Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street NW
Washington, D.C. 20006

Re: **Docket No. CFPB-2013-0033**
Regulatory Identification Number (RIN) 3170-AA41
Bureau of Consumer Financial Protection

Dear Ms. Jackson:

The Commercial Law League of America ("CLLA") was founded in 1895 and is the nation's oldest organization of attorneys, collection agencies and other experts in credit and finance actively engaged in the field of commercial law, bankruptcy, debt collections and reorganization. The CLLA while long associated with creditor interests, has also been an advocate for the fair, equitable, and efficient administration of collection, commercial and bankruptcy cases for all parties in interest. The League is firmly committed to regulatory compliance and has regularly been a resource to its members through publications and seminars on consumer and commercial law issues. In addition, several of its members have testified before Congress and the CLLA has appeared as amicus curie in both federal appellate courts and the United States Supreme Court on issues affecting its members.

The Consumer Financial Protection Bureau (CFPB) currently seeks commentary on its proposed rules affecting debt collection practices. In response to that request, the CLLA provides the following information on behalf of its organization and membership.

Question 1: 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?
Customarily, there are amounts of data made available at the time of placement with a debt collector that varies by the type of debt. This variance may be attributed to the different requirements predicated on the type of debt. In the case of debt sales, the amount of data that is transferred at the time of sale tends to be greater than that typically provided to a third-party collector at the time of placement for collection.

Every transfer of data travels with the duty to keep that data secure. The more data transferred, the greater the risk to the consumer. The vast majority of accounts placed for collection are not disputed. Therefore, most third-party collectors do not request more than the basic account information media unless it is necessary to respond to a validation request or prosecution of a lawsuit.

Question 2: 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?
Typically, cost of debt is related to a variety of factors. These factors include, but are not limited to, the: (1) type of the account which is being sold, (2) location of the accounts, (3) number of accounts in the portfolio to be sold, (4) age of the accounts, and (5) competition for the portfolio.

Documentation included can be a factor in pricing the account. Typically in a purchase arrangement, the agreement will provide that the purchaser can return accounts that do not conform to the seller's warranties. As applicable to types of debts that are not sold, it benefits a seller to omit problematic accounts in a portfolio which is being transferred. In addition, original creditors are exercising more control as part of their obligation to monitor their vendors and are more desirous of not placing more problematic accounts in the selling stream.

Question 3: 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?
Collection professionals are experiencing an increased amount of scrutiny and monitoring by the original creditors over their debt purchasers. This scrutiny has, by example, expanded to national banks requiring that certain vendors obtain prior approval of the collection professionals, in any phase of their collection process, before engagement by the debt buyers.

Collection professionals are experiencing increased reporting requirements as regards: (1) disputes, (2) complaints and (3) allegations of fraud. These increased reporting requirements appear to be implemented to allow the original creditor's separate investigation.

The League is observing restraints imposed by original creditors on the ability of debt buyers to re-sell debt. This often extends to forbidding re-sale. It is the position of the League that this is an anti-competitive practice. It is the position of the League that neither the Bureau nor any other federal agency should support, endorse or regulate limits on the negotiation of debt because it results in an anti-competitive environment.

Question 4: 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?
It is common "practice of the trade" that a purchaser of debt negotiated from another debt buyer has the right to obtain documentation from the original creditor.

Question 5: 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?

Sellers do not ordinarily sell disputed accounts. The absence of disputes is a common warranty in debt sale contracts. Typically, purchase contracts will provide recourse to a debt purchaser if an account is disputed. A debt purchaser typically provides information regarding a dispute or request for a cease-and-desist to the third party debt collector including any contact information provided by the consumer. Debt purchasers require third party debt collectors to provide information about disputes and requests to cease and desist. Most creditors, whether they be original creditors or debt buyers, will require a third party debt collector to provide this information so they may investigate a dispute and provide a response to the consumer.

Question 6: 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?

The information regarding notation of consumer language proficiency varies in the industry. Those engaged to prepare this response would assert in some cases, if a debt owner has information about a consumer's proficiency in a language other than English, this information is provided to a third party debt collector. Debt owners have often required that third party debt collectors have processes for consumers with other language proficiencies and have collectors and attorneys fluent in Spanish. Non-English collections present supervisory concern. Responsible collection businesses do not allow collectors to converse in languages that cannot be supervised.

Almost all third party debt collectors will "scrub" or employ a process to review accounts to determine whether a consumer is an active-duty service member or deceased. These accounts are typically closed and returned to the creditor. Most creditors require third party debt collectors to have or develop and implement policies and procedures relative to these issues as a condition precedent to placement.

The availability of information collected prior to negotiation of the debt regarding the status of a consumer would reduce the costs of resources deployed subsequent to acquisition of the debt. Much of the information is acquired post-placement or post-judgment. In the case of deceased debtors, varying based upon jurisdiction, information regarding this status affects the choice of which court in which to make filings, e.g., filing a "Notice of Claim" within an estate.

Depending on the sophistication of the third-party collector and debt owners, technology effectuates communication between the third-party collector and debt owner on the status of a debtor. Where such information is acquired post-placement it becomes available to the debt owner immediately upon update.

Question 7: 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?

In order to facilitate resolution of an obligation, it is beneficial for a debt owner to provide as much information as possible at the time the account is sold so that when such account is placed with a third-party debt collector the new owner will then be able to respond quickly to any disputes. Certain currently-available technologies allow third-party debt collectors to verify information on a consumer. For example, bankruptcy filing, service member and deceased status including, but not limited to: Department of Defense SCRA Validation Record Request page, Lexis-Nexis and Accurint.

Question 8: 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?

Debt collector's access to documentation facilitates the debt owner. Thus, access rights are more an issue of efficiencies. Access and timeliness of access is often affected by the existence of such data, the form of data storage or archiving method. Many creditors have streamlined the process for requesting documentation so that many of these requests can be made electronically or more easily than in the past. Creditors have mandated that third party debt collectors have sufficient safeguards in place for this information to be held securely.

Question 9: 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?

The League believes that the Bureau should mandate that debt issuers maintain account records for the entire time that the data evidenced by such records can be reported under the FCRA. Furthermore, at the time an account is sold, all of the electronic records pertaining to that account, including images, statements and cardholder agreements, should be transferred. The benefits to consumers and to the efficiency of court dockets far exceed the cost of data storage. The League does not believe that banks can or will maintain such records unless required to do so as the expense of retention cannot be justified in the absence of a federal mandate.

Currently, it is customary for documentation to be provided to a third party debt collector at the time the account is placed for collection sufficient to generate a validation notice. It provides a good summary of information that consumers are seeking such as the account balance, the account number and general information about the original creditor so that the consumer can better ascertain the basis for the obligation.

Question 10: 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?
The information available varies by the type of account being collected. If the basis for the account is a promissory note, than having that document is helpful. It is most important to maintain those documents which show an active relationship between the parties and the duration of such relationship.

Question 11: 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?
There should be some assurance that there are safeguards in place to protect consumers' non-public personal data. While there appears to also be concern linked to security of account numbers, the majority of these account numbers are no longer valid for use post-default. Reasonable safeguards would include development and implementation of policies and procedures for access, storage, retention and destruction of non-public personal or other protected data in both electronic and paper format. As §805 of the FDCPA prohibits debt collectors from making unlawful disclosures of certain information regarding a debtor, the majority of third-party debt collectors have already developed policies and procedures to ensure compliance with existing information security and non-disclosure mandates.

Question 12: 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? The League currently takes no position as to the above inquiry.

Question 13: 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?
It is League's position that, given the lack of precision in much of the language of the FDCPA, and the high propensity for consumer litigation that may result from sending non-mandatory notices that such notices tend to trigger, it is most prudent to avoid sending notices in addition to those outlined above.

Question 14: 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?
The League believes that the validation notice provides the debtor sufficient notice that the account has been transferred to another entity for collection and also specifies the means by which a debtor who wishes to discover whether a change in account ownership has occurred may obtain such information. The League is unaware of any data or studies suggesting that consumers have been unable to exercise their validation rights.

Question 15: 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?
Direct costs for providing a notice to the debtor that a debt has been sold would include those reasonable administrative and transmission costs. More concerning and less quantifiable would be costs incident - that may be reasonably anticipated - to vexatious litigation by debtors against the debt buyer or debt owner that will invariably arise due to issues related to timeliness, accuracy, completeness and reliance associated with such an obligation.

It would seem most efficient, if any notice were required, for that notice to be sent by either the debt buyer if they intend to pursue collection activities in their own name or by a third party debt collector if the account is placed for collection with it.

Question 16: 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?
The League believes that providing this information in the validation notice is likely to be confusing to consumers; however, it is not opposed to a rule that would require that such information be provided upon request.

Question 17: 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?
Itemization of pre-charge-off sums on a validation notice for credit card accounts and other open-end credit is not practical, and it is inconsistent with (1) the provisions of most cardholder agreements and (2) provisions of the Fair Credit Billing Act. As required by federal law, consumers receive monthly statements until the account is charged off at 180 days of delinquency, and have been afforded repeated opportunities to dispute those statements. However, the League is not opposed to a requirement of itemizing any post-charge-off charges at the time a validation notice is sent. In the case of closed-end credit itemization of principal, late fees, and other charges, it may be more appropriate. The key to itemization, no matter the type of account, is to summarize the principal amount outstanding, the amount of interest due and/or currently accruing, and often the amount of payments credited to the account.

Question 18: 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 information provided to consumers that would be most useful depends wholly on the type of account. All the identifying information provided in the question could potentially be useful information for a consumer to determine whether they owe the debt; however, in most cases, provision of information beyond what is currently required pursuant to the FDCPA is not necessary to alert the consumer or refresh the consumer's memory as to his or her liability. The addition of information to the validation notice always increases the risk that the notice will be rendered misleading or confusing.

Question 19: 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. The FDCPA does not require debt collectors to notify consumers that: (1) disputing a debt will suspend collection until it is verified, and (2) consumers can request that collectors cease communicating with them. In its 2009 Modernization Report, the FTC noted that few, if any, debt collectors appear to voluntarily disclose this information to consumers.
In following the "unsophisticated consumer" standard, the statements made to consumers must be "clear and comprehensible to an individual who is 'uninformed, naïve, [and] trusting,' but not without a rudimentary knowledge about the financial world or incapable of making basic deductions and inferences." From this standard, debt collectors currently have the responsibility to provide consumers with their FDCPA rights in an understandable manner, such that it will be understandable to even the most unsophisticated debtors. This standard is sufficient to allow consumers to understand their most pertinent FDCPA rights, as it provides how the debt may be paid and how the debt may be disputed if there is an issue.

Question 20: 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?
It is the position of the League that this language should not be included on validation letters as it may encourage consumers to dispute a debt in bad faith simply to forestall collection attempts. Currently, if a consumer has a legitimate reason to dispute his or her debt, the consumer has the avenue to take the necessary steps to dispute the debt and will have collection efforts suspended until the verification is provided in writing. If a consumer has knowledge that a debt belongs to him or her, the consumer may use this provision in bad faith simply to suspend collection attempts, needlessly slowing the collection process and forcing creditors and collection agencies to use more time and resources requiring the debt collector to go through the motions of providing validation so they can begin to communicate with a consumer once again. If consumers are not made aware that disputing a debt will allow for temporary suspension of collection efforts, then only the consumers that have a legitimate issue with a debt will receive this benefit, as likely intended.

Question 21: 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.
The purpose of the initial demand letter is to inform the consumer of the claim and provide general information about how to request additional information. As evidenced by the increasing numbers of consumer initiated litigation, the consumer bar has done a very good job of educating their clients on the necessity of advising a third party collector or debt purchaser of attorney representation. As there is added additional length of the requirements in the initial disclosure, the less likely this information will be clear and understandable. Should the consumer be represented by an attorney, it would be reasonable to expect that the attorney advise the consumer that as part of the representation, the debt collector should contact the attorney. Consumers have been quite straight forward of invoking their rights to have the collector cease and desist whether it be at their home or work.

Question 22: 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?
More is less. The League would assert that having to provide a separate "summary of rights" section or include bullet points of FDCPA provisions would water down and convolute the validation notice.

There may be a benefit conveyed by having a separate "summary of rights" document provided by the Bureau for debt collectors allowing debt collectors to keep the validation notice as is, including the most relevant information—that which is required to be disclosed by the FDCPA. Having a separate, comprehensive document may be helpful to consumers that want to educate themselves on all of their FDCPA rights and will also allow other consumers the ability to read only the most relevant information that pertains to them if they choose to only read the validation notice.

Practically speaking, including this pamphlet with each demand letter would be incredibly burdensome to collection agencies and to the Bureau, with a vast majority of these pamphlets likely to be discarded without even being opened.

The League strongly opposes any requirement that a debt collector provide a notice of rights. Model Rule of Professional Conduct 4.3 states, in pertinent part: "The lawyer shall not give legal advice to an unrepresented person . . ." The official comment to that rule states that "the possibility that the lawyer will compromise the unrepresented person's interests is so great that the Rule prohibits the giving of any advice, apart from the advice to obtain counsel." Under no circumstances should the Bureau issue any rule that would require collection attorneys to act in a manner inconsistent with the Rules of Professional Conduct.

Question 23: 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?

Beyond the information required by the FDCPA, many notices include language from a 4th Circuit Court decision on what constitutes sufficient verification of a debt. Also included is a statement that the communication is from a debt collector, that the letter is an attempt to collect a debt, and that information obtained will be used for that purpose. In addition, it may include information on the best way to contact the collection agency or firm to discuss the debt further.

Question 24: How common is it for collectors to communicate with consumers or provide validation notices in languages other than English?

It is not very common and is dependent upon the jurisdiction, location, etc. For Spanish-speaking individuals, as it is most common language to English, many firms will have collectors fluent in Spanish to properly assist the consumer. Additionally, these accounts often have documentation from the original creditor in Spanish. The notices often will include a statement that confirms that the collection agency has Spanish-speaking individuals ready to assist them. The League believes that it is irresponsible to mandate (or even permit) collection activity in a language other than English unless there are supervisory personnel capable of monitoring and assessing such collection activities for legal compliance.

Question 25: 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?

Firms would have to rely on an overt communication from the consumer or from documents from the original creditor prepared in another language. Even then, it would not always be practical to estimate or make a practice of sending out validation notices and demand letters in dozens of different languages - depending on the consumer's native dialect. Some onus has to be on the consumer who speaks a foreign language to have the demand letters and validation notices properly translated for them.

Question 26: 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)?

Collection firms do not currently provide validation notices to consumers electronically. The League urges the Bureau to permit such electronic communications and provide guidance and

"safe harbors" for their use, as it believes that consumers are more likely to open and read validation notices that are delivered via email.

Question 27: 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?
It is not industry practice to deliver validation notices electronically. Therefore, the E-Sign Act is not currently applicable to validation notices.

Question 28: 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?
It is industry standard to treat certain electronic communication as satisfying the "written" requirement of the FDCPA, namely direct e-mails and faxes. Text messages would not fall under this category as most collection agencies are not equipped to respond to consumers via text messaging. With the extremely informal and character-limited nature of text messaging, it would not be practical to have a text message satisfy the "written" requirement of the FDCPA.

Question 29: **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?**
The League is not aware of any entities that may have developed model validation notices. The League strongly supports the promulgation by the Bureau of a model notice that would be deemed to be compliant if used by collectors. If the Bureau does promulgate such a model notice it should take into account the special duties and limitations imposed upon attorney debt collectors by the Rules of Professional Conduct.

Question 30: 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.
The League is unaware of any testing or research concerning consumer understanding of disclosures relating to validation notices. However, the League notes that a standard readability test that is built into Microsoft Word indicates that the reading level for a typical validation notice is beyond 12th grade. Newspapers are written at only an 8th grade reading level, and the Bureau should promulgate a model notice that is compliant with the statute and understandable at an 8th grade level.

Question 31: 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?

It is industry practice that consumer correspondences are construed liberally to infer that a debt or a portion thereof is disputed. Pursuant to the FDCPA, 15 U.S.C. § 1692g(b), debt collectors should treat any communication from a consumer that is received in writing within the thirty-day period after receiving the demand notice, stating that a debt, or any portion thereof, is disputed, as "dispute." If a consumer implies or directly requests no contact (cease & desist), their request is honored as a "cease & desist." The League does not have data indicating how many debts are disputed or specific data to indicate how disputes are resolved.

Question 32: 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?

Question 33: 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?
The League does not possess responsive data on Questions 32 and 33.

Question 34: 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?
The League cautions the Bureau that terms must be both definable and defined. If the Bureau chooses to enunciate standards, the Bureau should define what constitutes a "dispute" in a manner that is clear and unequivocal. Should the Bureau choose to create such a definition the League urges it to exclude from the definition of "dispute" both general denials in litigation and requests for information that do not challenge the validity of a debt.

Question 35: Should consumers be required to provide particular information or documentationas 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?
It is the League's position that if a consumer has a valid dispute, he/she usually has some kind of documentation to support their claim. There would be no benefit to the consumer withholding or failing to disclose this information. Making the debt collector's duty to provide validation contingent on the consumer's ability to furnish documentation supporting his/her dispute is unnecessary.

Question 36: 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)?
Consumer reasons for dispute of a debt vary greatly. Commonly, and from the layperson's perspective, the "dispute" is not that the debt is not theirs or owed, but that they lack the resources to retire the debt. However, a majority of dispute letters are form letters obtained from internet websites that contain canned language disputing the validity of the debt and requesting a slew of

documents, presumably to forestall the collection process. Generally, if a consumer has a valid dispute, he or she will clearly articulate the basis for the dispute claim, whether it is identity theft, the amount of debt is incorrect, the account was paid previously, a spouse or acquaintance made charges without the consumer's knowledge or permission, or the fact that he or she simply does not recognize the account.

Question 37: 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?

When a non-specific dispute notice is received after the validation period, it is treated as untimely and collection efforts continue. If it is a specific dispute (not a form) letter appears to have merit, the account is treated much the same is if the debtor had disputed within the 30 day validation period.

Question 38: 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?

The time required to respond to verification depends heavily on the creditor's ability to obtain the documents. The time needed to complete verification can vary from 10 days to 120 days. Responding to validation requests can be significantly time consuming depending on the volume of requests pending at any given time. Although it may be beneficial to a consumer to establish a specific time period for validation responses, it would be unduly burdensome on collection firms. Suspending collection efforts until validation is a sufficient safeguard for the consumer.

Question 39: 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?

The steps taken to investigate a dispute under the FDCPA varies greatly depending on the nature of the dispute. In the case of boilerplate requests for validation, debt collectors obtain the necessary information and documentation required by the FDCPA and transmit the documentation to the consumer before collection attempts resume. For more specific disputes, additional investigation is necessary. It is common for there to be additional investigation specifically for identity theft claims, paid-prior claims, or specific disputes of the amount owed. In these instances, debt collectors may need to analyze signatures, review purchases and payments on billing statements, contact prior agencies or assignees, conduct address history searches, etc. Collection firms have adequate guidelines in place to investigate specific disputes.

Question 40: 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?
A "reasonableness" standard is sufficient. Document retention and production can become inordinately costly for debt collectors. In some instances it becomes impractical in relation to the amount of the debt. It is in the debt collectors' best interest to produce as much relevant information as is available in order to validate the debt or resolve a dispute. Debt collectors should have the flexibility of a "reasonableness" standard to investigate and respond to a dispute.

Question 41: 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.

Debt collectors rely upon a preponderance of documents as available to prove that a debt belongs to a consumer. Debt collectors must rely on the specific type of dispute and the information requested by the consumer. If a balance is contested, then the debt collector, through the creditor, will review payment history through billing statements or other documents. If a consumer states that he/she is not the alleged debtor, or if the consumer does not recognize the account, the debt collector will look to the application, contract, or agreement to verify the signature and possibly at the address to which the billing statements were mailed in order to verify that the proper consumer is identified. If the consumer claims prior payment of the debt, the debt collector will look at the pay history and contact the creditor or creditor's assignee to determine whether the information can be corroborated.

Question 42: 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?
Generally speaking, third-party debt collectors do not act as "furnishers" within the meaning of the FCRA. Debt collectors make sure to communicate disputes to their creditor clients immediately upon receipt so the creditors can comply with the requirements of the FCRA.

Question 43: 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 organization that debt collectors receive? The League does not possess responsive data.

Question 44: 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?
Yes – a provision regarding frivolous and irrelevant disputes would be extremely beneficial for both debt collectors and consumers. The obvious benefit would allow debt collectors to disregard or exempt from investigating frivolous, boilerplate validation requests that are submitted for the sole purpose of forestalling collection activity. Another significant benefit would be allowing debt collectors to focus their time and energy on responding to legitimate disputes and validation requests as opposed to every single "request for validation" routinely submitted by consumers when it is clear that they contain no valid dispute.

Question 45: 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? Depending on the reason provided by a consumer for disputing a debt, a debt collector may provide a copy of the contract, loan agreement, card agreement, invoices, chain of title documents, credit card application, or billing statements on the relevant account. Typically, some form of media is provided. In certain scenarios, such as mass verification requests sent by credit repair organizations where there is no real intent to obtain documents, a response letter is sent identifying - among other things - the account number, the amount due and owing, the date of default, the name of the original creditor, when the account was opened, and when the last payment on the account was received.

Question 46: 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?
Debt collectors should be responsible for providing media when a timely request for verification is made for that specific information. [Obviously, other scenarios would trigger a debt collector to provide media, such as a specific request before or during litigation or the fact that the debt collector became aware of an issue or dispute the consumer has that can be cleared up by providing the media]. A billing statement is usually sufficient to verify the type of debt to the consumer. The FDCPA does not and should not require debt collectors to keep detailed records of an open-ended credit account. This would be an unduly burdensome requirement. Most often, consumers submitting a good faith request for verification just want information as to the original creditor, type of account, and account number.

Question 47: 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?
The benefit of requiring specific forms of information would be that the debt collection agencies would have uniformity and clarity as to the specifics required to be provided. Consumers would benefit from clarity as that information they are able to obtain through a verification request. Not all disputes may be sufficiently resolved with a uniform response. Due to the cost associated with the number of accounts for which most debt collection agencies are responsible, having to provide a complete account history, all billing statements, or every document regarding the chain of title on each disputed account is impractical. For credit card accounts, a charge-off statement should be sufficient. For a loan account, a copy of the promissory note should be sufficient, etc.

Question 48: 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)?

Verification by debt collectors is sent almost exclusively via postal mail. There may be specific instances where the consumer or consumer's attorney specifically requests that information be provided via e-mail. Those requests are usually honored depending on the situation. Email remains an unsecure means of transmission as regards personal identifiable financial data. Once placed in the ether of the virtual world, there is no limitation on access or dispersal of the information.

Question 49: 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?

The League knows of no research or study suggesting that addresses consumers dissatisfied with validation documents received or to whom no response is provided. The League is unaware of any prohibition on a debtor's continued communication with the debt collector regarding their disputes. It is standard practice among debt collectors to forward to the creditor any information received from the consumer in furtherance of a timely and unresolved dispute, which enables the creditor to knowledgeably direct the debt collector's future activities toward the consumer.

Question 50: 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 are prohibited from attempting to collect a debt that cannot be verified when a timely request for verification has been received. Generally, the Model Rules of Professional Conduct promulgated as adopted the State regulating authorities require that an attorney reasonably verify the basis for a claim and to refrain from vexatious litigation [MRPC 3.1, 3.3 and 4.1]. Therefore, to the extent that a debt collector is unable to verify a debt, collection of that account ceases. Debt collectors should be required to communicate to the creditor that the debt cannot be verified and the creditor, in turn, should cease collection attempts, close the file and properly report it pursuant to FCRA requirements. Third-party collectors do not typically return accounts to the debt owner when it is disputed without first verifying or attempting to verify the debt.

Question 51: 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 an investigation reveals errors or misrepresentations with respect to the debt, those are typically conveyed to the consumer, either in writing or orally depending on what the mode of communication has been between the collector and the consumer.

Question 52: 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?

Typically, because sale contracts provide recourse for disputed accounts, a debt owner is incentivized not to sell a disputed account. With regard to whether the account is unverified, the original creditor would have had a continuing relationship with the consumer where regular statements are being sent. With regard to a debt purchaser that has a disputed account that is not verified, they also are not incentivized to sell it since a purchaser could seek to be refunded the payment price for a disputed account. Most debt purchasers have processes in place to note accounts that are disputed to prevent it from being sold or replaced.

Question 53: What would be the costs and benefits of prohibiting collectors from reporting a debt to a CRA during the 30-day window?

Attorney debt collectors generally do not report any information to a CRA. This is further addressed in succeeding answers. The League takes no other position on this at this time.

Question 54: 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?

Electronic mail and facsimile are two technologies not contemplated by the FDCPA and therefore application has been problematic. The ease and convenience of communicating through both these methods have made them a desirable means for both collectors and consumers and it would be very beneficial to have clear guidelines governing the form and content. Limiting use of these methods of communication would be more harmful for consumers since they are low cost, easy to use and convenient methods that can be utilized at any time of day.

Question 55: 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?

Sending text messages or automatic email messages in lieu of telephone calls has been mentioned as a future collection possibility; however, those lines of communication could prove quite problematic in regards to FDCPA or UDAAP compliance. The FDCPA is very vague regarding what telephone messages may be left for a consumer and what information those messages may include if any. Auto-sent emails and text messages have the same, if not a greater chance of being received or viewed in transit by a third party -- a third party that not only may intercept the communication from the actual electronic device, but from those third parties who are attempting to hack email or smart phones via the web.

Question 56: 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?
Debt collectors should not utilize social media at all to attempt to collect debts. There are vast privacy issues and potential third party communication issues that arise from utilizing social media forums to attempt to collect a debt. The amount of accounts that are compromised on a weekly basis between Facebook and Twitter alone makes these forums quite dangerous. Additionally, a debt collector would have no valid way to verify whether a consumer's account is public; thus, the potential for third party communications is greatly increased.

Question 57: 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?
Debt collectors do not currently and should never engage in debt collection via in social media. The pitfalls, problems, and concerns are endless.

Question 58: 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 do not make it common practice to communicate to third parties about matters relating to the consumer (outside of a physical location). Sometimes, it is necessary to obtain information from third parties relating to the consumer's credit history. Debt collectors are careful not to disclose any personally identifiable information to a third party in relation to the collection of a debt.

Question 59: 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? We believe the only standard that can be set is reasonableness.
Mandating more invasive investigative techniques could impact and harm consumers' privacy. If is reasonable for a debt collector to believe the information obtained by a third party skip tracer is correct, that standard should be sufficient.

Question 60: 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?
This need not be addressed in rule making unless the rule is directed at making permissible said practice in order to protect the privacy of the debt collectors themselves.

Question 61: 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?

Identification of a law firm or debt collection agency always runs the risk of disclosing the purpose of the calling. The risk of disclosing the specific debt, not that a debt exists, about which the caller is inquiring is very minimal. Most consumers want to pay their debts and not identifying the caller's identity when asked increases the risk that the consumer will not answer the phone again or ignore the call, thus increasing the potential that litigation may be necessary to resolve the debt.

Question 62: 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?

This restriction should not apply to electronic communications. The FDCPA requires we disclose that all communications are an attempt to collect a debt. Many consumers specifically request that we contact them via a particular email address or via fax. Applying this restriction to electronic mediums would make collection and litigation extremely difficult--especially considering the increasing number of states that have gone to mandatory E-filing.

Question 63: 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?

Currently available screening technologies provide a reasonable and reliable method for distinguishing between a landline and a cell telephone number. However, relying on an area code can be problematic when the area code is associated with a portable cell phone. Some guidelines on a permissible and reliable method of determining a consumer's time zone would be helpful.

Question 64: 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?

The time zone of the consumer's face address should dictate when a collector can reasonably call the consumer. Many people have cell phones and move out of state and do not change their cell phone numbers due to the fact that no long distance charges generally apply to most cellular plans. Using the mobile phone number to determine the consumer's location would likely not be an effective means of determining when a consumer should be contacted.

Question 65: 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?

Due to the mobility of cellular telephones, it can be difficult to determine exactly when an email or text message will be received and whether or not an email or text message will cause the noise

that may be disturbing. If a consumer desires to communicate through these methods, there should be some ability for the collector to assume that the messages are not inconvenient or harassing.

Question 66: 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?

Most communications by email are initiated now at the consumer's request due to the lack of clear guidelines of how a third party debt collector can permissibly utilize electronic mail.

Question 67: 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 League believes that the timing restrictions should only exist for phone calls.

Question 68: 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? 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

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?

It is not reasonably possible to know where a consumer is located at the time a call is placed. Typically a debt collector would not possess enough information to be able to determine where a consumer is physically located. Typically if a debt collector does know such specifics, it is the result of a conversation with a consumer where the consumer has indicated where and when is it convenient to communicate with the consumer. The FDCPA not only prohibits contacting a consumer at a place which is inconvenient, but also, knowingly contacting a consumer with the intent to take advantage of a stressful situation could be construed as harassment. More commonly, if a consumer advises a collector that they are in the process of grieving or ill in a hospital, the collector will deduce such a location is inconvenient, and duly note the consumer's account. Asking a collector to makes such deductions about a consumers whereabouts would be, in the opinion of The League, an unreasonable impediment to otherwise lawful collection attempts.

Question 69: Are there additional places not listed above that would be inconvenient places for consumers to be contacted?
Inconvenience is personal to every individual so this could be any location and is too impractical to quantify.

Question 70: 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?
Calls to a consumer's place of employment would be inconvenient if the consumer states that is the case. Presumably, some consumers do not have the privacy, latitude, or desire to discuss a personal matter at work. However, prohibiting a discussion at the workplace absolutely forecloses many consumers from the only opportunity they have to discuss the matter with a collector. If they work during the hours that the collector is available for calls, this makes it difficult for them to effectively resolve their account. It would force some consumers to take personal time off from work in order to deal with the matter which could be more inconvenient than talking to a collector at work.

Question 71: 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?
The League would posit that this type of survey of employers has not been located, most employers policies seem to delineate only between personal and work matters and do not specifically cite collection calls as prohibited separately. To do so would seem to unfairly discriminate against someone with an outstanding obligation if they did want to attempt resolution during working hours. Most consumers when indicating that they do not wish to be contacted at work, indicate that they are not allowed personal calls or that they personally do not want to discuss the matter at their place of employment.

Question 72: 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 website?
If requested, a collector must already cease communication. The collector wants to make communications as convenient as possible for consumers and provide them an opportunity to resolve their files without the need for litigation. If employers and consumers request we not call them at their places of employment, the practice in the industry is to honor that request, as already required by the FDCPA. To require a collector to attempt to discover and track another entity's policies on employee contact for personal matters is unreasonable and unduly burdensome. Any

company can change its policy at any time and there is currently no requirement for them to publicly post this policy in any location. It would be costly for employers to be forced to take a stand on this type of contact because it could force employees to take additional time away from work and it requires them to invest in formulating and enforcing a policy that is likely not necessary. If a consumer indicates that they should not be contacted at work, the collector must cease and desist. The consumer bar has been reasonably aggressive bringing suit for breaches of this requirement.

Question 73: 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?

If a collector has information that a consumer is represented by counsel, most commonly letter is sent to the attorney. If the attorney does not respond within two weeks, it is likely there is no representation of the consumer. For attorneys, their actions are additionally prescribed by the Code of Professional Responsibility as adopted in their jurisdiction regarding communicating with a represented party. It has become increasingly common for attorneys not licensed in the jurisdiction of the debtor to attempt to use their status as a prohibition on communication. Where a debtor is purportedly represented by counsel unlicensed in the jurisdiction of the debtor, the debtor is treated as unrepresented.

Question 74: 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 not uncommon for a consumer to be represented by an attorney regarding their debt(s) and the consumer's attorney usually represents them in all debt cases. It is less common for a consumer to change attorneys once they have been retained, except in the case where a nationally advertised consumer law firm represents the consumer initially. Typically a law firm of this type will respond to an initial demand letter and may or may not attempt resolution of the obligation, depending on the circumstances. If litigation is initiated against the consumer, then the national firm will make a referral of the matter to a local attorney who will appear in the action.

Question 75: **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 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? 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? Collectors may communicate with spouses while servicemembers are deployed to combat zones or qualified hazardous duty areas. Collectors may ask military spouses to pay the debts of these consumers during periods when it is difficult for the spouse to contact these consumers, or when such contact may interfere with combat readiness. Alternatively, collectors may**

contact military spouses during the potentially sensitive period immediately following the death of a servicemember serving in a combat zone or qualified hazardous duty zone, with the hope of obtaining payment from the spouse's military death gratuity.
The League's position is that collection of servicemember accounts should be approached extremely conservatively. Further, contacts with servicemember spouses while the servicemember is either on active duty or where the servicemember is recently deceased are largely prohibited by (1) the creditor in its third-party vendor service standards - with which the debt collector must comply to retain placements - or by (2) the debt collectors own policies.

Question 76: How common are the practices mentioned above?
They are not common.

Question 77: 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)?
Creditors are customarily closing accounts when a consumer has passed and moving files to agencies with expertise in probate collections. Notwithstanding this practice, some clarification regarding whether it is permissible to speak to a surviving spouse who initiates contact would be beneficial for both collectors and consumers.

Question 78: 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 marital status of the consumer is often something obtained directly from the consumer. Attempts to contact or discuss an account with a spouse are done at the behest or the permission of the consumer. Contact with an estranged spouse does not frequently occur.

Question 79: 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?
Typically, accounts of deceased consumers are handled by specialized collectors who deal with these matters. For most collectors, the creditor will require, once the consumer is deceased, that the account be closed and returned the creditor for a determination about whether a claim should be made against the estate and what further collection activity should occur.

Question 80: 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?

These accounts are typically closed back to the creditor at the time of the consumer's death and it is unknown whether this information is conveyed to the executor or administrator.

Question 81: 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?
Collectors should not rely on the theory of implied consent simply due to the stated or purported relationship of the caller. Express permission from the consumer must be received before account details can be discussed. It is very common for a third party to contact a collector and indicate that they wish to discuss the account and resolve it on behalf of the consumer. In these circumstances, the consumer must give either oral or written permission for these discussions to proceed. Collectors are accustomed to these circumstances and obtaining that permission has not been problematic. Most third parties and consumers understand from a common sense standpoint that the debt is sensitive personal information and that permission is needed to proceed.

Question 82: 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?
A rule that provides a clear and concise script for recorded messages would be ideal. The benefit to a recorded message is to inform the consumer that their file exists and to provide the consumer with a convenient opportunity to resolve it without litigation. Consumers rely on the ability to obtain information from recorded methods for other reasons as well such as to receive a reminder about a medical appointment. These messages are convenient and practical.

Question 83: 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 website 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.
Of the methods suggested above, the League asserts the best method for avoiding third party disclosure whilst notifying the consumer is to leave a message identifying the consumer and leaving a telephone number for a return call. Many consumers do not identify themselves on a recording device and some use an automated system-generated voice, so requiring that the consumer be specifically identified is unrealistic. Problematic is determining what safeguards are currently effective in preventing third party disclosure. Currently the safeguard is to pause in

a message to allow a third party to leave the room or terminate the call so that no private information is disclosed. This could continue to be employed - - though the effectiveness of this method is unknown. Leaving a message indicating that the call is from a collector but does not identify whom the collector is trying to reach makes it difficult for a consumer to know if the call is meant for them or someone else, and reduces the effectiveness of the attempt at contact for both the consumer and the collector. Directing a consumer to a website with the mini- Miranda assumes all consumers will have ready access to the internet. While many do, there are many who either do not have access or are simply not familiar enough to look up a website to obtain information.

Question 84: 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?

Consumers should be allowed to opt out of the disclosures both orally and in writing. As applied currently, every conversation with the consumer - even if it is only minutes after the prior conversation - includes the mini Miranda. Once the consumer has had contact with the debt collector and is attempting to resolve the debt, continuing repetitive disclosures are unnecessary and - in some cases - irritating to consumers who feel that the collector is not listening or assuming they are not sophisticated enough to realize that the collector is attempting to collect a debt.

Question 85: 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?

Caller ID provides only a limited amount of space for characters and trying to provide a consumer with substantive information via caller ID is not practical. The advent of caller ID has resulted in individuals regularly screening the majority of their calls to determine whether it is convenient for them to take a call or not. It is the telecom provider who determines what will appear on the caller ID and apparently not all telecom companies transmit the same calling information in the same format. The most straight forward resolution would be to allow collectors to transmit their number with no further information and prescribe a permissible message that may be left for the consumer.

Question 86: Should debt collectors be prohibited from blocking or altering the telephone number?

A debt collector should be required to transmit a number where the consumer can view the caller ID log and contact the collector.

Question 87: 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?

The League believes that it is unreasonable to require that a collector know the privacy policy of the consumer's employer with regard to email. If the consumer indicates that a work email address is the most convenient method of communication, then the collector should be able to contact the consumer at that address. It remains the consumer's prerogative to deny or rescind permission for e-mail contact at any time for any or no reason. Requiring the debt collector to independently verify the employer's privacy policy would not increase consumer protection, but it could erode a consumer's freedom of choice relative to debt resolution.

Question 88: 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?

Although every communication carries a risk of third party disclosure, email and fax do provide security. Providing the mini Miranda in the body of an email is private. Neither the email address from a collector or their company name on a fax banner may be immediately recognizable as being from a debt collector. While this information may be known by some, it can't be assumed that it is an automatic disclosure. Unlike the outside of an envelope which can be read by anyone who sees that envelope, email and fax require some effort by someone who is not recipient to read. If the agency does determine that some restrictions should be placed on a fax banner or in an email, a clear statement about what is permissible would assist in providing consistent communication.

Question 89: 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?

It is the League's position that the FDCPA, as written, enables a consumer to designate the time, place and manner in which many communications from a debt collector can be transmitted. A consumer may direct the debt collector to cease communications with consumer concerning the debt. In the event the Bureau proposes any rule that would enlarge a consumer's right to restrict communications from a debt collector, the Bureau should make clear that such rights do not in any way impede an attorney debt collector's ability to pursue litigation or post-judgment recovery efforts against the consumer.

Question 90: 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?
Providing clarification and safe harbors to collectors and servicers about exactly how to provide required disclosures when a cease and desist is in effect would be extremely helpful.

Question 91: 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?
The League asserts that the most important thing is to provide more than one method of contact so that a consumer can communicate with the collector and obtain information about the account being collected. There are consumers who have no desire to talk to a natural person and instead desire to obtain information through email or by being able to leave a message. If a consumer cannot make personal telephone calls at work, having a natural person available during regular working hours is not going to be effective to assist him/her.

Question 92: 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?
The League takes the position that consistent interpretation and enforcement regarding existing categories of prohibited conduct is sufficient to deter or remedy any potential abuses by debt collectors.

Question 93: 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?
The original creditor should not subject to the same rule prohibitions authorized by the FDCPA for debt collectors. The Bureau is expressly authorized to define "abusive" and thus controls the scope of behaviors constituting abuse. 12 USC § 5531.
Arguably, greater restrictions on original creditors will ultimately lead to further scrutiny and due diligence by original creditors inherently restricting an already restrained consumer lending

environment. This is posited to be detrimental in measuring risk by the original creditor affecting the consumer/"covered person;" 12 USC § 512; as to availability of credit. Separately, it is posited that particular segments of "covered persons" choose not to engage traditional financial services and the League would posit that this choice may be further exacerbated. *See gen.*, Edward C. Lawrence and Gregory Elliehausen, "*A Comparative Analysis of Payday Loan Customers,*" 26 Comp. Econ. Policy 2, 299-301, 306 (April 2008).

Question 94: 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?

Providing clear rules on the use of social media and safe harbors would be helpful to collectors and consumers. Most collectors do not utilize any form of social media due to the fact that there are very few opinions dealing with what are permitted communications involving social media.

Question 95: 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 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.

Question 96: 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?

Both this and the preceding question ask whether there should be rules regarding call frequency. The courts have considered more than just the frequency of the calls looking to the "totality of the circumstances." While the Bureau has signaled that it desires to bring some clarity to this area, the League urges that it leave sufficient flexibility within any rules to allow a collector to attempt to contact consumers and deal with them as the consumer requests. Placing limits on the number of calls could lead to a result where a collector is waiting several days before contacting a consumer to discuss the account conversely with the consumer believing that the collector is placing impediments to resolution. Limiting telephone communications or requiring very specific calling times will cut down on the opportunities consumers have for resolution and increase the amount of creditor initiated lawsuits.

Question 97: At least one State has codified bright-line prohibitions on repeated communications. Massachusetts allows only two communications via phone — whether phone calls, texts, or audio recordings — 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?
Limiting communications as described above will limit a consumer's opportunity for resolution and will cause more matters to be litigated. A consumer has the ability to demand and cease and desist of all communications.

Question 98: 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 hangups, dead air, or other similar treatment?
The League takes no position on this question at the current time.

Question 99: 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?
The League takes no position on this question at the current time.

Question 100: 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.
Section 807 should be limited to material, willful or intentionally false, deceptive, or misleading representations. Given the subjectivity of the terms "false, deceptive or misleading" there is very little room for debt collectors to conduct their practice in a way that would not run aground of violating FDCPA Section 807. The specific representations or omissions addressed in subsections (1) through (16) are sufficient. These subsection are not the problem. It is more the general nature of the terms "false, deceptive or misleading" that create uncertainty and unexpected litigation for debt collectors. Without limiting violations to those that are either willful or intentional and material in nature, the Bureau's efforts to clarify or supplement additional representations or omissions in the subsections will not resolve the underlying problem. If the Bureau is unwilling to limit FDCPA Section 807 to "material" representations, at the very least, violations should be limited to those that are willful or intentional. Despite FDCPA 813(c), defining the violation as "willful or intentional" within FDCPA 807 makes this an element the plaintiff must prove to first assert a claim. Doing so will reduce the number of frivolous claims and litigation associated with a debt collector having to assert a "bona fide error" affirmative defense.

Question 101: 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?
Creditors and collectors have invested in increased training of collectors around the SCRA and are not permitted to advise that the SCRA does not apply to debts. Accounts are rigorously scrubbed for active military status.

Question 102: 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? 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?

It is the League's position that such are not the actions of entities legitimately engaged in the debt collection business and that the majority of collection offices have implemented policies and procedures to ensure compliance with SCRA. The League urges the Bureau to strongly oppose any rule requiring attorney debt collectors to provide disclosures to consumer regarding his or her rights under the SCRA, as such action may constitute the provision of legal advice in violation of the Model Rules of Professional Conduct.

Question 103: 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?

If a non-debtor spouse is talking to a collector about the obligation is likely because the consumer spouse has indicated that they wish their spouse to attempt resolution or handle payments on the account. With regard to a surviving spouse, almost every creditor will require a collector to close an account once the consumer is determined to be deceased.

Question 104: 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?

In the vast majority of cases, creditors place accounts for collection in the name of the account holder only. It is The League's position that dunning of authorized card users is a remote occurrence among legitimate collection entities.

Question 105: 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?

Sending mini-Miranda warnings via text message is more limited by practical and statutory hurdles, than technological ones. It is unlikely that an initial communication from a debt collector in the form of a text message will be well received unless it is at the request of the consumer. Such a communication is typically very brief and requiring the lengthy disclosure would leave little room given the space limitations for practical communication. Retaining and storing such messages may be difficult for purposes of a collector reviewing and assuring that no unauthorized contact is occurring.

Question 106: 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 website, 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?

Qualified in accord with the response to Question 105, texting a link to a website would be more practical than simply sending a text of the mini-Miranda or other communication. There must be a method to track (1) that the message or warning was sent, and (2) whether it was delivered and not rejected. Given this technology may not exist, it is difficult to estimate the costs of such a program. There are also significant security risks associated with ensuring that messages related to debt collection are received by the intended party, and only the intended party, and that debtor account information cannot be easily hacked. Given these risks, communication via text should be limited to instances where it is requested by the debtor as a preferred means of communication. This will avoid potential liability of the debt collector, and also ensure privacy and security concerns are alleviated.

Question 107: 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?

Communication via email poses fewer risks than text or social media since the technology has exists for a longer period of time. Problems with privacy, security and ensuring receipt of a particular communication, by email is still not as desirable regular mail. Like texts, communication via email should be limited to instances where it is requested by the debtor as a preferred means of communication.

Question 108: 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?

The most common forms of payment are those received through regular mail (most often checks), checks or payments made over the phone and credit or debit cards. Payments via regular mail account for approximately half of all payments received.

Question 109: 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 service fees for checks by phone – somewhere in the range of $3.00 per payment. The fee is based on what third party service providers charge the collector to process the payment. More commonly, these fees are now seen as a cost of doing business and are being assumed by the collector.

Question 110: 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?

These claims do not appear to be widespread though many creditors do limit the methods by which payments can be made to checks, debit and cash payments.

Question 111: 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?
Most consumers understand that certain methods of payment take longer to process. For example, most know that a payment made with a cashier's check or other certified funds will be processed more quickly than a personal check. It is beneficial to inform consumers that certain methods of payment carry a waiting period to ensure that the funds are available. Again, the most common example is that many debt collectors wait a period of time for personal checks to clear before confirming a settlement or payment in full, or issuing a satisfaction of judgment.

Question 112: 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?
The application of proposed rules should be consistently applied amongst all debt collectors. If the CFPB in contemplating additional rules then they should apply to all in the same manner. Without knowing "the most commonly complained of unfair or unconscionable means of collection," it is difficult to say whether any additional conduct should be incorporated into newly proposed rules. But as stated above in the response to Question 100, FDCPA should be limited to unfair or unconscionable means of collection that are willful or intentional. Despite FDCPA 813(c), defining the violation as "willful or intentional" within FDCPA, Section 808 makes this part an element the plaintiff must prove into to first assert a claim. To do so will reduce the number of frivolous claims and litigation associated with a debt collector having to assert a "bona fide error" affirmative defense.

Question 113: 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?
Consumers should be treated fairly in any situation involving the collection of accounts.

Question 114: 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?
Many agreements, contracts and instruments creating debt obligations extensively explaining the interest rate, any fees or costs associated therewith. There is little need to supplement FDCPA 808(1). There is extensive statutory law governing disclosures of this information – for example, 15 USC 1637 relating to credit cards, and TILA, relating to other debt instruments. With respect to 15 USC 1637, a debtor can reference any billing statement to determine his or her interest rate and how the monthly amount due was calculated.

Question 115: 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?
See the response to Question 114. Given the detailed nature of debt instruments and prevailing state and - more importantly - federal statutory law, there is little need to supplement FDCPA 808(1).

Question 116: 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?
The League qualifies that its answer to this question is made without having relevant data regarding telephone service provider rates. Subject to that qualification, most cell phone carriers charge by the minute for calls and per each text message/characters. Many providers offer calling packages that allow their customers to consume a specific number of phone minutes and send/receive a specific amount of text messages without rate assessment. It is commonplace that these communication technology companies offer unlimited calling and text plans. The League is not aware of any cell phone service provider billing based on a customer's demographic – perhaps geographic location, but not demographic.

Question 117: **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?**
Given the prevalence of cell phones and the growing prevalence of households using only cell phones - eliminating the home phone - rules prohibiting communication via cell phone should not be considered. See gen., http://www.pbs.org/mediashift/2010/05/your-guide-to-cutting-the-cord-to-landline-phones147/ (available as of 2/20/14). Consumer laws already create a protracted stream of communication between debtors and collections professionals and further limitations and regulations will only frustrate their ability to communicate. Rules already exist limiting the ability to leave voicemails on cell phones. Other than the US mail, there are few secure and truly free-to-end-user methods of communication available. Further regulation of cell phone usage may completely bar a debt collectors ability to communicate with a debtor and make litigation unavoidable. If a debtor does not want to be contacted, he or she can simply make a cease and desist request.

Question 118: 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? It is the League's position that the Telephone Consumer Protection Act, 47 USC § 227, adequately addresses these concerns and that the majority of debt collectors have developed policies and procedures intended to ensure that the collector obtains the consumer's consent prior to engaging in communications with consumers by cell phone or text message.

Question 119: 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? A consumer can always provide the collector with a preferred method of communication, preferred contact number, or simply ask not to be contacted at all. These are simple ways to handle the issue of calls to cell phones. Text messaging - on the other hand - should only be permitted if requested by the consumer as a preferred means of communication. A consumer already has the option to opt out of being contacted by a debt collector – whether a request that all communications cease and desist or by provided preferred means or hours of contact. If the debt collector does not honor such requests, there is a means for addressing those violations under the FDCPA and other statutory schemes. A right to opt out is preferred over a requirement that the consumer opt in.

Question 120: 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."228 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?

While data regarding this proposed charged is not readily available, there is little need to further supplement FDCPA Section 810. The rule is sufficiently clear in the prohibition against applying payments to dispute debts or in a manner inconsistent with the consumer's direction. "Disputed debts" are adequately discussed under the FCRA. The CFPB should limit any supplementary rules to clarifying whether a "debt which is disputed" under FDCPA Section 810 is the same as a disputed debt under the FCRA. If not, the term/phrase should be defined.

Question 121: 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?

The proposed rules should not require payments be applied in a specific manner. Doing so may frustrate collection and or settlement efforts. Consumers and debt collectors, more often than not, have an express agreement as to how payments should be applied. It is already the practice of many debt collectors to apply payments to the principal balance first.

Question 122: 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?

Many payments are made pursuant to a settlement or payment arrangement offered by the debt collector. Thus, many times there are writings evidencing the agreement for payment. Most debt collectors will either offer or provide such documentation at the request of the consumer. Requiring debt collectors to provide this information will not ensure that consumers retain the written agreement nor will it ensure that consumers are not pursued for debts that have allegedly already been paid.

Question 123: 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? FDCPA Section 809 sufficiently addresses substantiation of claims. This information is sufficient to allow a consumer to confirm the existence of the debt. A consumer may benefit if the account number, open and closing date of the alleged debt was provided at the validation stage. The preceding information is commonly requested and is often the most useful piece of information allowing the consumer to confirm the accuracy of the alleged debt. This information is more than sufficient at the validation stage. Other than these suggested changes, FDCPA Section 809 is sufficiently clear as written. A case by case approach is not necessary.

Question 124: 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?
Different levels of substantiation depending on account type are not necessary for the reasons previously discussed. If the debt remains disputed after verification is provided, then the account would likely be moved into the litigation phase. At the litigation phase, the debt collector must provide adequate proof of the debt to not only satisfy the consumer, but also the finder of fact (court).

Question 125: 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?
There are really only two phases of collection – (1) initial communication and (2) litigation. A debt is either admitted or denied after the initial communication is provided. If the consumer does not dispute the debt, then the parties will often come to an agreeable payment arrangement. If it is disputed, verification will often be provided (if requested). If the debt remains disputed by the consumer, then, as set forth in the response to Question 124, the file will be moved into the litigation phase. Here the debt collector must provide adequate proof to satisfy the finder of fact beyond the relevant standard of proof.

Question 126: 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?

Prior to validation notice, account information substantiating that the balance that the consumer owes generally includes: when the account was opened; when the last payment was made; personal information about the consumer; whether they are represented by an attorney; and whether they have requested that the creditor cease contacting them on the account. After the consumer has disputed the debt, typically account statements or a copy of the judgment are provided to a consumer. After the consumer has disputed the debt and it has been verified – assuming the debt remains disputed, it depends on the nature of the dispute. Prior to commencing a lawsuit to enforce a debt – this, too, depends on the nature of the dispute.

Question 127: 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?
In most instances, debt collectors do not furnish data to any credit rating agency or similar organization. Debt collectors generally make no representations regarding the credit score or the consumer's credit report. Debt collectors provide information to the creditor who may subsequently furnish the data to a credit reporting agency.

Questions 128 through 132: The League makes no response to the above series of questions at this time.

Question 133: 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?
Mandating such a requirement could be problematic as many states within their own courts are conflicted about the statute of limitations that should apply in collection matters. Prime examples of this are Pennsylvania and Virginia. State Courts in Pennsylvania for the most part impose a four year statute of limitations from the date of last payment. However, at least one Federal Court and one local court have imposed a choice of law standard and applied a three year statute of limitations. Virginia has a split amongst its state and appellate courts as to whether to apply a five year or three year statute of limitations from the date of last payment.

To impose this requirement, when judges of various court levels cannot agree, would be a dangerous practice and necessarily leads to an inconsistent result. Setting this requirement in the validation notice adds further to the confusion. For example, if a payment is made by the consumer after the validation notice is sent, the limitations period starts anew in many jurisdictions which could be confusing to the consumer.

Question 134: 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.
The Asset Acceptance language is long, cumbersome and does not provide a clear and concise message. Should the Bureau wish to add language on this issue, a clear and concise message should be inserted at the end of the validation language to the effect: "Be aware that consumers cannot be sued for any debt existing outside your state's statute of limitations period".

Question 135: 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?
This question contains an incorrect premise that a "time-barred" debt can be "revived". While again, this may vary by jurisdiction, most states do not start to toll the statute of limitations until the date of last payment, which is a date where the consumer acknowledges that the debt is owed. More importantly for the consumer, this rule permits payment plans over potentially longer periods of time that might help the consumer pay an obligation without getting sued. The League does not possess data on the volume of suits on revived accounts.

Question 136: 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?
The League is unaware of any studies or data which provide information on the mindset of consumers when making partial payments. However, such an arrangement usually permits a payment plan that works for the consumer.

Question 137: 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?
An attorney debt collector is governed by the Rules of Professional Conduct in effect in the jurisdiction of licensure. An attorney debt collector is charged with the zealous representation of his client. Model Rules of Professional Conduct (MRPC), Preamble, A Lawyer's Responsibilities. Pursuant to the preceding cited Model Rules Preamble, an attorney debt collector is charged with pursuing the client's legitimate interests within the bounds of the law. An attorney debt collector is prohibited from giving legal advice to unrepresented defendant other than to seek advice to seek legal counsel. MRPC 4.1. Notice of "time barred debts" and "revival" is legal advice. Such a requirement imposed upon the attorney debt collector is in direct conflict with the precepts of the MRPC and, arguably, the adoption of the Rules of Professional Conduct in the jurisdiction of licensure. An attorney debt collector should not be compelled to act contrary to those Rules of Professional Conduct in effect in the jurisdiction of practice.

Note the obligation of an attorney debt collector to neither bring nor defend a proceeding or assert or controvert an issue unless there is a basis in law or fact that is not frivolous. MRPC 3.1. An attorney debt collector may be ethically prohibited from instituting an action where such a proceeding is time-barred.

Questions 138 and 139: The League makes no response to the above series of questions at this time.

Question 140: 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?

Generally, the "affirmative defense" of a statute of limitations (time barred) must be raised by a defendant. The League is unfamiliar with other methods of reviving a time-barred debt other than recommencing by partial payment, settlement in full for a specific amount or payment in full. Imposing upon attorney debt collectors the obligation of notifying the consumer of an affirmative defense is contrary to the precepts of our adversarial system and may set up conflicts with the applicable Rules of Professional Conduct as adopted in the jurisdiction of licensure.

Questions 141 and 142: The League makes no response to the above series of questions at this time.

Question 143: 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?

The choice of venue is predominately predicated upon the venue statutes promulgated by most States (where a person may be sued) but comport with the restrictions set forth in the FDCPA. The choice of jurisdiction is dependent on the "subject matter jurisdiction" of a particular court (that court in which a person may be sued on a particular type of claim). Some courts have limited jurisdiction based upon the amount in controversy. There are, of course - in all occasions, courts of unlimited jurisdiction in every State. Depending on the amount in controversy, the most economical and expeditious method of pursuing a matter is in that particular State's "small claims" court. Where the amount in controversy may exceed the jurisdiction amount ("subject matter jurisdiction") of a small claims court, the matter is brought in a court of unlimited jurisdiction. An attorney debt collector may always bring a claim in a court of unlimited jurisdiction. The jurisdiction affording relief in "law or equity" may be circumscribed in courts of limited jurisdiction and this limitation may play a significant role in determining where the attorney debt collector commences suit. Generally, the associated costs and time involved in the proceedings are greatly extended in courts of unlimited jurisdiction – presuming judgment against the consumer, costing the consumer significantly more. Venue, although there may be latitude contained in the statute, is not determined based up the type or amount of debt. Venue is predicated upon the latitude of discretion contained in the venue statute. Generally, venue selection is simply predicated on "where the defendant may be found."

Question 144: 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?

Many courts are sensitive to the convenience of consumers and have implemented processes such as allowing a consumer to appear telephonically or adjourning a date at the consumer's request. However, in other jurisdictions, telephonic appearance is not provided either by statute or rule and is not within the discretion of the court. Courts are sensitive to effectively managing their dockets as well as serving all litigants. Many have support services to assist those who are appearing pro se or who are indigent. In various larger jurisdictions, local bar associations have organized to provide *pro bono* assistance to those who are acting *pro se* or are indigent.

Question 145: Are there any particular unfair, deceptive, or abusive practices related to choice of venue that the Bureau should address in proposed rules?

The FDCPA already prescribes where a collection action may be brought. Violations are adequately addressed through the FDCPA and state consumer protection laws. In addition, the consumer bar has been very vigilant on venue claims.

Question 146: 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?

It does not appear to the League that there has been a compilation of aggregate numbers regarding where collectors file against consumers each year in contemporary literature. Various States do aggregate filing numbers and types of claims; however, many jurisdictions to not collect data on "small claims courts." It appears anecdotally that the number of collection matters being sued is declining as creditors make different determinations about how to pursue accounts. More emphasis is being placed on personal contact and resolution options made possible by the increased amount of communication methods available to both consumers and collectors.

Question 147: 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 compliment or avoid interfering with States' pleading, motions, and supporting documentation requirements?
Interference in established State pleading standards could lead to inconsistency and difficultly in determining how to apply a proper standard. Setting pleading and evidence requirements should the prerogative of the individual states and attempting to set rules without coordination will not likely lead to better pleadings but more litigation about a proper interpretation of what is required.

Question 148: 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?

Anecdotally, deceptive claims are being made and are serious claims but they are infrequent relative to the number of actions filed. Consumers appear vigilant enough to involve attorneys in representing them and proceeding against creditors, collectors and process servers who put forth deceptive claims.

Question 149: **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?**
Procedural and evidentiary requirements vary by jurisdiction. Many jurisdictions tend to follow – with varying exception – the Federal Rules of Civil Procedure and the Federal Rules of Evidence for a semblance of uniformity. Note, however, that "small claims courts" may or may not be governed by a particular State's rules of civil procedure. Generally, all courts follow a State's rules of evidence.

Question 150: 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.258 Should the Bureau address communications in formal legal actions in proposed rules? If so, how?
Given that the majority of collection actions are filed in state court, and the fact that many states have passed consumer protection laws and/or statutes related to pleading in consumer collection actions, additional proposed rules are not recommended. It would be counter-productive for the Bureau to interject its regulatory authority into the province of State courts.

Question 151: 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?

Please see the Answer to Question 150.

Questions 152 through 158: The League makes no response to the above series of questions at this time.

Question 159: 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?
Like pleading statutes, these registration laws are enacted at the state level and many states are increasing the requirements for registration. These registrations are comprehensive and are tied directly to state law. Requiring an additional federal registration will be costly and may conflict with what is now being required in individual states.

Questions 160 through 162: The League makes no response to the above series of questions at this time.

We appreciate your time and consideration.

Very truly yours,

Jeffrey Schatzman, President
Anthony Hilvers, Executive Vice President

The Commercial Law League of America