this information upon sale or placement of the debt? To what extent do third-party debt collectors provide this information to debt owners? What would be the costs and benefits of third-party collectors providing this information to debt owners?

Generally, the debt owner determines what information is provided at the time of placement. Some provide very detailed information about the debt, while others may not.

[1] Statement on Oversight of Debt Collection and Debt Sales, OCC Testimony before the Senate Committee on Banking, Housing, and Urban Affairs, "Shining A Light on the Consumer Debt Industry," July 17, 2013.

With regard to the placement of a debt with a third-party debt collector, dispute and bankruptcy information (including communications requests, cease collections communication requests, and attorney representation), is usually included. When debt owners do not provide such information, third-party debt collectors may need to perform due diligence to ascertain this data directly, in order to ensure compliance with applicable law.

If debt is sold, the cost of obtaining historical information regarding the account rests with the buyer. When a creditor retains ownership of a debt but places the debt with a third-party debt collector, the cost of forwarding information remains with the creditor. Dispute information is viewed as vital by debt collectors, but the cost and benefit calculation is different based on the party involved.

For third-party debt collectors and debt buyers, obtaining robust information regarding disputes at the time of placement or sale could potentially reduce consumer complaints and attendant costs. Additionally, if such information were to be included upon sale of a debt, the information could be more readily available in the event of resale of the debt.

From a creditor perspective, the cost of providing such information upon placement or sale could be high, given the additional time required for the creditor or its billing companies to locate, review, and potentially redact information. Such a process would likely not be systematic, but rather a manual-intensive process. To the extent such information would be shared systematically, there would likely be significant technology expense incurred in the modification of creditors' existing systems.

For third-party debt collectors and debt buyers, if additional information were required at the time of placement or sale, there likely would be associated costs in obtaining this information including additional review of the information, data entry, and systems storage and related information technology expense.

On average, less than 1% of accounts sold or placed for collection result in consumer disputes. As such, requiring additional documentation of all debts at the time of placement or sale would be unduly burdensome and expensive for the businesses that operate in the industry. This undue burden and expense would not have a corresponding benefit (or if so, such perceived benefit would be dramatically outweighed by the burden and expense).

Although debt owners' policies and procedures vary, third-party debt collectors notify their debt-owner clients of their responsibilities to verify and validate debts in accordance with the FDCPA. Third-party debt collectors customarily provide debt owners with notices of dispute, unless the debt collector has the requisite information to address the dispute directly.

Additional Information

Q6. To what extent do debt owners transfer or make available to debt buyers or third-party collectors information relating to: The consumer's understanding of other languages (if the consumer has limited English proficiency); the consumer's status as a servicemember; the consumer's income source; or the fact that a consumer is deceased? What would be the benefits and costs of debt buyers and third-party collectors obtaining or obtaining access to this information upon sale or placement of the debt? To what extent do third-party debt collectors provide this information to debt owners? What would be the costs and benefits of third-party collectors providing this information to debt owners?

Debt owners will occasionally have knowledge of a consumer's special circumstance (e.g. limited English proficiency, active duty military status, source of income, living or deceased status), but in many instances, it is the third-party debt collector who will uncover such information during the course of trying to help the consumer resolve the debt.

Additionally, debt buyers and attorneys engaging in debt collection may have business processes that assist them in identifying military or deceased status. Nonetheless, if creditors do not specifically request special status information, there is no information available to provide to a debt buyer or third-party debt collector at the time of debt sale or placement. Moreover, a creditor cannot be expected to know whether a consumer has been deceased between the time of account opening and the collection. Further, if the original creditor does not have access to such information, any subsequent debt owner would further lack such knowledge, as the information would not exist to be transferred along with the debt. The investigative costs of obtaining account-specific and consumer-specific information regarding certain special and comparatively, rare, circumstances, would be significant, and in exchange for minimal overall benefit.

Q7. Is there other information that has not yet been mentioned that should be required to be transferred or made available with a debt when it is sold or placed for collection with a third-party collector? What would be the costs and benefits of debt buyers and third-party collectors obtaining or obtaining access to this information upon the sale or placement of a debt?

The costs to debt collectors would significantly outweigh the benefits of obtaining this information at the time of sale or placement of the debt. Debt collectors generally do not have the capability to store all the data the client would have stored. Further, the passing of information back and forth between the debt owner or creditor and the debt collector can result in corruption of the data or other technology-related glitches that could cause harm to consumers. Debt buyers, on the other hand, often negotiate receipt of documentation into the sale agreement, either obtaining it upon delivery of the accounts, providing for a process for the buyer to access the documentation on demand, or otherwise obtaining access to the documentation.

Documentation (Media)

Q8. Please describe debt collectors' access rights to documentation such as account statements, terms and conditions, account applications, payment history documents, etc. What restrictions are most commonly placed on these access rights? Do these restrictions prevent or hinder debt collectors from accessing documentation?

While information transferred varies by the type of underlying debt involved, when needed, third-party debt collectors are usually able to obtain such information upon request made to the debt owner. There are exceptions, however, such as in the case of HIPAA requirements for patient privacy in medical debt portfolios. In some instances, third-party debt collectors may have access to the debt owner's data systems, but such functionality is largely dependent on the relationship between the debt owner and the third-party debt collector, the type of debt involved, and the data systems employed.

Q9. Part III.A below solicits comment on whether the last periodic statement or billing statement provided by the original creditor or mortgage servicer should be provided to consumers in connection with the validation notice. If these documents are not required in connection with the validation notice, what would be the costs and benefits of debt buyers and third-party collectors obtaining or obtaining access to this documentation when the debt is sold or placed for collection?

As mentioned above, on average, less than 1% of accounts sold or placed for collection result in consumer disputes. As such, requiring the last periodic statement or billing statement to be provided with the validation notice at the time of placement or sale would be unduly burdensome and expensive for the businesses that operate in the industry. This undue burden and expense would not have a corresponding benefit (or if so, such perceived benefit would be dramatically outweighed by the burden and expense) and could be detrimental to the consumer because of data security and privacy risks (e.g. mailing to an inaccurate address) for the 99% of accounts not subject to dispute.

Q10. Are there other types of documents that would be useful for debt buyers and third-party collectors in their interactions with consumers? What types of documentation would it be most beneficial to consumers for debt buyers to have or have access to? For instance, would it be beneficial to consumers for debt buyers to have: (1) A contract or other statement evidencing the original transaction; (2) a statement showing all charges and credits after the last payment or charge-off; or (3) a charge-off statement? What would be the costs and benefits of debt buyers and third-party collectors obtaining or obtaining access to each of these types of documentation when a debt is sold or placed for collection?

Should a consumer dispute the debt, the last statement typically suffices for consumers to recognize the debt. It is important to recognize, however, that the provision of additional documentation is beneficial to all participants in the debt-collection cycle (including consumers) only if and when the debt is disputed. The provision of such documentation upon placement or sale of the debt would be unnecessary and unduly burdensome, as the consumer would not yet have disputed the existence or amount of, or responsibility for, the debt.

Q11. What privacy and data security concerns should the Bureau consider when owners of debts provide or debt buyers and third-party collectors obtain or obtain access to documentation and information when a debt is sold or placed for collection?

In many cases, debt owners, third-party debt collectors and debt buyers already use secure repositories to transmit encrypted data. Sensitive personally identifiable information should not, however, be electronically transmitted without commercially reasonable data privacy and security protocols in place, in accordance with all relevant privacy and data security laws, including the privacy and data security provisions of the HIPAA and Gramm-Leach-Bliley Act, as well as any applicable state laws.

Technological Advances

Q12. Would sharing documentation and information about debts through a centralized repository be useful and cost effective for industry participants? If repositories are used, what would be the costs and benefits of allowing consumers access to the documentation and information about their debts in the repository and of creating unique identifiers for each debt to assist in the process of tracking information related to a debt? What privacy and data security concerns would be raised by the use of data repositories and by permitting consumer and debt collector access? Would such concerns be mitigated by requiring that repositories meet certain privacy and security standards or register with the CFPB? What measures, if any, should the Bureau consider taking in proposed rules or otherwise to facilitate the debt collection industry's use of repositories? What rights, if any, should consumers have to see, dispute, and obtain correction of information in such a repository?

Although there are several vendor-operated systems that act as a centralized repository for accounts receivable management information, there is not a current industry standard. For an inclusive

system, debt owners would need to provide original documentation to be accessed by third-party debt collectors and debt buyers, which could be a costly and lengthy process.

Unlike consumer reports, documentation and information related to debts in the collection cycle are not used for credit or employment eligibility decisions regarding the consumer. The documents and information are private documents between business entities that have a business relationship. As such, consumer access rights would not be appropriate. Moreover, consumers already have avenues to address concerns with respect to the collection of debts, including the filing complaints with federal and/or state regulators and private rights of action for alleged statutory violations.

Information Debt Owner, Debt Buyer, or Third-Party Collector Provides to Consumer Upon Sale or Placement of Debt

Q13. Do debt owners, buyers of debt, or third-party collectors currently notify consumers upon sale or placement of a debt, other than through the statutorily-required validation notices or through required mortgage transfer notices?

Unlike transfers of mortgage servicing, there is not currently a requirement for debt sellers to send a "goodbye" letter to consumers, nor for a "hello" letter to be sent by debt buyers. Debt owners, however, routinely inform the consumer of their last contact before the debt gets placed with a third-party debt collector, and the third-party debt collector routinely sends a letter (including the validation notice) that informs the consumer that the debt owner placed the debt with it. An additional goodbye/hello requirement would be unnecessary in this context.

Q14. What would be the costs and benefits of requiring notification to a consumer when a debt has been sold or placed with a third-party for collection? If such a notice were required, what additional information should be provided to the consumer and what would be the costs and benefits of providing such additional information?

Most third-party debt collectors notify consumers in writing when a debt is placed for collection with their company, including the required validation notice. These actions follow upon a debt owner's customary final demand letter mailed as part of internal business operations for accounts receivable. As such, a separate notification to the consumer would be unnecessary and add additional expense to the sender of the notice for the costs of production and delivery of the notice. Should a notice be required, however, the CFPB should create a model notice for the sender to use that would, if used, provide the sender with a "safe harbor" against regulatory enforcement and private rights of action, and such notice should be permitted to be sent electronically.

Q15. What would be the respective costs and benefits of requiring a debt buyer or a debt owner to provide notice that a debt has been sold? What would be the respective costs and benefits of requiring that a third-party collector or a debt owner provide notice that a debt has been placed with a third-party for collection?

In the context of a third-party debt collector that collects debt on behalf of a creditor or debt owner, such a notice would be redundant given that consumers are typically informed by the creditor or debt owner that a delinquent debt will be placed with a debt collector as well as through the initial contact by the debt collector.

VALIDATION NOTICES, DISPUTES, AND VERIFICATIONS (SECTION 809 OF THE FDCPA)

Validation Notices

Information in Validation Notices Related to Recognizing the Debt

Current Owner of the Debt

Q16. Where the current owner of the debt is not the original creditor, should additional information about the current owner, such as the current owner's address, telephone number or other contact information, be disclosed in the validation notice or upon request? Would this information be helpful to consumers so that they may contact the current owner directly about the debt, or about the conduct of its third-party collector?

Including additional information regarding the current owner in the validation notice has a likelihood of confusing consumers, resulting in the consumer expending time and resources to contest a valid debt because he/she merely does not recognize the new debt owner's name. Also, the inclusion of such information in the validation notice may create inefficiencies and cause confusion as consumers may not understand which entity is the appropriate entity for the consumer to contact. Moreover, current debt owner information is available customarily on request, with the original creditor listed in the validation notice.

In many instances, agreements between creditors or debt owners and third-party collectors include a provision that if the debt owner is contacted directly by a consumer after the debt has been placed for collection, it will refer the consumer to the debt collector to handle the inquiry. The vast majority of creditors and debt owners do not maintain the resources to monitor and manage outsourced debts, and to the extent they do, such a provision serves to ensure clarity for the consumer as to which party is attempting to collect the debt.

Itemization of Total Amount of Debt

Q17. Are there other approaches to itemization of the total amount of debt on validation notices that the Bureau should consider, and if so, for what type of debts should this itemization apply? For example, the Bureau recognizes that the three alternatives described above might work best for credit-based debt. Are there other approaches that might work better for other types of debts? Are there advantages to consistency in itemization across different types of debt or would it be more helpful, for consumers and collectors alike, to require different itemizations standards depending on the type of debt? Or could a standard set of information be required, with certain augmentation for specific types of debt?

If the CFPB were to establish a list of acceptable options to respond to debt validation inquiries, or otherwise mandate a standard, potential conflicts with state law would be an issue. Regardless, the inherent danger of applying a one-size-fits-all approach to itemization requirements is problematic because of the vast differences in types of debt and industry participants. To the extent that any benefits to requiring itemization outweigh competing considerations, it would be incredibly burdensome to provide itemizations for every debt being collected, rather than only the limited volume of debts that are disputed based on the amount owed.

If any itemization would be required, the itemization should include only those fees and charges that are lawfully added to the debt by the specific debt collector that is attempting to collect the debt.

Specific itemization should not be required; it should only separately include the balance upon placement of the debt with the debt collector, the total of any post-placement charges and the total of any post-placement fees.

Additional Information

Q18. What additional information should be included in the validation notice to help consumers recognize whether the debts being collected are owed by them or respond to collection activity? For example, which of the following pieces of information would be most useful to consumers?

- *The name and address of the alleged debtor to whom the notice is sent*
- *The names and addresses of joint borrowers*
- *A partial Social Security number of the alleged debtor*
- *The account number used by the original creditor or a truncated version of the account number*
- *Other identifying information*
- *The name of the original creditor (if different from current owner)*
- *The name of the brand associated with the debt, where different from the original creditor (e.g., the name of a retail partner on a private label or co-branded credit card, or the name of the person providing the periodic statement for closed-end mortgages)*
- *The name of the doctor, medical group, or hospital for medical bills ancillary to their provision of services (e.g., a testing laboratory)*
- *Type of debt (e.g., student loan, auto loan, etc.)*
- *Date and amount of last payment by the consumer on the debt*
- *Copy of last periodic statement*

To what extent is this information available to debt collectors and debt buyers and what would be the cost of requiring that it be included in the validation notice? What privacy concerns would be implicated by providing any of this information (e.g., the name and addresses of joint borrowers, partial Social Security numbers, and account numbers) and how might the Bureau address such concerns?

The overwhelming majority of consumers recognize their debt under current procedures. As stated earlier, on average, less than 1% of consumers dispute the debt. As such, additional information and documentation is unwarranted when sending the validation notice and would be unduly burdensome.

Statements of Consumers' Rights Set Forth in the FDCPA

Q19. Are the statements currently provided to consumers regarding these FDCPA rights understandable to consumers? If consumers do not understand the statements that collectors currently include on validation notices as to their FDCPA rights, please provide suggested language for how these statements should be changed to make them easier to understand.

Although ACA does not have any empirical data to demonstrate consumers' understanding of the legally-required validation notice, we believe the validation notice to be relatively straight forward, understandable and of appropriate length. Nonetheless, should the CFPB add or change the statements made in the validation notice, the CFPB should create a model notice that would, if used, provide the debt collector with a "safe harbor" against regulatory enforcement and private rights of action.

Q20. Should consumers be informed in the validation notice that, if they send a timely written dispute or request for verification, the debt collector must suspend collection efforts until it has

provided the verification in writing? Would any other information be useful to consumers in understanding this right? Should consumers be informed in the validation notice of their right to request that debt collectors cease communication with them?

In the validation notice, consumers are provided with contact information to discuss or dispute the debt. Given that debt collectors must suspend collection until the disputed debt is verified, a requirement that the consumer be informed of such action provides no tangible consumer benefit relative to the primary right to dispute.

While the consumer has the right to cease collections communications under the FDCPA, disclosing that right in the validation notice accords it with a level of significance not provided to other important aspects of the FDCPA. The addition of other existing rights or aspects of the FDCPA in the validation notice would also overshadow the importance of the consumer's right to request verification of the debt. Also, merely stating the consumer's right without disclosing the corresponding effects of ceasing collections communications would cause more consumer harm than the disclosure of the consumer's right affords.

Q21. Are there any other rights provided in the FDCPA that should be described in the validation notices? For example, would it be helpful to consumers for the validation notice to state that the consumer has the right to refer the debt collector to the consumer's attorney, to inform a debt collector about inconvenient times to be contacted, or to advise the collector that the consumer's employer prohibits the consumer from receiving communications at work? If so, please identify the costs and benefits of including each right that should be included in the validation notices.

While the rights listed above specify certain rights under the FDCPA, listing them in the validation notice accord these rights with a level of significance not provided to other important aspects of the FDCPA. The addition of other existing rights or aspects of the FDCPA in the validation notice would also overshadow the importance of the consumer's right to request verification of the debt. Moreover, these additions would significantly increase the length of the notice containing information related to validating the debt, effectively making it more difficult for consumers to understand this important right in the debt collection process or making the reading of such a disclosure more daunting to the consumer.

Q22. What would be the costs and benefits of disclosing FDCPA rights in the validation notice itself, as opposed to the Bureau developing a separate "summary of rights" document that debt collectors would include with validation notices?

Additional text and pages would increase the costs of production and delivery. To the extent the CFPB chooses to require the disclosure of rights in the validation notice, or a separate summary of rights, the CFPB should create model language that would, if used, provide the debt collector with a "safe harbor" against regulatory enforcement and private rights of action. Moreover, to the extent that the CFPB deems that a separate summary of rights is appropriate, the CFPB should allow for a model summary to be accessed online, with the debt collector required to provide the webpage address rather than the entire content with the validation notice.

Format and Delivery of Validation Notices

Format

Q23. What additional information do debt collectors typically include on or with validation notices beyond the mandatory disclosures? Do debt collectors typically include State law disclosures on the validation notices? If so, do debt collectors typically use a validation notice that contains the State law disclosures from multiple States, or do debt collectors typically tailor validation notices for each State?

Debt collectors typically include some version of the following information with the validation notice: name/address/contact information for the third-party debt collector, the original creditor name and account information, including balance due and/or date of service, and all state required notices. Most collectors provide one letter with the federal and all applicable state notices.

Q24. How common is it for collectors to communicate with consumers or provide validation notices in languages other than English?

Some debt collectors may choose, based on their clients, demographics, and areas of operation, to provide notices in Spanish, upon notice or request. The practice of providing validation notices in languages other than English, however, remains very rare.

Q25. If collectors were sometimes required to provide validation notices in languages other than English, what should trigger that obligation? For example, should it be triggered by the request of the consumer, by information from the original creditor indicating that the consumer communicated in a language other than English, by the language used in the original credit contract, or by information gathered by the collector during the course of its dealing with the consumer? What would be the costs of requiring validation notices in languages other than English using each of these triggers?

It would be reasonable for subsequent communications to proceed in the language of the underlying contract, service agreement or transaction. To require translation for circumstances in which the consumer engaged in an underlying transaction by means of the English language, however, would result in significant cost to debt collectors, many of which are small businesses.

Method of Delivery of Validation Notices

Electronic Delivery of the Validation Notice

Q26. Do collectors currently provide validation notices to consumers electronically? If so, in what circumstances, by what electronic media (e.g., email), and in what format (e.g., PDF, HTML, plain text)?

It is not a general practice to provide validation notices electronically because of the risk of potential disclosure of a debt to a third-party.

Q27. Does the consent regime under the E-Sign Act work well for electronic delivery of validation notices? If a consumer consents to electronic disclosures pursuant to the E-Sign Act prior to the account being moved to collection, are debt collectors currently requiring E-Sign consent again when the account moves into collection? When the account is sold or placed with a new collector, is

the new collector currently requiring a new E-Sign consent? If a consumer consents to electronic correspondence, what process do debt collectors currently require to revoke this consent?

Generally, the consent regime under the E-Sign Act would work well for electronic delivery of validation notices. Clear guidance or authority for debt collectors to use electronic communication would likely need to supersede or, at minimum, comprehensively address concerns related to the FDCPA third-party disclosure prohibition.

To the extent third-party debt collectors electronically deliver required disclosures, they typically require E-Sign consent to be provided again, when a debt is placed with them. Such consent is limited to that particular debt collector. A consumer can revoke consent at any time by notifying the third-party debt collector.

Consumers' Use of Electronic Means to Fulfill Writing Requirements for Exercising Rights Described in Validation Notice

Q28. Do debt collectors currently treat emails, text messages, or other forms of electronic communications as satisfying the "in writing" requirement to exercise the three rights described above? If so, what would be the costs and benefits of treating them as satisfying the "in writing" requirement?

Many debt collectors treat email as satisfying the "in writing" requirement. An appropriate framework around the electronic delivery of disclosures, notices and information, along with the electronic exercise of existing rights, would be beneficial to all parties.

Consumer Testing of Validation Notices

Q29. Have industry organizations, consumer groups, academics, or governmental entities developed model validation notices? Have any of these entities or individuals developed a model summary of rights under the FDCPA that is being given to consumers to explain their rights, or a model summary of rights under State debt collection laws? Which of these models, if any, should the Bureau consider in developing proposed rules?

ACA has a model validation notice that has been used by the industry for over 15 years. While some entities may have developed a model summary of rights under the FDCPA, the use of such a summary is not a widespread practice in the industry given the strict liability nature of the FDCPA.

Q30. Is there consumer testing or other research concerning consumer understanding or disclosures relating to validation notices that the Bureau should consider? If so, please provide any data collected or reports summarizing such data.

ACA is not aware of any consumer testing or other research concerning consumer understanding or disclosures relating to validation notices.

Disputes and Verification

Definition, Types, and Timing of Disputes

Q31. What types of consumer inquiries do debt collectors currently treat as "disputes" under the FDCPA? What standards do debt collectors currently apply in distinguishing disputes from other types of consumer communications? What data exist to indicate the percentage of debts that are

disputed, and what definition of "dispute" is being used to arrive at this percentage? What data exist to indicate how disputes are resolved by debt collectors?

Consumer inquiries that debt collectors currently treat as "disputes" include the following:

- Identity theft
- "That's not my bill"
- "My insurance should have paid that" or other insurance dispute (for medical debt)
- "I already paid that"
- Question as to the validity of the debt amount/balance owed
- Fraud
- Attorney involved

Basically, anytime a consumer expresses dissatisfaction with any component of the notice that requires investigation and confirmation, it is treated as a dispute.

Given the legal risk, when in doubt, third-party debt collectors err on the side of treating consumer inquiries as disputes under the FDCPA. When the consumer does not respond, when the consumer refuses to pay the debt, or when the consumer indicates dissatisfaction with the original product, service, or creditor, a dispute is not usually inferred. Similarly, requests for a receipt after payment or address updates would not be considered disputes. Despite this broad construction as to what consumer inquiries constitute a dispute, on average, less than 1% of debts in collection are disputed by consumers.

Debt collectors use varied methods to track disputes, including but not limited to case notes, written documentation, email records, recorded calls, dispute tracking software databases—all of which are monitored by a person with compliance responsibilities in order to ensure a resolution is reached and communicated to the consumer.

Q32. Are certain types of debts (e.g., credit card vs. student) disputed at higher rates than others? Do dispute rates differ between debts being collected by debt buyers versus those being collected by third-party collectors?

As indicated earlier, on average, less than 1% of accounts sold or placed for collection result in consumer disputes.

Medical debt seems to be disputed at a slightly higher rate than other types of debt, with around 5% of debts disputed. This slightly higher rate is likely due to consumer confusion regarding how medical insurance works, what is covered, and who is the party responsible for submitting claims.

In some cases, the type of debt may also contribute to higher rates of dispute. For example, debts related to gym memberships can have a higher dispute volume due to the lack of consumer understanding of the installment payment processes and contract cancellation fees.

Q33. What data or other information are available regarding how disputed debts are resolved? What percentage of disputed debts are verified? What percentage of debt disputes are never investigated? Where disputes are investigated, what percentage of the investigations reveal that there was an error?

Most requests for verifications are produced via form letters found online and usually provide little specificity as to the consumer's underlying concern. The vast majority of consumer disputes are investigated, and many collection agencies attempt to investigate all consumer disputes. Across the industry generally, less than 3-5% of disputes are found to be valid; of those, roughly half involve consumer reporting errors by the consumer reporting agency or the debt owner furnisher.

Q34. Should the Bureau define or set standards for what communications must be treated as "disputes" under the FDCPA and, if so, how? What are the advantages and disadvantages of the definition recommended?

If the CFPB were to designate an industry standard for what constitutes a dispute, such one-size-fits-all approach could be problematic across different categories of debt. Currently, the FDCPA and FCRA are explicit in how to handle disputes, and debt collector policies and procedures are drafted to strictly adhere to all federal and state laws.

Given the industry practice of broadly defining what constitutes a dispute, it would be useful for a rule to limit appropriately what could comprise a dispute. A proposed definition could provide that a dispute is limited to the content contained within the validation notice, thereby eliminating disputes based on the original product or service, or general dissatisfaction with the original creditor that is unrelated to the debt itself. The CFPB should also define what, if any, information is required to be provided by the consumer to dispute a debt and address frivolous disputes.

Dispute Requirements

Q35. Should consumers be required to provide particular information or documentation as part of their disputes to debt collectors to trigger an investigation requirement under the FDCPA? What would be the costs and benefits of requiring that consumers provide the same or similar information as required under the FCRA when making disputes directly to debt collectors? Should a consumer's obligation to provide this information about the basis for their disputes be contingent on having received a validation notice with requisite information? Why or why not?

Consumers and industry alike would benefit from having consumers provide information or documentation to support a dispute, as such information would assist debt collectors in timely validation and/or resolution of the debt when consumers are in the best position to provide information or documentation. Placing an appropriate level of responsibility with the consumer would also serve to reduce the number of frivolous disputes, thereby allowing debt collectors to focus resources on assisting those consumers with legitimate disputes.

A proper validation notice is independent of the dispute and any corresponding investigation process. The notice is only a disclosure of an important right under the FDCPA. A consumer should be able to lodge a good faith dispute relating to a debt at any time, whether or not an appropriate validation notice has been sent. As such, the consumer should provide information and documentation to be used in any corresponding investigation.

Types of Disputes

Q36. Do consumer disputes typically specify what is being disputed, or do consumers simply make general statements that they dispute the debt? If consumers do make specific statements, are those statements typically relevant to the consumer's particular circumstances or the alleged debt, or do they typically appear to be unrelated to the consumer's particular circumstances or the alleged debt?

What types of specific disputes are most commonly received by debt collectors (e.g., identity theft, wrong amount, do not recognize the debt, previously paid, previously disputed)?

Currently, consumer disputes tend to be very general, and there is no requirement to provide any specific information that would facilitate where to focus any corresponding investigation. Often, consumers replicate dispute letters found on the internet or from credit repair organizations and lack any specificity as to the reasoning for the dispute of the specific debt. Approximately 80% of the time, disputes are unrelated to the circumstances of incurring the actual debt, with a focus on emotional sentiments, such as dissatisfaction with the underlying product, service, or provider, rather than factual issues pertaining to the debt.

Timing

Q37. What practices do debt collectors follow when they receive a dispute after the 30-day period following receipt of the validation notice has expired? Do collectors usually follow the same verification procedures as for disputes that are received during the 30-day period? What would be the potential costs and benefits of a debt collector following the same investigation and verification procedures for disputes received after the 30-day period relative to disputes received within the 30-day period?

Members of ACA International agree to follow the same verification procedures for disputes received after the 30-day validation notice period has expired, despite the lack of a legal requirement to do so. They do so not only because it is an ethical and responsible business practice, but also because the ultimate goal is to work with consumers to assist them with resolving justly-owed debts. Because this practice is already occurring, there would be no additional cost or benefit to requiring this by rule.

Q38. How long does it typically take after a debt has been disputed for the collector to investigate and provide verification to the consumer? Would establishing a specific time period for responding to a dispute be beneficial to consumers? Does the prohibition on collection until verification has been provided give collectors a sufficient incentive to investigate expeditiously and appropriately? What costs and burdens would establishing a specific deadline for an investigation impose?

On average, it takes between 30-60 days for a debt collector to investigate and provide verification after a debt has been disputed, but individual circumstances may provide for verification sooner or later than that timeframe. Any requirement for providing verification within a specific time period would need to be flexible enough to allow for different contingencies that may arise with respect to the different types of debt being collected or the underlying circumstances.

The current prohibition on collection until after a disputed debt is verified provides ample economic incentive for the debt collector and ample protection for the consumer.

Investigation of Disputed Debts

Q39. What steps do collectors take to investigate a dispute under the FDCPA? Do collectors request information from the debt owner or any other parties? Do they look beyond confirming that the information contained in the validation notice is consistent with their records? Are the steps debt collectors are taking adequate?

Debt collectors regularly request information from debt owners or original creditors and look beyond confirming that the validation notice information is consistent with their records.

As part of their investigation, debt collectors routinely request statements from debt owners or original creditors to confirm information consistency between the original documentation and the validation notice, and provide documentation to the consumer. In the event of any discrepancies, such as a difference in balances owed, the debt collector would engage the debt owner or creditor for a detailed explanation. Collection efforts are placed on hold during investigations, with collection activities usually resuming once the consumer has had a reasonable opportunity to review the verification documentation.

Q40. What steps should debt collectors be required to take to investigate a dispute? Would a "reasonableness" standard benefit consumers and debt collectors? Would more specific standards or guidance be useful to help effectuate such a standard? For example, should debt collectors be required to review account-specific documents upon receiving the consumer's dispute? Should debt collectors be required to consider the accuracy and completeness of the information with a portfolio of accounts, including whether the information is facially inaccurate or incomplete? Should debt collectors be required to consider the nature and frequency of disputes they have received about other accounts within the same portfolio?

When an investigation is required, a reasonableness standard should apply as it provides for appropriate flexibility for the different types of debts and factual circumstances. Any reasonableness standard should parallel the standards in the FCRA. Should the FCRA's reasonableness standard be applied to disputes under the FDCPA, the FCRA's frivolous dispute provisions should also apply. Should the CFPB develop a reasonableness standard, it should provide examples of what it deems to be reasonable as to help ensure maximum clarity. Such examples, if followed, should afford debt collectors a safe harbor from enforcement and litigation.

Debt collectors should be required to consider the accuracy and completeness of the information with a portfolio of accounts, determining whether the information is facially inaccurate or incomplete; this is in line with customary industry practice. Debt collectors should also consider the nature and frequency of disputes they have received within the same portfolio of accounts.

Q41. How should the investigation required vary depending on the type of dispute? For example, if a consumer states the balance on a debt is incorrect, what information should a debt collector review for its investigation? If a consumer states that she is not the alleged debtor, what information should a debt collector be required to obtain or review? If a consumer disputes the debt by stating that she does not recognize it, what information should a debt collector obtain or review? If the consumer claims prior payment of the debt, what information should a debt collector obtain or review? Please comment on other common dispute scenarios that may require review of specific types of information.

The reasonableness of any required investigation will depend on a variety of factors, including type and age of the debt, the source for applicable information and documentation, and the particular facts of the situation. Reasonableness should also depend on the information provided by the consumer when disputing, as consumer disputes tend to be very general, without any specific information that would facilitate where to focus any corresponding investigation.

If a consumer disputes the balance of a debt, documentation relating to the underlying debt, such as the debt owner's invoice or itemized statement, may need to be reviewed.

If a consumer states that he/she is not the debtor, the consumer is in the best and most efficient position to provide identification information so that the debt collector can compare it with the information on file to expediently verify identity. Typically, providing the last four digits of the Social Security number, or date of birth, and address suffices in most instances to establish proper identity.

If a consumer disputes the debt by saying it is unrecognizable, the collector should provide details as to the original creditor, charges, dates, payments, and the like. In some circumstances, it may be appropriate to provide available documentation related to the underlying debt.

FCRA Obligations

Q42. What percentage of debt collectors are "furnishers" under the FCRA? How many FCRA disputes do debt collectors receive? What percentage of FDCPA disputes do collectors treat as direct disputes under the FCRA? How do debt collectors fulfill their responsibilities to investigate disputes that are covered by both the FDCPA and the FCRA? To what extent do debt collectors stop collecting debts disputed pursuant to the FDCPA and the FCRA without investigation? To what extent do debt collectors stop reporting debts disputed pursuant to the FDCPA and the FCRA without investigation?

ACA does not collect member data on what percentage of member companies are furnishers under the FCRA.

Depending on the size of the debt collector and types of debt being collected, the percentage of FCRA disputes ranges from less than 1/1000 of one percent to 1.3% of all accounts.

Debt collectors that furnish information to consumer reporting agencies treat all FDCPA disputes as FCRA disputes. Debt collectors use a broad definition of dispute, verification, and investigation, and follow very similar procedures for a dispute under the FDCPA as they would a dispute under the FCRA, seeking the same relevant documentation and with a reasonable investigation leading to a resolution.

Q43. What percentage of disputes are repeat disputes that were already subject to a reasonable investigation and do not include any new information from consumers? How do debt collectors currently handle repeat disputes or disputes that are unclear or incomplete? Do debt collectors receive a significant number of disputes from credit repair organizations? Is any data available as to the number of repeat disputes or disputes from credit repair organizations that debt collectors receive?

The percentage of repeat disputes varies according to types of debt.

For medical debts, where there are often insurance billing questions, the rate of repeat disputes can be as high as 50-60%. For other types of debt, like credit card debts, the rate of repeat disputes can be as low as 2%. On average, for the entire industry, the percentage of repeat disputes is likely in the 10-20% range (keeping in mind that the overall dispute rate averages around 1% of all debts). Debt collectors handle repeat disputes by replying with a letter detailing the previous dispute and validation, and in some cases, trying to contact the consumer directly.

The number of disputes from credit repair organizations varies with the type of underlying debt involved, with some collectors receiving over 75% of disputes in a standard form letter produced by

a credit repair organization, with others receiving less than 10% of these letters. Volume aside, such credit repair organization disputes are significant and problematic due to their lack of specificity as to the consumer's particular concern. Given that credit repair organizations routinely pose as the consumer, thus circumventing the FCRA provision that exempts furnishers from responding to disputes generated by credit repair organizations, such disputes create unnecessary work for the debt collector while providing no benefit to the consumer.

Debt collectors can easily identify the disputes from credit repair organizations because they arrive in recognizable batches, on the same day, from the same postmark (despite debtors being geographically diverse), in regular intervals, with signatures made in the same handwriting, which when compared to other documents over time, varies widely from the consumer's signature.

Q44. Should the Bureau consider including in proposed rules for debt collection an exception for "frivolous and irrelevant" disputes, similar to the one found in the FCRA? Are the incentives of those collecting on debts different from the incentives of other furnishers and CRAs with respect to information included on consumer reports? What would be the costs and benefits of allowing collectors not to investigate "frivolous and irrelevant" disputes?

ACA supports creating an exception for "frivolous and irrelevant" disputes, similar to the one found in FCRA in order to empower debt collectors to focus on those consumers who have legitimate disputes. There is no difference in the incentives of debt collectors and other furnishers and CRAs with respect to information included in consumer reports. All parties share the same goal—to accurately display the credit history of the consumer.

Q45. What information do debt collectors currently provide to verify a disputed debt? Do debt collectors typically provide documentation (media) to consumers to verify a debt?

Debt collectors use statements, copies of signed applications and/or contracts, copies of judgments, and other similar documentation to verify a disputed debt. Debt collectors provide such documentation to consumers, whenever such information is requested and available.

Q46. Under which circumstances, if any, should collectors be required to provide consumers with documentation (media) to verify a debt? Would providing the last periodic or billing statement related to the account be sufficient to verify most disputed debts?

In most cases, it would be appropriate for debt collectors to provide consumers with documentation verifying the debt. There may be some circumstances, however, for which documentation is not available. When available, the last periodic or billing statement should be sufficient to verify many types of debt being disputed.

Q47. What would be the costs and benefits of requiring particular forms of information to verify a debt? Are there any particular types of verification that would be especially beneficial to consumers or particularly costly for collectors to provide?

Creating a standard of information to verify a debt may not work well across all debt types. As with any new form or paper requirement, additional costs would be incurred to comply, and additional processes, policies, and procedures would need to be established to ensure compliance.

It would be particularly costly, however, to require the entire history of an account to be mailed to the disputing consumer. The costs to the debt collector would primarily be copying, mailing, staffing and administrative expenses, depending upon how voluminous the documentation would be. This would also depend upon the "particular forms" required.

For a debt owner or original creditor, the costs could be much larger depending upon their systems (if stored electronically) or facilities' storage capabilities (if kept on paper). This would also vary widely from industry to industry and depend on the nature of the underlying account.

From a benefits perspective, having a complete set of any/all documents that a consumer has ever received would certainly eliminate any ambiguity; but would likely be unmanageable and extremely costly. Providing information and documentation may be appropriate when a debt is disputed, but the required documentation (and associated retention requirements) must strike a reasonable balance between costs and anticipated benefits.

Q48. Section 809(b) of the FDCPA states that verifications must be "mailed" to the consumer. Do debt collectors currently provide the verifications only by postal mail, or are debt collectors providing verifications in other formats, such as email or text message? Do collectors obtain consumer consent if they wish to provide the verification electronically and, if so, what type of consent are they obtaining (e.g., do they follow E-Sign standards)?

Pursuant to the FDCPA, debt collectors are only permitted to provide verifications by "mail," and accordingly, debt collectors only provide verifications via postal mail. Although some larger collection companies permit (under E-Sign standards) customers to voluntarily request and authorize email communications, FDCPA required "mailings" are not delivered via electronic means.

Q49. If consumers disagree with the verification of disputed debts provided by debt collectors, or if they do not receive verification of the disputed debts, should consumers be afforded the opportunity to file statements with collectors that explain the nature of their disputes with the debt collector, and should the debt collector then be required to provide that statement to the owner of the debt or subsequent collectors? What would be the costs and benefits of requiring debt collectors to accept and communicate consumers' statements of dispute?

In practice, third-party debt collectors forward dispute and investigation information back to debt owners or creditors as part of ongoing portfolio reports and other contractual communications. Debt collectors are not, however, engaged in creating and maintaining information repositories. Unlike consumer reporting agencies, which are designed to serve the role of information intermediaries in the credit markets and whose information is used to determine consumers' eligibility for credit, employment, and other decisions, debt collectors are an end-of-credit-cycle service provider to the debt owner or creditor and should not be expected to play a similar role. The consumer statement requirement in the FCRA is designed to provide additional information to another party who is considering the consumer's consumer report for eligibility purposes. This is not the case in the debt collections context. As such, the collection and dissemination of consumer statements of dispute by a debt collector, especially to an unrelated party such as another debt collector, would be inappropriate. The costs of building such an infrastructure and maintaining it would be unduly burdensome while the underlying benefits would be specious at best.

Unverified Debts

Q50. To what extent do debt collectors attempt to verify a debt that is disputed? What do debt collectors currently do when they are unable to verify a disputed debt? What, if anything, should debt collectors be required to do when they are unable to verify a disputed debt? Do third-party collectors typically return the account to the debt owner when it is disputed, without attempting to verify it?

Debt collectors attempt to verify disputed debts. If a debt is unable to be verified, however, collection activity ceases and the account is returned to the debt owner. Third-party debt collectors do not often return debts without attempting to verify it, as immediately returning debts would be antithetical to the service they have been contracted to perform.

Q51. If a debt collector's investigation reveals errors or misrepresentations with respect to the debt, do collectors report those findings to the consumer? When and how are such findings conveyed to consumers?

If a debt collector's investigation reveals errors or misrepresentations with regard to the debt, the debt collector reports them directly to the consumer in an attempt to resolve the debt, while working with the debt owner or creditor as well. Such findings are conveyed to the consumer with a new letter or phone call, either when the matter arises or when the investigation is concluded.

Q52. Do owners of debts sell disputed but unverified debts to debt buyers or place them with new third-party collectors? Are these debts reported to CRAs? What limitations should be placed on the sale or re-placement of unverified disputed debts? For example, should the owner of the debt or the collector be required to inform debt buyers and new collectors that it is an unverified disputed debt when it is sold or re-placed? Should the new debt buyer or collector be required to verify the debt before making collection efforts? What would be the potential costs and benefits of such restrictions or conditions?

It is not industry practice to sell or re-place disputed but unverified debts. If a debt owner inadvertently sold or placed such debts, upon discovery, they would be returned.

Where the sale or re-placement of unverified disputed debt is permitted, the debt owner should be required to inform the debt buyer or third-party debt collector that such debt is unverified disputed debt. In these instances, the new buyer or third-party debt collector should verify the debt prior to initiating collection activities.

Reporting of Un-validated Debts

Q53. What would be the costs and benefits of prohibiting collectors from reporting a debt to a CRA during the 30-day window?

Neither the FCRA nor the FDCPA prohibit furnishing data to CRAs in the validation period. Considering that on average, less than 1% of debts are disputed and that many of these disputes are not valid, little, if any, consumer harm occurs by furnishing data because data furnishers have the duty to investigate disputes and provide verification or delete the account from the consumer's consumer report.

DEBT COLLECTION COMMUNICATIONS (SECTIONS 804 AND 805 OF THE FDCPA)

Advances in Communications Technology

Q54. In addition to telephone and mail, what technologies, if any, do debt collectors currently use on a regular basis to communicate or transact business with consumers? For which technologies would it be useful for the Bureau to clarify the application of the FDCPA or laws regarding unfair, deceptive, or abusive acts or practices? What are the potential efficiencies or cost savings to collectors of using certain technologies, such as email or text messaging? What potential privacy, security, or other risks of harm to consumers may arise from those technologies and how significant are those harms? Could regulations prevent or mitigate those harms? Should consumers also be able to communicate with and respond to collectors through such technologies, including to exercise their rights under the FDCPA and particularly when a collector uses the same technology for outgoing communications to the consumer? What would be the potential costs and benefits of such regulations?

Debt collectors should be able to communicate in accordance with the preferences of consumers. Given that debt collectors are trying to assist consumers in resolving their debts, they have a better chance of doing so if they can communicate with consumers using the methods that consumers prefer. Debt collectors, if expressly authorized by regulation, would welcome using technology to communicate with consumers, including the use of email, text messages, web portals, social media, instant messaging, wireless telephones and devices, and other modern means. No other industry is so restricted in the use of technology to communicate with consumers as the debt collection industry. Today's consumers appreciate being able to facilitate communications with businesses in means most useful, convenient, comfortable and effective for them — be it during non-business hours on a tablet through a web chat function, via pushed text message during the workday, or through a company's online software application. Debt collection rules should be modernized to allow for the use of these newer technologies in the same way the FDCPA anticipated debt collection communications via telephone and postal mail.

The benefits both for industry and consumers to be able to use post-1977 communications technology would be enormous. The consumer could choose the communication method(s) to which they will respond, which is especially important for consumers who do not have landline telephones. According to the U.S. Census Bureau, in 2011, two-thirds of households led by people under age 30 did not have a landline telephone, and 89% of Americans owned a cell phone—up from 36% in 1998, the first year the survey included cell phone ownership. The use of email and/or text messaging would reduce letter mailing costs significantly, while also reducing waste and providing a greener footprint.

Potential risks of harm include typographical errors (either at the customer-input level or the debt collector level) resulting in the wrong person being sent communications, and dangers of hacking or other cybercrime inherent in the modern, digital world. Overall, these risks pale in comparison to the existing privacy concerns of postal mail, which may be sent to an incorrect address and opened by anyone, without a password, encryption, or a secure device.

Consumers should be permitted to communicate and respond to debt collectors using modern technologies to exercise their FDCPA rights, provided that the debt collector can respond to them via the same technology.

Q55. Are there nascent communication technologies, or communication technologies that are likely to arise in the future, whose use in connection with debt collection might materially benefit or harm debt collectors or consumers? What additional challenges do those communication technologies present in applying the FDCPA or the Dodd-Frank Act's prohibition against unfair, deceptive, and abusive acts and practices to debt collectors?

There are always future technologies that will be developed in the communications realm that could benefit or harm consumers and businesses, many of which are likely unforeseeable now. Any regulation should be flexible enough to allow for the development and appropriate use of new technology.

Q56. What complications or compliance issues do social media present for consumers or collectors in the debt collection process? How, if at all, should collector communications via social media be treated differently from other types of communications under debt collection rules? What privacy concerns are raised by various social media platforms?

Social media, by design, encompasses a wide variety of platforms and messaging components, with varying levels of privacy usually controlled by the consumer user. Many social media users send and receive text messages, email messages, instant messaging and equivalent communications via social media websites and applications in the same or similar way that traditional telephonic text messaging or internet-based email hosting platforms deliver content.

To the extent that collections communications via social media do not have obvious third-party disclosure implications (e.g. posting a debt collection communication on a consumer's "wall," "timeline," etc…), such communications should be treated like postal mail communications as contemplated by the FDCPA (posting on a consumer's wall is akin to sending a postcard, which is prohibited by the FDCPA). Social media, electronic mail, and text messaging are the modern substitutes for postal mail — they are visual modes of communication that can be read at the consumer's convenience (unlike telephone calls, which are an aural mode of communication at a given point in time).

Also, debt collectors should not use any false or deceptive means to access a consumer's social media site. For example, a debt collector should not be permitted to create a deceptive social media profile in order to mislead a consumer into granting the debt collector access.

Q57. FDCPA section 807(11) declares it to be a false, deceptive, or misleading representation for collectors to fail to disclose that a communication is from a debt collector. This section also requires in the collector's initial communication what is often called a "mini-Miranda" warning, in which the collectors state that they are attempting to collect a debt and any information obtained will be used for that purpose. Standard industry practice is for third-party debt collectors to provide the mini-Miranda warning during every collection call. What are the costs and benefits of such collectors including the mini-Miranda disclosure when they send communications via social media?

If debt collector communications were permitted via social media as outlined above, the same communications rules that apply to postal mail should apply.

Communications to Locate Debtors (Section 804 of the FDCPA)

Q58. How frequently do debt collectors communicate with third parties about matters other than the location of the consumer? What other topics are discussed and for what reason? What are the potential risks to consumers or third parties? Would additional regulation to address this issue be useful?

Debt collectors rarely communicate with third parties about matters other than the location of the consumer. Debt collectors do leave messages with third-parties requesting the consumer return the call, in compliance with FDCPA. Calls to verify a consumers' employment, though infrequent, are also a topic for a conversation with a third-party.

Debt collectors may also communicate with attorneys and other parties authorized by the consumer, such as consumer credit counseling and bank professionals for purposes of consumer debt resolution.

The potential risks for communicating about these topics include inadvertent disclosure to the third-party that a debt is owed. Such risk is mitigated, however, by proper training of the debt collector's employees. Because the FDCPA is clear about such communications, additional regulation is unnecessary.

Q59. What would be the costs and benefits of setting a standard for when a debt collector's belief about a third-party's erroneous or incomplete location information is reasonable? If a standard would be useful, what standard would be appropriate?

Any new standard for reasonableness would need to be flexible enough to accommodate widespread variation in circumstances. Should the CFPB choose to implement such a reasonableness standard, it should include examples of what would be deemed reasonable as to ensure maximum clarity. Such examples, if followed, should afford debt collectors a safe harbor from enforcement and litigation.

Q60. Some individuals employed by debt collectors use aliases to identify themselves to third parties when seeking location information about a consumer. Should this practice be addressed in a rulemaking? If so, how?

In order to protect the privacy (and sometimes safety) of individuals working in the debt collection industry, the CFPB should expressly permit the use of individual collector aliases. Any specific aliases should be used only by one individual debt collector and a list of all aliases used by a company's individual debt collectors should be maintained by the company.

Q61. Under FDCPA section 804(1), debt collectors are permitted to identify their employers during location communications only if the recipient of the communication expressly requests that information. Does providing the true and full name of the collector's employer upon request risk disclosing the fact of the alleged debt to a third-party? If so, how could the risk be minimized? What would be the costs and benefits of minimizing or otherwise addressing this risk?

FDCPA-required disclosure of the full name of the debt collection company, upon request during location communications, risks disclosing the existence of the debt to a third-party. Although the rules of statutory construction likely prevent such a disclosure from being a violation of the FDCPA, for the sake of maximum clarity, it would be beneficial for the CFPB to affirm this position.

Q62. FDCPA section 804(5) bars a debt collector from using any language or symbol on an envelope or elsewhere in a written communication seeking location information if the name indicates that the collector is in the debt collection business or that the communication relates to the collection of the debt. How should such a restriction apply to technologies like email, text message, or fax?

The underlying intent should be preserved such that if the communication is "public," as an envelope may be when submitted through the mail, then existing restrictions on language or symbols visible to the public can similarly be applied. To the extent that any communications sent via newer technologies (email, text, etc.) lack an analogous component that is visible generally to the public, the restriction should not apply.

Communications With Consumers (Section 805(a) of the FDCPA)

Unusual or Inconvenient Times Under Traditional Communications Technologies (Phones)
Q63. Does sufficiently reliable technology exist to allow collectors to screen to determine whether a given phone number is a landline versus a mobile phone? If so, should collectors conduct such screening before relying on an area code to determine a consumer's time zone? What would be the costs and benefits of requiring such screening? Should collectors be allowed to rely on information provided by consumers at the time they applied for credit, such as when a consumer provides a phone number identified as a "home" number or a "mobile" phone number on an initial credit application without screening the area code?

Current technology does not exist to allow debt collectors to determine whether a given telephone number is a landline or wireless line at any exact moment in time. While technologies exist to "scrub" telephone lines to determine whether such lines are land-based or wireless, they cannot accommodate numbers that have been very recently "ported" or whether calls to a landline are forwarded (temporarily or permanently) to a mobile phone. Moreover, no consumer-accessible technology exists to determine whether a mobile telephone user is traveling outside their typical location. As such, it is increasingly difficult to determine local time at the consumer's location.

As consumers relocate residences and maintain their wireless telephone numbers with the area codes associated with the consumers' prior residences, area codes are also no longer a firm indicator of local time at the consumer's location. Debt collectors should not be required to conduct a screening before relying on an area code to determine a time zone because the costs would be tremendous, and the underlying objective would still not be achieved. Debt collectors should be permitted to dial, at appropriate times, telephone numbers based on the time zone of either the last known address of the consumer or the area code of the telephone number. In the alternative, debt collectors should be permitted to rely on the time zone of the consumer's last known address for FDCPA calling time purposes.

Q64. Should collectors assume that the consumer's mailing address on file with the collector indicates the consumer's local time zone? If the local time zone for the consumer's mailing address and for the area code of the consumer's landline or mobile telephone number conflict, should collectors be prohibited from communicating during any inconvenient hours at any of the potential locations, or should one type of information (e.g., the home address) prevail for determining the consumer's assumed local time zone?

Debt collectors should be permitted to dial, at appropriate times, telephone numbers based on the time zone of either the last known address of the consumer or the area code of the telephone number.

In the alternative, debt collectors should be permitted to rely on the time zone of the consumer's last known address for FDCPA calling time purposes.

Newer Communications Technologies (Email and Text Message)

Q65. A main purpose of designating certain hours in the FDCPA as presumptively convenient apparently was to prevent the telephone from ringing while consumers or their families were asleep. Do similar concerns exist for other technologies? Should any distinction be made between the effect of a telephone ringing and an audio alert associated with another type of message delivery, such as email or text message, if a mobile phone is on during the night?

Similar "sleeping time" issues do not exist with newer technologies, for which consumers have advanced settings options in "sleeping" and "waking" their mobile phones, in selecting tones and alerts for different types of messages, or changing sound profiles to "vibrate" or "silent." Unlike land line phones in 1977, for which ringers could not be silenced, mobile phones and electronic devices can be set to a consumer's preference in terms of sound, time, and volume. The effect of a beep or tone from a mobile phone or email message in the middle of the night is entirely different from the multi-key ring of a landline phone that cannot be silenced and that cannot be directed to voicemail or an answering machine until a set number of rings. No business or industry has any time constraints placed upon when electronic messages must be sent or received and consumers are able to retrieve messages at the time of their choosing.

Q66. Should a limitation on usual times for communications apply to those sent via email, text message, or other new media? Should it matter whether the consumer initiates contact with the collector via that media? Is there a means of reliably determining when an electronic message is received by the consumer? Are there data on how frequently consumers receive audio alerts when either emails or text messages are delivered? Are there data showing how many consumers disable audio alerts on their devices when they wish not to be disturbed?

There should not be a limitation on times for newer media messages as these newer media messages are more akin to communication via postal mail – they are visual modes of communication that can be read at the consumer's convenience (unlike telephone calls, which is an aural mode of communication at a given point in time). Following the established legal concept of the "mailbox rule," which ensures that the day/time that a letter is sent is the date on which delivery is deemed, any new requirement should focus on when a message is sent, as opposed to when it is received or opened. Regardless, if a consumer initiates contact with a debt collector via a newer media, the debt collector should be permitted to respond using the same media.

ACA is not aware of any uniform means to determine when an electronic message is received.

Q67. Is there a general principle that can guide the incorporation of standards on unusual times for communications to newer technologies? For instance, should such restrictions apply only to technologies that have "disruptive" effects, like phone calls, and if so, how might "disruptive" be best defined? What would be the costs and benefits of applying any such general principles?

The notion of "unusual times" for communications does not apply to newer technologies because newer technologies lack the disruptive effect that accompanied older technologies. Unlike a landline telephone, which (prior to widespread use of voicemail and answering machines) would ring audibly until the phone was physically answered (which, prior to cordless telephone technology that debuted in the 1980's, further required a person to physically move to the location of the telephone), modern

communication devices are portable (do not require physical movement), can be silenced (either through the ringer, settings, or while an incoming call is in progress) or ignored, without audible or physical disruption to the consumer. Like postal mail, these communication methods are visual in nature and they may be retrieved when convenient for the consumer.

Unusual or Inconvenient Places

Q68. Especially with the advent and widespread adoption of mobile phones, consumers often receive calls at places other than at home or at work. Under what circumstance do collectors know, or should know, that the consumer is at one of the types of places listed below? What would be the costs and benefits of specifying that such locations are unusual or inconvenient, assuming the debt collector knows or should know the location of the consumer at the time of the communication?

- *Hospitals, emergency rooms, hospices, or other places of treatment of serious medical conditions*
- *Churches, synagogues, mosques, temples, or other places of worship*
- *Funeral homes, cemeteries, military cemeteries, or other places of burial or grieving*
- *Courts, prisons, jails, detention centers, or other facilities used by the criminal justice system*
- *Military combat zones or qualified hazardous duty postings*
- *Daycare centers*

The mobile consumer can be any place at any given moment. Consumers who choose the convenience of mobile telephony also have the choice to silence and/or ignore incoming calls, without disruption to themselves or others. Perhaps other than for landline telephones, the use of which is on the decline and may well be obsolete in the next decade, the outdated doctrine of inconvenient times and places does not apply to the way consumers consume mobile technology in the twenty-first century.

Q69. Are there additional places not listed above that would be inconvenient places for consumers to be contacted?

While a consumer may find any number of additional venues to be inconvenient locations at which to be contacted, it would be unreasonable and unduly burdensome to require a debt collector to know each and every place that might be considered inconvenient by each and every individual consumer.

Q70. Under what circumstances are communications at a consumer's place of employment inconvenient, even if the employer does not prohibit the receipt of such communications? What would be the potential costs and benefits of prohibiting communications at a consumer's place of employment due to inconvenience, assuming that the collector knows or should know the consumer's location? To what extent does the inconvenience depend on the nature of the consumer's workplace or on the consumer's type of employment at that workplace?

Debt collectors try to avoid contacting consumers at their place of employment. As a matter of course, if a consumer requests not to be contacted at work, debt collectors comply with their request, provided the debt collector has knowledge that a particular telephone number is associated with a consumer's place of employment. This is true even if the employer does not prohibit the receipt of such communications, as the debt collector will have no reasonable way of knowing the particular employer's policy regarding such communications.

A debt collector could unknowingly call a consumer at his/her place of employment by calling a consumer's mobile telephone number. In this circumstance, an absolute prohibition on calling a consumer at work would be problematic.

While the inconvenience to an employee being called at work will likely depend on that employee's function (e.g. an assembly line worker vs. an office worker with a private office), these distinctions are best addressed on a case-by-case basis, rather than an overarching mandate or prohibition.

Place of Employment Communications

Q71. Do employers typically distinguish, in their policies regarding employee contacts at work, between collection communications and other personal communications? Are employers' policies concerning receipt of communications usually company-wide, specific to certain job types, or specific to certain individuals?

It is our belief that employers do not distinguish, in policies regarding employees' personal communications at work, between debt collection communications and other personal communications. To our knowledge, most communication policies and employee handbooks are applicable enterprise or location wide.

Q72. Collectors may have many accounts with consumers employed by the same large employer, such as a national chain store, and this may enable collectors to become familiar with the employers' policies regarding receipt of personal or collection communications in the workplace. Can collectors reliably determine consumers' employers and their policies with regard to receiving communications at work? If so, what would be the costs and benefits of requiring that collectors cease communications at work for all consumers working for a certain employer if collectors are informed by one (or more) consumer(s) that the employer does not permit personal communications for any of its employees overall, or at a particular location or job type (e.g., retail premises employers)? What would be the costs and benefits of requiring that collectors cease communication at work if they learn of the employer's policy through other means, such as the policy being posted on the employer's Web site?

Requiring debt collectors to be aware of the communications policies of all employers is a wholly unreasonable and unduly burdensome compliance proposition. Compliance would be virtually impossible for any industry, let alone in the case of limited services provided by debt collectors, especially when the consumer has provided such telephone number. Debt collectors cannot reliably determine the policies of any singular employer regarding debt collection communications in the workplace, assuming that any restrictions targeting the specific communications between employees and debt collectors exist in a particular corporate employee handbook or manual.

The cost of requiring debt collectors to cease collections communications with employees of a single company upon being informed by a single employee that she/he is not permitted to receive such calls is unquantifiable, but would be expansive given a need to create a new data warehousing system as well as scrubbing systems to engage prior to placing any calls to ensure that each called party's company was not listed.

Debt collectors cannot be expected to assume that because a single employee suggests that he/she cannot take debt collection calls at his/her place of employment, that such is the actual corporate policy applicable to all employees enterprise wide, nor can debt collectors be expected to know the actual name of the company if the employee does not provide it (but merely lists a telephone

number). Further, such a requirement would subject debt collectors to liability if one employee informs one individual collector of such a prohibition, but not all individual collectors in the company or not all employees are aware.

Such a prohibition becomes further unworkable by employees that list a number associated with the employer as a contact means, regularly initiate calls from the number, or if the number is a mobile telephone number. Such a requirement would be virtually impossible to comply with at both ends of the employer spectrum—large, multinational companies may have different policies among various jurisdictional or business entity lines, while small businesses may not have specific policies in place on this topic.

Consumers Represented by Attorneys

Q73. The FDCPA's restriction on contacting consumers represented by attorneys does not apply if "the attorney fails to respond within a reasonable period of time." How do collectors typically calculate a "reasonable period of time" for this purpose, and does the answer vary depending on particular circumstances?

Debt collectors maintain a working assumption that a "reasonable" period of time for an attorney to respond is between 14 and 60 days, with 30 days being the most common assumption. Particular circumstances, including vacation or similar known time out-of-office, will add to the period of time.

Q74. How common is it for consumers to be represented by attorneys on debts? When consumers have multiple debts, do attorneys usually represent them on one debt, all debts, or some number of debts less than the total? How often do consumers with debts change their attorney?

It is very uncommon for consumers to be represented by attorneys related to unpaid debts. Although a bankruptcy attorney could represent clients on all of the client's outstanding debts, typically, attorneys only represent clients on some, but not all, of their outstanding debts.

For most debt collectors, consumers have attorney representation on less than 1% of all accounts. Consumers with debts very rarely change attorneys during the legal process.

Servicemember Issues

Q75. How prevalent is the practice of requesting or requiring, as part of a credit application or credit contract, contact information and consent to contact a servicemember's commanding officer or other third parties? Are such consent agreements to contact a consumer's employer or boss as common among civilian consumers? How frequently do debt collectors actually contact servicemembers' commanding officers or other third parties identified in credit contracts? Are servicemembers harmed in unique ways by communications with their commanding officers? Relatedly, do such harms suggest solutions that are unique to servicemembers, either in the disclosures they receive as part of credit applications or regarding limits on communications with commanding officers?

Debt collectors almost never contact a servicemember's commanding officer or other third-parties—such contact would be extremely uncommon. Any consent agreements, civilian or non-civilian, are similarly uncommon. The only circumstance known to ACA of a servicemember contact would be in the case of child support collections, for which federal and state law permits, and in some cases, requires, garnishment of wages.

Q76. How common are the practices mentioned above?

The practices discussed above are extremely uncommon.

Communications With Third Parties (Section 805(b) of the FDCPA)

Definition of "Consumer"

Q77. During a consumer's lifetime, a collector can communicate with a consumer's spouse about the consumer's debt. When a consumer dies, the FDCPA does not specify whether a consumer's surviving spouse continues to be the consumer's "spouse," such that collectors may continue to contact the person without violating section 805(b). How often do collectors contact surviving spouses and what is the effect of such contacts? What would be the potential costs and benefits of regarding surviving spouses as "spouses" under section 805(b)?

In some states, both spouses are responsible for the debt and thus, the surviving spouse may still be liable for the debt. Further, for some debts, including jointly held accounts and cosigned accounts, both spouses jointly retain financial responsibility.

In most cases for which a spouse is not liable for the debt, a collector will contact a spouse to determine whether there is an estate for the debt owner to lay claim against and who is the administrator or executor of the estate.

Q78. Are there circumstances under which a collector should not be permitted to contact a consumer's spouse, for example, the individuals are estranged or the consumer has obtained a restraining order against her spouse? How frequently do these circumstances occur? What would be the costs and benefits of prohibiting or limiting communications with a consumer's spouse upon the consumer's request?

The circumstances listed above are extremely rare and it would be unreasonable and unduly burdensome for the debt collector to accurately ascertain the situation without communicating with the spouse. If a spouse has a restraining order or is otherwise estranged from the consumer, the consumer and/or the spouse should communicate with, and provide supporting documentation to, the debt collector to ensure the account can be updated. If this information were provided to a debt collector, it would be unusual for the debt collector to continue to communicate with the estranged spouse because such communications would not likely yield the desired result of resolving the debt.

Q79. The FDCPA permits collectors to communicate with "executors" and "administrators" about a decedent's debts. State laws may allow individuals other than those with the status of "executor" or "administrator" under State law, for example, "personal representatives," to pay the debts of a decedent out of the assets of the decedent's estate. How frequently do collectors contact individuals who are not "executors" or "administrators" but still have the authority under State law to pay the debts of decedents out of the assets of decedents estates? What is the effect of these contacts? What would be the potential costs and benefits of treating any person who has the authority to pay the debts of the decedent out of the assets of the estate as "executors" or "administrators?" To what extent do spouses, executors, and administrators pay decedents' debts out of their own assets? Do collectors state or imply that such parties have an obligation to pay these debts?

Debt collector contacts with executors, administrators, and personal representatives of an estate often occur as part of the normal probate process. Typically, either the debts will be paid or debt collectors

will discover that no assets exist to satisfy the claim. Debt collectors contact individuals who have the authority to pay the debts out of the assets of the decedent's estate, including personal representatives under the informal probate and summary administration procedures of many states. While doing so is consistent with the Federal Trade Commission's Final Policy Statement on Collecting Debts of the Deceased, to ensure maximum clarity the CFPB should affirm the permissibility of debt collectors to contact any individual who has the authority to pay the debts from the assets of the decedent's estate.

It would be very uncommon for an executor, administrator, or otherwise non-liable spouse to pay a decedent's debts (absent specific testamentary guidance to do so). Absent instances where a spouse retains financial responsibility for a debt, or a suit against the estate, where the administrator is directed to pay the claim, debt collectors do not state or imply there is an obligation for others to pay the decedent's debt.

Q80. Do owners of debts or collectors inform executors and administrators when collecting on debt that was disputed by the decedent prior to the decedent's death?

Individual debt owners and debt collectors, pursuant to internal policies and procedures, determine what information flows to the decedent's estate.

Q81. A third-party who is not a "consumer" under FDCPA section 805(d) may know details about the consumer's debt and contact a debt collector to settle a consumer's debt. For example, the parent of a non-minor child may reach out to a collector to assist with the child's debt. How often are such contacts made? Should collectors be permitted to assume that the consumer has consented to the third-party contact, where a third-party already knows about the consumer's debt and is offering to repay the debt? When would it be appropriate to allow collectors to rely on this theory of implied consent?

Third-parties who know details about a consumer's debt (such as parents of a non-minor child, in the case of student loan debt) frequently contact debt collectors to assist with the debt. The theory of implied consent should be applied when the third-party contacts the debt collector with information about the debt and is offering to repay it. The risk of consumer harm is extremely slight in such circumstances while the consumer benefits greatly from resolution of his/her justly-owed debt.

Recorded Messages

Q82. How should a rule treat recorded messages, if at all? What benefits do recorded messages (as distinct from live phone calls) offer to debt collectors or consumers?

Recorded telephone messages are beneficial because they are an efficient way to help the consumer and the collector communicate and facilitate resolution. They help to reduce the number of call attempts made regarding the debt, afford the consumer the opportunity to return the call at a time convenient for him/her, and increase the likelihood of a right-party contact and the start of a dialogue to provide the consumer with opportunities for discounted settlement or payment plans. Communication between the debt collector and the consumer also results in fewer accounts being litigated.

At minimum, the rule should remove any conflict between the requirement to provide meaningful disclosure of the debt collector's identity and the "mini-Miranda" disclosure and the prohibition against third-party disclosure of the debt. We strongly believe that recorded messages that do not

disclose the existence of a debt should not be considered a "communication" under the FDCPA, given that the FDCPA communication provisions are tailored to the disclosure of debt.

To the extent that recorded messages may, however, be considered a communication, the rule should outline model language that would be permissible for a debt collector to leave in a recorded message and provide debt collectors with a safe harbor from regulatory enforcement and private civil litigation if the model language is used.

Q83. What would be the costs and benefits of allowing the following approaches to leaving recorded messages?

- *When leaving recorded messages on certain media where there is a plausible risk of third-party disclosure, the collector leaves a message that identifies the consumer by name but does not reference the debt and does not state the mini-Miranda warning.*
- *The collector leaves a recorded message identifying the consumer by name and referring the consumer to a Web site that provides the mini-Miranda warning after verifying the consumer's identity.*
- *The collector leaves a recorded message identifying the consumer by name, but only on a system that identifies (e.g., via an outgoing greeting) the debtor by first and last name and does not identify any other persons.*
- *The collector leaves a recorded message that identifies the consumer by name and includes the mini-Miranda warning but implements safeguards to try to prevent third parties from listening.*
- *The collector leaves a recorded message that indicates the call is from a debt collector but does not identify the consumer by name.*
- *The collector leaves a message that does not contain the mini-Miranda warning, but only after the consumer consents to receiving voice messages without the mini-Miranda warning.*

Leaving a recorded message on certain media without the mini-Miranda but identifying the consumer by name, without referencing the debt, would entail no additional cost (over current practice). It would still allow initiation of communication, with the decision to call back at the consumer's discretion along with limiting the number of necessary call attempts. This would be the preferred option for debt collectors given that voice mail messages that do not disclose a debt should not be treated as communications under FDCPA and as such, the mini-Miranda is unwarranted.

Leaving a message directing the consumer to a website with the mini-Miranda (after verification of consumer identity) would entail significant technology costs in order to allow for individual personalized logins. From the consumer standpoint, it would also be an extra step for them to take.

Many answering machines and mobile telephone voicemail greetings are automated system-generated greetings or greetings that otherwise do not readily identify the name of the consumer. To require the consumer's outgoing greeting contain the consumer's name (and his/her name only) prior to leaving a message would seriously limit the circumstances for which a recorded message could be left, resulting in necessary continued call attempts in order to try to make contact with the consumer.

Leaving a recorded message that identifies the consumer by name and includes the mini-Miranda disclosure after a third-party disclosure safeguard is akin to the process that many debt collectors are currently following. This approach is costly due to the length of the message that must be left, it is awkward in practical application, and can be confusing to the consumer.

Leaving a message stating the call is from a debt collector but failing to identify the consumer by name is problematic because debt collectors will likely receive return calls from third parties they cannot legally speak to, increasing costs of dealing with erroneous callbacks and increased risk of third-party disclosure of the debt.

Leaving a message that does not contain the mini-Miranda warning, but only after the consumer consents to receiving voice messages without the mini-Miranda warning is problematic as it presumes that the debt collector and consumer have already been in contact regarding the debt. The importance of leaving a recorded message arises when trying to establish initial contact with the consumer.

Q84. Some of the proposed solutions described above would permit a collector to leave a recorded message without leaving the mini-Miranda warning. Should collectors be permitted, in their communications with consumers, to ask consumers if they will opt out of receiving future mini-Miranda warnings? If consumers are permitted to opt out of receiving future mini-Miranda messages, what factors or limitations, if any, should limit consumers' right to opt out? Should consumers be allowed to opt out both in writing and orally? Should the opt-out provision extend to mini-Miranda warnings given in other communications besides recorded messages?

Recorded messages that do not disclose a debt should not be treated as a communication under the FDCPA. The original intent of FDCPA Section 807(11) was to prevent debt collectors from misrepresenting or withholding the nature or purpose of their communications, such as by using blind postcards that merely said, "We have been trying to reach you about your package, call me at XXX-xxx-xxxx." Communications to consumers that do not misrepresent or withhold their nature and purpose, whether written or verbal, should not require any specific disclosure.

Caller Identification ("Caller ID")

Q85. What would be the costs and benefits for collectors in transmitting caller-ID information? In addition to the benefit of consumers being able to screen calls, how do consumers benefit from receiving caller-ID information? Do space limitations constrain the ability of collectors to disclose information (e.g., the collector's identity) via caller ID? What are the risks of third-party disclosure by caller ID? The Bureau is particularly interested in data showing how many consumers currently use telephones that provide technologies such as caller ID, and whether these technologies display for consumers only a telephone number or whether they display additional information, such as the name of the caller. How can collectors use these technologies to minimize third-party disclosure risks while still providing consumers with relevant, truthful, and non-misleading information?

The transmission of caller identification information by the debt collector would have little cost but help consumers and debt collectors return missed calls. If a debt collector's name is too long, it could be truncated by caller ID, but the debt collector does not retain full and complete control over how caller ID information is transcribed, transmitted, and received. Different caller ID readers (stand-alone box, screen on telephone, screen on telephone receiver, television screen, mobile phone) may have different character allotments and carriers may employ different abbreviations.

There is little to no risk of third-party disclosure, based on mobile telephone caller ID, which largely shows only the telephone number, unless the number is in the consumer's address book.

The CFPB should clarify that the transmission of caller ID information is not a "communication" under the FDCPA. If the CFPB is unwilling to make such a clarification, the CFPB should create requirements with an associated safe harbor from government enforcement and private civil litigation.

Q86. Should debt collectors be prohibited from blocking or altering the telephone number or identification information transmitted when making a telephone call, for example by blocking the name of the company or the caller's phone number or by changing the phone number to a local area code? What technological issues might complicate or ease compliance with regulation regarding caller-ID technologies?

Debt collectors should not transmit misleading or inaccurate caller ID information with the intent to harm or defraud. Unless the CFPB clarifies that the transmission of caller ID information is not a "communication" under the FDCPA, debt collectors should be allowed to block caller ID information to ensure that it is not subject to liability under the FDCPA.

Newer Technologies

Q87. Should the email provider's privacy policy affect whether collectors send emails to that account? For instance, where a collector knows or should know that an employer reserves the right to access emails sent to its employees, should the collector be prohibited from or limited in its ability to email a consumer at the employer-provided email address? Should a collector be prohibited from using an employer-provided email address if a collector is unsure whether an employer or other third-party has access to email sent to a consumer? How difficult is it for collectors to discern whether an email address belongs to an employer?

An email provider's privacy policy should not affect whether debt collectors can send email to that account. Collectors have no reasonable way of knowing what a particular email provider's privacy policy is at any given time. To require a debt collector to obtain such knowledge would be incredibly burdensome. Consumers are also able to forward email from one account to another, obfuscating whether an email may be transmitted through or to another account or service provider. Some email address URLs are designed to merely be shells that automatically deliver to another account. Further, if a consumer does not want to be contacted in a given manner, such as via a particular email address, they can instruct the debt collector to cease collections communications.

It is virtually impossible to discern whether an email account is employer-provided, as many legitimate businesses use domains that are available to the public, and consumers can easily create and use any URL website that appears like an employer. A consumer may also choose to forward personal email to an employer-provided email account. It is similarly impossible for a collector to know whether a particular email account is jointly accessed (for example, between parents who use shared email to receive information about a child's education/activity updates, or to monitor a child's email account).

Q88. What third-party disclosure issues arise from providing FDCPA section 807(11)'s mini-Miranda via email, text message, or other means of electronic communication? Are an email's subject line and sender's address akin to the front of an envelope mailed by post, and should it be subject to the same restrictions? Should the restrictions apply to the sender's name on a text message or to the banner line on a fax?

Any third-party disclosure issues arising from new media communications would be similar to the risks associated with current postal mail communications. Because email and text message subject or banner lines and sender's name are not readily accessible to the public in the same way as the envelope of a letter, the subject or banner lines and sender's name should not be subject to the same restrictions applicable to envelopes mailed by post.

Ceasing Communications (Section 805(c) of the FDCPA)

Q89. What would be the costs and benefits of allowing consumers to limit the media through which collectors communicate with them? What would be the costs and benefits of allowing consumers to specify the times or locations that are convenient for collectors to contact them? What would be the costs and benefits of allowing consumers to provide notice orally or in writing to collectors of their preferred means or time of contact? Should there be limits or exceptions to a consumer's ability to restrict the media, time, or location of debt collection communications? Should consumers also be allowed to restrict the frequency of communications from debt collectors?

The FDCPA does not provide a framework for a consumer to opt-out of specific communication methods. It does, however, provide the ability for consumers to opt-out of all collections communications from the debt collector. To modify this framework would require debt collectors to incur significant cost in updating systems and practices to handle the multiple variations of such an opt-out scheme. Those costs are unnecessary given the fact that once debt collectors establish contact with the consumer, it will want to increase the chances of successful subsequent communications by communicating with the consumer in his/her preferred communications method, in addition to the fact that consumers can always choose to restrict all collections communications of a debt collector.

Debt collectors are currently prohibited from communicating with a consumer in connection with a debt at any time or place known or which should be known to be inconvenient to the consumer. The FDCPA further defines the time window during the day for which the debt collector must assume is convenient to the consumer. As such, the onus is already on the debt collector with respect to the convenience of its debt collections communications. Further altering these requirements would serve no additional useful purpose in preventing consumer harm.

Debt collectors encourage consumers to inform them of their preferred method of contact. After all, understanding how a consumer prefers to be contacted is likely to increase the chances of successful contact and ultimate resolution of the debt. Consumers are not prohibited from providing this information to debt collectors.

Given the sheer number of debts being collected by debt collectors, it would be extremely burdensome and incredibly expensive, if even possible, for debt collectors to comply with individualized limitations on the frequency of debt collection communications.

Q90. Other Federal consumer financial laws, as defined in section 1002(14) of the Dodd-Frank Act, may require collectors to provide certain notices or disclosures to consumers for a variety of purposes, raising potential conflicts in cases in which consumers have made a written request that collectors cease communications. For example, the 2013 RESPA and TILA Servicing Final Rules require mortgage servicers to provide certain disclosures to borrowers, while the FDCPA may prohibit communications with those same consumers where the servicer falls within the FDCPA's definition of a debt collector and the consumer has requested that the servicer cease communications. The Bureau recently concluded that, in most cases, servicers that fall within the

FDCPA's definition of debt collector are required to engage in certain communications required by Regulations X and Z, notwithstanding a consumer's cease communications request under the FDCPA. However, two of the provisions under Regulations X and Z exempt such servicers from certain communications requirements in cases where the consumer has validly requested that communications cease under the FDCPA. How often do debt collectors provide notices or disclosures to consumers required by other Federal consumer financial laws? What would be the advantages and disadvantages to consumers of receiving these notices and disclosures notwithstanding their cease communication requests?

Debt collectors frequently provide consumers with notices and/or disclosures required by other consumer financial laws, both federal and state. Such communications are not generally considered communications with respect to the debt under the FDCPA. Of course, to the extent there is a potential conflict of laws, the CFPB should clearly resolve the conflict in its regulation.

Q91. Some jurisdictions require that collectors provide consumers with contact information. At least one jurisdiction has required that collectors provide not only contact information, but also a means of contacting the collector that will be answered by a natural person within a certain time period. How would the costs and benefits of providing contact information compare to those associated with a natural person answering calls within a certain period of time?

Debt collectors attempt to have calls answered by natural persons during their business hours. At times, however, call volume may be heavy, and a longer than usual wait time may be experienced—not unlike any other industry. The costs of requiring a natural person to answer the phone within a specified period of time would be enormous, given that overstaffing (and the attendant overhead associated) would need to be in place. Debt collectors actually want to have live conversations with consumers as such conversations are generally the most effective and efficient way to communicate with the consumer and resolve the debt.

UNFAIR, DECEPTIVE, AND ABUSIVE ACTS AND PRACTICES (SECTIONS 806, 807, 808, 810, AND 812 OF THE FDCPA)

Abusive Conduct (Section 806 of the FDCPA)

General Abusive Conduct Questions

Q92. Should the Bureau incorporate all of the examples in FDCPA section 806 into proposed rules prohibiting acts and practices by third-party debt collectors where the natural consequence is to harass, oppress, or abuse any person? Should any other conduct by third-party debt collectors be incorporated into proposed rules under section 806 on the grounds that such conduct has such consequences? If so, what are those practices; what information or data support or do not support the conclusion that they are harassing, oppressive, or abusive; and how prevalent are they?

Although the examples provided in Section 806 are clear, to the extent other problematic conduct is identified, the CFPB should accordingly restrict or prohibit such conduct through its official rulemaking function.

Q93. Should the Bureau include in proposed rules prohibitions on first-party debt collectors engaging in the same conduct that such rules would bar as abusive conduct by third-party debt collectors? What considerations, information, or data support or do not support the conclusion that

this conduct is "abusive" under the Dodd-Frank Act? Does information or data support or not support the conclusion that this conduct is "unfair" or "deceptive" conduct under the Dodd-Frank Act?

Although, given Section 5 of the FTC Act, first-party debt collectors routinely follow the prohibitions on abusive conduct as outlined by the FDCPA, it may be logical to apply similar rules applicable to third-party debt collectors. Of course, any application of similar rules must specifically consider whether legitimate exceptions should exist for first-party debt collectors. For example, if a first-party debt collector takes foreclosure action to sell property and posts a legally-required notice of the sale, such action would violate the prohibition on making public any debt advertisement.

Specific Section 806 Prohibition Questions

Q94. FDCPA section 806(3) enjoins debt collectors from "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 603(f) or 604(a)(3) of [the Fair Credit Reporting Act]." Should the Bureau clarify or supplement this prohibition in proposed rules? If so, how? The Bureau notes that in communicating with debtors through social media, the use of this media might cause collectors to make known the names of debtors to others using that medium. Should the Bureau include in proposed rules provisions setting forth what constitutes the publication of a list of debtors in the context of newer communications technologies, such as social media? If so, what should these provisions prohibit or require and why?

It is unnecessary to clarify the FDCPA provision enjoining debt collectors from publishing a list of consumers who allegedly refuse to pay debts. The provision is clear. Debt collectors are prohibited from publication of such a list, including publication of such a list on social media sites. That said, debt collection rules should be modernized to allow for the use of newer technologies in the same way the FDCPA anticipated debt collection communications via telephone and postal mail.

Q95. FDCPA section 806(5) bars debt 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 at the called number." Should the Bureau clarify or supplement this prohibition in proposed rules? If so, how?

The CFPB should clarify or supplement the prohibition against causing a phone to ring or engaging in repeated or continuous intent to annoy, abuse, or harass by defining "repeatedly" and "intent". Consumers and debt collectors alike would benefit from a more clearly defined interpretation of what is acceptable under the law. Case law in this area is highly inconsistent. The CFPB should strive for maximum clarity in any forthcoming regulations to ensure the regulatory compliance obligations of industry participants are certain, so that debt collectors are not subject to undue regulatory enforcement and private civil litigation seeking to exploit legal and regulatory uncertainty.

It is difficult to ascertain when a telephone actually begins to ring and the number of seconds a telephone line is engaged and, as such, it would be preferable for any such clarification to address the frequency that a debt collector may make telephone contact attempts with the consumer.

Q96. The FDCPA does not specify what frequency or pattern of phone calls constitutes annoyance, abuse, or harassment. Courts have issued differing opinions regarding what frequency of calls is sufficient to establish a potential violation. Courts also often consider other factors beyond frequency, such as the pattern and content of the calls, where the calls were placed, and other factors

demonstrating intent. Should the Bureau articulate standards in proposed rules for when calls demonstrate an intent to annoy, harass, or abuse a person by telephone? If so, what should those standards be and why?

ACA strongly supports efforts to ensure maximum clarity and consistency in the application of the requirements of the FDCPA and any implementing regulations to debt collector conduct. Although the FDCPA does not define a specific call frequency to a consumer, ACA supports a standard to limit the number of collections call attempts to no more than six times per day per unique debt, including one permissible voicemail message (the language of which is afforded a safe harbor from regulatory enforcement and private civil litigation), unless the collector is responding to a communication from the consumer, his/her spouse, or other personal representative authorized to speak on the consumer's behalf.

Q97. At least one State has codified bright-line prohibitions on repeated communications. Massachusetts allows only two communications via phone—whether phone calls, texts, or audiorecordings—in any seven-day period. The prohibition is stricter for phone calls to a work phone, allowing only two in any 30-day period. If the Bureau provides bright-line standards in proposed rules, what should these standards include? Should there be a prohibition on repetitious or continuous communications for media other than phone calls and should that prohibition be in addition to any proposed restriction on phone calls? Should all communications be treated equally for this purpose, regardless of the communication media, such that one phone communication (call or text), one email, or one social networking message each count as "one" communication? What time period should be used in proposed rules in assessing an appropriate frequency of communications?

In making repeated call attempts, debt collectors are trying to establish contact with the individual responsible for paying the debt. As it takes multiple attempts to reach a consumer about a debt, limiting the ability of debt collectors to make repeated attempts to contact the consumer is harmful to the consumer. Fewer consumers will be reached and, as such, the options available for resolving the debt will not be communicated. This will result in more debts being resolved through the litigation process. Moreover, the economic impact of such a limit is likely to, over time, have a deleterious impact on the availability of consumer credit. The Federal Reserve Bank of Philadelphia published a study that found "one additional restriction on debt collection activity reduces the number of debt collectors per capita by 15.9% of the sample mean and lowers the number of new revolving lines of credit by 2.2% of the sample mean."[5]

Consumers should be encouraged through rulemaking to respond to collection communications in order to make arrangements to resolve the debt, dispute the debt, or show that due to a set of unfortunate circumstances the consumer will need more time to address the issue. This would provide efficiency to the debt collector and prevent the need for numerous attempts to connect with the consumer. Reasonable communication is the best solution for resolving matters and rulemaking should identify ways to facilitate, rather than hinder, such communication between the consumer and debt collector.

Statutory communication limitations are purportedly designed to protect against harassment of the consumer. They are, however, a crude instrument in fulfilling this purpose. Whether communication

[5] Working Paper No. 13-38, "Debt Collection Agencies and the Supply of Consumer Credit," Viktar Fedaseyeu, Federal Reserve Bank of Philadelphia, May 20, 2013.

practices intend to harass, rather than intend to establish contact with a consumer, is discerned through the totality of the underlying circumstances and the actual patterns of the communications, more than just the total number of call attempts within a given period of time. As such, a bright-line test based on the number of communications attempts is more harmful to the consumer than beneficial.

Although overly restrictive or inflexible communication standards can serve to hinder legitimate contacts needed to resolve the debt, if the CFPB elects to implement a standard, then ACA supports a standard to limit the number of collections call attempts to no more than six times per day per unique debt, including one permissible voicemail message (the language of which is afforded a safe harbor from regulatory enforcement and private civil litigation), unless the collector is responding to a communication from the consumer or his/her spouse. To count toward such a limit, each call attempt must be connected through to the consumer's telephone line; call attempts that have no impact on the consumer would not be included (e.g. calls that were attempted by the debt collector when telephone service was temporarily unavailable in the consumer's location). This limitation likely would still allow, in many instances, the consumer to benefit from debt collectors being able to establish contact with them to begin a dialogue that would help the consumer resolve the debt. After the establishment of contact with the appropriate consumer and a continuing dialogue over time to resolve the debt (if it cannot be resolved within the first contact), the need for the number of call attempts in the proposed limitation likely reduces. Moreover, consumers would continue to retain their right under the FDCPA to cease all collections communications from a debt collector.

There should not be a prohibition on the frequency of other types of debt collector communications as newer technologies lack the disruptive effect that accompanied older technologies. Unlike a landline telephone, which (prior to widespread use of voicemail and answering machines) would ring audibly until the phone was physically answered (which, prior to cordless telephone technology that debuted in the 1980's, further required a person to physically move to the location of the telephone), modern communication devices are portable (do not require physical movement), can be silenced (either through the ringer, settings, or while an incoming call is in progress) or ignored, without audible or physical disruption to the consumer. Like postal mail, these communication methods are visual in nature and they may be retrieved when convenient for the consumer.

Q98. What are the costs and benefits to consumers and collectors of using predictive dialers? How commonly are they used by the collection industry and what are the different ways in which they are used? How often do consumers receive debt collection calls resulting in hang-ups, dead air, or other similar treatment?

Predictive dialers enable debt collectors to effectively manage high call volume at a lower cost than having personnel dial numbers manually, which is subject to risk of human error. Efficiency over manual dialing can be improved by 200-400%, depending on how a predictive dialer is used. Predictive dialers are also an important tool in a debt collector's compliance management system. For example, predictive dialers are able to be programmed to restrict calls to certain area codes within calling times proscribed by law.

From a consumer benefit perspective, the use of predictive dialers helps to quickly eliminate wrong numbers and improve the amount of "right number" talk time with consumers, while also reducing the risk of a wrong number call - all of which results in more accounts resolved expeditiously, and fewer consumers inconvenienced by wrong number dialing. The costs are minimal in comparison to the vast benefit of efficiency and accuracy. Because the economic incentive of communicating with

the consumer and resolving the debt is present in the debt collection business model, debt collection calls resulting in hang-ups and dead air are minimized.

Q99. Should there be standards limiting call abandonment or dead air for debt collection calls, similar to the standards under the FTC's Telemarketing Sales Rule? Are there reasons why debt collection standards should be more stringent or more lenient than standards for telemarketing?

Debt collectors are generally not subject to the FTC's Telemarketing Sales Rule for good reason. Debt collectors are wholly distinct from telemarketers in that there is already a defined business relationship and there is no solicitation component. As stated above, because the economic incentive of communicating with the consumer and resolving the debt is already present in the debt collection business model, debt collection calls resulting in hang-ups and dead air are minimized. Moreover, in the limited instances where the consumer receives a dropped call or is subject to dead air, there is minimal, if any, actual consumer harm.

Deceptive Conduct (Section 807 of the FDCPA)

FDCPA Examples of Deception

Q100. With respect to each of the areas covered in FDCPA section 807, should the Bureau clarify or supplement any of these FDCPA provisions? If so, how? Are there other representations or omissions that the Bureau should address to prevent deception in each of these areas? For each additional representation or omission you believe should be addressed, please describe its prevalence and why you believe it is material to consumers.

ACA strongly supports efforts to ensure maximum clarity and consistency in the application of the requirements of the FDCPA and any implementing regulations to debt collector conduct. To the extent that additional problematic representations or omissions are identified, the CFPB should accordingly restrict or prohibit such conduct through its official rulemaking function. ACA does not believe, however, that clarification or supplementation of Section 807 is required at present.

Q101. Do collectors falsely state or imply that the Servicemembers Civil Relief Act does not apply to debts? What would be the costs and benefits of requiring collectors to disclose information about rights related to debts subject to the Servicemembers Civil Relief Act to a consumer, consumer's spouse, or dependents? What debt collection information related to the Servicemembers Civil Relief Act should be communicated?

Debt collectors do not falsely state or imply that the Servicemembers Civil Relief Act does not apply to debts. As a class with unique financial and household management concerns, through the Department of Defense, individual military branches' Judge Advocate General Corps, and more recently, the CFPB's own Office of Servicemember Affairs, servicemembers benefit from a suite of comprehensive financial literacy and management resources. These entities are the appropriate parties to provide information regarding a servicemember's rights related to financial products or services. To the extent the CFPB chooses to require such a disclosure, the CFPB should create model language that would, if used, provide the debt collector with a "safe harbor" against regulatory enforcement and private civil liability. Moreover, the CFPB should allow for such a disclosure to be accessed online, with the debt collector required to provide the webpage address.

Q102. The Bureau has heard reports of debt collectors falsely stating that they will have a servicemember's security clearance revoked and threatening action under the Uniform Code of Military Justice if the servicemember fails to pay the debt. How prevalent are these threats?

Debt collectors do not falsely suggest that failure to pay a debt would result in revocation of a service member's security clearance or other punitive action under the UCMJ. Non-attorney debt collectors are legally prohibited from engaging in the practice of law and further lack specialized legal expertise in the provisions of the UCMJ.

Q103. Spouses and surviving spouses of alleged debtors may be asked by collectors to pay the spouse's individual debt in circumstances in which the non-debtor spouse is not legally liable for the debt. Do debt collectors state or imply that the non-debtor spouse or surviving spouse has an obligation to pay debts for which they are not liable? What would be the costs and benefits of requiring that collectors, where applicable, use disclosures or other approaches to convey that non-debtor spouses or surviving spouses have no legal obligation to pay the spouse's individual debt?

Debt collectors do not intentionally mislead surviving spouses as to their personal liability for debts. Notifying every surviving spouse (that is not liable for the debt) in writing of the fact that they are not liable for their decedent spouse's debts would be extremely costly. To the extent the CFPB chooses to require such a disclosure to a surviving spouse, the CFPB should create model language that would, if used, provide the debt collector with a "safe harbor" against regulatory enforcement and private civil liability. Moreover, the CFPB should allow for such a disclosure to be accessed online, with the debt collector required to provide the webpage address.

Q104. Authorized users on credit cards are sometimes contacted by debt collectors and asked to pay debts in circumstances where the cardholder is liable but the authorized user is not. How often are authorized users asked to pay debts for which they are not liable? What would be the costs and benefits of requiring that collectors disclose to authorized users, where applicable, that they have no legal obligation to pay the debt?

Debt collectors do not intentionally represent or imply that authorized users on credit cards are liable for the credit card debt. Notifying every authorized user in writing that they are not liable for the credit card debt would be extremely costly. To the extent the CFPB chooses to require disclosure related to the lack of authorized user liability, the CFPB should create model language that would, if used, provide the debt collector with a "safe harbor" against regulatory enforcement and private civil liability. Moreover, the CFPB should allow for such a disclosure to be accessed online, with the debt collector required to provide the webpage address.

Other Deceptive Acts and Practices

Newer Communication Technologies

Q105. What technological limitations might prevent mini-Miranda warnings from being sent via text message? Should consumers be able to opt in to collector communications via text message that do not include a mini-Miranda warning? If so, what type of consent should be required and how and when should it be obtained? Could the mini-Miranda warning be more succinctly stated so that it fits within the character constraints of a text message?

Depending on the mobile phone and service provider, character limitations may be an issue for including a mini-Miranda with text messages.

Consumers should be permitted to opt-in (via any accepted medium, including email, web, verbal, voicemail) to receiving text messages about the debt without mini-Miranda warnings.

ACA would support an abbreviated version of the mini-Miranda notice for use when communicating about the debt via any technological means for which character limitations are present.

Q106. What technological innovations (e.g., links, attachments) might facilitate the delivery of mini-Miranda warnings via text message? For instance, what would be the potential costs and benefits of allowing a collector to send the consumer a text message that does not contain the mini-Miranda but contains only a link to a Web site, PDF, or similar document that provides the mini-Miranda as well as other information about the consumer's debt? Should the acceptability of relying on a link or an attachment depend on the frequency with which persons who receive such links or attachments go to the linked material or open the attachment? Would relying on a link or an attachment raise privacy or security risks? If so, how significant are those risks?

Links to websites or the use of attachments could facilitate the disclosure of the mini-Miranda and other required disclosures, especially when communicating about the debt using modern technology. There may be concerns that the consumer would not click on the link or open the attachment in order to read the information provided. Of course, this concern is present whenever required disclosures are made in any context; there are no assurances that the consumer actually reads the disclosure. Debt collectors should be able to rely on the reasonable expectation that a consumer will read the disclosures provided, via any form of communication. Also, there may be concerns that the consumer would not click on the link or open the attachment due to computer/device security concerns (e.g. malware).

Q107. Are there challenges in providing the mini-Miranda warning via other newer technologies, such as email or social networking sites? If so, what, if anything, should be included in proposed rules to address these challenges?

As most social media platforms provide for private mail messaging, such platforms tend to function in the same manner as regular email, any challenges would be similar. Because there are generally no character limitations in these communications mediums, there are no unique challenges in providing the mini-Miranda disclosure.

Payment Methods and Fees

Q108. Which methods of payment do consumers use to pay debts? How frequently do consumers use each type of payment method? In particular, how often do consumers pay collectors through electronic payment systems?

Consumers use all forms of payments to pay debts, including cash, personal checks, credit and debit cards, ACH transactions, money orders, and cashier's checks. The volume of electronic payments varies among debt collectors who are equipped with electronic payments capabilities, but is generally significant, ranging from 35% to 85% of all payments.

Q109. Do collectors charge fees to consumers based on the method that they use to pay debts? How prevalent are such fees for each payment method used? How much is charged for each payment method used?

Some debt collectors charge payment processing fees for the use of payment mechanisms that expedite payment for the consumer or for which the debt collector incurs processing expense. The fees associated with different payment methods varies by individual businesses, as each payment stream has a different user cost associated (e.g. ACH network, card payments systems networks, banking institution fees, etc.). When fees are charged, they generally range from approximately $5 to $20. These payment processing choices provide consumers with alternatives for making payments in the manner most convenient to them. Most debt collectors provide customers with a clearly delineated payment option(s) for which fees are not charged.

Q110. Do collectors make false or misleading claims to consumers about the availability or cost of payment methods? If so, how prevalent are these claims and why are they material to consumers?

Debt collectors do not intentionally make false or misleading claims about payment methods to consumers because to do so would open collectors to additional legal and litigation risks.

Q111. Do consumers understand the costs of using specific payment methods to pay their debts or the speed with which their payment will be processed depending on which payment method they choose? Should disclosures be required with respect to the costs, speed, or reversibility of alternative payment methods and, if so, what type of disclosures?

It is our belief that consumers are informed and understand the costs of using specific payment methods. Other disclosures related to electronic payments are unnecessary as these transactions have become ubiquitous and have become familiar to consumers. The phase-out in 2010 of the processing speed disclosures for electronic payments under Regulation E to the Electronic Fund Transfer Act highlights this point.

Unfair Conduct (Section 808 of the FDCPA)

General Unfair Conduct Questions

Q112. Should the Bureau incorporate the examples from FDCPA section 808 into proposed rules prohibiting unfair or unconscionable means to collect or attempt to collect any debt by third-party debt collectors? Should any of the specific examples addressed in section 808 be clarified or supplemented and, if so, how? Should any other conduct by third-party debt collectors be incorporated into proposed rules prohibiting unfair or unconscionable means of collection? If so, what are those practices; what information or data support or do not support the conclusion that they are unfair or unconscionable; and how prevalent are they?

ACA strongly supports efforts to ensure maximum clarity and consistency in the application of the requirements of the FDCPA and any implementing regulations to debt collector conduct. To the extent that additional unfair or unconscionable conduct is identified, the CFPB should accordingly restrict or prohibit such conduct through its official rulemaking function. ACA does not believe, however, that clarification or supplementation of Section 808 is required at present.

Q113. Should the Bureau include in proposed rules prohibitions on first-party debt collectors engaging in the same conduct that such rules would bar as unfair or unconscionable by third-party debt collectors? What information or data support or do not support the conclusion that this conduct is "unfair" under the Dodd-Frank Act? What information or data support or do not support the conclusion that this conduct is "abusive" or "deceptive" conduct under the Dodd-Frank Act?

Although, given Section 5 of the FTC Act, first-party debt collectors routinely follow the prohibitions on unfair or unconscionable conduct as outlined by the FDCPA, it may be logical to apply similar rules applicable to third-party debt collectors. Of course, any application of similar rules must specifically consider whether legitimate exceptions should exist for first-party debt collectors.

Specific Section 808 Prohibition Questions

Q114. Section 808(1) of the FDCPA prohibits collecting any amount unless it is expressly authorized by the agreement creating the debt or permitted by law. Should the Bureau clarify or supplement this prohibition in proposed rules?

While we believe that Section 808(1) is clear, the CFPB should clarify that the debt collector is entitled to rely upon the representations made by their client – the creditor or debt owner – as to what amounts are expressly authorized by the agreement between the creditor or debt owner and the consumer. This clarification is important as the debt collector is not a party to the agreement and is working on behalf of the creditor or debt owner.

Q115. The FDCPA expressly defines the amount owed to include "any interest, fee, charge, or expense incidental to the principal obligation." Section 808(1) makes it unlawful for debt collectors to collect on these amounts unless authorized by the agreement creating the debt or permitted by law. Should the Bureau clarify or supplement this prohibition in proposed rules?

In order to ensure maximum clarity and reduce uncertainly, the CFPB should define what is considered the principal obligation and those items that are incidental to it.

Q116. What communications technologies could cause consumers to incur charges from contacts by debt collectors? What are the costs to consumers and how many consumers use these technologies? For instance, how common is it for consumers to be charged for text messages and what is the average cost of receiving a text message? How common is it for consumers to be charged for mobile phone calls and what is the average cost of receiving an average-length call? Does incurring such charges vary by demographic group? If so, how?

Though historically, mobile telephony and landline telephony had divergent cost structures, that distinction has largely evolved to a point where the product and service offerings by each are comparable in both price and functionality. Regarding text messages, specifically, for existing plans that may continue to charge per message fees, the technology now exists to ensure such per-message costs can be borne by the sender of the message.

Q117. Should proposed rules presume that consumers incur charges for calls and text messages made to their mobile phones? Should the failure to use free-to-end-user services when using technologies that would otherwise impose costs on the consumer be prohibited? What would be the costs and challenges for collectors of implementing such requirements?

Debt collectors should be permitted to respond to any communication initiated by the consumer in the same media as used by the consumer, regardless of associated cost to the consumer, as the consumer exercised his/her informed choice as to the communication method. As mobile telephony plans have largely moved to unlimited calling and text messaging, there should be no presumption that a consumer will incur talk or text charges on his/her mobile telephone. Like traditional land line telephony, the consumer incurs a cost to maintain the mobile telephone utility service, and, as such,

both land line and mobile telephone service should be treated equally. Further, any regulatory restrictions to limit communications could also create the unintended consequence of consumers initiating communications that could not be responded to by debt collectors, thus harming consumers and their perceived relationship with the creditor or debt owner, which is especially significant for small businesses that rely on customer relationship goodwill.

Q118. Should proposed rules require collectors to obtain consent before contacting consumers using a medium that might result in charges to the consumer, such as text messaging or mobile calls? If so, what sort of consent should be required and how should collectors be required to obtain it?

As the consumer has the ability to instruct the debt collector to cease collections communications, such a requirement would be unnecessary. That said, there are many forms of communication that "might" result in charges to the consumer. Whether charges are, in fact, imposed, and whether the debt collector has actual knowledge that the consumer will be charged, are the appropriate considerations for any such requirement. Moreover, as one could extrapolate the payment by a consumer for any service as being a "charge" to the consumer, should the CFPB implement such a requirement, the CFPB should clarify what types of charges are contemplated.

Q119. Should proposed rules impose other limits beyond consent on communications via media that result in charges to the consumer and if so, what limits? For example, would it be feasible to require in proposed rules that consumers have the right to opt out of communications via certain media to avoid the possibility of being charged? If so, should initial communications via such media be required under proposed rules to include a disclosure of the consumer's right to opt out? Should proposed rules include limits on the frequency with which collectors use such media?

As mentioned above, consumers maintain rights to opt-out of all debt collections communications under FDCPA and, as such, no other limits are necessary. Should such a rule be promulgated by the CFPB, disclosure of such a right should not be necessary as it has not been deemed necessary in other contexts, such as company "do not call" lists for solicitations. Finally, as stated earlier, given the sheer number of debts being collected by debt collectors, it would be extremely burdensome and incredibly expensive, if even possible, for debt collectors to comply with individualized limitations on the frequency of debt collection communications by media type.

Payment Acts and Practices

Q120. FDCPA section 810 states, "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 direction." Should the Bureau clarify or supplement this prohibition in proposed rules? If so, how? In addition, what information or data support or do not support the conclusion that conduct that violates FDCPA section 810 is unfair or abusive conduct under the Dodd-Frank Act? Why or why not?

ACA does not believe there is any need to clarify this provision.

Q121. Should proposed rules require that payments be applied according to specific standards in the absence of an express consumer request or require a collector to identify the manner in which a payment will be applied? Should proposed rules require that the payment be applied on or as of the date received or at some other time?

Rules should not require that payments be applied to specific standards in the absence of an express consumer request, nor should debt collectors be required to identify the precise manner in which a payment will be applied. To require a debt collector to impose standards on how to apply a payment would be cumbersome and overwhelming given the broad range of products and services available to consumers. As third-party debt collectors are collecting debts on behalf of the debt owner, payment application requirements should rest with the debt owner in accordance with the underlying agreement that governs the debt.

Q122. Many consumers complain that debt collectors seek to recover on debts that consumers have already paid and therefore no longer owe. Other consumers assert that debt collectors promise that they will treat partial payments on debts as payment in full, but then collectors subsequently seek to recover the remaining balance on these debts. To what extent do debt collectors currently provide consumers with a receipt or other documentation showing the amount they have paid and whether it is or is not payment in full? Should such documentation be required under proposed rules? Are there any State or local laws that are useful models to consider?

Debt collectors do not intentionally seek to recover debts that have been already paid or where lesser payments have been accepted as "payment in full." Debt collectors routinely provide documentation evidencing that payment has been made, which could be in the form of confirmation letters, statements, or other documentation that may indicate remaining balances or "paid in full" status. Given the variety of types of debt collectors —many of which are small businesses—the debts they service and the types of payment methods available, it would be costly and inflexible to require all debt collectors to provide a standard receipt form. State and local laws pertaining to receipts vary widely based on type of debt involved.

Substantiation

Q123. Should the Bureau's proposed rules impose standards for the substantiation of common claims related to debt collection? If so, what types of claims should be covered and what level of support should be required for each such claim? What would be the costs and benefits to consumers, collectors, and others of requiring different levels of substantiation? Would a case-by-case approach to substantiating claims instead be preferable? Why or why not?

Proposed rules should not impose a one-size-fits-all approach to substantiation of common claims because the underlying evidence available and methods of proof will vary significantly across debt classes, given the overwhelmingly vast array of products and services for which credit is offered and used. Further, given that, on average, less than 1% of all debts are disputed by consumers, requiring the additional step of substantiation before attempting to collect a debt would be unduly burdensome and unnecessary.

Q124. Should the information or documentation substantiating a claim depend upon the type of debt to which the claim relates (e.g., mortgage, credit card, auto, medical)? Is it more costly or beneficial to substantiate claims regarding certain types of debts than others?

The information or documentation required to substantiate a claim should depend upon the type of debt to which the claim relates (e.g. mortgage, credit card, auto, medical, student loan). Copies of mortgage documents or purchase agreements for automobiles are relatively easy to provide as verification, whereas certain credit card or medical debts may be more difficult. Substantiation should be established on a case-by-case basis.

Q125. Should the information or documentation expected to substantiate a claim depend on the stage in the collection process (e.g., initial communication, subsequent communications, litigation) and if so, why?

The information or documentation required to substantiate a claim should depend on the stage of the collection process. Substantiation should only occur after the consumer disputes the debt. If the consumer does not dispute the debt, there is no practical reason why substantiation should occur. Of course, for all types of litigation, the plaintiff must proffer appropriate evidence to prove its claim – this is an underpinning of our nation's judicial system. As such, no regulatory requirement is necessary for matters in litigation. Also, substantiation should not be required for circumstances in which consumers have already been provided with substantiation earlier in the debt collection process, is aware of the debt, and has already been in communication with the debt collector or debt owner and/or made payments.

Q126. What information do debt collectors use and should they use to support claims of indebtedness:

- *Prior to sending a validation notice;*
- *after a consumer has disputed the debt;*
- *after a consumer has disputed the debt and it has been verified; and*
- *prior to commencing a lawsuit to enforce a debt?*

Debt collectors support claims of indebtedness when the consumer disputes the claim. In order to support such claims, debt collectors use a variety of documents and information, dependent upon the type and age of a debt.

Q127. *In July 2013, the Bureau released a compliance bulletin explaining that representations about the effect of debt payments on credit reports, credit scores, and creditworthiness have the potential to be deceptive under the FDCPA and the Dodd-Frank Act. What information are debt collectors using to support the following claims:*

- *The consumer's credit score will improve if the consumer pays the debt;*
- *payment of the debt will result in the collection trade line being removed from a consumer's credit report;*
- *the consumer's creditworthiness will improve if the consumer pays the debt; and the collector will furnish information about a consumer's debt to a CRA?*

Debt collectors should not make representations relating to the effect of payments on consumers' credit scores or creditworthiness, unless they are legally required to do so, as is the case with student loan debts, for which collectors are legally required to provide information related to debt remediation, under the Higher Education Act.

The CFPB should provide model language that would be permissible for a debt collector to use when consumers ask about the effect of debt payments on credit reports, credit scores, and creditworthiness. The model language should provide debt collectors with a safe harbor from regulatory enforcement and private civil litigation if the model language is used.

Service Providers and Third-Party Liability for UDAAP Violations

Q128. What services are provided to debt collectors in connection with the collection of debts and who provides them? Are the types of services the same for first-party and third-party collectors?

What information or data support or do not support the conclusion that such services provided are material to the collection of debts?

Debt collectors employ a variety of services in connection with collection activities, including but not limited to:

- Postal, mailing, and delivery services
- Legal services, including compliance, consumer and commercial litigation
- Consumer reporting agencies
- Telecommunications, including telephony, internet/data services
- Computer hardware, software, network maintenance
- Data subscription services
- Technology consulting services
- Licensing services
- Skip-tracing services
- Data correction services
- Payment processing services
- Data mining services

These services are used largely in the same way by first-party collectors and third-party collectors. As technology evolves, the nature and use of certain services will evolve as well, and many of these services are material to many modern businesses, including debt collectors.

Q129. Are there specific acts or practices by service providers that should be specified in proposed rules as constituting unfair, deceptive, or abusive acts or practices in connection with the collection of debts? How prevalent are such acts or practices?

The underlying service industries are not known to engage in UDAAP violations specific to the debt collection business.

Q130. Who provides substantial assistance to debt collectors? Is the assistance provided to first-party collectors the same as the assistance provided to third-party collectors? What measure should be used to assess whether such services provided are material to the collection of debts?

Of course, the answer to this question would hinge on the CFPB's definition of "substantial." The service providers listed in our answer to Q128 of this ANPR are likely to be considered substantial to debt collectors.

Q131. In what types of circumstances, if any, are persons knowingly or recklessly providing substantial assistance to collectors who are a "covered person" or "service provider" as defined in the Dodd-Frank Act with respect to acts or practices by the covered person or service provider that violate section 1031? How prevalent is conduct by such persons?

ACA is not aware of any reckless substantial assistance provided to debt collectors who are covered persons or service providers under the Dodd-Frank Act.

TIME-BARRED DEBTS

No Legal Right to File Suit on Time-Barred Debt

Q132. Is there any data or other information that demonstrate or indicate what consumers believe may occur when they do not pay debts in response to collection attempts? Does it show that consumers believe that being sued is a possibility?

ACA is not aware of any data regarding what consumers believe will happen if they do not pay their debts. We believe that it is common consumer knowledge that being subject to legal action is a possibility for any breach of contract.

Q133. Should the Bureau include in proposed rules a requirement that debt collectors disclose when a debt is time barred and that the debt collector cannot lawfully sue to collect such a debt? Should the disclosure be made in the validation notice? Should it be made at other times and in other contexts? Should such a rule be limited to situations in which the collector knows or should have known that the debt is time barred? Is there another standard that the Bureau should consider?

The expiration of the applicable statute of limitations for the enforcement of a contractual obligation through the court system is a complex legal determination to be made by qualified legal counsel. Debt collectors should not be responsible for making legal determinations or otherwise engaging in the unauthorized practice of law. Moreover, because the running of any applicable statute of limitations only affects the remedy (of obtaining a legal judgment), not the right to collect, debt collectors that are not creditors or debt owners, and therefore not seeking the legal remedy, are not the appropriate party to provide such information.

ACA further believes that the use of the term "time-barred debt" can be confusing or misleading to consumers, who may believe that the debt is not subject to collection or credit reporting. A more appropriate term or definition might specify that the debt is ineligible for judicial enforcement.

Q134. The FTC in its Asset Acceptance consent order and several States by statute or regulation have mandated specific language disclosing that consumers cannot be lawfully sued if they do not pay time-barred debts. Please identify what language would be most effective in conveying to consumers that the collector cannot lawfully sue to collect the debt, and why.

Plain language to the effect of "this debt is not subject to legal action" should suffice to convey that the consumer may not be sued in court to recover the debt.

Revival of Statute of Limitations With Partial Payment of Debt

Q135. Is there any data or other information indicating how frequently time-barred debt is revived by consumers' partial payments? How frequently do owners of debts and collectors sue to recover on time-barred debts that have been revived?

ACA is not aware of any data indicating how frequently time-barred debt is revived by consumers' partial payments.

Most debt collectors never intentionally sue on debts that have been time-barred.

Q136. Is there any data or other information bearing on what consumers believe are the consequences for them if collectors demand payment on debts and they make partial payments?

ACA is not aware of any data indicating what consumers believe are the consequences of making partial payments on a time-barred debt.

Q137. Should the Bureau require debt collectors seeking or accepting partial payments on time-barred debts to include a statement in the validation notice that paying revives the collector's right to file an action for a new statute of limitations period for the entire balance of the debt if that is the case under State law? What would be the benefits to consumers of receiving such disclosure? What would be the costs to debt collectors in making such a disclosure? How should such a disclosure be made to be effective? Are there any State or local models that the Bureau should consider in developing proposed rules concerning disclosures and the revival of time-barred debts?

Debt collectors who never intend to sue consumers should be exempt from providing any disclosure requirements related to time-barred debt. The inclusion of additional disclosures in the validation notice could confuse consumers and make less conspicuous the consumer's paramount right to dispute and request verification of the debt. As the disclosure contemplated by this question only applies in very limited circumstances, any such disclosure should be tailored to those specific circumstances. Debt collectors would incur a significant cost to determine what debts are time-barred, including legal research fees, and additional processing times to secure original information and compare the contracts/agreements against the applicable statute. Additional personnel training and resources would also be needed to implement the additional information. To the extent the CFPB chooses to require disclosure related to time-barred debt, the CFPB should create model language that would, if used, provide the debt collector with a "safe harbor" against regulatory enforcement and private civil liability. Moreover, the CFPB should allow for such a disclosure to be accessed online, with the debt collector required to provide the webpage address.

Q138. Some debts may become time barred after collectors have sent validation notices to consumers. In this case, if a collector is still attempting to collect debts after they become time barred, should the collector be required to disclose information about the debt being time-barred, the right of the collector to sue, and the effect of making partial payment to these consumers, and, if so, when and how should it be provided?

To the extent that the benefits of additional disclosures related to time-barred debt would outweigh any potential drawbacks, it hardly seems appropriate that a notice relating to a potential lawsuit by the creditor or debt owner would need to be provided so early in the collections process for every debt being collected. It is equally inappropriate for the third-party debt collector to be required to provide a notice about the effects of a potential suit by the creditor or debt owner. To the extent the CFPB chooses to require disclosures related to time-barred debt, the CFPB should create model language that would, if used, provide the debt collector with a "safe harbor" against regulatory enforcement and private civil liability. Moreover, the CFPB should allow for such a disclosure to be accessed online, with the debt collector required to provide the webpage address.

Q139. A substantial period of time may transpire between the time of the first disclosure that debt is time barred and of the consequence of making a partial payment and subsequent collection attempts. Should collectors be required to repeat the partial payment disclosure during subsequent collection attempts? If so, when and how often should the disclosure be required?

As stated above, debt collectors would incur a significant cost to determine what debts transition to being time-barred. To the extent that the CFPB chooses to require earlier disclosures related to time-barred debt, the debt collector should not have to incur the expense to provide the consumer a reminder of information he/she has already received. To the extent the CFPB chooses to require a second disclosure related to time-barred debt, the CFPB should create model language that would, if used, provide the debt collector with a "safe harbor" against regulatory enforcement and private civil liability. Moreover, the CFPB should allow for such a disclosure to be accessed online, with the debt collector required to provide the webpage address.

Q140. How frequently do actions by consumers other than partial payment (e.g., written confirmation by the consumer) revive the ability of debt collectors to sue on time-barred debts? If so, what other actions trigger the revival of time-barred debts? Should debt collectors be required to provide the same type of disclosures to consumers before they take one of these actions that they would be required to provide in connection with payment on a time-barred debt?

The expiration of the applicable statute of limitations for the enforcement of a contractual obligation through the court system is a complex legal determination to be made by qualified legal counsel. Moreover, because the running of any applicable statute of limitations only affects the remedy (obtaining a legal judgment), not the right to collect, debt collectors that are not creditors or debt owners, and therefore not seeking the legal remedy, are not the appropriate party to provide such information. To the extent the CFPB chooses to require the same type of disclosure related to time-barred debt, the CFPB should create model language that would, if used, provide the debt collector with a "safe harbor" against regulatory enforcement and private civil liability. Moreover, the CFPB should allow for such a disclosure to be accessed online, with the debt collector required to provide the webpage address.

Consumer Testing of Time-Barred Debt Disclosures

Q141. Have industry organizations, consumer groups, academics, or governmental entities developed model time-barred debt notices? Have any of these entities or individuals developed a model summary of rights under the FDCPA or State debt collection laws related to time-barred debt? Which of these models, if any, should the Bureau consider for proposed rules?

Some state statutes contain required disclosures for time-barred debts.

Q142. Is there consumer testing or other research concerning consumer understanding or disclosures relating to time-barred debts that the Bureau should consider? If so, please provide any data collected or reports summarizing such data.

ACA is not aware of any consumer testing or other research related to required disclosures relating to time-barred debts.

DEBT COLLECTION LITIGATION PRACTICES

Venue (Section 811 of FDCPA)

Q143. Where do most collectors file suit? For example, do collectors usually select the place of suit based on a consumer's place of residence or based on where a contract was signed? Do collectors' choices of venue differ based on the type of debt, the amount of debt, or other considerations?

Although the FDCPA permits debt collection lawsuits to be filed in the judicial district in which the contract was executed or in which the consumer resides, generally, most debt collections lawsuits are filed in the judicial district where the consumer resides.

Q144. Are there any consumer protection concerns related to the geographic size of judicial districts, and if so, where do these problems arise specifically? Are States implementing any measures to decrease burdens on consumers in areas where it may be more burdensome for indigent consumers to travel to courts that are farther away from their places of residency?

ACA is unaware of legitimate consumer protection concerns related to the size of judicial districts. In order to decrease burdens incident to consumers appearing in person, many courts allow court appearances by telephone.

Q145. Are there any particular unfair, deceptive, or abusive practices related to choice of venue that the Bureau should address in proposed rules?

ACA is unaware of any unfair, deceptive, or abusive practices related to the venue in which debt collection litigation is brought.

State Debt Collection Litigation

Q146. How many debt collection actions do collectors file against consumers each year? If the number of actions filed has changed over time, please explain why. Has the resolution of collection actions changed over time? For example, are default judgments more prevalent than in the past? If cases are being resolved for different reasons than before, why?

The number of suits filed varies according to type and age of debts involved and is a very small percentage of all outstanding debts in the collection cycle. The ability to contact a consumer, make a right-party contact, and engage the consumer with repayment plans and other financial remedies, results in fewer accounts going through judicial recovery of debt payment. Moreover, debt collection litigation is only brought against consumers with means to pay the debt, which would otherwise result in a loss to the creditor or debt owner. Given the high costs associated with litigation, lawsuits are not employed as a punitive measure against consumers, but rather a legitimate means of enforcement to recover rightfully owed amounts, in order to facilitate the provision of credit in the economy.

ACA is unaware of any meaningful changes in the resolution of collection litigation or the number of default judgments.

Q147. Some States have adopted requirements for the information that must be set forth in debt collection complaints, as well as for documents (e.g., a copy of the credit contract) that must be attached to them. Other States have set forth specific requirements for the information that collectors must file in support of motions for default judgment, including adopting standards for the information that must be included in or attached to supporting affidavits and the reliability of the information in the affidavits. Should the Bureau incorporate into proposed rules any requirements to complement or avoid interfering with States' pleading, motions, and supporting documentation requirements?

Judicial processes are the purview of the judicial branch and most appropriately handled through judicial procedures.

Q148. What types of deceptive claims are made in pleadings, motions, and documentation filed in debt collection litigation? How common are such deceptive claims? For example, how frequently do collectors make the false claim that they have properly served consumers?

Plaintiffs attempting to collect debt through litigation do not knowingly make deceptive claims in legal filings, as to do so would violate established court rules and subject them to judicial sanctions. Moreover, the attorneys of such plaintiffs have a professional responsibility to deal honestly with the court and are subject to discipline by the Bar and state supreme courts that oversee bar admissions and lawyer discipline. ACA members do not knowingly falsely claim that they have properly served consumers, but to the extent that any process servers might file a false affidavit of service, the party on whose behalf the process server is working should not be unduly prejudiced due to actions beyond their control and responsibility.

Q149. What specific documentation or information do collectors have or provide in State courts to support claims that (1) the creditor has the right to collect on debts; (2) the consumer owes the debt; and (3) the consumer owes the debt in the amount claimed?

Debt collectors should not have an affirmative duty to produce copies of every underlying contract between consumers and creditors before collecting debts that have been placed with them. Given the extremely low percentage of debts that are disputed, most consumers recognize and accept responsibility for their outstanding debts. It would be highly onerous and unduly burdensome to require production of such hefty additional documentation in all cases, prior to engaging in collection efforts.

Appropriate proof of a valid debt in state court varies by jurisdiction but typically includes account affidavits and bills of sale to show proper chain of title, statement copies showing a balance owed and last payment or charge within the applicable statute of limitations, and the original contract or agreement, where applicable. Such information would also include the creditor name, account number, and relevant dates of the debt.

Q150. The FTC's Staff Commentary to section 803 excludes from the definition of "communication" "formal legal actions," like the filing of a lawsuit or other petition/pleadings with a court, as well as the service of a complaint or other legal papers in connection with a lawsuit, or activities directly related to such service. Should the Bureau address communications in formal legal actions in proposed rules? If so, how?

Formal legal actions and activities related thereto (such as service of process) should not be considered "communications" under FDCPA as legal proceedings are subject to a different and independent framework of rules. The CFPB should only address formal legal actions in its proposed rules to reinforce the non-applicability of the FDCPA.

Q151. Are there any other acts and practices in debt collection litigation that the Bureau should address in a proposed rule? For each type of act or practice, how prevalent is it, what harm does it cause to consumers, and how could the Bureau address it in proposed rules in a manner that complements and that is not inconsistent with State law?

Procedural rules relating to litigation remain within the purview of the judicial branch, which can most appropriately address litigation practices.

STATE AND LOCAL DEBT COLLECTION SYSTEMS (SECTIONS 817 AND 818 OF THE FDCPA)

Exemption for State Regulation (Section 817 of the FDCPA)

Q152. Do the procedures and criteria set forth in sections 1006.1 through 1006.8 of Regulation F adequately enable States to apply for exemption? Are there any specific revisions to the procedures or criteria set forth in sections 1006.1 through 1006.8 of Regulation F that the Bureau should consider?

While ACA has no information regarding criteria to adequately enable States to apply for exemption, ACA strongly supports consistency in federal and state laws and regulations in order to help ensure that the compliance requirements do not conflict and are not unduly burdensome to participants in the debt collection market. This is especially important as many participants operate on a regional or national scale.

Exception for Certain Bad Check Enforcement Programs Operated by Private Entities (Section 818 of the FDCPA)

Q153. How prevalent are bad check pretrial diversion programs?

Q154. What provisions typically are included in the "administrative support services contracts" between private entities operating bad check pretrial diversion programs and State or district attorneys? Are these contracts available to the public? Should the Bureau define "administrative support services contracts" in proposed rules or specify in such rules what types of provisions must be included for contracts to meet the definition? Why or why not?

Q155. What do State or district attorneys usually do to ensure that the private entities that operate bad check pretrial diversion programs are subject to their "direction, supervision, and control"? Should the Bureau specify in proposed rules what State or district attorneys must do to direct, supervise, and control the private entities that operate bad check pretrial diversion programs in order for these programs to be excluded from the FDCPA? If so, what should be required?

Q156. One of the specific requirements in section 818(2)(C) of the FDCPA is that in their initial written communication with consumers the private entities operating bad check diversion programs must provide a "clear and conspicuous" statement of the consumers' rights. How do private entities currently disclose this information? Should the Bureau specify in proposed rules what constitutes a "clear and conspicuous statement" of these rights? If so, what standards should be included?

Q157. Private entities operating bad check pretrial diversion programs that meet the conditions set forth in section 818 are exempt from the FDCPA. Where these private entities are subject to title X of the Dodd-Frank Act, should the Bureau exempt these entities from title X of the Dodd-Frank Act and any implementing regulations?

Q158. Are there any other aspects of bad check pretrial diversion programs that the Bureau should address in a proposed rule? To the extent commenters have concerns about acts or practices

involving these programs, describe how prevalent the practice is and what harm it causes to consumers?

Q153 – Q158. Bad check pretrial diversion programs, to the extent they are exempt from portions of the FDCPA, should be subject to similar provisions through the CFPB's rulemaking to prohibit unfair, deceptive and abusive acts or practices.

RECORDKEEPING, MONITORING, AND COMPLIANCE REQUIREMENTS

Federal Registration of Debt Collectors

Q159. Should the Bureau propose rules to require debt collectors to register? Should any such registration system be used to register individual debt collectors, debt collection firms, or both? What information should be required for registration, and are there any particular State models that the Bureau should consider? Are there data on how consumers have benefitted from similar systems now operating in States? Are there data on the costs imposed on collectors by registration? How could a registration system be structured to minimize the cost of registration for debt collectors, while still providing adequate information for those who use the registration system?

Most jurisdictions already require debt collectors to be registered, licensed and/or bonded. Traditionally, financial and professional services have been licensed and registered in the state and local jurisdictions in which they operate. To the extent that a federal registration has been traditionally available in regulated financial services, it has been available as an alternative to state or local registration — not as an additional requirement. As not all entities engaging in the collection of consumer debts in the financial services marketplace are required to maintain state/local registration, requiring both a federal and a state/local registration for certain other entities would serve to create an "unlevel playing field" for those entities. Third-party debt collectors and debt buyers surely cannot be the only segment of the American financial services industry that requires concurrent federal and state licensing and registration.

Unless such federal registration supersedes the licensing, registration and bonding requirements of state and local jurisdictions, it is unclear why federal registration would be necessary or beneficial. Moreover, given the large percentage of small business debt collectors, the imposition of new, additional registration requirements and fees would pose an undue operating burden on such entities. If, however, the CFPB chooses impose a federal registration requirement, registration of debt collection companies, rather than individual collectors, should suffice, and any such registration should occur on a one-time-only basis.

Q160. The Nationwide Mortgage Licensing System and Registry ("NMLSR"), which was originally used by State regulators for the registry of mortgage loan originators, is increasingly being used as a broader licensing platform, including for the registration of debt collectors. Would it be desirable for NMLSR to expand or for some other existing platform to be used to create a nationwide system for registering debt collectors rather than having the Bureau create such a system? What could the Bureau do to facilitate the sharing of information among regulators who are part of the NMLSR or other nationwide system to safeguard confidentiality and protect privileged information?

To the extent the CFPB proceeds with the idea of requiring the registration of debt collectors, the registration process and system should be uniform across state lines and not duplicate or add redundant requirements. Any system should be simple, intuitive, and without cost to the registrants. Moreover, registration should occur on a one-time-only basis.

While the NMLSR system is adequate as a broader licensing platform, it comes with challenges. The system can be confusing and difficult to navigate for debt collectors. Moreover, increased functionality would be beneficial. It is likely, however, that comfort with the NMLS and its utility would increase over time. At this point, it would seem premature and not cost-effective for the CFPB to create a new platform.

Recordkeeping Requirements

Q161. What records do creditors and collectors currently retain relating to debts in collection? Should proposed rules impose record retention requirements in connection with debt collection activities? If so, what requirements should be imposed and who should have to comply with them? What would be the costs and benefits of these requirements?

Debt collectors typically retain account information, dispute documents, original debt substantiation documents, signed origination documents, and any other documents required by law or what may be necessary to assist the debt owner. Debt collectors typically also create and retain call logs, individual collector call notes, call recordings and/or recorded messages.

Q162. How long do creditors and debt collectors currently retain records, and how does it differ based on the type of debt or type of record? Should the length of time that debt collection records are retained relate to how long a debt may generally be reported in a consumer report, how long a collector may collect upon the debt, or how long a consumer has to bring private action under the FDCPA? Or is another time period more appropriate?

Document retention is typically a function of legal requirements, contractual requirements, and business risk. As such, documentation retention varies by type of debt and debt collector. Generally speaking, some records typically will be retained between 4 and 7 years. Other records may be retained for a lesser period of time due to cost of storage and/or elimination of business risk. For example, recordings of collection telephone calls may only be retained for a period of time that mirrors the consumer's right to bring a private civil action under the FDCPA.

* * *

ACA appreciates the opportunity to provide comments on this ANPR and respectfully urges the CFPB to consider tailored rules that will accommodate the differences and roles of market participants and provide a flexible framework in which legitimate debt collectors can continue to effectively serve their vital role in the credit cycle. Please feel free to contact me at (202) 547-2670, or Vice President and General Counsel Robert L. Föehl at (952) 259-2103 with any questions.

Respectfully submitted,

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