February 28, 2014

INTRODUCTION TO DBA'S ANPR RESPONSE

Part 1: General Overview of Debt Collection and Consumer Protection

DBA International (DBA) is pleased to submit a detailed response to the Consumer Financial Protection Bureau's (CFPB or Bureau) Advanced Notice of Proposed Rulemaking (ANPR) regarding consumer debt collection practices, dated November 6, 2013. 78 *Fed. Reg.* at 67868.

DBA is the nonprofit trade association that represents the interests of certified public and private companies that acquire distressed asset portfolios on the secondary market. It was founded in 1997 by a small group of companies to provide a forum to advance best practices, including consumer protection, within the industry. Today DBA has grown to represent over 600 companies. DBA provides its members with networking, education and legislative advocacy opportunities through an annual conference, an executive summit, regional seminars, state and regional committees, newsletters, webinars, teleconferences and other media. Importantly, DBA has adopted a code of ethics and adopted comprehensive and robust national certification standards that promote uniform and consumer protective industry conduct. All DBA debt buying members must meet DBA's certification standards by March 1, 2016 in order to maintain membership. DBA is headquartered in Sacramento, California.

Throughout our ANPR response, we emphasize five overarching principles:

- Consumer access to credit is a privilege – not a right. When this privilege is exercised appropriately, everyone benefits – consumer borrowers, lenders and, ultimately, the nation's economy.

- Ethical debt buying and selling provides important benefits – to consumer borrowers who are assisted in meeting their repayment responsibilities; to lenders who receive a return on their investment; and to the consumer credit economy which debt buying helps to catalyze.

- The law should protect and promote ethical debt collection, which safeguards the rights of consumers and provides rules of the road for collectors.

- The law should not be misused to enable borrowers to turn legitimate loans into de facto gifts. In the long run, this will reduce the availability of credit for all consumers and make credit more expensive.

- The law should be as clear as possible – effective rules; effective remedies; and appropriate safe harbors for good faith efforts to comply with the law.

DBA appreciates that the CFPB has stated that, "the collection of consumer debts serves an important role in the functioning of consumer credit markets by reducing the costs that creditors incur through their lending activities… The resulting reductions in creditors' losses, in turn, may allow them to provide more credit to consumers at lower prices." 78 *Fed. Reg.* at 67894.

DBA supports the CFPB's effort to consider the adoption of substantive and comprehensive reforms to the Fair Debt Collection Practices Act (FDCPA) and related reforms. There are three reasons.

- First, DBA shares the CFPB's commitment to improve consumer protection in the debt marketplace. Adherence to good consumer protection principles by debt buyers and debt collectors is good business for debt buyers and debt collectors and their original creditor customers. In addition, strong consumer protection is fair to consumers and, quite simply, "the right thing to do." It is with this in mind that DBA has adopted a robust, comprehensive certification program.

- Second, as the CFPB has pointed out, the FDCPA was enacted in 1977. During the 37 years since that time, much has changed and, not surprisingly, the FDCPA needs to be updated and modernized to reflect the current social, economic, and technological landscape.

- Third, the consumer debt marketplace is in real need of clarity and certainty, and the debt buying industry seeks a reliable path toward compliance. Clear and certain rules of the road are far better than vague, unclear or partial rules of the road.

DBA also very much appreciates the manner in which the CFPB is going about this important rulemaking, including the open process and thoughtfulness of the questions. Not only has the CFPB published an extensive ANPR including 162 specific questions on a wide range of topics, but the CFPB has provided ample time for a thoughtful response.

In addition, CFPB's staff has been conscientious and hard working in reaching out to the industry, as well as to consumer groups and other stakeholders. The CFPB has held workshops; attended and participated in industry events; been available for small group meetings; and has made an extra effort to elicit input from stakeholders.

DBA's response to the ANPR has been commensurately conscientious, thorough and substantive. DBA established eight task forces involving several dozen DBA members from every part of the market, including large, medium and small sized debt buyers, along with attorneys, to review and respond to the ANPR. In addition, DBA has reached out to all DBA members to solicit extensive feedback on key topics addressed in the ANPR. As a part of our response, we have also conducted a detailed analysis of the ANPR questions based upon DBA's certification standards. We have also marshaled various third party authorities, including the Federal Trade Commission's (FTC) January 2013 Debt Buyer Report, *The Structure and Practice of the Debt Buying Industry*.

However, although DBA shares the CFPB's commitment to improving consumer protection, our responses to the ANPR make clear that DBA, not surprisingly, is not always in agreement with the CFPB. For example, senior CFPB officials have made repeated comments about the "dysfunction" in the collection industry arising from the fact that consumers do not get to "choose" their debt buyer or collector. Allowing consumers to choose their debt buyer would be unworkable and inappropriate. The 7th Circuit, for example, in *Olvera v. Blitt & Gaines*, 431 F.3d 285, 288 (7th Cir. 2005), makes clear that giving consumers the ability to "vote with their feet" would blow up the debt buying and debt collecting business models and, ultimately, harm consumers.

> "Adopting the plaintiff's interpretation of the Illinois Interest Act would push the debt buyers out of the debt collection market and force the original creditors to do their own debt collection. Borrowers would not benefit on average, because creditors, being deprived of the assignment option as a practical matter… would face higher costs of collection and would pass much of the higher expense on to their customers in the form of even higher interest rates."[1]

DBA is also concerned about the potential that some regulations may have the unintended consequence of limiting credit availability for consumers, a possibility that was explored at length in "Debt Collection Agencies and the Supply of Consumer Credit", Working Paper No. 13-38, Viktar Fedaseyev, Bocconi University and Visiting Scholar, Federal Reserve Bank of Philadelphia, May 20, 2013.

[1] *See, also,* the Philadelphia Fed study pointing out that, when states implement restrictive debt collection laws, the availability of credit to consumers in that state is restricted.

DBA's ANPR submission addresses several critical subjects.

- Technology. It is critical that the CFPB utilizes this opportunity to modernize the ability of debt buyers and debt collectors to communicate with consumers. This will be far better for consumers. Debt buyers and debt collectors need to be able to communicate through email, cell phones and voice mail, and the CFPB needs to put flexible rules in place to address additional communications technologies that may be developed in the future.

- Documentation. Documentation requirements also need to be reformed. A distinction should be drawn between the documentation that a debt buyer needs at the time of a purchase and the documentation that debt buyers may need later in the collection process. Other key issues addressed by the DBA in this ANPR response include chain of title; documentation requirements for when a debt is resold; and disputes, verification and validation. The FDCPA does not define a "dispute" and nor does it distinguish a "dispute" from a "complaint" or even from an "inquiry." The result, not surprisingly, is that the CFPB's and the FTC's assertions about dispute rates lack empirical validity, and do a disservice to both the industry and consumers. Validation notices should be reformed and made brief, helpful and non-redundant. Our response includes a proposal for adoption of a "substantial validation" concept. Indeed, the DBA recommends, as set forth in detail in our ANPR response, that the CFPB develop a uniform, national consumer notice, available online, to provide consumers with effective and fully reliable disclosures. Debt buyers and debt collectors will also benefit from uniform rules of the road.

- Communications. Our ANPR response proposes several improvements in standards for and ability to communicate with consumers. Some of these improvements are technology-based, as set forth above. Some of the suggested improvements, however, address the content of consumer communications, including the content of a voice message; validation and verification reforms; and the development of a national summary of consumer rights.

- Time-Barred Debt. DBA's ANPR response notes that the DBA certification standards prohibit the use of the courts to attempt to

collect time-barred debt. Our response also speaks to the question of whether a model notice concerning time-barred debt is practicable and speaks to the extent to which and the way in which "revitalization" of a debt can occur.

DBA also requests that the CFPB adopt a provision in the forthcoming rule, or in related commentary to the rule, that enables smaller debt buyers (those below the $10 million threshold and, thus, not eligible for examination except in extreme circumstances where the CFPB deems that they pose "a risk to consumers") who demonstrate current compliance with the DBA certification program, to be deemed by the CFPB as having obtained the equivalent of a favorable examination report from the CFPB. DBA recognizes that, if the CFPB considers this proposal, the CFPB will have many questions and refinements and DBA stands ready to work with the CFPB to answer those questions and to facilitate those refinements. In the absence of such an approach by the CFPB, the vast majority of debt buyers will be greatly disadvantaged in the marketplace because they will not have the "benefit" of a potentially positive examination report and, thus, may be unable to purchase debt portfolios, directly or indirectly, from creditors.

Finally, by this ANPR response, DBA asks that the CFPB Final Rule preempt conflicting or inconsistent state law, even when the state law is theoretically "more" consumer protective. The debt collection marketplace is a national marketplace. Several of DBA's proposals call for the development of a national summary of consumer rights and other uniform national disclosures. These disclosures are unhelpful without a uniform law. Furthermore, tens of millions of consumers move from one state to another every single year. Both the industry and consumers will benefit greatly from one reliable and uniform set of rules.

Part 2: Transfer and Accessibility of Information upon Sale and Placement of Debts

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

Debt buyers have a keen economic interest in obtaining accurate and complete portfolios.[2] Accurate and complete portfolios facilitates consumer protection; collection

[2] As the FTC has noted, "[i]f debt buyers have sufficient and accurate information about debts, they are more likely to recover on them." (The Structure and Practices of the Debt Buying Industry, FTC Report, January 2013) p. 36.

activities; minimizes the cost of collection; and helps to ensure that debt buyers and collectors are collecting from the correct person.

When a debt buyer obtains a portfolio from an original creditor or a debt reseller, the portfolio must contain information sufficient to determine the correct consumer and amount of debt, as specified in the FDCPA.

However, under the recently adopted DBA Certification Standards,[3] DBA members cannot purchase a debt unless the debt is accompanied by more than the legal minimum amount of data.[4] This helps to ensure that the certified debt buyer can properly locate the correct consumer and the correct amount of debt.[5]

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[3] DBA members must agree to abide by the requirements and standards of the DBA Certification Standards by March 1, 2016, and the DBA requires that companies undertake an independent audit to ensure that these standards are complied with.

DBA devised these 20 uniform Certification Standards based on recognized industry practices to help ensure that DBA members are going above and beyond the requirements of the FDCPA to help protect consumers and the reputations of original creditors in their collection activities. For example, while the FDCPA does not prohibit the sale of disputed debt, the DBA standards do prohibit the sale of disputed debt.

These standards address core issues in the debt buying process, including account documentation, chain of title, consumer complaint and dispute resolution, statute of limitation compliance, vendor management, credit bureau reporting, resale, and other relevant operational procedures.

Compliance with the standards will be monitored through audits performed by independent third party auditors.

While the DBA Certification Standards have not been "approved" by the Federal Trade Commission or the Consumer Financial Protection Bureau, DBA consulted extensively with those Agencies in the drafting these standards, and have incorporated many of the recommendations of those agencies – the primary regulators of the debt buying industry – into the Certification Standards.

DBA's comments in this ANPR reference these standards frequently because they often govern practices that are raised by the ANPR.

[4] DBA requires all of its members to comply with the DBA Certification Standards, which require the following elements be included in the sale of any debt:

(13) **<u>Portfolio Acquisition</u>.** A Certified Company shall establish and maintain a Portfolio Acquisition Policy that provides the rules, processes, and procedures it follows in the acquisition of debt portfolios and the accounts contained therein to ensure accuracy and completeness of information.

Additionally, on all new debt portfolios purchased after becoming certified, the Certified Company shall require in the purchase agreement (*i.e.,* the contract):

(a) The transmission of data elements required to sufficiently identify the consumers on the associated accounts and to confirm the accuracy and completeness of information

The information often varies for different types of debt. For example, data available regarding medical debt varies widely from available information regarding auto

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pertaining to the accounts. The Certified Company shall use commercially reasonable efforts to negotiate the inclusion of the following data elements in purchase agreements, provided that they are applicable to the type of debt being purchased: (i) first name and last name of consumer, (ii) the complete last known address of consumer, (iii) last known telephone number of consumer, (iv) name of originating creditor at the time of charge off, (v) account number or account identifier used by the originating creditor at the time of charge off, (vi) social security number or other government issued identification number of consumer as long as the original creditor received the number at the time the account was opened, (vii) account opening date, (viii) last payment date, provided a payment was made, (ix) the charge off balance, (x) the charge off date, (xi) the nature of the debt – *i.e.*, auto, credit cards, medical, telecom, etc., (xii) the current balance at the point of sale, and (xiii) the total amount of any interest and the total amount of any fees accrued on the account since the charge off date, if applicable;

(b) Access to or transmission of documents required to sufficiently identify the consumers on the associated accounts and to confirm the accuracy of dates, balances, and other information pertaining to the accounts. The Certified Company shall use commercially reasonable efforts to negotiate access to or inclusion of sufficient documents in purchase agreements, provided that they are applicable to the type of debt being purchased. Examples of documents may include, but are not limited to: (i) original application or contract, if available; (ii) last statement showing a purchase transaction, service billed, payment, or balance transfer; (iii) charge off statement; (iv) terms and conditions or cardholder agreements, and (v) affidavits, as applicable; and

(c) Adequate time to evaluate and review sufficient portfolio information for accuracy, completeness, and reasonableness and to discuss and resolve with the seller any questions or findings resulting from the review process prior to purchasing the portfolio.

Additionally, auto loan accounts must include information regarding the repossession and subsequent sale of the auto, such as sale proceeds applied to the balance owed.

The Audit Review Manual that governs the compliance audit for DBA members, and is performed by an independent auditor, notes that "The goal of this Certification Standard is for the Certified Debt Buyer to require appropriate data, at the point of purchase, that is necessary to sufficiently identify the consumers on the accounts being purchased."

[5] For example, DBA Certification Standards require debt buyers to maintain the chain of title for debts that they purchase.

> Chain of Title Requirements: Identify and maintain the name, address, and dates of ownership of the originating creditor and all subsequent owners, up to and including the Certified Company, for each account within a portfolio that is purchased. The intent is to have each subsequent Certified Company maintain an accurate listing for chain of title on debts purchased after certification. This Certification Standard shall only apply to accounts purchased by the company after it obtains certification. This is not a retroactive requirement on accounts purchased prior to certification.

deficiencies. In any case, however, the debt buyer obtains enough information to ascertain the correct consumer and correct amount of debt.

While the need for additional information may be rare (for example, in 2012, only 11,495 FDCPA lawsuits were filed against debt collectors, out of 30 million consumers who have debts in collection) debt buyers do sometimes need additional information above and beyond that provided for in the FDCPA and DBA Certification Standards.

Therefore, while DBA believes that current law and practice provide enough information to debt buyers to identify the right consumer and correct amount of debt, debt buyers believe that it would be helpful to receive more supporting documentation from original creditors.

The Federal Trade Commission (FTC) has undertaken several studies of the debt buying industry, and the FTC's "analysis reveals that the debt buyers usually had all the information that the FDCPA currently requires debt buyers to provide consumers in validation notices at the beginning of the collection process – specifically, the name of the current creditor (*i.e.,* the debt buyer itself) and the amount of the debt. Buyers also received additional information from sellers, such as the name of the original creditor, the original creditor's account number, the debtor's social security number, the date of last payment, and the date of chargeoff." [6]

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

The cost of the debt when first purchased can be impacted by the amount of supporting documentation provided at the time of sale.

If a debt is resold from one debt buyer to another, the accompanying information that was provided by the original creditor is conveyed.[7]

However, as discussed in the response to Question 1, there may be a cost and delay to obtain supporting documentation beyond what is included in the original sale from the original creditor, if necessary.

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[6] The Structure and Practices of the Debt Buying Industry, FTC Report, January 2013 (p. 36).

[7] The FTC noted that "information that debt buyers conveyed to other debt buyers when debt was resold was very similar to the information that original creditors provided to debt buyers." (p. 37).

If a certain type of debt is sold, such as disputed, bankrupt, or deceased debt, that status is disclosed to the buyer. It is also industry standard to regularly scrub accounts for bankruptcy and deceased consumers.

DBA Certification Standards prohibit the sale of any debt where there is a pending dispute/request for verification:

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(19) Resale. A Certified Company shall not sell any accounts: (a) where outstanding written and non-duplicative consumer requests for verification of the debt pursuant to the FDCPA (15 U.S.C. 1692g) have not responded in writing.

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

Comments by the OCC have restricted the ability of DBA members to continue purchasing distressed consumer accounts. In addition to reducing the number of potential buyers they will sell to, national banks have curtailed the ability of debt buyers to resell accounts. Many banks have reduced the number of potential buyers qualified to purchase their debt. The FTC speculated that "[l]arge sellers apparently employ these selection criteria to decrease their risk of reputational harm as a result of the conduct of the debt buyers in collecting on debts as well as to decrease the sellers' credit risk."

As a result smaller debt buyers are being frozen out of the market, not because they cannot meet compliance requirements, but rather because they do not have the capital to purchase accounts on a national basis. Restrictions like these further reduce the price national banks can sell these accounts for, impacting the cost and availability of credit for consumers.

DBA believes its Certification Program will become recognized as a "Gold Standard," where national banks will be able to rely on Certified DBA members to demonstrate adherence to standards that meet or exceed their requirements, and will provide strong consumer protections, as well as reputational protections for creditors. DBA

believes that creditors should seek out Certified Debt Buyers to protect their reputations.

DBA's Certification Standards will protect consumers and reputations not only in the first sale, but in any subsequent resales of the debt, as well, because all "certified" debt buyers in the chain must adhere to the strict policies of the DBA Certification Standards.

Debt buyers are also subject to periodic on site examination of their policies and procedures by original creditors.

There are also instances where debt sellers may impose some requirements on possible down-stream purchasers, such as restrictions on who a debt buyer may resell a debt to.[8]

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

Debt buyers that purchase from resellers typically receive or have access to the same information as the reseller, and there are no additional restrictions that are placed on access to information on a debt that is resold than there were on the original debt purchaser.[9]

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[8] The FTC has noted, for example, that "[c]ontracts [between loan originators and debt buyers] typically also include[] some terms and conditions regulating each party's post-sale interactions with consumers." (p. 26)

Further, "[s]ome contracts between debt sellers and debt buyers expressly prohibited debt buyers from reselling any of the debts acquired under the contract, or placed restrictions on when and to whom the debt buyer could resell the debts. More commonly, however, contracts permitted debt buyers to resell debts, but required either that the original debt seller pre-approve the resale or that the debt buyer notify the debt seller prior to resale. Virtually all contracts that permitted debt buyers to resell debts required that they state in their contracts with purchasers of the resold debts that: (1) the purchasers of the resold debts were subject to the terms and conditions of the original purchase and sale agreements." (p. 27)

[9] "The Commission's [FTC] analysis also reveals that the information that debt buyers conveyed to other debt buyers when debt was resold was very similar to the information that original creditors provided to debt buyers. Resellers conveyed to debt buyers the same type of data file information about specific debts (*e.g.*, consumer name, social security number, original creditor name, account balance, charge-off date, last payment date, and opening date) that they received from original creditors. With respect to media, most resellers appeared to provide debt buyers with the purchase and sale agreement, a bill of sale, and, in some case, documents showing

Further, even in instances where the debt buyer may need supporting documentation regarding the account that is held by the original creditor, the debt buyer typically has the same access to those documents that the original purchaser had. The only difference is that it may take some additional time to request supporting documentation, as the request may have to travel through different resellers, but the end result is the same.

As discussed in the response to Question 1, DBA does have concerns about the availability of supporting documentation from original resellers and the time and expense it may take to obtain supporting documentation.

DBA members have also raised concerns about Truth in Lending Act (TILA) document retention time-frames for information that is retained by the original seller and not conveyed to the debt buyer. Specifically, creditors are required to only retain records for two (2) years under TILA, but because debt collectors may work on accounts for longer than that, there have been instances where creditors may not have retained relevant documents. Therefore, a requirement for a longer retention period under TILA, combined with greater access to documentation and information by debt collectors and debt buyers, may avoid issues relating to the amount and nature of the debt and the identity of the debtor. Debt collectors normally keep the records for longer than two years and follow company specific retention policies.

Information Related to FDCPA Provisions.

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

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price calculations or additional transaction-specific documents. This suggests that the initial debt buyers generally do not discard any information they receive from the original creditor, but also that they typically do not supplement the information they provide to secondary debt buyers to reflect their experience in collecting on debts." (P. 37)

information to debt owners? What would be the costs and benefits of third-party collectors providing this information to debt owners?

Disputed debts are rarely sold, and the DBA Certification Standards prohibit the sale of disputed debt, as indicated in our response to Question 2.

To the extent that debts where the consumer has communicated cease and desist requests are sold, that information is disclosed.

<u>Additional Information.</u>

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

Information related to a consumer's understanding of other languages, their status as a servicemember or the consumer's income source is not commonly transferred from originating creditor to debt buyer, or from debt buyer to subsequent debt buyers, or from third party collector to debt owner. Bankruptcy or deceased accounts are disclosed when sold.

However, debt buyers generally engage licensed collectors that have Spanish (or other foreign language) speaking collectors available to interact with consumers, so accommodating language limitations can be overcome.

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

First, it is important to note that the information that is provided to debt buyers by original creditors is sufficient to identify the right consumer and the right amount of

debt, and it is very rare that a consumer or debt buyer needs any supporting documentation discussed above.[10]

Therefore, while DBA believes that supporting documentation from original creditors to debt buyers would be beneficial in a small percentage of cases, as discussed above, DBA has concerns about *requiring* such a transfer. Specifically, while DBA would welcome an original creditor's decision to make more information available, we are concerned that placing additional *requirements* on original sellers may reduce the amount of debt available for purchase, and because debt buyers need additional information so rarely, DBA is not advocating additional *required* disclosure.

DBA is also concerned that *requiring* the additional disclosure of additional information by original creditors may have a detrimental impact on consumers. Specifically, a recent study by the Philadelphia Federal Reserve, *Debt Collection Agencies and the Supply of Consumer Credit*, found that additional restrictions and costs placed on debt collectors reduced credit availability for all consumers. In other words, while requiring the disclosure of supporting documentation may benefit some very small percentage of consumers, the adverse effect will impact all consumers.

Documentation (Media)

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

As discussed in question 1, original creditors may require debt buyers to request, and perhaps pay for, access to documentation that was not included in the original sale. These limitations impact a very small percent of consumer and accounts, so while debt buyers would prefer the disclosure of supporting documentation on the front end, we urge the CFPB to carefully weigh the benefits to a very small percentage of consumers against the costs to the vast majority of consumers.

Q9: Part III. A below solicits comment on whether the last periodic statement or billing statement provided by the original creditor or mortgage servicer should be provided to consumers in connection with the validation notice. If these documents are not required in connection with the validation notice, what would

[10] See footnotes 4 and 5.

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 validation notice provides consumers with the same information as the last periodic statement or billing statement, and therefore DBA does not believe that these specific documents should be required. Further as discussed above, the vast majority of consumers do not request supporting documentation during the validation period and for those that do, this information or other similar information is sufficient to establish that this is the correct consumer and correct amount of debt is provided.

Additionally, obtaining and providing these documents could add to the time it takes to respond to a consumer dispute, as the documents may have to be requested from the original creditor. As discussed above, while DBA would support the provision of supporting documentation with the sale of debts from the original creditor, we also understand the potential higher costs associated with that, and do not believe that it is necessary to increase costs when there is at most only a small benefit to a very small percentage of consumers.

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

As discussed above, debt buyers receive information that is sufficient to properly identify the correct debtor and amount of debt from original creditors, and do not need supporting documentation in more than 95% of all cases. Further, in cases where it is necessary, debt buyers generally have access to supporting documentation from original creditors.

While some supporting documentation may be useful in some cases for some types of debts, requiring them for all types of debts would not be beneficial, and could be very expensive to acquire and send, if they are even available. For example, few accounts

are opened with a traditional written contract (many are opened on line or over the phone), but use of the account indicates the contract terms were accepted by the consumer.

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

Debt buyers are financial institutions under Gramm Leach Bliley, and are therefore subject to significant data security and privacy requirements.

In addition, in crafting its own data security standards, DBA carefully considered the need to balance the need for more data with the greater risk associated with storing more data about consumers.

DBA has addressed privacy and data security concerns in its Certification Standards:

> (7) **Data Security Policy.** A Certified Company shall establish and maintain a reasonable and appropriate data security policy based on the type of Consumer Data being secured that meets or exceeds the requirements of applicable state and federal laws and regulations. The Chief Compliance Officer shall ensure that an annual risk assessment is performed on the Certified Company's protection of Consumer Data from reasonably foreseeable internal and external risks. Based on the results of the annual risk assessment, the Certified Company shall make adjustments to their data security policy if warranted.

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

DBA believes that it is important to preserve documentation and chain of title, but there are many ways to accomplish this goal, and a repository is just one possibility. Currently, DBA members get all of the information they need to identify the consumer and validate the debt, and while supporting documentation could be beneficial in some cases, there are costs and privacy concerns that must be carefully considered, as well.

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

Although notification in cases of change of ownership is not required, 87% of all DBA members attempt to notify debtors of a change in ownership when they purchase a debt.

However, DBA does not believe that that should be a required practice. There are several reasons.

First, a validation notice that the consumer receives already serves that purpose.

Second, some debt owners do not purchase the debt with the intent of collecting it themselves, but instead resell the debt to other debt buyers. Requiring these intermediate debt buyers to send notices to consumers would be confusing to consumers who would wonder what to do in response.

Third, even though such intermediate debt buyers have no intention to undertake collection activities on the debt, any communication with the consumer (including a notice of ownership), may require such intermediate debt buyers to become licensed in certain states, unnecessarily increasing the cost associated with that debt.

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

As discussed above, although notification in cases of change of ownership is not required, 87% of all DBA members attempt to notify debtors of a change in ownership when they purchase a debt.

However, DBA does not believe that that should be a required practice.

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

See above.

Part 3. Validation Notices, Disputes, and Verifications

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

DBA believes that providing such additional information to the consumer could be beneficial, but we also believe that the possibility for consumer confusion over who the consumer should contact about the debt should be addressed, as well. For example, if the contact goes through the owner and not the servicer, there is a potential to create an FDCPA violation for duplication of collection efforts. Also, as discussed further below, DBA is wary of adding additional information to the validation notice that could prove to be over-whelming or confusing to consumers.

DBA looks forward to working with the CFPB to craft a balanced, workable and effective solution to this question.

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

DBA is concerned about the possible itemization requirement, because such a notification may be difficult to apply in practice, particularly for unsecured debt. For example, it would be nearly impossible to itemize pre-charge off credit card balances, and could cause confusion to consumers based on current itemization practices. See Footnote 99 to the ANPR.

Specifically, for revolving credit accounts, interest and other fees are generally capitalized, and cannot be broken back out of the account.

Further, even if the debt buyer had the ability to calculate the itemization, debt buyers are often not provided with sufficient information to conduct such a calculation.[11]

DBA agrees that transparency to the consumer is always important, which is part of the reason why the DBA Certification Standards contain many provisions designed to enhance consumer transparency, such as requiring the use of information sufficient to identify the proper consumer on purchased accounts and the proper balance due.

DBA also believes that there may be benefits to creating a uniform "standard" itemization, which removes questions regarding validation data.

Augmentation based on debt type may also cause potential technical violations of the FDCPA when unintentionally excluded.

The alternative provided by the Bureau might work for secured debt in most cases, but not for all "credit based debt." In terms of alternatives, DBA suggests that itemization cannot be accomplished for revolving debt.

There are also several technical questions that would have to be addressed in establishing an itemization program. For instance, should there be a standard form for itemization, including all fields that would be included for the most detailed of debt types, and each creditor would then only populate the necessary fields based on type of debt and available information, which could cause consumer confusion about the missing fields; or should missing fields be excluded altogether.

Q18: What additional information should be included in the validation notice to help

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[11] For example, the FTC's study revealed that there were limitations on the information that debt buyers received at time of sale. "Most significantly, debt buyers often did not receive the information needed to break down outstanding balances on accounts into principal, interest, and fees." (p. 36)

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?

Ensuring that the right amount of debt is collected from the correct consumer is of paramount concern to consumers and debt buyers alike, and debt buyers undertake significant research and spend significant amounts of money to ensure that the correct consumer is contacted. However, ensuring that the consumer is empowered and provided with sufficient information to independently make such an assessment is a vital part of the process, as well. Therefore, providing sufficient information to the consumer to ascertain that is a key part of the process.

Fortunately, the process that debt buyers have in place seems to be working well, based on the proxy information that we have. Specifically, as demonstrated in the FTC report

and elsewhere, less than 5% of all consumers dispute the validity of debt they are notified about through the Validation notice, and only a small percentage of those consumers pursue additional steps to continue to contest the debt if it is validated beyond that stage.

In other words, consumers overwhelmingly appear to recognize and acknowledge the validity of a debt that they are notified of from a debt buyer.

Additionally, DBA is concerned that adding additional information to a validation notice may make it more overwhelming and confusing for consumers, and so while debt buyers will provide additional information to consumers when requested, requiring such disclosure upfront is more likely to have adverse consequences.

Also, as discussed above, debt buyers do not always have access to some of the information indicated above from original creditors, and so obtaining that information may increase delay and cost with no benefit to the vast majority of consumers.

In addition, the use of additional, highly sensitive data, such as social security number, account number, doctors, medical groups, hospital, identification of services, etc., would need to take into account all of the laws that touch this information, including HIPAA, GLBA, the FCRA, and other privacy and data security laws and regulations at the federal and state levels. Further, additional disclosures raise costs, increase risk of accidental disclosure and identity theft, and increase consumer confusion. Therefore if the CFPB goes down the road of requiring additional disclosures, it will need to consider all of the possible ramifications of disclosure when applying rules so that conflict/confusion is minimized.

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

DBA does not have specific information about a consumer’s ability to understand a statement regarding their rights, though DBA members strive to make it as comprehensible as possible within the confines of the law.

As discussed in the response to Question 22, DBA is very interested in working with the CFPB to devise a "summary of rights" that could help makes consumers aware of their rights in a searchable and convenient way.

DBA strongly believes that consumers who owe a debt should be aware of all of their rights under the law. However, there has also been significant consumer confusion and litigation over what constitutes consumer disclosure and confusion in a validation notice. See, *Caprio v. Healthcare Revenue Recovery Group LLC*, 2013 U.S. App. LEXIS 4221 (3d Cir. Mar. 1, 2013). Therefore, the risk of increasing consumer confusion with additional requirements and disclosures is an acute risk that must be taken into account. [12]

DBA believes that lengthier notices may result in a less knowledgeable consumer. Anecdotally, during recent state legislative negotiations, DBA found several consumer groups that came to the same conclusion that DBA has on the beneficial versus detrimental effects of long and detailed consumer notices.

DBA would therefore like to recommend that the CFPB develop a uniform national consumer notice that would be required on all written communications to consumers.

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[12] The CFPB ANPR suggests at least 25 additional disclosures that could be added to the validation notice. DBA believes that these additional disclosures would make the validation notice more confusing for consumers:

- The name and address of the alleged debtor to whom the notice is sent (Q 18)
- The names and addresses of joint borrowers (Q 18)
- A partial Social Security number of the alleged debtor (Q 18)
- The account number used by the original creditor or a truncated version of the account number (Q 18)
- Other identifying information (Q 18)
- The name of the original creditor (if different from current owner) (Q 18)
- 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) (Q 18)
- The name of the doctor, medical group, or hospital for medical bills ancillary to their provision of services (*e.g.*, a testing laboratory) (Q 18)
- Type of debt (*e.g.*, student loan, auto loan, etc.) (Q 18)
- Date and amount of last payment by the consumer on the debt (Q 18)
- Copy of last periodic statement (Q 18)
- Last periodic statement or billing statement (Q9)
- Notice of consumer rights (Q 19)
- Consumer notice that if they send a dispute or request for verification, collection efforts are suspended (Q 20)
- Consumer can request that collector cease communications (Q 20)
- Consumer can refer the collector to an attorney (Q 21)
- Consumer can notify collector of inconvenient times (Q 21)
- Consumer can inform collector not to call at work (Q 21)
- Enclosure of a separate "summary of rights" document (Q 22)
- Disclosure that a debt may be time-barred (Q 133)
- Disclosure that a partial payment may revive a time-barred debt (Q 137)
- Disclosure that other actions by a consumer may revive a time-barred debt (Q 140)

Such a notice would direct consumers to a searchable Consumer Notice Web Page maintained by the CFPB, where consumers could learn their rights on specific topics that apply to their circumstances.

Here is a sample 62 word consumer notice for CFPB's consideration:

"*<u>IMPORTANT NOTICE</u>: As a consumer who owes or may owe a consumer debt, you are provided certain protections and rights by federal and state laws regulating debt collection procedures. You should be aware of your rights and should not permit your rights to be violated. For more information about your rights, contact the federal Consumer Financial Protection Bureau at [insert approved telephone number] or [insert approved website address].*"

In fact, having a searchable notice created by the CFPB would enhance consumer comfort with the notice, and would enable consumers to search for information that is specifically relevant to them.

However, DBA does NOT believe that this notice should be provided to consumers in the form of a separate, paper notice, but should be provided on the Validation notice and as part of all consumer disclosures. First, it is more likely to be seen by consumers if it is provided as part of the principal communication. Second, a separate notice could add to the confusion of consumers. Additionally, providing a separate piece of paper with current disclosures would be costly for debt buyers by adding additional pages to the disclosure.

Further, the benefit of a separate piece of paper to consumers would be minimal, and could be detrimental.

Q20: Should consumers be informed in the validation notice that, if they send a timely
written dispute or request for verification, the debt collector must suspend collection efforts until it has provided the verification in writing? Would any other information be useful to consumers in understanding this right? Should consumers be informed in the validation notice of their right to request that debt collectors cease communication with them?

As discussed in the response to Question 19, DBA strongly believes that consumers who owe a debt should be aware of <u>all</u> of their rights under the law, and therefore we urge the CFPB to develop a uniform national consumer notice that would be required on <u>all</u>

written communications that directs the consumer to a searchable Consumer Notice Web Page maintained by the CFPB where consumers can learn about their rights on specific topics that apply to their circumstances.

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

As discussed in the response to Question 19, DBA strongly believes that consumers who owe a debt should be aware of all of their rights under the law, and therefore we urge the CFPB to develop a uniform national consumer notice that would be required on all written communications that directs the consumer to a searchable Consumer Notice Web Page maintained by the CFPB where consumers can learn about their rights on specific topics that apply to their circumstances.

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

The benefit of a consistent "summary of rights" leaves little question as to what should be included and lowers the cost of creating the summary, and limits legal exposure by creating a rule/law that attempts to outline the requirements which may be interpreted various ways or misunderstood.

It would also potentially reduce the "clutter" on the validation notices, and could put all disclosures in one place.

DBA would like to work with the CFPB to develop a "Summary of Rights" that could be included with validation notices. The DBA strongly believes that the CFPB should develop a web site link to a CFPB overview of consumer rights that could be included in the validation notice, as discussed in the response to Question 19.

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

Debt collectors typically include a state level disclosure from the state that the notice is being sent to, along with the disclosures that are required to be provided in the initial demand, as required by the FDCPA.

While some DBA members provide some additional information to consumers in the Validation notice, most do not because of the uncertainty regarding the FDCPA, and the risk of inadvertent or technical violations.

In other words, the irony is that the statute that is designed to help protect consumers and provide more information has become such a compliance and liability morass that even those that want to provide more information to consumers are not able to do so for fear of liability.

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

All debt buyers recognize the need to service consumers in a language they best understand, and will make accommodations as necessary, if possible. Collectors will attempt to communicate with a consumer if there is a language indicator, to the extent that they have collectors that speak that language available. Most have Spanish speaking collectors available to interact with consumers, but very few have regular access to collectors that speak a language other than English or Spanish.

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

As an initial consideration, if there is a language indicator, DBA would suggest that the validation notice should be provided in that language, to the extent that such translators are available. However, translators for languages other than Spanish may be difficult to find and expensive to use, so those considerations must be taken into account.

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

DBA members believe that it would be more effective and efficient to be able to contact consumers through email and other electronic means, and would be more beneficial and convenient for consumers. However, the vast majority of DBA members believe that there is a greater risk of liability that may result if they attempt to use communications methods other than phone or mail.

DBA found that only 15% of all collectors communicate with consumers through email or other electronic means; these numbers are limited primarily because of concerns about possible liability.

If a consumer contacts a DBA member through email, text or online chat available through the debt buyer's website, then the DBA member may respond through a similar medium, taking the consumer's use of that medium as consent. However, not all do so.

In fact, some DBA members do not accept electronic communications such as email from consumers as valid notification because it is not "in writing."

DBA strongly urges the CFPB to update the FDCPA and TCPA to enable debt buyers to communicate with consumers through electronic communications methods, such as cell phone, email and text.[13]

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

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[13] DBA plans to file a comment in support of a Federal Communications Commission (FCC) petition filed by the American Collector's Association (ACA), seeking to clarify several rules and practices regarding the TCPA.

correspondence, what process do debt collectors currently require to revoke this consent?

No, E-Sign does not appear to work well in the debt buying industry. Debt buyers are concerned about liability, and, as mentioned above, often do not communicate with consumers electronically even if consumers initiate a communication through such means.

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

While DBA members believe that it would be very beneficial to consumers to treat emails, text messages, or other forms of electronic communications as satisfying the "in writing" requirement, as discussed above, liability concerns have minimized that effort.

Consumer Testing of Validation Notices

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

Because of different types of debts, different state requirements and certain cases that have tested the language contained in letters/notices, there is no single "model" validation notice that can serve as "the one" for everyone.

As discussed in the response to Questions 19-23, DBA recommends that the CFPB develop a uniform national consumer notice that would be required on <u>all</u> written communications that directs the consumer to a searchable Consumer Notice Web Page maintained by the CFPB where consumers can learn their rights on specific topics that apply to their circumstances.

Q30: Is there consumer testing or other research concerning consumer understanding or

disclosures relating to validation notices that the Bureau should consider? If so, please provide any data collected or reports summarizing such data.

DBA does not have information about a consumer's ability to understand a statement regarding their rights, though DBA members strive to make it as comprehensible as possible within the confines of the law.

However, as discussed in the response to Questions 19-23, DBA recommends that the CFPB develop a uniform national consumer notice that would be required on all written communications that directs the consumer to a searchable Consumer Notice Web Page maintained by the CFPB where consumers can learn about their rights on specific topics that apply to their circumstances.

Q31: What types of consumer inquiries do debt collectors currently treat as "disputes"
under the FDCPA? What standards do debt collectors currently apply in distinguishing disputes from other types of consumer communications? What data exist to indicate the percentage of debts that are disputed, and what definition of "dispute" is being used to arrive at this percentage? What data exist to indicate how disputes are resolved by debt collectors?

The type of inquiries and disputes raised by consumers vary widely, and debt buyers attempt to address each one individually. Debt buyers and the DBA Certification Program treat any communications received from a consumer regarding their account as items that should be responded to regardless of whether or not they meet a certain standard in order to qualify legally as an official type of communication, (*e.g.*, "dispute.") This includes consumer inquiries that are received through the CFPB consumer response system. [14]

Debt buyers review the incoming inquiries and disputes, and investigate each individually. For example, an allegation of identity theft would be handled much

[14] The terms "dispute" and "complaint" should be clearly defined and delineated by the CFPB, especially within the CFPB complaint portal. All disputes are not complaints. A "dispute" should relate to a "consumer disagreement about facts relating to whether they are responsible for the entire amount of the debt the collector is seeking to collect." While a "complaint" should relate to "a consumer concern related to conduct which was engaged in by a creditor or a debt collector in connection with efforts to collect a debt".

differently than a dispute that the balance was incorrect based on an uncredited payment.

With such variances, DBA does not have any empirical data as to how disputes are handled.
DBA requires a certified entity to "Establish and maintain written consumer compliant and dispute resolution policies and procedures that instruct employees how to handle and process consumer complaints and disputes in compliance with the Certification Program and applicable laws and regulations, including, but not limited to, the Fair Debt Collection Practices Act and the Fair Credit Reporting Act."

Under the DBA Certification Program, a Certified Professional Receivables Company must also have a Chief Compliance Officer who oversees responses to any consumer complaints. Any incoming communication outside of normal day to day business, such as an incoming regular payment, is typically reviewed by debt buyers and responded to as necessary based on content.

With regards to resolutions, DBA has found:

- 85% of all debt buyers report that less than 5% of their accounts are disputed; only 5% reported that they encounter disputes on more than 20% of their accounts.

- 90% of debt collectors reported that they investigate every dispute, and 97.5% investigate more than 25% of their disputes.

- 82% of debt buyers reported that they find an error less than 5% of the time that an account is disputed, and only 1.2% indicated that they find an error 50% of the time or more.

While DBA does not have empirical evidence regarding the percentage of accounts that are disputed and the resolution of those disputes, extrapolating data from other sources reveals that dispute and error rates are very low, and consumer concerns are low, as well:

- The 2012 Consumer Financial Literacy Survey provides some approximate numbers. Specifically, approximately 21 million Americans have debts in collection, and in 2012 there were 11,495 FDCPA lawsuits filed against debt collectors, a general measuring stick for the debt collections industry as to a degree of escalated disputes and/or complaints that were not resolved to the

consumer's satisfaction. This demonstrates that a tiny fraction of accounts (less than one tenth of one percent) in collections are not being resolved to the consumer's satisfaction.

- DBA found that only 10% of all DBA members received disputes on more than 10% of their accounts.

- According to the FTC, "consumers disputed 3.2% of the accounts on which debt buyers in the sample attempted to collect," (p. 38) and that debt buyers "verified 51.3% of the debts that consumers had disputed." (P. 40)

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

Each particular type of debt can have individual contractual terms that vary widely from debt type to debt type which can cause confusion to the consumer over information such as the total amount they owe, the interest rates they are charged, and the legal name of the lender.

Generally speaking, when the initial marketing of the underlying product is conducted without full disclosure of the terms of the consumer obligations, there tend to be higher dispute rates. (*i.e.*, gym and "Book of the Month Club" memberships). Additionally, accounts that may not have had collection attempts made on them for a significant amount of time can result in higher dispute rates, as consumers may have misinterpreted the lack of activity for resolution.

Based on anecdotal evidence, disputes have risen steadily over all asset classes due to the surge of websites created by consumer groups providing direction on how to avoid paying a collector. Some of these websites charge consumers for packages of 'legal information' that consumers then send off to collection agencies and/or debt buyers, often with "legal authority" that is not applicable to the consumers situation. Many of these sites also offer legal advice to consumers from non-attorneys.

Dispute rates, defined as consumer disagreement over the fact of the account, tend to revolve around the debt itself, not the party collecting the account, so the rates between debt buyer and third-party agencies is consistent.[15]

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[15] "[T]he FTC's analysis revealed that there was no statistically significant relationship between the likelihood that a debt was disputed and a debt's age or face value. The Commission's analysis also did

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

Please see the response to Question 31.

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

As discussed in the response to Question 31, debt buyers and the DBA Certification Program currently treat any communications received from a consumer regarding their account as items that should be responded to regardless of whether or not they meet a certain standard in order to qualify legally as an official type of communication, (*e.g.*, "dispute.")
However, DBA has concerns about codifying such a standard, as it could open companies up to possible liability for trying to do "the right thing" for consumers. Instead, we believe that current standards under 15 USC 1692g are the appropriate legal standards.

Dispute Requirements

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

DBA believes that the right of the consumer to send a dispute shouldn't necessarily be contingent upon them receiving a validation notice, and while having additional

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not find any statistically significant difference between disputes for debts purchased directly from original creditors and for debts purchased from resellers of debts."

information to conduct a dispute makes it easier for both the debt buyer and the consumer, consumers should not be *required* to provide additional information.

Debt buyers will make an effort to respond to non-frivolous, non-duplicative consumer questions and disputes.

However, the more information a consumer provides, the better able a debt buyer is to respond to the consumer's question or dispute in a helpful way.

It would also be helpful to provide consumers a voluntary resource where they could fill out a premade dispute form, if they choose, requesting information that could expedite resolution when a debt buyer receives such a communication, such as the information submitted with a FCRA complaint. At the very least having the consumer identify themselves (name and current and previous address), the disputed account information (account number, balance, bank) and the nature of the dispute (fraud, balance, unknown account, paid prior, etc.) would provide a great deal more than is often provided now in order to investigate the dispute.

The costs of requiring information would fall on the consumer, but the benefits would outweigh that burden. For example, giving more information to debt buyers and collectors makes it easier for them to accurately and quickly investigate the claim the consumer is making.

A debt buyer's ability to investigate and substantiate a disputed debt with little or no information can be limited, as the burden falls on the debt buyer to determine who the consumer is, and what they are attempting to dispute. In fact, while debt buyers will attempt to complete such disputes, 80% of DBA members believe that such disputes are used primarily as a delaying tactic more than half the time.

Additionally, debt buyers find that consumer provided documentation is a significant tool in determining the accuracy of the account and identifying the correct consumer. When documents are provided by the consumer, 7.5% of all disputes result in a balance adjustment in favor of the consumer. The ability to investigate can be impeded further if the consumer files a dispute which includes a cease and desist request on all further communication, it could be practically impossible to fully investigate such a dispute.

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

particular circumstances or the alleged debt, or do they typically appear to be unrelated to the consumer's particular circumstances or the alleged debt? What types of specific disputes are most commonly received by debt collectors (*e.g.*, identity theft, wrong amount, do not recognize the debt, previously paid, previously disputed)?

The specificity of consumer disputes varies widely, as do the statements that debt buyers receive from consumers.

While the percentage of accounts that are disputed is very low, disputes about "don't recognize the debt" is the most received type of dispute received (61% of all disputes), followed by "wrong amount" at 12%, identity theft at 11%, and previously paid at 9%.

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

Generally, debt buyers will investigate the dispute no matter when it is received. It would not be an industry standard practice to refuse to acknowledge the dispute simply because the initial 30 day time frame had lapsed.

However, the process for verifying disputes may vary depending on what part of the collections cycle the account is in. For example, if a dispute letter is received after the 30 day window but before any litigation may have been filed, then the debt buyer will generally conduct an investigation along the same lines that they would have prior to the expiration of the 30 day period following the validation notice.

If a dispute has been received during litigation but before a judgment has been rendered, then the debt buyer will investigate the dispute as required under the discovery rules that govern the jurisdiction where suit has been filed.

If it has been received after a judgment has been rendered, then the debt buyer will follow the normal post-judgment process for that jurisdiction.

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

80% of all disputes are resolved within a month, but the time to respond to a consumer dispute can vary greatly depending on the debt type, the debt age, the original creditor, the debt buyer's internal process, information provided by the consumer, and many other variables.

For example, if the documentation supporting the account is readily available from the original creditor to provide back to the consumer, the debt buyer can reply in just a few days. On the other hand, if the documentation is not readily available, it may take several weeks for the debt buyer to respond, as they may have to request the documents from other places.

Establishing a set time frame to respond to a dispute would not benefit consumers, because debt buyers already have an incentive to respond to consumers as quickly as possible – they cannot undertake further collection activity while a dispute is pending, and DBA members cannot sell disputed debt until the dispute has been resolved.[16] Adding a specific time frame would not "speed up" the process.

Further, without imposing specific requirements on the original sellers to provide information, it would be unfair to impose a deadline for responding to a consumer dispute on a debt buyer. Often times for more extensive investigations, the debt buyer has to rely on other parties. It should be sufficient to impose a collection activity restriction on debt buyers until the disputes are responded to.

If the CFPB were to consider such a time frame, DBA would suggest that the time frame be imposed without prejudice, so that if the debt buyer is able to confirm the debt outside of the original time frame, they should be able to reinstate the debt. In other words, if it takes the debt buyer longer to complete their investigation than the allotted time, the debt buyer should be able to reinstate the debt if it is validated outside of that time frame. As discussed previously, debt buyers often do not have direct access to all of the documentation that may be necessary to validate the debt, and so it may take

[16] *See* DBA Certification Standards, discussed previously.

longer to obtain that information from original creditors and complete an investigation. However, there is a chance that this could cause some confusion among consumers, as they would suddenly find that a debt that they thought was not validated suddenly becomes valid again.

The costs of imposing a deadline would potentially be very high on debt buyers, as they would have to potentially request expedited document production from original creditors, and it would not benefit consumers because collection efforts stop during the dispute investigation, so a quicker time frame could reinstate those activities sooner.

Investigation of Disputed Debts

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

Debt buyers will make an effort to respond to non-frivolous, non-duplicative consumer questions, disputes and complaints, and in fact the DBA Certification Program treats any communications received from a consumer regarding their account as items that should be responded to, regardless of whether or not they meet a certain standard in order to qualify legally as an official type of communication (*e.g.*, "dispute.") This includes consumer inquiries that are received through the CFPB consumer response system.

80% of disputes are resolved within a month. However, the more information a consumer provides, the better able a debt buyer is to respond to the consumer's question or dispute in a helpful way.

Disputes are handled differently by debt buyers based upon the type of the dispute and the facts relating to the account, and they do look beyond the information contained in the validation notice to validate a debt if appropriate. For example: a dispute over the balance due might require the debt buyer to contact the original creditor to obtain additional documentation, the payment history and payment application. A consumer's claim that they may not be liable at all for the debt may require a contractual analysis. A dispute over whether the debt is past the statute of limitations requires factual determinations and an analysis of applicable state law, and may require contract interpretation.

DBA believes, as discussed in above, that if additional documentation is provided to debt buyers on the front end of the sale, that that would make the investigation process

easier and quicker for all. However, given the limitations of data availability, DBA believes that our members are undertaking a full and adequate investigation process, and responding to consumer questions, complaints and disputes as required under the FDCPA and the DBA Certification Standards. However, we also believe that as more DBA members become Certified and implement the changes required by the Certification Standards, such as hiring a compliance officer, those individuals may be able to identify company-specific policies and practices that may make their reinvestigation process more efficient and effective. However, those are likely to be company-by-company changes, and not practices that can be imposed by regulation.

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

Debt buyers will make an effort to respond to non-frivolous, non-duplicative consumer questions, disputes and complaints, and in fact the DBA Certification Program treats any communications received from a consumer regarding their account as items that should be responded to, regardless of whether or not they meet a certain standard in order to qualify legally as an official type of communication (*e.g.,* "dispute").

DBA believes that these requirements, in conjunction with the requirement that DBA members employ a compliance officer, will establish a "gold standard" for the investigation process.

Given the wide variety of types of debts and types of disputes, DBA does not believe that specific standards would be broad or flexible enough to cover all of the various possibilities of disputes that are received. With regards to a "reasonable" standard, DBA is very concerned that such a standard could become more of an invitation to litigation than a protection to consumers, and that such an outcome would take years to resolve and would not benefit consumers or debt buyers.

Further, investigating whether certain portfolios result in higher rates of dispute may not necessarily be indicative of whether a particular portfolio is suspect. For example, as explained above, different types of accounts may experience higher dispute rates, such as gym memberships or accounts that have been dormant for a while, and those may be sold together in a single portfolio.

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

See the responses above. The elements of the appropriate investigation will vary on an account by account and a dispute by dispute basis, and will turn on a variety of factors, including the description and nature of the dispute, the level of detail and documentation provided by the consumer, and the timing the dispute within the collection cycle. An identical dispute claiming the debt is not owed by the consumer may be evaluated differently if it is received early in the collection process in response to a validation letter, as opposed to being received later in the process, such as in response to a garnishment request after a valid judgment has been entered.

Debt buyers will review the dispute as described by the consumer, any documentation provided by the consumer, any relevant information in their files that bears upon the account and the dispute, and will request supporting documentation from the original creditor when necessary. While there cannot be a perfect standard to address disputes, perhaps a requirement for a longer retention period under the Truth in Lending Act (TILA) combined with greater access to documentation and information by debt collectors and debt buyers would obviate the majority of the issues. See previous discussion.

FCRA Obligations

Q42: What percentage of debt collectors are "furnishers" under the FCRA? How many

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

DBA found that about 30% of all DBA members are "furnishers" under the FCRA.

Debt buyers receive about 44% of disputes directly from consumers, about 10% from credit repair services and the rest from other sources, including consumer reporting agencies.

While debt buyers may place disputes received through the FCRA process higher in the "queue" to resolve because of the strict FCRA timelines, the dispute and resolution processes are similar – debt buyers will review the relevant information that consumers provide, whether directly or through the E-OSCAR system, and will evaluate what other type of information that they may need, and will acquire that information from the original creditor.

Documentation that can now be sent to furnishers through the E-Oscar dispute system will alter the handling of the CDVs sent by consumers but it is too early to evaluate.

90% of debt buyers investigate every dispute, and an additional 7.5% investigate at least 90% of all disputes.

Upon receipt of a request for validation, debt buyers uniformly cease communications until a verification request is fulfilled or the account may be closed with no further communication. Debt buyers do not report to credit bureaus during the validation period.

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

About 20% of all disputes are duplicate disputes that do not include any new information.

90% of debt buyers will investigate a dispute even if they are unclear or incomplete.

Debt buyers receive about 44% of disputes directly from consumers, about 10% from credit repair organizations and the rest from other sources, including consumer reporting agencies.

18% of debt buyers have indicated that a majority of the disputes that they receive from credit repair organizations are duplicates that do not include any new information.

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

Yes, the CFPB should establish an exception for "frivolous" OR "irrelevant" disputes, along the lines of the FCRA (not "frivolous" AND "irrelevant") (although "redundant" might be a more appropriate term) disputes.

Specifically, like the FCRA, the FDCPA should have a provision that renders a dispute frivolous or irrelevant if a consumer fails "to provide sufficient information to investigate the disputed information." While DBA members generally attempt to investigate a dispute even if a consumer does not provide any information, if the consumer does not provide sufficient information to allow a debt buyer to investigate their dispute, the attempted dispute should be exempt from the investigation process.

If a debt buyer receives a dispute that is substantially identical to a dispute that it has previously received and responded to, it might be beneficial to have the CFPB draft a standard deeming this as a "redundant" dispute, along with guidelines exempting debt collectors from having to respond to such disputes. In addition, the CFPB should make clear, consistent with section 1681s-2(a) of the FCRA, that there is no private right of action based upon a collector's failure to investigate a direct dispute.

The investigation incentives for debt buyers, and particularly DBA members, are different than those of other creditors, because DBA members do not communicate,

collect *or sell* their debt during a pending investigation, so they have an incentive to complete the reinvestigation process quickly and accurately.

The majority of debt buyers believe that the cost of reinvestigating frivolous or irrelevant debts is "significant."

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

The answer depends on the specificity of the complaint and information provided by the consumer and original creditor.

The FDCPA and various state statutes already define what types of documents and disclosures are required and effective for consumers to verify a debt. Although DBA members attempt to provide consumers with documentation that goes above and beyond the requirements of the FDCPA when it is available, additional documentation is not always available (*see discussion regarding original creditors),* and even if it were available, adding additional documents and disclosures could lead to additional consumer confusion.

If the incoming dispute is generic, and does not address any specific concerns, or provide specific information, a generally acceptable business practice among debt buyers is to provide the consumer with the documentation available to them from the original creditor to validate the debt. The type and volume of documentation can vary by debt type. This documentation can consist of anything from a charge off statement for a credit card to a full mortgage origination file.

If there are specific claims made in the dispute from a consumer, the debt buyer will respond to those individual claims. Because of the wide variety of disputes and the specifics that may be involved each, debt buyers generally do not utilize automated processes to respond to disputes, but instead utilizes an individual or group of individuals that reviews and responds to disputes including pertinent information when possible.

When the consumer alleges identity theft and an affidavit of identity theft has not been provided most debt buyers will reply to the consumer with an identity theft packet that provides the consumer with an affidavit to fill out and additional steps to take to ensure that they notify all important institutions regarding the theft.

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

As discussed above, although DBA members attempt to provide consumers with documentation that goes above and beyond the requirements of the FDCPA when it is available, additional documentation is not always available.

Additionally, obtaining and providing additional documents could add to the time it takes to respond to a consumer dispute, as the documents may have to be requested from the original creditor.

For some older debt, monthly billing statements may not be available, such as where payment books were issued to the consumers or gym memberships.

It is in debt buyers' best interest to provide as much information as possible to clarify any questions the consumer has in the first attempt to resolve in order to continue to collect the underlying debt.

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

See responses above.

Not all debt types have the same information available, requiring any standardization of validation information wouldn't be prudent until all originating institutions are required to provide uniform information to consumers that could then be transferred to a debt buyer.

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

As discussed elsewhere, debt buyers would like to be able to communicate with consumers through email and other electronic communications, particularly when a consumer expresses a preference for such communications. However, legal uncertainty has inhibited that use and adoption.

For instance, 22% of debt buyers do not use any form of electronic communications for any purpose, including electronic bill payment.

83% of debt buyers provide validation electronically if requested by the consumer, but 27% will not accept electronic communications.

55% of debt buyers allow for electronic notice of dispute from consumers, but 45% do not.

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

While there may be consumers who may believe that a debt was verified in error, the CFPB must carefully balance that concern against those that may seek to abuse the system to discharge valid debts. Given the very low rate of dispute and complaints against debt collectors, DBA would argue that the balance has been pretty carefully crafted.

According to the 2012 Consumer Financial Literacy Survey, approximately 21 million Americans report they have debts in collection. In 2012 there were 11,495 FDCPA lawsuits filed, a general measuring stick for the debt collections industry as to a degree of escalated disputes and/or complaints that were not resolved to the consumer's satisfaction. This represents a tiny fraction of accounts (less than one tenth of one percent) in collections that aren't being resolved to the consumer's satisfaction.

However, we would like to work with the CFPB to identify if there are other ways to ensure that consumers who have legitimate concerns about a debt are protected, but at the same time, debt collectors want the ability to determine "substantial validation" so that consumers do not continue to repeatedly dispute valid debt.

Before such a requirement can be put into place, or in conjunction with such a requirement, the CFPB should consider implementing guidelines of substantial validation and frivolous disputes so that consumers do not continue to repeatedly dispute valid debt.

Any valid dispute investigated where the outcome is finding an error typically results in the account being closed or the portion of the account that was incorrect being fixed. It is not in any debt buyer's best interest to continue to work on an account that had a valid dispute finding.

Under DBA Certification guidelines, disputed debt may not be re-sold.

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

There are many different types of accounts and disputes, and therefore many ways in which disputes are handled by the companies. However, 90% of debt collectors reported that they investigate every dispute, and 97.5% investigate more than 25% of their disputes.

If warranted, the accounts are closed and/or returned.

For accounts that are unverifiable, the current practice is to close the account.

Depending on the individual debt buyer they may or may not have third party agencies working the accounts, and their contract terms would dictate whether the agency returns the account to the debt buyer.

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

After an investigation is conducted, a debt buyer will send follow up correspondence to the consumer, either to validate the debt or to notify the consumer that an error was identified and explaining the nature of the error. Depending on the severity of the

situation, there may also be additional follow up phone calls and additional communication.

For example, if the investigation finds that the debt is valid but the amount owed has changed, then the debt buyer will contact with the consumer and reverify the debt. If, on the other hand, the investigation determines that the consumer is the wrong person, the debt collector will cease communications with the consumer and attempt to identify the correct consumer, or may close and/or return the debt.

Follow up time frames can vary widely from situation to situation, but it is generally done in a timely manner as soon as the information is received and can be communicated.

According to the FTC, "consumers disputed 3.2% of the accounts on which debt buyers in the sample attempted to collect," (p. 38) and that debt buyer "verified 51.3% of the debts that consumers had disputed." (P. 40)

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

DBA's Debt Buyer Certification requirements do not allow for the resale of disputed debts, and collection efforts and reporting to CRAs stop during the investigation.

DBA does not believe that disputed debt should be sold and, if it is, such status should be clearly disclosed to any purchasers.

Reporting of Unvalidated Debts

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

Delaying the reporting of a debt to a CRA could have a potential adverse effect on a lender who is considering lending to a consumer whose account is in collection, because

the lender may not have notice of an adverse payment history during the loan application process.

Delaying the reporting of a debt to a CRA is likely to have a minimal impact on a debt buyer, however, since almost all debt buyers will accept a dispute past the 30 day window, and if they are a "furnisher" under the FCRA, any reporting would be removed during a dispute anyway.

Part 4: Debt Collection Communications

A. Advances in Communications Technologies

The debt collection landscape has changed dramatically since the FDCPA was enacted in 1977. Perhaps the greatest transformations have occurred in the technologies that debt collectors and debt owners use to communicate with consumers. The statute itself contemplates communications via telephone, postal mail, and telegraph, but it does not reflect the advent of the internet, smartphones, autodialers, fax machines, and social media. These newer technologies present new challenges and new opportunities. The challenges often arise when attempting to apply the FDCPA's prohibitions to a technology that was not envisioned at the time of its enactment and may not easily fit its statutory framework. Nonetheless, these technologies also create new opportunities for consumers, debt collectors, and debt owners to communicate in ways that may be more convenient and less costly than prior methods.

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

As discussed above, debt buyers do not frequently utilize technologies aside from telephone and mail because of concerns about liability and running afoul of the FDCPA.

When Congress enacted the FDCPA in 1977, answering machines were rare, and electronic communications were not even in existence. Given the wide spread use of electronic and mobile communications, consumers expect to use technology as a vital means to communicate about past due accounts. However, communications other than telephone and regular mail present challenges in their compliance with the FDCPA and applicable law. Accordingly, it would be beneficial for the Bureau to clarify the application of FDCPA and laws regarding unfair, deceptive or abusive acts or practices with respect to voice mail, text messaging, email communication and social media.

DBA believes that it is vital that the CFPB use this Rulemaking opportunity to update and clarify the FDCPA. As discussed previously, DBA plans to file comments in support of the American Collector's Association (ACA) brief with the Federal Communications Commission (FCC) to clarify several aspects of the TCPA, and we would urge the CFPB to work with the FCC to clarify those over-lapping rules that impact debt buyers.

However, debt buyers' concerns about the FDCPA go beyond those issues, and include concerns about basic opportunities for debt buyers to communicate with consumers. For example, as discussed below, DBA believes that there is too much uncertainty regarding when and what type of voicemail message a debt buyer may leave with a consumer, if any. DBA also would suggest that the CFPB clarify what the "in writing" requirement is, particularly with regards to text and email. *See the discussion of Foti for additional concerns about this issue.*

Utilizing "new" technologies like text and email offers significant benefits not only to debt buyers, who could then more effectively communicate with consumers, but also to consumers, who then would have the opportunity to interact with debt buyers in the forum and means that they choose.

DBA feels that consumers should be able to communicate with and respond to collectors through electronic communication and emerging technologies, and would urge the CFPB to clarify the rules to enable that. Currently, while many debt buyers will respond to a consumer through email if initiated by the consumer, many won't because of a concern that such a communication is not "in writing," as defined by the FDCPA, even if that is the desired communication method of the consumer. Further, most debt collectors will not utilize text messages, even if it is the preferred method of communication by the consumer, because of liability concerns.

This would be tremendously beneficial to both consumers and debt collectors. Consumers would be able to communicate and resolve their obligations at times and in

a manner that is most convenient to them, resulting in the ability to dispute and resolve debts quicker. Debt collectors would be able to reduce their overall mail and postage costs, as well as, resolve to disputes and inquiries in a timely and efficient manner.

DBA believes that the use of "new technologies" present minimal additional privacy and data security concerns. To the extent that potential issues arise with respect to privacy and data security the DBA has addressed privacy and data security concerns in its Certification Standards.[17]

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

It is extremely difficult to predict the future of communications and technology. When the FDCPA was enacted in 1977, electronic communications were not contemplated, and voice mail messages were hardly commonplace. That being said, with any technology or communication, meaningful disclosure of the debt collector's identity and that a collector refrain from communicating a consumer's debt to a third party will remain primary concerns.

Because there is no ability to predict what new technologies may develop, DBA would urge the CFPB to enable maximum flexibility, so that new technologies can be adopted to benefit consumers and debt buyers.

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

As with all forms of communications, meaningful disclosure of the debt collector's identity and that a collector refrain from communicating a consumer's debt to a third party remain primary concerns when dealing with social media.

[17] See response to Question 11.

DBA does not see an appreciable difference between the use of social media and other types of communication. Further, treating social media as separate potentially makes it more difficult to adapt to changing technology beyond social media. Also, differing rules will create unnecessary confusion and inefficiencies. Newer technologies also raise an issue similar to the *Foti* dilemma relating to the requirement to provide the mini-Miranda and the simultaneous prohibition against third-party disclosures, as discussed below. All collection communications, including those made via new communication technologies, are subject to the requirements of FDCPA section 807(11), which requires that collectors clearly disclose in both initial and subsequent communications that the communication is from a debt collector. Debt collectors may be concerned that this requirement is in conflict with the prohibition on third-party disclosure under FDCPA section 805(b).

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

As is the case with voice mail messages, providing the mini-Miranda disclosure when sending communications via social media highlights the conflict of the FDCPA's requirement that debt collectors meaningfully identity themselves and the prohibition against communicating with third parties.

B. Communications to Locate Debtors (Section 804 of the FDCPA)

Collectors are generally prohibited from communicating with third parties regarding the collection of a debt, but one exception is location communications.[18] Location communications are permitted under FDCPA section 804 and used by collectors to obtain or update contact information for consumers. That section, for instance, requires a debt collector making location calls to "identify himself, state that he is confirming or correcting location information concerning the consumer, and, only if expressly requested, identify his employer" but not state that the consumer owes any debt.[19] Collectors are also limited to one location communication with a person unless, inter

[18] 15 U.S.C. 1692 (b).
[19] 15 U.S.C. 1692b(1), (2).

alia, "the debt collector reasonably believes that the earlier response of such person is erroneous or incomplete and that such person now has correct or complete location information."[20]

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

Debt buyers take precautionary steps to avoid inappropriate discussions or disclosures with third parties, and additional regulation is unnecessary.

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

DBA believes that this is too subjective to be eligible for a "reasonable" standard.[21]

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

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[20] 15 U.S.C. 1692b(3).

[21] A recent FTC consent order provided standards governing when the debt collector subject to the order has a "reasonable belief" that a third party's prior statements are "erroneous or incomplete." That order required that, to establish such a belief, the defendant debt collector must have:

> (1) conducted a thorough review of all applicable records, documents, and database entries for the alleged debtor Defendants are trying to reach to search for any notations that indicate that the alleged debtor cannot be reached at that telephone number or that the person does not have location information about the alleged debtor Defendants are trying to reach; and (2) obtained and considered information or evidence from a new or different source other than the information or evidence previously relied upon by Defendants in attempting to contact the alleged debtor Defendants are trying to reach and such information or evidence substantiates Defendants' belief that the person's earlier statements were erroneous or incomplete and that such person now has correct or complete location information.

Stipulated Order at 14-15, *United States v. Expert Global Solutions, Inc.*, No. 3-13CV2611-M (N.D. Tex. July 16, 2013), *available at* http://www.ftc.gov/os/caselist/1023201/130709ncoorder.pdf.

This practice is utilized in very discreet circumstances to protect the safety of collectors when appropriate, and is not used to mislead consumers.

Q61: Under FDCPA section 804(1), debt collectors are permitted to identify their employers during location communications only if the recipient of the communication expressly requests that information. Does providing the true and full name of the collector's employer upon request risk disclosing the fact of the alleged debt to a third party? It is possible that providing company name could become a debt disclosure? If so, how could the risk be minimized?

Like other inconsistent requirements in the FDCPA, there is a risk from disclosure and for a failure to disclose. DBA would like to work with the CFPB to develop clarity and a safe harbor for compliance.

What would be the costs and benefits of minimizing or otherwise addressing this risk?

Providing a company name adds validity to the call, but risks disclosure.

Q62: FDCPA section 804(5) bars a debt collector from using any language or symbol on an envelope or elsewhere in a written communication seeking location information if the name indicates that the collector is in the debt collection business or that the communication relates to the collection of the debt.[22] How should such a restriction apply to technologies like email, text message, or fax?

The FDCPA was enacted prior to the use of email and cellular technology. While the privacy and disclosure concerns have not changed, email and texts are fundamentally different from phone calls and mail in that these new technologies are generally accessed only by the intended recipient, and that significantly minimizes the concerns about those disclosures from this "new' technology.

C. Communications with Consumers (Section 805(a) of the FDCPA)

1. Unusual or Inconvenient Times

a. Traditional Communications Technologies (Phones)

[22] 15 U.S.C. 1692b(5).

Section 805(a) of the FDCPA sets parameters on collector communications with consumers, including a bar on contacting consumers at "any unusual time or place or a time or place known or which should be known to be inconvenient to the consumer."[23] The statute further states, "In the absence of knowledge to the contrary, a collector shall assume that a convenient time for communicating with a consumer is" between 8:00 a.m. and 9:00 p.m., local time in the consumer's location.

The advent of mobile phones complicates the determination of what times are unusual or inconvenient. Mobile phones are, increasingly, the prominent mode of telephone communications.[24] With landline phone numbers, a collector can generally determine the consumer's time zone using the area code for the number (call forwarding is one exception). But consumers may take mobile phones anywhere and travel to different time zones is not uncommon. In addition, many consumers now keep their mobile phone number when they move, so that the area code for their mobile phone does not match the area code of their current residence. Collectors that use area codes or home addresses to determine convenient calling hours therefore may inadvertently call earlier or later than the law permits. In the 2009 FTC Modernization Report, the FTC recommended that collectors be permitted to assume, for the purposes of determining appropriate calling hours, that the consumer was located in the same time zone as her home address.[25]

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

There is sufficiently reliable technology to allow collectors to screen to determine whether a given phone number is a landline versus a mobile number, and an area

[23] 15 U.S.C. 1692c(a)(1).
[24] Eighty-nine percent of U.S. households now own a mobile phone, up from 36% in 1998, while 71% of households own a landline, down from 96% in 1998. Moreover, mobile-only households are on the rise among younger households, with about two-thirds of households led by people ages 15 to 29 having only mobile phones. Jeffrey Sparshott, *More People Say Goodbye to Landlines*, Wall St. J., Sep. 6, 2013, at A5.
[25] *2009 FTC Modernization Report* at vi.

code to determine a consumer's time zone. The benefit of conducting such screenings outweighs the cost to conduct such screenings. Collectors should be allowed to rely on information provided by consumers at the time they applied for credit, but debt buyers also conduct additional screening to confirm that the number is a landline or mobile phone number.

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

The home address should prevail to determine the consumer's local time zone, as that address was disclosed by the consumer as their home address.

b. Newer Communications Technologies (Email and Text Message)

The legislative history of the FDCPA indicates that the restrictions on convenient hours in section 805(a)(1) were intended to apply principally, or perhaps exclusively, to telephone communications rather than postal mail.[26] Newer technologies like email and text messages present challenges in applying section 805(a)(1) because the technologies themselves are hybrids between the textual nature of postal mail and the immediate delivery of telephone calls (as with faxes). For email, recipients arguably do not receive their messages until they affirmatively check their email account, thus allowing consumers to control when they view new messages. However, some consumers have devices that notify them when the email is delivered to their email provider, such as a smartphone that makes a sound upon the delivery of an email. The extent to which the receipt of an email occurs at an unusual or inconvenient time may therefore differ greatly among consumers.

Text messaging presents similar but distinct issues. Text messages arrive primarily over telephones, whereas emails can arrive on any device with an internet connection. As with email, a consumer may not view a text message until long after it was delivered to her phone, but many consumers are alerted when a text message arrives, often by an audio alert.

[26] *See, e.g.*, S. Rept. 382, 95th Cong., at 2 (1977); 123 Cong. Rec. S13851, 13854 (daily ed. Aug. 5, 1977); H. Rept. 5294, 95th Cong., (1977) (prior version of the bill specifying that the hours restriction applied to telephone calls).

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

Unlike telephone calls, which require an immediate and interactive response, particularly when the FDCPA was enacted, and answering machines were rare, technology such as email and texts provide recipients with the ability to choose how and when to access and respond to a particular message. This is a significant distinction. Consequently, there should not be a limitation on usual times for email, text messages or other "new" media communications.

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

No, there should be no limitation on usual times for "new" communications such as text and email, because recipients have the ability to choose how and when to access and respond to a particular message.

As discussed above, debt collectors should be allowed, or even encouraged, to respond to consumers in the form that they express a preference for, as indicated by their choice of methods to contact the debt buyer.

While DBA is not aware of particular technology that can reliably determine when an electronic message is received by the consumer, email and text messages are in broad, wide-spread use, and DBA is unaware of any significant complaint by consumers or others in other contexts about unreliability in the delivery of email or text messages.

DBA is unaware of any statistics regarding audio alert usage frequency.

Q67: Is there a general principle that can guide the incorporation of standards on unusual times for communications to newer technologies? For instance, should

such restrictions apply only to technologies that have "disruptive" effects, like phone calls, and if so, how might "disruptive" be best defined? What would be the costs and benefits of applying any such general principles?

DBA suggests that the use of electronic communications such as text and email to communicate with consumers would *enhance* the consumer experience, particularly when this type of communication is initiated by the consumer. As discussed above, because consumers can determine when and how they access their email and text messages, a limitation on communication times does not make sense in that context.

With regards to "disruptive" communications, DBA submits that that is not the right context to address this issue. When the FDCPA was enacted, consumers generally did not have access to answering machines, and therefore had to answer all calls. However, with texts, emails and telephone calls, consumers can ignore these communications when they arrive, and can respond to them when it is convenient for the consumer. Therefore, the test should not be whether the communication is "disruptive," but should focus on whether the consumer has an opportunity to ignore the communication and respond when it is convenient for them.

Further, as with the consumer's ability to request the debt collector cease telephonic communications, the consumer can request that they do not receive any electronic communications, or can limit the times that debt buyers can communicate with them; this would limit any "disruptive" impact.

2. Unusual or Inconvenient Places

Inconvenient Places. The Bureau seeks comment about the types of places, if any, that are unusual or that collectors know or should know to be inconvenient for them to contact consumers.

As a general matter, the consumer has the ability to determine when and how they want to access email and text messages, and so DBA would argue that the prohibition on inconvenient locations should not be extended to text and email communications unless specified by the consumer.

With regards to cell phone communications, debt buyers do not have the ability to know where a consumer is located when a call is placed, and consumers have the ability to ignore or silence calls that they receive at an inconvenient place, so we would urge the CFPB to determine that these prohibitions are outdated, and limit their impact.

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

Debt collectors do not possess the ability to determine where the consumer is when they contact them, particularly when they contact them via cell phone, text or email. DBA suggests that the CFPB should not establish a broad rule prohibiting communications via these technologies to these locations, or else it likely will have the effect of chilling all communications through these technologies. Specifically, debt buyers will not want to risk committing a violation by communicating to a consumer at a particular location when they do not know where the consumer may be. Such an outcome would undermine the broader benefits that enabling communications via text, email and other communications formats would establish.

DBA suggests that a better approach would be to prohibit communications to a consumer when the debt buyer knows or is informed by the consumer that they are at a sensitive location.

Further, the FDCPA affords the consumer the opportunity to identify to the debt collector when certain times are inconvenient and to cease all communications, which further mitigates any concern about unusual places.

As discussed above, the consumer has the ability to determine when and how they want to access email and text messages, and so DBA would argue that the prohibition on inconvenient locations should not be extended to text and email communications unless specified by the consumer.

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

The FDCPA affords the consumer the opportunity to identify to the debt collector when certain times are inconvenient and to cease all communications, and the DBA membership feels that it would not provide any measurable benefit to designate any additional places.

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

A debt buyer does not have any information regarding when it may be inconvenient unless the consumer directly states that it is inconvenient for them. As discussed above, the consumer has the ability to determine when and how they want to access email and text messages, and so DBA would argue that the prohibition on inconvenient locations should not be extended to text and email communications unless specified by the consumer.

Place of employment communications. Under FDCPA section 805(a)(3), a collector may not contact a consumer at his place of employment if the collector knows or has reason to know that his employer prohibits the consumer from receiving such communication.

Like the prohibition on contacts to consumers at inconvenient times or places, as a general matter, the consumer has the ability to determine when and how they want to access email and text messages, and so DBA would argue that the prohibition on inconvenient locations should not be extended to text and email communications unless specified by the consumer.

With regards to cell phone communications, debt buyers do not have the ability to know where a consumer is located when a call is placed, and consumers have the ability to ignore or silence calls that they receive at an inconvenient place, so we would urge the CFPB to determine that these prohibitions are outdated, and limit their impact.

Also, as a general matter, if the consumer provides a work number on their application for credit, the debt buyer should be able to rely upon that disclosure as express consent to contact the consumer at work.

Regarding communications to an employee via landline at an employee's place of employment, DBA members are not aware of and should not be held to a "known or should have known" standard regarding an employer's policies and practices unless and until they are informed by the consumer and/or the employer.

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

Debt collectors do not have any way to know if a consumer's place of employment is "inconvenient" unless the consumer directly states that it is inconvenient for them, and are not in a position to know when or if a consumer's employer distinguishes between collections and other forms of personal communications unless directly informed by the consumer or employer.

Q72: Collectors may have many accounts with consumers employed by the same large employer, such as a national chain store, and this may enable collectors to become familiar with the employers' policies regarding receipt of personal or collection communications in the workplace. Can collectors reliably determine consumers' employers and their policies with regard to receiving communications at work?

No, debt collectors should not be required to assume that an employer has one blanket policy, because employers may have different policies that apply to different types of workers (*i.e.*, management vs. line worker; or unionized vs. non-unionized employees.) Therefore, debt collectors are not in a position to know when a consumer's workplace or type of work is inconvenient or not unless directly informed by the consumer or employer.

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)?

As discussed above, debt collectors should not be required to assume that an employer has one blanket policy based on a statement by an employee.

The costs of such a misguided requirement would be very high for debt collectors, who potentially could be held to be liable for a failure to adhere to a communications standard that may or may not be effective throughout a particular company, and the

benefit to consumers would be minimal, particularly since consumers can already ignore these communications when inconvenient, and can request that a debt collector cease all communications.

The cost of such a blanket restriction could also be high for consumers, particularly if the consumer's place of employment is the only method of communication available. Specifically, such a restriction could limit the opportunities for a debt collector to contact a consumer to try to work out a payment plan, and the consumer may be harmed due to accruing interest on a debt they may not otherwise be able to resolve due to a lack of ability to communicate.

The benefit is that an individual consumer would no longer receive collections calls at work, but the consumer already has the power to ask a debt collector to cease all communications, so this is not a significant problem for consumers in any case.

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?

A policy that may be posted on a website cannot be relied upon because different divisions, subsidiaries or workplace assignments may over-ride a general policy.

It would be difficult, if not impossible, to reasonably assume that a blanket policy posted on an employer website in fact represented the employer in question without conducting additional validation.

Additionally, a debt buyer should not be required to search a company's website prior to attempting contact. This would constitute a massive increase in cost, as every call would need to be manually pre-screened or checked across a not yet created employer database to check for exclusions. This would vastly outweigh the minimal benefit that consumers might receive.

Assuming we agree this is problematic… *Can collectors reliably determine consumers' employers and their policies with regard to receiving communications at work?*

No, collectors cannot be expected to know the policies of any employer unless specifically informed of such by the employer. Policies may vary based on location, job responsibilities and other factors, and can be changed at any time, and it would place an

undue burden on the collector to know and/or interpret the current policy of any one employer.

This cost would significantly outweigh the minor benefit to consumers who receive calls on their landlines at work.

While the benefits of such a policy choice could be that some employees do not receive collections calls at work, which they can ask the collector to stop in any case, the result would likely be that many calls to consumers during the day would stop if debt buyers were unsure if a particular phone number is an employer number or not, increasing potential liability on debt buyers and making it more difficult to contact *all* consumers, and possibly inhibiting a consumer's ability to settle a debt in an amicable way.

In other words, the costs to debt buyers and the vast majority of consumers would rise, and only a very small number of consumers would benefit in a very minor way.

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?*

Collectors cannot be expected to know the policies of any employer unless informed by the employer or consumer directly.

As discussed, such a policy would impose significant costs on collectors and consumers, and a tiny fraction of consumers might receive a small benefit.

3. Consumers Represented by Attorneys

The FDCPA provides that "[w]ithout the prior consent of the consumer given directly to the debt collector or the express permission of a court of competent jurisdiction, a debt collector may not communicate with a consumer in connection with the collection of any debt if the debt collector knows the consumer is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address, unless the attorney fails to respond within a reasonable period of time to a communication from the debt collector or unless the attorney consents to

direct communication with the consumer."[159] Collectors are also prohibited from making location communications concerning represented consumers unless the attorney fails to respond within a reasonable period of time to the communications from the debt collector.[160]

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

DBA is not aware of any case law regarding what a reasonable amount of time in these circumstances may be. Generally, debt collectors will make multiple attempts to contact the attorney by phone and mail. If these attempts are unsuccessful, the debt collector will usually send a letter to the attorney providing anywhere from 14 to 30 days to respond to the letter, and advising if there is no response in that time, the debt collector will presume that the attorney is not representing the consumer, and direct contact with the consumer will commence.

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

While debt buyers have no specific information regarding this question, anecdotal evidence appears to indicate that the small portion of consumers that have counsel are usually represented by personal injury attorneys, bankruptcy attorneys, consumer attorneys or family member/friend attorneys. Personal injury attorneys will typically only represent a consumer regarding medical bills relating to an incident giving rise to the attorney's representation. Bankruptcy attorneys will usually represent consumers regarding all debts and may seek to negotiate debt settlements or affect other credit repair for the consumer. Consumer attorneys may represent consumers regarding all accounts or some accounts, and will often seek to negotiate debt settlement or credit repair for the consumer. Family member/friend attorneys will also usually represent consumers regarding some or all debts and will seek to negotiate debt settlement or credit repair for the consumer.

4. Servicemember Issues

Credit applications for servicemembers may sometimes require them to provide contact information for their commanding officers. These applications may also request or

require that servicemembers provide some form of consent allowing debt owners to contact their commanding officers with respect to the debt. When a servicemember signs such an application, some collectors may believe that communications to commanding officers are not subject to the prohibition on communication with third-parties under FDCPA section 805(b). Nonetheless, servicemembers may report that these communications are inconvenient, annoying, or harassing, or may harm their reputations at work.

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

Because DBA members are not primary creditors, and do not establish credit with servicemembers, we do not have information to determine how prevalent a practice it is for servicemembers to consent to contact a commanding officer or third party, nor are we aware of how common such agreements are among civilian employees, nor if such contacts may or may not be harmful.

The only communication with a third party that DBA members engage in is found under the FDCPA, Sections 804 and 805(b).

DBA members are unaware of any circumstances in which a debt collector would communicate with a servicemember's commanding officer or the boss of a civilian employee, except in permitted circumstances.

Q76: How common are the practices mentioned above?

DBA members are not aware that these practices are used at all, and to the extent that they violate the FDCPA or other laws, they would be prohibited by the DBA Certification Standards.

D. Communications with Third Parties (Section 805(b) of the FDCPA)

FDCPA section 805(b) bars communication with most third parties absent prior consent of the consumer provided directly to the debt collector, express permission of a court, or as reasonably necessary to effectuate a post judgment judicial remedy.[27] Communications with the consumer, the consumer's attorney, a CRA if otherwise permitted by law, the creditor, the attorney of the creditor, and the attorney of the debt collector are not subject to the bar in section 805(b). The purpose of this provision is to protect the privacy of consumers' personal and financial affairs.[28]

1. Definition of "Consumer"

The FDCPA's definition of "consumer" is "any natural person obligated or allegedly obligated to pay any debt."[29] In addition, for the purposes of FDCPA Section 805, "consumer" is defined as including "the consumer's spouse, parent (if the consumer is a minor), guardian, executor, or administrator."[30] The Bureau seeks comment on the following questions related to the FDCPA's definition of "consumer."

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

DBA members follow guidance issued by the FTC on regarding the collection of debts owed by deceased individuals.[31] For example, the FTC asserted:

One commenter argued that the term ''spouse'' in Section 805(d), 15 U.S.C. 1692c(d), does not cover widows or widowers because marriage terminates at the death of a spouse. *See* Nat'l Consumer Law Ctr. at 1–2. Therefore, the commenter maintained that collectors should not be permitted to discuss the decedent's debts with surviving spouses. This is incorrect. In 1996, Congress created an omnibus definition for ''spouse'' to apply ''[i]n determining the meaning of any Act of Congress, or any ruling or

[27] 15 U.S.C. 1692c(b).
[28] *See, e.g.*, S. Rept. 382, 95th Cong., at 4 (1977) ("[T]his legislation strongly protects the consumer's right to privacy by prohibiting a debt collector from communicating the consumer's personal affairs to third persons…)
[29] 15 U.S.C. 1692a(3).
[30] 15 U.S.C. 1692c(d).
[31] http://www.ftc.gov/os/2011/07/110720fdcpa.pdf

interpretation of the various administrative bureaus and agencies of the United States.'' 1 U.S.C. 7. The only court to address whether a surviving spouse is a ''spouse'' within the omnibus definition held that a surviving spouse remains a ''spouse'' in determining the meaning of any Act of Congress. *Taing* v. *Napolitano,* 567 F.3d 19 (1st Cir. 2009). The court expressly rejected the government's arguments that the use of the present tense in the omnibus definition and what the government contended was the common, ordinary meaning of the term compelled the conclusion that the plaintiff ceased being a ''spouse'' upon her husband's death. Rather, the court stated that the traditional meaning of ''spouse'' includes surviving spouse and cited *Black's Law Dictionary* to note that ''surviving spouse'' is subsumed within the dictionary definition of ''spouse.'' *Id.* at 24–26. *See, Federal Register, Vol 76, No. 144, page 44918, footnote 29.*

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

DBA members agree that communication with a consumer's spouse should be limited if the spouse has no personal liability for the obligation or the spouse is estranged from the consumer or has a restraining order against the consumer. The difficulty is for the collector to determine when the consumer and spouse are estranged or restraining order is in place; debt buyers should not be required to undertake extraordinary research to determine if a decedent was estranged or under a restraining order prior to death. As opposed to a blanket prohibition on such communications, the CFPB should promulgate specific rules for consumers and collectors to follow in these circumstances.

Q79: The FDCPA permits collectors to communicate with "executors" and "administrators" about a decedent's debts. State laws may allow individuals other than those with the status of "executor" or "administrator" under State law, for example, "personal representatives," to pay the debts of a decedent out of the assets of the decedent's estate. How frequently do collectors contact individuals who are not "executors" or "administrators" but still have the authority under State law to pay the debts of decedents out of the assets of decedents estates? What is the effect of these contacts? What would be the potential costs and benefits of treating any person who has the authority to pay the debts of the decedent out of the assets of the estate as "executors" or "administrators?"[32] To

[32] The FTC previously issued a Policy Statement providing that the agency will not take enforcement action under the FDCPA against collectors that communicate with someone who is authorized to pay a

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?

As discussed in the response to Question 77, DBA members follow guidance issued by the FTC on regarding the collection of debts owed by deceased individuals.[33]

Three sections of the July 27, 2011, the Federal Trade Commission issued a Statement regarding the collection of debts owed by deceased individuals are responsive to this question:

> *Based on the information received in the comments and on the Commission's law enforcement experience, the FTC has decided to retain the proposed Statement's approach in the final Statement: The Commission will forebear from taking law enforcement action against a debt collector for communicating about a decedent's debts with either the classes of individuals specified in Sections 805 (b) and (d) of the FDCPA or an individual who has the authority to pay the debts out of the assets of the decedent's estate. Individuals with the requisite authority may include personal representatives under the informal probate and summary administration procedures of many states, persons appointed as universal successors, persons who sign declarations or affidavits to effectuate the transfer of estate assets, and persons who dispose of the decedent's assets extrajudicially.*
>
> *The Commission believes that this enforcement policy best ensures the protection of consumers while allowing collectors to engage in legitimate collection practices. If collectors are unable to communicate about a decedent's debts with individuals responsible for paying the estate's bills, because those individuals were not court-appointed ''executors'' or ''administrators,'' collectors would have an incentive to force many estates into the probate process to collect on the debts. Typically, it is easy and inexpensive under state law for creditors and others to petition for the probate of an estate. The actual probate process, on the other hand, can impose substantial costs and delays for heirs and beneficiaries. Policies that result in the imposition of these costs are contrary to the goal of state probate law reforms to promote simpler and faster alternatives to probate, especially for smaller estates. See, Federal Register, Vol 76, No. 144, page 44919*
>
> *Based on the comments received and on its law enforcement experience, the Commission will forebear from taking enforcement action for violating Section 804(2) of the FDCPA against a debt collector who includes in location communications a general reference to paying the ''outstanding bills'' of the decedent out of the estate's assets. Such a reference*

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decedent's debts from the estate of the deceased even if that person is not officially designated as an "executor" or "administrator." *Statement of Policy Regarding Communications in Connection With the Collection of Decedents' Debts*, 76 FR 44915 (July 27, 2011).

[33] http://www.ftc.gov/os/2011/07/110720fdcpa.pdf

balances the legitimate needs of the collector with the privacy interests of the decedent. Such language should provide sufficient information for the recipient of the communication to identify the person with authority to pay the decedent's debts out of the estate's assets, while minimizing the harm to the decedent's reputation that might ensue from a reference to the decedent's debts. The Commission, however, cautions collectors using the term ''outstanding bills'' that stating or implying in other ways that the decedent was delinquent on those bills would violate Section 804 of the FDCPA. Id at 44921

Based on the comments received and its law enforcement experience, the Commission concludes that the information that must be disclosed to avoid deception when collectors contact individuals with the authority to pay the decedent's debts depends on the circumstances. The proposed Statement suggested two possible disclosures: (1) That the collector is seeking payment from the assets in the decedent's estate; and (2) the individual could not be required to use the individual's assets or assets the individual owned jointly with the decedent to pay the decedent's debt. These disclosures generally will be sufficient to prevent deception. Nevertheless, there may be circumstances in which these disclosures are not applicable or sufficient to prevent deception. The collector has the responsibility of tailoring the information it discloses to avoid misleading consumers.

A collector also should not use questions about the decedent's assets to mislead the person who has the authority to pay the decedent's debts from the estate into believing incorrectly that those assets are subject to the collector's claim. Although such questions are not necessarily deceptive, the collector may need to take precautions to prevent the person from being misled—for example, by disclosing that jointly-held assets are not subject to the collector's claim and that the collector is trying to determine what assets are in the estate. Once the collector has reason to believe that a particular asset is not part of the decedent's estate, the collector should stop asking questions about that particular asset or otherwise create the misimpression that the particular asset is subject to the debt.

Finally, in determining whether individuals are taking away the misimpression that they are personally liable for the decedent's debts, the Commission will consider whether the collector has obtained an acknowledgment at the time of the first payment that, if appropriate, the person understands that he or she is obligated to pay debts only out of the decedent's assets and is not legally obligated to use his or her own assets – including those jointly owned with the decedent – to pay the debts. Id. at 44922 and 44923.

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

Debt owners and debt collectors provide dispute information to the executors and administrators if requested.

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

A debt buyer should be able to rely on a theory of implied consent in this instance, though DBA is not aware of the prevalence of this practice.

2. Recorded Messages

Communications by telephone remain the most common form of consumer contact in debt collections. Telephones themselves were one of the communications technologies Congress addressed when the FDCPA was enacted in 1977. However, over the years, phone technology has changed dramatically, from landlines to mobile phones and then to smart phones. In addition to voice calling, the ability to record voice messages for others to retrieve at a later date is commonplace (*e.g.*, voicemails). Many phones also allow consumers to see the caller's phone number, and sometimes other information about the caller, before answering.

When collectors leave recorded messages, they must identify themselves in the communication but they also must refrain from disclosing information about debtors to third parties. FDCPA section 806(6) prohibits debt collectors from placing telephone calls without meaningful disclosure of their identity.[34] Section 807(11) of the FDCPA also requires that collectors disclose in their initial communications with consumers, including telephone calls, that they are trying to collect a debt and that any information they obtain will be used for that purpose.[35] For many years, collectors did not include the information set forth in FDCPA sections 806(6) and 807(11) in recorded messages that they left on voicemails or answering machines.[36] However, in 2006, a Federal

[34] 15 U.S.C. 1692d(6).
[35] 15 U.S.C. 1692e(11).
[36] For example, collectors would often leave messages stating, "This is John Smith calling for Nancy Jones about an important business matter. Please call me back at 555-5555."

district court in *Foti v. NCO Financial Systems, Inc.*, held that a collector's telephone message is a communication" within the meaning of the FDCPA, thereby requiring that these messages include the information set forth in FDCPA sections 806(6) and 807(11).[37] Other courts have reached the same conclusion as *Foti*.[38]

Collectors believe that *Foti* creates a dilemma. On the one hand, if recorded messages are "communications,"[39] then collectors must identify themselves as a debt collector. On the other hand, if they leave that information in a recorded message, they risk disclosing such information to a third party who may hear the message, which could violate FDCPA section 805(b).

Courts and other observers have noted that collectors can avoid both forms of liability by simply refraining from leaving recorded messages altogether.[40] Some collectors argue that this would impose high costs, by limiting their ability to reach many consumers, such as those that work night hours (given the calling-time restrictions in FDCPA section 805(a)(1)), those that do not answer calls from unfamiliar numbers, or those for whom collectors have the wrong mailing address. It could also cause harm if consumers do not learn that their debts are in collection and debt collectors furnish information about these debts to CRAs or file law suits to collect.

In its 2009 Modernization Report, the FTC acknowledged the challenges that *Foti* and similar cases create for collectors and stated that it would be beneficial to clarify the law relating to collectors leaving recorded messages.[41]

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

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[37] 424 F. Supp. 2d 643 (S.D.N.Y. 2006) (denying collector's motion to dismiss).

[38] *See, e.g.*, *Hosseinzadeh v. M.R.S. Assocs.*, 387 F. Supp. 2d 1104 (C.D. Cal. 2005) (denying collector's motion for summary judgment); *Costa v. Nat'l Action Fin. Services*, 634 F. Supp. 2d 1069, 1076 (E.D. Cal. 2007) (denying collector's motion for summary judgment); *Berg v. Merchants Ass'n Collection Div., Inc.*, 586 F. Supp. 2d 1336, 1340-41 (S.D. Fla. 2008) (denying a collector's motion to dismiss); *Edwards v. Niagara Credit Solutions, Inc.*, 586 F. Supp. 2d 1346, 1350-51 (N.D. Ga. 2008) (granting consumer's motion for summary judgment), *aff'd on other grounds*, 584 F.3d 1350 (11th Cir. 2009).

[39] Some collectors argue that messages that do not reference the debt or the fact that the message is from a debt collector are not "communications" because they do not convey information regarding a debt, as required by the definition of "communication" under FDCPA section 803(2).

[40] *See, e.g.*, *Mark v. J.C. Christensen & Assocs., Inc.*, Civil No. 09-100 ADM/SRN, 2009 WL 2407700, at *5 (D. Minn. Aug. 4, 2009); *Berg v. Merchants Ass'n Collection Division, Inc.*, 586 F. Supp. 2d 1336, 1343 (S.D. Fla. 2008); *Leyse v. Corporate Collection Services*, No. 03 Civ 8491 (DAB), 2006 WL 2708451, at *5 (S.D.N.Y. Sept. 18, 2006).

[41] *2009 FTC Modernization Report* at 49.

DBA agrees that this is a problem, and that the FDCPA and TCPA should be modernized to provide flexibility to consumers and debt collectors regarding voice mail messages, and that there should be a rule that directly deals with recorded messages.

DBA's discussion of the issue follows:

I. INTRODUCTION

Communication with consumers is the hallmark of the debt collection industry. Impediments to communication hurt consumers who may not be aware that their accounts are seriously delinquent and could result (if they have not already) in credit reporting and/or litigation to recover the balance. The situation is worse if the balance is incorrect or if the consumer does not owe the debt in question. Reduced effectiveness at collecting delinquent balances will drive up the cost of credit and in some situations make it unavailable. As stated by Director Cordray: "Collection of consumer debts serves an important role in the proper functioning of consumer credit markets."[42]

When seeking to communicate with a consumer, the most important and effective tool is the telephone. Telephone conversations have the immediate benefit of promoting the exchange of information, providing important details about the existence of a debt and its potential consequences, as well as the opportunity to resolve the matter and/or discuss issues that might not otherwise be known. Consumers expect voicemail messages as a vital means to communicate about nearly any matter of importance, and that certainly includes past due accounts. However, Congress did not anticipate the challenges that would be created by the wording of the FDCPA with respect to our modern voicemail lifestyle.

Congress passed the FDCPA in response to "abundant evidence of the use of abusive, deceptive, and unfair debt collection practices."[43] The Act regulates collection conduct in a variety of ways. The FDCPA also includes competing requirements that a debt collector disclose his or her identity and that a collector refrain from communicating a consumer's debt to a third party.[44]

These competing requirements of the FDCPA create a significant dilemma for consumers. Most consumers desire to exchange information about past due accounts via telephone. However, the FDCPA provides no mechanism for debt collectors to leave

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[42] **http://www.consumerfinance.gov/newsroom/director-cordray-remarks-at-the-debt-collection-advance-notice-of-proposed-rulemaking-press-call**

[43] 15 U.S.C. § 1692(a).

[44] *See,* 15 U.S.C. §§ 1692c(b), 1692d(6), and 1692e(11).

voicemail messages for consumers. Various techniques exist to comply, including a lengthy voicemail script and leaving no message. None of these have proven effective for the consumer. Thus, the Federal law designed to protect consumers severely limits options for consumers to obtain information about past due accounts by phone.

II. STATEMENT OF THE PROBLEM

Current case law and interpretations of the FDCPA materially and adversely impact consumer debtors by raising issues and casting doubts as to what, if any, call back message may be left for a consumer without risking legal exposure. If a telephone message is considered a "communication" under 15 USC 1692a(2), then the agency is required to leave the mini-Miranda which will disclose that they are debt collectors seeking to collect. But if overheard by a third party, those same "beneficial" disclosures can embarrass the debtor by improperly disclosing the existence of the debt. Thus, agencies have become very reluctant to leave messages for debtors which in turn harms consumers who would otherwise want to know about the debt and have the opportunity to resolve the matter.

Prior to *Foti*, collectors would leave simple, but effective voicemail messages for debtors. These messages would typically follow a script much like the following, never revealing the debt:

> Hello, this is John Smith calling from ABC Financial. I am calling about an important personal business matter that requires your attention. Please call back 1–800–234–5678. Please reference file number 7891234. This is not a solicitation.[45]

It was widely believed that such messaging was a fair balance between several competing needs - the need for the consumer debtor to know that there was a matter that required their attention, the need for the agency to have a reasonable opportunity to reach the consumer debtor, and the need for the consumer debtor to be secure knowing that their debt remained a private matter, not revealed to others who might overhear the message:

- At the time of leaving the message, the collector was not engaged in a discussion with the debtor so there was no risk at that moment that the debtor might mistakenly reveal damaging information;

[45] *See*, *e.g.*, *Foti* at 648.

- The message did not convey any substantive information regarding the debt, but was merely a request for a return call;

- At the time of the return call from the debtor to the agency, the agency would immediately issue the mini-Miranda warning before any further discussion of the account; and

- Such a message could not be considered abusive of a consumer's rights, but instead benefited consumers by facilitating communication of an important matter.

Foti changed all of this by continuing a line of cases interpreting very broadly the word "communication" in 15 U.S.C. 1692a(2)(the conveying of information regarding a debt directly or indirectly to any person through any medium). More specifically, the court found that:

> Defendant's voicemail message, while devoid of any specific information about any particular debt, clearly provided some information, even if indirectly, to the intended recipient of the message. Specifically, the message advised the debtor that the matter required immediate attention, and provided a specific number to call to discuss the matter. [Emphasis supplied.]

This unfortunate interpretation and decision resulted in great harm to consumers. Where agencies would once leave messages as a matter of routine, now they are very reluctant, leaving the consumer debtor potentially unaware of the existence of a debt and unable to resolve it in a reasonable and timely manner. Further, given the reluctance to leave messages, agencies will now make many more attempts to reach a consumer debtor in an effort to make direct contact without the need to leave a message. Thus, instead of calling just once or twice and leaving a message, an agency may now try several times and leave no message.

III. THE PROPOSED SOLUTION AND BENEFITS TO THE CONSUMER

The DBA proposes that the CFPB adopt a new rule or rules to clarify that simple call back messages left for consumer debtors are permissible and that such messages do not constitute "communications" within the definition of 15 USC 1692a(2).This will facilitate the exchange of information with debtors so that they are more readily aware of potentially adverse financial matters and better able to address those matters. As well, such clarification will avoid the need for agencies to leave disclosures that provide no

immediate or tangible benefit to the consumer, but could cause the debtor potential embarrassment if overheard by third parties. The DBA also proposes that the CFPB announce safe harbor language which, if used, would assure agencies that they would not be subject to litigation simply by leaving such a message.

The CFPB should recognize that simple telephone messages requesting a call back from the consumer debtor are important, one-way transmissions from agency to consumer that greatly benefit consumers by facilitating discovery and resolution of outstanding accounts. A message that recites nothing more than the caller's name, the company's name (if it does not reveal the existence of a debt), the name of the consumer being sought, a telephone number and a reference or account number is not a communication "conveying information" about the debt. [46] Nothing at all is being conveyed other than a request for a call back. At the time of leaving these messages, the agency is not engaging the consumer in any discussion or placing the consumer at risk of disclosing information that the consumer would otherwise keep private. Thus, the protections afforded by the mini-Miranda disclosure are not needed or even relevant until such time as the consumer debtor returns the call. At that point, the agency is certainly obligated to provide the mandatory warning and the consumer debtor is therefore protected before discussing the debt.

Further, by facilitating such messaging, the CFPB will help avoid the unintended consequence of numerous hang up calls where no message is left simply because there is no other safe way for the agency to attempt to reach the consumer.

A. Create a New Rule

Proposed rule: "CALL BACK MESSAGES. Leaving a call back message for a consumer debtor that does not reveal the existence of or otherwise discuss a debt, and that includes no more than: i) the name of the caller and/or their company; ii) the name of the person being sought (without referencing them as a debtor); iii) a return telephone number; and iv) may or may not include an account number, shall be permissible and shall not require the disclosures set forth in 15 U.S.C. 1692e(11) or any other disclosures that could reveal to a third party the existence of a debt. Mention of an "account number," "file number," "reference number," or the like, shall not, in and of itself, or in combination with the other elements listed above, be considered conveying of

[46] 15 USC 1692a(2); Some may argue that mention of an account number is conveying information about the debt. To the contrary - this is information about the agency's internal record-keeping to facilitate locating the account information only; *i.e.*, a placeholder. It is nothing at all of substance about the debt, such as the name of the creditor, amount due, nature of the obligation, etc. While an agency would likely be able to locate the account without this information, it takes longer to do so. Consumers and agencies benefit from greater efficiency.

information about the debt or disclosure of the existence of a debt. This rule shall apply to messages left on an answering machine, by electronic voicemail or other means of recording, or with a third party. Other messages that may be left for a consumer debtor are not addressed by this rule."

B. Create Safe Harbor Language for Recorded Messages

Proposed preamble and safe harbor language to accompany the proposed rule: "Pursuant to this rule, the language quoted below may be used when leaving a recorded message for a debtor. This language shall be considered compliant with the FDCPA and these regulations. Notwithstanding, this safe harbor language shall not be required by debt collectors or considered the only language permitted for a message and shall not preclude alternate wording, so long as it otherwise complies with the FDCPA and these rules:

> Hello, this is <name of caller> calling to speak with <name of debtor>. This concerns an important personal matter. Please call back at <toll-free telephone number> and reference account number <account number>. Thank you.
>
> Note: The name of the caller may be the individual leaving the message and/or name of agency, or both,[47] provided that the name of the agency does not reveal the existence of a debt.[48]

Alternatively, should the CFPB conclude that the disclosures under e(11) are mandated even in a simple recorded call back message (notwithstanding that the agency must give them, at the outset of any conversation with a debtor), then the CFPB is requested

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[47] Note that 1692d(6) prohibits the placement of telephone calls without meaningful disclosure of the caller's identity. Recent cases have grappled with the question of whether there is a violation when a message is left for a debtor without leaving the name of the individual who placed the call. *See, Fashakin v. Nextel Communs.*, 2009 U.S. Dist. LEXIS 25140, 24-32 (E.D.N.Y. Mar. 25, 2009); *Mino v. Credit Protection Association*, 2013 U.S. Dist. LEXIS 111359 (S.D.IN. Aug 7. 2013); *Barlow v. Safety Nat'l Cas. Corp.*, 2012 U.S. Dist. LEXIS 75585, 21-22 (M.D. LA. May 30, 2012); and *Lynn v. Monarch Recovery Mgmt*., 2013 U.S. Dist. LEXIS 41700, 34-36 (D. MD. Mar. 22, 2013) which are accepting of this practice; compare with *Gryzbowski v. I.C. Sys.*, 691 F. Supp. 2d 618, 625-626 (M.D. PA. 2010). The CRC urges the CFPB to expressly rule that it is not a violation under d(6) to omit the name of the individual caller when leaving a simple call back message.

[48] Note that 1692e(14) contains language that appears to restrict use of a trade name or acronym. However, the FTC and various courts examining the issue have construed the language more broadly. "A debt collector may use a name that does not misrepresent his identity or deceive the consumer. Thus, a collector may use its full business name, the name under which it usually transacts business, or a commonly used acronym" (Emphasis supplied.) *See, also, Sullivan v. Credit Control Services, Inc. ,745 F. Supp. 2d 2 (D. Mass. 2010)*; *Koller v. West Bay Acquisitions, LLC*, C 12-00117 CRB, 2012 WL 1189481 (N.D. Cal. 2012) The CFPB is urged to adopt and reinforce the FTC's ruling as a means of further protecting consumer debtor's from potential embarrassment.

to establish a rule or rules that shield agencies from leaving messages that contain those disclosures, even if the messages are overheard by third parties.

C. *ZORTMAN* DOES NOT RESOLVE THE ISSUES OF CONCERN IN *FOTI*

In a decision from 2012, a federal court considered a creative voicemail left for a debtor. In *Zortman v. J.C. Christensen & Assoc., Inc.*, the collector, while attempting to collect a debt, left the following message on the consumer's voicemail:

> "We have an important message from J.C. Christensen & Associates. This is a call from a debt collector. Please call 866–319–8619."

The message seemingly discloses the existence of the debt, but it does not provide the name of the debtor. The debtor argued that his rights had been violated by disclosure of the existence of his debt to a third party in his household who had overheard the message. The court disagreed, holding instead that without a name connected to the message, there were multiple plausible explanations.

> A person who heard the message would have to make the assumption that because it was [the consumer's] telephone that she was the intended recipient. But the number might have been dialed in error. The debt collector might have wrong or outdated information about the owner of the number it dialed. In a world where wrong numbers are a fact of life, the unintended third-party listener would understand that one possible explanation for the message he or she overheard might be a wrong number.[49]

The court continued by discussing how an unintended listener would have to make a second assumption: "that the only reason a debt collector calls is to collect a debt." The court wrote that debt collectors place calls for a variety of other reasons, including to obtain location information. "Inferences or assumptions by an unintended listener are not 'indirect communications' [under the FDCPA.]"[50]

While the *Zortman* court clearly sought to restore the benefits of messaging for both consumer and agencies, there are difficulties with the *Zortman* message which work against consumers' best interests. For instance, since the message did not specify which person was being called, if multiple users have access to the voicemail message

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[49] *Zortman v. J.C. Christensen & Associates, Inc.* 870 F. Supp. 2d 694, 704 (D. Minn. 2012)

[50] *Id.* at 704-05. Note, however, that when placing location calls, an agency is not permitted to divulge that the call is about the collection of a debt; thus, the court's reasoning is flawed in this respect.

including the debtor, there is no way to be sure which of those users will return the call. If it is the debtor, the agency will look up the number, verify that they are speaking with the correct party and continue the discussion about the account. But often the caller is not the debtor, but instead a third party with whom the collector is prohibited from sharing any information. The caller encounters frustration when told by the agent that no further information can be shared. The simple message strategy outlined in the proposed rule and safe harbor language prevents these problems.

The Federal Trade Commission ("FTC") addressed the issue of telephone message requirements in a Stipulated Order.[51] In that order, the FTC prohibited (with limited exceptions)[52] the debt collector from leaving a message that includes the first or last name of the debtor *and* discloses that the caller is a debt collector attempting to collect a debt.[53] This restriction reveals the FTC's position that a "*Foti* complaint" script is not universally appropriate.

IV. BENEFITS TO THE CONSUMER

Debtors are benefitted by knowing that an account is in collections and having the ability to contact the agency at an early stage before the matter is escalated. The *Foti* line of cases has harmed consumers by restricting the ability of agencies to provide such messages to debtors who need the information. The proposed rule and safe harbor language will clarify that agencies can leave messages without the need to embarrass the debtor through disclosures that reveal the existence of a debt.

While leaving a simple voice message may technically be construed to be a communication within the broad definition in the statute (even though no information concerning the debt was conveyed, or at least none of any substance), the reality is that the disclosures that are then required by such an interpretation do nothing to protect consumers any more than they would be protected without them. The purpose of the mini-Miranda warning is to protect consumers who might otherwise not realize they are talking to an adversary and thus let down their guard by revealing what might be harmful information. But this concern is fully addressed with the requirement already exists in e(11) that the agency provide the warning at the outset of any subsequent discussion.

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[51] The order is available at: http://www.ftc.gov/os/caselist/1023201/130709ncoorder.pdf.

[52] The FTC order allows the agency to provide both the name of the consumer *and* the debt collector disclosure if: (1) The recorded greeting discloses the person's first and last name, and only that person's first and last name, which are the same as the person owing the debt; or (2) the agency has previously spoken with the person on at least one occasion using the telephone number associated with the messaging system.

[53] *See id*. at p.13.

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

- When leaving recorded messages on certain media where there is a plausible risk of third-party disclosure, the collector leaves a message that identifies the consumer by name but does not reference the debt and does not state the mini- Miranda warning.
- The collector leaves a recorded message identifying the consumer by name and referring the consumer to a 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.[54]
- 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.

Debt buyers should not be required to determine under what circumstances a consumer or third party may be accessing a voicemail message.

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[54] ACA International, a debt collection trade association, developed a model message designed to address the *Foti* dilemma. The message provides the required disclosures only after asking third parties to stop listening and providing time for execution of those directions: "This message is for [ ]. If you are not [ ] or their spouse, please delete this message. If you are [ ] or their spouse, please continue to listen to this message. By continuing to listen to this message, you acknowledge that you are the right party. You should not listen to this message so that other people can hear it, as it contains personal and private information. There will be a three second pause in the message to allow you to listen to the message in private. (Pause.)" A 2010 survey of ACA's members found that 47 percent used its proposed message, while 39 percent did not, and 14 percent left no messages whatsoever. However, collectors note that these messages may prove too complicated to execute, their length may prove expensive, and their efficacy, in the end, may not convince courts, due to the continued risk that third parties can listen in. *See, e.g.*, *Leahey v. Franklin Collection Serv., Inc.*, 756 F. Supp. 2d 1322, 1327 (N.D. Ala. 2010) (denying a collector's motion to dismiss in which it had argued that the ACA message did not violate FDCPA section 1692c(b)); *Berg v. Merchants Ass'n Collection Div., Inc.*, 586 F. Supp. 2d 1336, 1343 (S.D. Fla. 2008) (denying a collector's motion to dismiss).

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

DBA agrees that clarity is necessary in this area. Debt buyers should be able to ask consumers if they would prefer not to receive the mini-Miranda disclosure each time they speak to a debt buyer, and consumers should be able to exercise that preference orally or in writing.

3. Caller Identification ("Caller ID")

Caller-ID technologies transmit certain information along with a telephone call that allows recipients of calls to view callers' telephone numbers and sometimes also their names. Some telephones display all or part of such information while others, such as many landlines, do not. A 2004 survey by the Pew Research Center indicated that approximately half of phone owners had some form of caller ID.[55]

Caller-ID technologies present certain compliance issues for debt collectors. For instance, FDCPA section 807(14) requires that debt collectors use the "true name" of their business. However, a debt collector may be concerned that using the name of the collector's employer in caller ID risks causing a disclosure of the consumer's debt to a third party or disclosure of the identity of the collector's employer without an express request under FDCPA sections 805(b) or 804(1). Alternatively, a debt collector may be concerned that changing how the name of its business is displayed via caller ID risks making a false representation or using a deceptive means, using a false name, or failing to make meaningful disclosure of the caller's identity under FDCPA sections 806(6), 807(10), or 807(14).

Debt collectors sometimes change the telephone number displayed via caller ID. For instance, when callers use certain voice-over-IP (VOIP) services, the phone number displayed to the recipient may have a local area code. Collectors may intend this result because they believe that consumers are more likely to pick up a local phone call, or it

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[55] *See,* Pew Research Ctr., *Polls Face Growing Resistance, But Still Representative Survey Experiment Shows* (2004), *available at* http://www.people-press.org/2004/04/20/polls-face-growing-resistance-but-still-representative.

may be an unintended result of the telephone services collectors use. Callers sometimes block the caller-ID phone number altogether so that the recipient is unaware of the caller's identity. Debt collectors may be concerned that blocking or changing the phone number displayed via caller ID risks making a false representation or using a deceptive means under FDCPA section 807(10).[56] The FTC considered similar issues in its Telemarketing Sales Rule and its 2009 Modernization Report, but it did not make any specific recommendations in the debt collection context.[57]

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

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

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[56] *See, e.g.*, *Knoll v. Allied Interstate, Inc.*, 502 F. Supp. 2d 943, 945 (D. Minn. 2007) (denying motion to dismiss where collector displayed caller ID as "Jennifer Smith"). *But see Glover v. Client Services, Inc.*, No. 1:07-CV-81, 2007 WL 2902209 (W.D. Mich. Oct. 2, 2007) (granting motion to dismiss where collector displayed caller ID as "unavailable").

[57]The FTC's Telemarketing Sales Rule concluded that telemarketers should be prohibited from blocking, circumventing, or altering the transmission of caller-ID information. 68 FR 4580, 4623-4627 (Jan. 29, 2003). The FTC reasoned that transmission of caller-ID information was inexpensive and was not a technical impossibility and that doing so provided many benefits, including privacy protections for consumers, increased accountability in telemarketing, and increased information for law enforcement groups. The FTC recognized in its 2009 Modernization Report that prohibiting debt collectors from blocking, circumventing, or altering the transmission of caller-ID information would provide similar benefits in the debt collection context. *2009 FTC Modernization Report* at 54-55.

Caller-ID raises *Foti* 3rd party disclosure issues, as well. The use of caller-ID information should not be used to intentionally mislead consumers.

4. Newer Technologies

Some new methods of communication appear to present greater privacy risks than do telephone or postal communications. Email, for example, is a service consumers often access through a provider, such as an employer or outside company (*e.g.*, Google, Microsoft, Yahoo). These providers, including employers, may retain rights to access the emails of their users. If employers or other email providers retain the ability to access an email account, the likelihood increases that debt collection emails sent to those accounts may be read by third parties. Joint users of email accounts also may be able to read each other's email messages, including any that debt collectors send.

Emails may also pose risks of third-party disclosure because they may be publicly viewable by anyone near the display screen. Even when consumers check their email using a smartphone, nearby onlookers may have the opportunity to see communications from debt collectors, especially when consumers have their smartphones configured to conspicuously display the subject and sender of the message upon receipt. A similar concern exists for text messages, which are often displayed on the public-facing screens of mobile phones.

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

If the communication is initiated by the consumer using a particular email address, or if an email address is provided by the debtor, the collector should be able to rely on that address as express consent to contact the consumer at that address, and assume that this is the method and email address that the consumer prefers. The burden should not be placed on the debt collector. The person who has the best access to the policy and superior knowledge is the consumer. As with the case with telephonic communications, the FDCPA affords the consumer to notify the debt collector when certain times are inconvenient, and to require that the debt buyer cease all communications, which would include email.

Newer technologies also raise an issue similar to the *Foti* dilemma relating to the requirement to provide the mini-Miranda and the simultaneous prohibition against third-party disclosures.[58] All collection communications, including those made via new communication technologies, are subject to the requirements of FDCPA section 807(11), which requires that collectors clearly disclose in both initial and subsequent communications that the communication is from a debt collector.[59] Debt collectors may be concerned that this requirement is in tension with the prohibition on third-party disclosure under FDCPA section 805(b).[60] To prevent such disclosures with traditional communication technologies, FDCPA section 808(8) prohibits the use of debt-collection-related language or symbols on the envelope of any communication, such as a communication through postal mail or telegram.[61] The Bureau seeks comment on whether analogous prohibitions might be useful to prevent third-party disclosures in the sending of emails, text messages, or other communications made via newer technologies.

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

As discussed above, a debt buyer should be able to respond to a consumer through the email, text or other address that the consumer provided /communicated with the debt buyer, and should not have to undertake any additional analysis about the appropriateness of such an address – if the consumer expresses a preference, the debt buyer should be able to rely on that preference.

With regards to the subject line, there is an expectation that an email is delivered directly to the consumer.

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

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[58] *See, e.g.*, Complaint at ¶ 15, *United States v. Nat'l Atty. Collection Servs., Inc.*, No. CV13-06212 (C.D. Cal. Aug. 23, 2013), *available at* http://www.ftc.gov/os/caselist/1223032/130925naccmpt.pdf.
[59] 15 U.S.C. 1692e(11).
[60] 15 U.S.C. 1692c(b).
[61] 15 U.S.C. 1692f(8).

The structure of the FDCPA raises the question of whether consumers may set the conditions under which collectors communicate with them. First, FDCPA section 805(c) affords consumers the right to cease communications from collectors, with limited exceptions, if consumers notify the collectors in writing.[62] Second, as discussed above, FDCPA section 805(a) prohibits collectors from communicating with consumers at unusual or inconvenient times or places, from communicating with a consumer represented by an attorney, and from communicating with the consumers at their places of employment where the consumer's employer prohibits such communications.[63]

The express language of the FDCPA does not provide consumers with the right to restrict
collector communications to a particular medium or a particular time or place. However, because consumers have the right to cease collector communications and the apparent right to declare certain times or places inconvenient, some argue that consumers do or should have the right to limit communications to certain media or to certain times or places. Others may respond that the FDCPA does not confer such a right on consumers and, if it is interpreted to, this would impose undue or unreasonable burdens on collectors.

Generally, DBA believes that a consumer has the right to restrict any or all forms of communication from a debt buyer, and may specify communications only through a particular medium (*i.e.*, please contact me only through this email address.)

The challenge for debt buyers currently, however, is that there is so much uncertainty over what forms of communications may be permitted, such as texts or emails, that limiting certain forms of communications may in effect inhibit all communications.

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

[62] 15 U.S.C. 1692c(c).
[63] 15 U.S.C. 1692c(a).

As discussed above, DBA believes that consumers should be able to restrict the types and times of communications they can receive.

Q90: Other Federal consumer financial laws, as defined in section 1002(14) of the Dodd- Frank Act, may require collectors to provide certain notices or disclosures to consumers for a variety of purposes, raising potential conflicts in cases in which consumers have made a written request that collectors cease communications.[64] 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.[65] 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.[66] 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?

There are several consumer financial laws that have inconsistent disclosure requirements, and DBA encourages the CFPB to take advantage of this opportunity to clarify these requirements. Most of them, like the example mentioned in the body of this question, are the result of required disclosures under other financial laws that conflict with the FDCPA, either when faced with a consumer request to cease disclosures, or that may conflict with other FDCPA requirements, such as limiting disclosure of the existence of a debt for privacy reasons.

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[64] *See, e.g.*, U.S. Fed. Trade Comm'n, *Anderson/Beato Advisory Opinion* (June 23, 2009), *available at* http://www.ftc.gov/os/statutes/andersonbeatoletter.pdf.

[65] U.S. Bureau of Consumer Fin. Prot., *CFPB Bulletin 2013-12, Implementation Guidance for Certain Mortgage Servicing Rules* (Oct. 15, 2013), *available at* http://files.consumerfinance.gov/f/201310_cfpb_mortgage-servicing_bulletin.pdf.

[66] *Interim Final Rule, Amendments to the 2013 Mortgage Rules under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z)*, 78 FR 62993 (Oct. 23, 2013), *available at* http://files.consumerfinance.gov/f/201310_cfpb_mortgage-servicing_interim.pdf.

For example, under Gramm Leach Bliley, financial institutions like debt buyers must provide consumers with an annual privacy disclosure, but this may conflict with FDCPA disclosure requirements.

DBA has supported legislation to resolve this conflict (H.R.749, the Eliminate Privacy Notice Confusion Act, and S. 635, the Privacy Notice Modernization Act of 2013), but supports efforts to resolve those conflicts through this rulemaking or other opportunities, if available.

DBA believes that the FDCPA should over-ride GLB in most cases because it is a more specific statute, but we would like the opportunity to work with the CFPB to identify and clarify these conflicting responsibilities.

Q91: Some jurisdictions require that collectors provide consumers with contact information. At least one jurisdiction has required that collectors provide not only contact information, but also a means of contacting the collector that will be answered by a natural person within a certain time period.[67] 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?

A major concern, as discussed above, is the liability that may result from leaving voice messages, and in fact a significant percentage of debt buyers will not leave any message at all.

Part 5: UDAAP

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

The Bureau should use its rulemaking authority to clarify the six examples listed in Section 806. For example, the Act prohibits "the placement of telephone calls without

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[67] *Interim Final Rule, Amendments to the 2013 Mortgage Rules under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z)*, 78 FR 62993 (Oct. 23, 2013), *available at* http://files.consumerfinance.gov/f/201310_cfpb_mortgage-servicing_interim.pdf.

meaningful disclosure of the caller's identity." The Bureau should specifically define "meaningful disclosure," and should reconcile the *Foti* and mini-Miranda disclosures discussed above.

No other conduct should be added. These UDAP processes have the benefit of significant interpretation and compliance, and additional requirements will not benefit consumers, but will only add to compliance burdens for collectors.

Q93: Should the Bureau include in proposed rules prohibitions on first-party debt collectors engaging in the same conduct that such rules would bar as abusive conduct by third- party debt collectors? What considerations, information, or data support or do not support the conclusion that this conduct is "abusive" under the Dodd-Frank Act? Does information or data support or not support the conclusion that this conduct is "unfair" or "deceptive" conduct under the Dodd-Frank Act?

DBA believes that there are many consumer protections available in the first party context, such as examinations, that protect consumers, and so the necessity of treating first and third party collectors under the same rules is not necessary.

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

Yes, additional clarity would be welcome. DBA welcomes the opportunity to work with the CFPB on these issues.

Q95: FDCPA section 806(5) bars debt collectors from "causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number." Should the Bureau clarify or supplement this prohibition in proposed rules? If so, how?

Yes. First, it should clarify that the requisite intent is more than an intent that the consumer answer the phone or an intent to speak with the consumer to assist them in paying a debt.

DBA members believe that it would be more effective and efficient to be able to contact consumers through email and other electronic means, and would be more beneficial and convenient for consumers, but the vast majority of DBA members believe that there is a greater risk of liability that may result if they attempt to use communications methods other than phone or mail.

Q96: The FDCPA does not specify what frequency or pattern of phone calls constitutes annoyance, abuse, or harassment. Courts have issued differing opinions regarding what frequency of calls is sufficient to establish a potential violation. Courts also often consider other factors beyond frequency, such as the pattern and content of the calls, where the calls were placed, and other factors demonstrating intent. Should the Bureau articulate standards in proposed rules for when calls demonstrate an intent to annoy, harass, or abuse a person by telephone? If so, what should those standards be and why?

Yes, DBA believes that some clarity on this question would be welcome. The resolution of this question should be addressed along with the voicemail dilemma that debt buyers face, discussed above.

Q97: At least one State has codified bright-line prohibitions on repeated communications. Massachusetts allows only two communications via phone — whether phone calls, texts, or 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?

As discussed above, there should be no location prohibitions for cell phone calls or texts, including calls placed to a consumer at work.

If a consumer provides a work landline number, then that should over-ride any restrictions placed on calls to work numbers, because it clearly demonstrates intent by the consumer to receive calls to that phone number.

However, there are no bright lines with regards to this question, and no "one size fits all" understanding of "harassment."

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

Predictive dialers are pervasive in the industry and provide significant benefits to collectors because they help maximize collections efficiency, reducing the cost of collections, and benefit consumers by improving reliability in reaching the correct consumer telephone number.

Further, because consumers are already empowered to cease all collector communications, there is no detriment to consumers regarding the use of predictive dialers.

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

Debt collectors strive to minimize dead air time and abandonment, but the TSR standards are inappropriate for debt collection, which should be more lenient than standards for telemarketing.

In particular, unlike telemarketing, where a seller is attempting to convince the consumer to take on some new obligation, collectors are seeking to help consumers meet an obligation they have already undertaken.

Collections can be further distinguished from sales because consumers can require a cessation of collections calls.

Q100: With respect to each of the areas covered in FDCPA section 807, should the Bureau clarify or supplement any of these FDCPA provisions? If so, how? Are

there other representations or omissions that the Bureau should address to prevent deception in each of these areas? For each additional representation or omission you believe should be addressed, please describe its prevalence and why you believe it is material to consumers.

DBA recommends that the Bureau eliminate hypertechnical claims based on good faith miscalculations of the amounts owed under 807(2).

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

DBA Certification standards prohibit this type of activity, and DBA would take these types of allegations very seriously.

With regards to the disclosure of rights, as discussed above, DBA strongly believes that consumers who owe a debt should be aware of all of their rights under the law, including disclosures regarding consumer rights under the Servicemembers Civil Relief Act.

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

DBA Certification Standards prohibit this type of activity, and DBA would take these types of allegations very seriously.

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

As discussed above, DBA members that collect these types of debts follow the FTC guidance on these practices.[68]

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[68] The Federal Trade Commission issued a Statement regarding the collection of debts owed by deceased individuals in the July 27, 2011 Report:

> Based on the information received in the comments and on the Commission's law enforcement experience, the FTC has decided to retain the proposed Statement's approach in the final Statement: The Commission will forebear from taking law enforcement action against a debt collector for communicating about a decedent's debts with either the classes of individuals specified in Sections 805 (b) and (d) of the FDCPA or an individual who has the authority to pay the debts out of the assets of the decedent's estate. Individuals with the requisite authority may include personal representatives under the informal probate and summary administration procedures of many states, persons appointed as universal successors, persons who sign declarations or affidavits to effectuate the transfer of estate assets, and persons who dispose of the decedent's assets extrajudicially.

The Commission believes that this enforcement policy best ensures the protection of consumers while allowing collectors to engage in legitimate collection practices. If collectors are unable to communicate about a decedent's debts with individuals responsible for paying the estate's bills, because those individuals were not court-appointed ''executors'' or ''administrators,'' collectors would have an incentive to force many estates into the probate process to collect on the debts. Typically, it is easy and inexpensive under state law for creditors and others to petition for the probate of an estate. The actual probate process, on the other hand, can impose substantial costs and delays for heirs and beneficiaries. Policies that result in the imposition of these costs are contrary to the goal of state probate law reforms to promote simpler and faster alternatives to probate, especially for smaller estates. *See Federal Register, Vol 76, No. 144, page 44919.*

Based on the comments received and on its law enforcement experience, the Commission will forebear from taking enforcement action for violating Section 804(2) of the FDCPA against a debt collector who includes in location communications a general reference to paying the ''outstanding bills'' of the decedent out of the estate's assets. Such a reference balances the legitimate needs of the collector with the privacy interests of the decedent. Such language should provide sufficient information for the recipient of the communication to identify the person with authority to pay the decedent's debts out of the estate's assets, while minimizing the harm to the decedent's reputation that might ensue from a reference to the decedent's debts. The Commission, however, cautions collectors using the term ''outstanding bills'' that stating or implying in other ways that the decedent was delinquent on those bills would violate Section 804 of the FDCPA. *Id at 4492.1*

Based on the comments received and its law enforcement experience, the Commission concludes that the information that must be disclosed to avoid deception when collectors contact individuals with the authority to pay the decedent's debts depends on the circumstances. The proposed Statement suggested two possible disclosures: (1) That the collector is seeking payment from the assets in the decedent's estate; and (2) the individual could not be required to use the individual's assets or assets the individual owned jointly with the decedent to pay the decedent's debt. These disclosures generally will be sufficient to prevent deception. Nevertheless, there may be circumstances in which these disclosures are not applicable or sufficient to prevent deception. The collector has the responsibility of tailoring the information it discloses to avoid misleading consumers.

A collector also should not use questions about the decedent's assets to mislead the person who has the authority to pay the decedent's debts from the estate into believing incorrectly that those assets are subject to the collector's claim. Although such questions are not necessarily deceptive, the collector may need to take precautions to prevent the person from being misled—for example, by disclosing that jointly-held assets are not subject to the collector's claim and that the collector is trying to determine what assets are in the estate. Once the collector has reason to believe that a particular asset is not part of the decedent's estate, the collector should

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

DBA does not have a basis for answering this question.

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

Yes, consumers should be able to opt-in to receive text messages, and should be able to waive the provisions of a mini-Miranda. With regards to the mini-Miranda specifically, the initial text message should contain the mini-Miranda, but subsequent texts from the same number, identified as a collector in the initial communication, should not need a mini Miranda. This is in the best interests of whoever is paying for the text and it is not adverse to the interests of the consumer as they have already been notified that the text sender is a collector and that the text is an attempt to collect a debt.

Q106: What technological innovations (*e.g.*, links, attachments) might facilitate the delivery of mini-Miranda warnings via text message? For instance, what would be the potential costs and benefits of allowing a collector to send the consumer a text message that does not contain the mini-Miranda but contains only a link to a 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

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stop asking questions about that particular asset or otherwise create the misimpression that the particular asset is subject to the debt.

Finally, in determining whether individuals are taking away the misimpression that they are personally liable for the decedent's debts, the Commission will consider whether the collector has obtained an acknowledgment at the time of the first payment that, if appropriate, the person understands that he or she is obligated to pay debts only out of the decedent's assets and is not legally obligated to use his or her own assets—including those jointly owned with the decedent—to pay the debts. *Id. at 44922 and 44923.*

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?

Embedding a link to a site that discusses consumer rights would be ideal – see discussion about CFPB-generated consumer rights disclosure document.

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

As discussed above, DBA believes that consumers should be provided with access to an on-line listing of all consumer rights under the FDCPA.

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

Debt buyers accept a wide variety of payment mechanisms, including check, ACH and credit card, with check and credit card being the most prevalent.

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

85% of debt buyers never charge a consumer fees based on a consumer's method of payment, and 95% almost never charge a fee.

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

DBA Certification Standards prohibit the use of false or misleading claims.

Some debt buyers may choose to accept certain payment methods from consumers or, historically, may have steered consumers into various payment methods, but providing consumers additional payment options should not be considered false or misleading.

Q111: Do consumers understand the costs of using specific payment methods to

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

DBA does not have specific information about consumer preferences or knowledge, though studies done in other contexts have demonstrated that consumers, even low income consumers, appear to understand the different costs associated with different payment methods.

For example, see http://mercatus.org/publication/economics-and-regulation-bank-overdraft-protection, which found that consumers understand how different fees and costs impact them.

Q112: Should the Bureau incorporate the examples from FDCPA section 808 into proposed rules prohibiting unfair or unconscionable means to collect or attempt to collect any debt by third-party debt collectors?

Yes. The Bureau should incorporate the examples from FDCPA section 808.

Debt buyers and third party agencies are used to complying with FDCPA section 808, and are required to do so under the DBA Certification Standards.

Should any of the specific examples addressed in section 808 be clarified or supplemented and, if so, how?

DBA believes that any changes should be focused on clarifying existing language and updating language to reflect modern technology.

Most of 808's practices are clearly unfair (*e.g.* charging interest/fees not allowed in contract or by state law) but some appear to be arbitrary, such as Section 808(2)'s post date notice requirements.

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?

No, only clearly unfair practices should be included. There is a long history of enforcement surrounding what is and is not clearly unfair, and changing those rules could be detrimental to consumers and debt collectors.

Further, DBA Certification Standards prohibit DBA members from engaging in unfair or deceptive practices.

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

DBA believes that there are many consumer protections already in place for first party collectors, and so does not believe that first party collectors should be subject to the same rules as third party collectors.

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

No, the language of 808(1) is clear, and DBA's Certification Standard clearly supports such a prohibition.

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

No, the language of 808(1) is clear, and DBA's Certification Standard clearly supports such a prohibition.

Q116: What communications technologies could cause consumers to incur charges from contacts by debt collectors? What are the costs to consumers and how many consumers use these technologies? For instance, how common is it for consumers to be charged for text messages and what is the average cost of receiving a text message? How common is it for consumers to be charged for mobile phone calls

and what is the average cost of receiving an average-length call? Does incurring such charges vary by demographic group? If so, how?

Consumers have literally thousands of choices in how they want to pay for any communications, and technology and competition is constantly creating new methods of communications and new ways for consumers to pay for that technology. Therefore, DBA has no way to know if when or how a consumer may or may be "charged" for a particular form of communication

Q117: Should proposed rules presume that consumers incur charges for calls and text messages made to their mobile phones?

No, there should not be a presumption about consumer charges and behavior. Consumers have literally thousands of choices in how they want to pay for any communications, and technology and competition is constantly creating new methods of communications and new ways for consumers to pay for that technology. Therefore, DBA has no way to know if when or how a consumer may or may be "charged" for a particular form of communication.

Should the failure to use free-to-end-user services when using technologies that would otherwise impose costs on the consumer be prohibited?

No, a burden should not be imposed on a debt buyer to determine methods of contacting the consumer that are entirely in the control of the consumer unless a preference is expressed by the consumer.

What would be the costs and challenges for collectors of implementing such requirements?

A burden should not be imposed on a debt buyer to determine methods of contacting the consumer that are entirely in the control of the consumer unless a preference is expressed by the consumer.

Q118: Should proposed rules require collectors to obtain consent before contacting consumers using a medium that might result in charges to the consumer, such as text messaging or mobile calls?

No, the debt buyer should be able to rely on the contact medium preferred by the consumer, so presuming that the consumer included specific contact information on their application or contacted a debt buyer through a particular medium, the debt

buyer should be able to rely on that communication as expressing “express consent” to contact the consumer through that medium.

If so, what sort of consent should be required and how should collectors be required to obtain it?

See above.

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

As discussed above, if the consumer included specific contact information on their application or contacted a debt buyer through a particular medium, the debt buyer should be able to rely on that communication as expressing “express consent” to contact the consumer through that medium.

However, DBA also supports the ability of the consumer to opt out of communications from a particular medium, or to request contact only through a particular medium.

Q120: FDCPA section 810 states, “If any consumer owes multiple debts and makes any single payment to any debt collector with respect to such debts, such debt collector may not apply such payment to any debt which is disputed by the consumer and, where applicable, shall apply such payment in accordance with the consumer’s direction.”[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?

There is no need to supplement this requirement; the DBA Certification Standard prohibits such conduct.

Q121: Should proposed rules require that payments be applied according to specific standards in the absence of an express consumer request or require a collector to identify the manner in which a payment will be applied? Should

proposed rules require that the payment be applied on or as of the date received or at some other time?

No. Any rules would inevitably be too complex to administer and would not match perfectly with consumer preferences (*e.g.,* some consumers might want the highest interest rate loan paid off first, but others might prefer to pay off the lowest principal balance.)

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

DBA agrees that this is an issue that should be addressed, to the extent that it occurs.

Many collectors provide zero balance statements and others provide receipts, but it is not clear that there is data regarding the prevalence of the practice.

Consumers should have the right to request documentation (*i.e.,* receipt), but documentation should only be required if requested by the consumer.

The type of documentation that consumers request may vary by consumer (email, mail, etc.)

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

Any untrue and/or misleading claims made under this section are already prohibited under 12 USC 5531; section 807 of the FDCPA; and the DBA Certification Standards.

There are several hundred Debt Buyers and several thousand collection agencies that all work to collect purchased debt, so the review on a case by case basis would be necessary as the types of claims made will vary widely throughout the industry.

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

Yes, the information or documentation substantiating a claim depends upon the type of debt to which the claim relates (*e.g.*, mortgage, credit card, auto, medical).

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

The techniques used to collect a debt will change as the account ages. The goal of all debt buyers and collectors is to resolve the outstanding debt voluntarily to the benefit of both parties involved. For example, in general, immediately after charge off the first step in collection typically will not be to file suit. As the account ages, different collection applications are applied.

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

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

Debt collectors and debt buyers are required to validate any underlying debt under section 809 of the FDCPA.

See responses to Section III as it relates to validation notices and requirements, and general practices related to the debt buying industry.

Generally speaking, debt buyers will use account level information (account number, consumer name, consumer address, bank name, balance owed) in the initial validation notice required under section 809; they will attempt to locate and send varying types of information when a dispute received, (for example, a fraud claim may result in an identity theft packet being sent to the consumer, while a balance dispute may result in a

statement being sent); after a debt has been disputed and verified from time to time additional information may be sent including, but not limited to, proof of payment, applications, asset information etc.; prior to commencing a lawsuit many debt buyers will send a final demand letter which contains the account information.

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

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

DBA believes that all communications with consumers must be accurate and not deceptive, including discussions about the effect of paying off debt.

Q128: What services are provided to debt collectors in connection with the collection of
debts and who provides them? Are the types of services the same for first-party and third-party collectors? What information or data support or do not support the conclusion that such services provided are material to the collection of debts?

Debt collectors receive services from a variety of providers in connection with the collection of debts. These services include several that are common to any business: utility services (electricity, gas, water); phone service; computer hardware and software providers; internet access; security services; insurance; accounting, licensing and legal services. In addition, debt collectors receive services from a group of providers that are collectively unique to the debt industry, such as letter vendors, collection software companies, telephone dialer companies and consumer location data sources. All of these services – both those that generally provide services to numerous business and the group the collectively provides services unique to the debt industry – are not "material to the collection of debts" and do not constitute "substantial assistance" to a covered person or service provider under the Dodd-Frank Act.

Q129: Are there specific acts or practices by service providers that should be specified in

proposed rules as constituting unfair, deceptive, or abusive acts or practices in connection with the collection of debts? How prevalent are such acts or practices? In addition to the prohibition on unfair, deceptive, and abusive acts and practices by service providers, section 1036(a)(3) of the Dodd-Frank Act prohibits "any person [from] knowingly or recklessly provid[ing] substantial assistance to a covered person or service provider in violation of the provisions of section 1031 or any rule or order issued thereunder."

No, DBA is unaware of any cases holding a debt collector liable for the acts of a servicer identified in response to Question 128 above.

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

See response to questions 128 and 129 above. The measure that should be used to determine if services provided are material to the collection of debt is whether the services are rendered by an employee or independent contractor under the control or supervision of the debt collector.

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

See responses to questions 128 through 130 above.

Part 6: Time-Barred Debt

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

DBA is unaware of any data or information that indicates what consumers believe may occur when they do not pay debts in response to collection attempts.

Q133: Should the Bureau include in proposed rules a requirement that debt collectors disclose when a debt is time-barred and that the debt collector cannot lawfully sue to collect such a debt? Should the disclosure be made in the validation notice? Should it be made at other times and in other contexts?

Yes, DBA believes that the CFPB should include a notice on <u>all</u> written communications that directs the consumer to a searchable Consumer Notice Web Page maintained by the CFPB where consumers can learn about their rights on specific topics that apply to their circumstances (see above). While it needs to be further explored as to how this disclosure might work with regards to time-barred debt (because of the state-specific requirements), DBA believes that including some form of uniform national notice that consumers have an evidentiary defense against debt collectors who attempt to collect on debt that is time- barred should be included. This position is consistent with DBA's Debt Buyer Certification Program which does <u>not</u> allow its certified members to bring suit against a consumer whose debt is beyond the statute of limitations. However, such a disclosure should be made as part of a broader disclosure of all consumer rights.

Should such a rule be limited to situations in which the collector knows or should have known that the debt is time-barred?

DBA believes that intentional violations of the law should be prosecuted to the fullest extent possible. However, measuring the statute of limitations is a confusing area of the law. All 50 states use differing statutory and judicial interpretations in their calculations. Consequently, DBA would suggest an intentional or reckless standard, as opposed to "knew or should have known," that allows for measured consequences for minor violations that were not intentional.

Is there another standard that the Bureau should consider?

No, a general, searchable disclosure is sufficient to provide consumers with relevant, timely and important information in a form that is likely to be most credible and helpful to them.

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

DBA believes that the CFPB should include in the proposed rule a uniform national notice that consumers have an evidentiary defense against debt collectors who attempt to collect on debt that is time-barred. This position is consistent with DBA's Debt Buyer Certification Program which does not allow its certified members to bring suit against a consumer whose debt is beyond the statute of limitations.

Q135: Is there any data or other information indicating how frequently time-barred debt is revived by consumers' partial payments?

The DBA Certification Standards prohibit Certified Debt Buyers from suing to enforce time-barred debt.

The vast majority of debt is not revived, even if the consumer takes an action that could otherwise be used to revive a debt.

How frequently do owners of debts and collectors sue to recover on time-barred debts that have been revived?

DBA is unaware of any data or information that indicates how frequently owners of debts and collectors sue to recover on time-barred debts that have been revived under state statutes.

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

DBA is unaware of any data or information that indicates "what consumers believe" will be the consequences or results should they make a partial payment on their debt.

However, the mere fact that a consumer is willing to make a partial payment on a debt would seem to suggest that: (1) the consumer recognizes that the debt is a contractual obligation that they owe; and (2) making a partial payment is a step toward paying off their contractual obligation.

Q137: Should the Bureau require debt collectors seeking or accepting partial payments on time-barred debts to include a statement in the validation notice that paying revives the collector's right to file an action for a new statute of limitations period for the entire balance of the debt if that is the case under State law?

DBA believes that consumers who owe a debt should be aware of <u>all</u> of their rights under the law, as discussed above. As stated earlier, DBA also believes that a uniform national notice that directs consumers to a searchable Consumer Notice Web Page maintained by the CFPB would increase consumer knowledge and clarity of their rights, and would provide them with timely and searchable information that is relevant to their circumstance.

What would be the costs to debt collectors in making such a disclosure? How should such a disclosure be made to be effective?

If the notice is included as part of the other disclosures that debt buyers are already required to make, and the language that is required is clear and unambiguous, the cost is not significant. However, if the notice is required to be sent as a separate attachment, the costs could be very high. Additionally, if the language is not clear, and debt buyers are then subject to possible litigation over the contents of the notice, that would add significant cost and would not benefit consumers.

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?

In 2013, California and Connecticut adopted consumer disclosure language that was modeled after the *Asset Acceptance* Decree language. DBA is not aware of any suitable consumer notices that concern the revival effect of a consumer payment on a time-barred debt.

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

The DBA Debt Buyer Certification Program does <u>not</u> allow its certified members to bring suit against a consumer whose debt is beyond the statute of limitations. Because DBA Members will not be suing on time-barred debts, DBA requests that its members not be then administratively required to provide the consumers with a notice that the DBA member will not sue on the debt.

Instead, as we have noted, DBA would support CFPB developing a uniform national consumer notice that would be required on <u>all</u> written communications that directs the

consumer to a searchable Consumer Notice Web Page maintained by the CFPB where consumers can learn about their rights on specific topics that apply to their circumstances (see response to question 133 above).

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

As we have stated, DBA believes that every written communication to a consumer should include directions to a CFPB web page, maintained by the CFPB, which provides information about consumer rights, including with regard to time-barred debt and the effects of a partial payment.

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

The following actions by consumers may revive time-barred debt:

- Reaffirmation agreement; and
- New charge on an account.

However, the vast majority of debt is not revived by DBA members, even if a consumer takes an action that could otherwise be used to revive a debt.

Consumer Testing of Time-Barred Debt Disclosures

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

DBA is unaware of any "model summary" of rights under the FDCPA or State debt collection laws related to time-barred debt.

However, in 2013, the Federal Trade Commission's Asset Acceptance Decree language was statutorily adopted by the states of California and Connecticut.

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

DBA is unaware of any consumer testing or other research concerning consumer understanding or disclosures relating to time-barred debts that the Bureau should consider.

Part 7: Debt Collection Litigation Practices

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

Most collectors file suit based on a consumer's place of residence. There are two compelling reasons for this. First, state and federal law regarding due process and fundamental fairness, which are articulated through court rules and state law concerning jurisdiction and venue, require that most suits be filed in the location where the consumer resides. Second, 15 U.S.C. § 1692i(a)(2) requires debt collectors to bring legal actions only in the place where the consumer resides at the commencement of the action or in the place where the consumer signed the contract sued upon. In some rare cases, it may be appropriate under state law to file suit in the location where the contract was signed. However, the location where a contract was signed may be more difficult to determine, not only due to the availability of documentation, but also because contracts do not always require signatures. For instance, a signature is often not required to open a credit card, as applications may be made over the phone or on the internet, and it is by use of the account that the consumer accepts terms of the agreement. As a result, it is rare that suits are not filed in the location where a consumer is located.

DBA certification standard A.4 requires certified debt buyers to comply with the FDCPA as well as all other local, state, and federal laws concerning collection activity on consumer accounts and the rights of consumers. This certification standard thus obligates certified debt buyers to comply with all state and local rules and FDCPA

provisions regarding venue and jurisdiction, which have been crafted to ensure fundamental fairness in venue selection. Additionally, legal actions to recover debts must be brought by licensed attorneys in the states in which they operate. Attorney conduct is regulated not only by federal and state debt collection laws, as attorneys can be considered debt collectors under the FDCPA and other relevant statutes, but also by the individual state bar ethics committees and rules. As such, attorneys have every incentive to ensure that the venue and jurisdiction selections in collections actions comply with all applicable laws and standards.

DBA found that 87% of DBA members always file suit in the consumer's residential area; and an additional 10% of DBA members file suits outside the consumer's residence area in less than 2% of their cases.

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

There are not significant consumer protection concerns arising from the geographic size of judicial districts. Typically, districts are not so large that the consumer cannot travel to the court for hearings which may occur in a debt collection action. State and local laws concerning jurisdiction and venue are in place to ensure that the venue for suit is fair, in addition to FDCPA provision 15 U.S.C. § 1692i(a)(2), which requires debt collectors to bring legal actions only in the place where the consumer resides at the commencement of the action or in the place where the consumer signed the contract sued upon. Due to these requirements, suits are generally filed in the jurisdiction where the consumer resides. Therefore, the burden of travel is more likely felt by the debt collector attorney or creditor than the consumer to travel to hearings and file documents. Additionally, with advances in technology, many courts allow parties to appear at hearings via telephone or video conference if travel is difficult, and also provide access to clerks and court records via telephone or internet. With such significant technological advances and the accommodative spirit of courts, there are few issues with physical access to the courts such that the size of districts would be an issue.

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

No. Issues related to abusive venue practices have generally been resolved by the FDCPA requirements in 15 U.S.C. § 1692i(a)(2), which restrict venue to the location where

the consumer resides or where the contract was signed. Additionally, state and local laws and court rules related to jurisdiction and venue are in place to ensure that suits are brought in locations which comport with standards of fairness. By the nature of service requirements involved in bringing suit and other venue and jurisdictional provisions, debt collectors will most likely have or find the current location of the consumer, and will generally file suit in that judicial district. State and local courts sometimes also have particular rules to automatically transfer cases within the jurisdiction based on convenience, resources, or need, and so any rule further restricting venue may interfere with the procedures of the state courts which oversee the actions.

Furthermore, law suits to collect on debts must be brought by attorneys licensed in the states in which the suits are filed. The attorney's selection of venue is not only ruled by applicable state and local laws, court rules, and FDCPA provisions, but their conduct is also governed by state bar associations and ethics committees. Additionally, DBA certification standard A.4 requires certified debt buyers to comply with the FDCPA as well as all other local, state, and federal laws, which necessarily requires debt buyers to adhere to standards in place which ensure fundamental fairness and due process in venue selection. These requirements limit inconvenience to consumers involved in suits and were designed to make certain that venue selection is fair. As actions will generally be filed based on the consumer's location, and because those filing suits are subject to federal, state, and local laws and court rules, the opportunity for abusive practices related to venue is virtually non-existent.

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

DBA found that there have been no appreciable differences in number of suits being filed on portfolios purchased since 2010.

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

rules any requirements to complement or avoid interfering with States' pleading, motions, and supporting documentation requirements?

No, this is an area that should be left to the states. States are well-equipped to establish pleading and procedure requirements that are adequate to protect their litigants, consistent with the laws of each state. It is questionable whether the CFPB has the authority to dictate to a certain group of litigants what they must say in their state court pleadings when pursuing litigation in state courts. For this reason, the CFPB should make clear that nothing in its rules is intended to modify state laws or rules of procedure concerning pleadings, motions or supporting documentation requirements, and that in the event of any conflict between the CFPB rules and the laws of any State in this area, State law shall control.

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

Please see the response to Question Number 147. Each state has established its own rules of procedure and its own pleading requirements, and it is unclear that the CFPB has the authority to modify those requirements for a certain group of litigants. If consumers allege that debt buyers have made "deceptive" claims in pleadings, this issue should be resolved in the context of the collection litigation consistent with prevailing state law. For example, if a consumer contends that a debt buyer has falsely stated that a debt is due, the consumer can file an answer which asserts this as an affirmative defense, and if the consumer prevails in the action, the consumer may seek appropriate sanctions or other remedies under state law, such as a claim for malicious prosecution. If a consumer contends that a debt buyer has falsely claimed that the summons and complaint was served, the consumer can move to quash service or can move to set aside the judgment, and the consumer may seek to recovery fees or costs as permitted under state law. The CFPB should make clear that its rules are not intended to modify state pleading requirements or state rules of procedure.

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

The DBA Certification Standard prohibits deceptive claims, and if such activity occurs at all, it may be the practice of a handful of collectors that are not DBA members.

The States have established specific proof requirements to prevail in an action to recover on a consumer debt. The specific, detailed requirements have been established by each State through a legislative process or by way of common law development. Each State acknowledges the right of a creditor to collect on a consumer debt. While each State has its own requirements, several common elements do exist among many of the states (including, but not limited to): (1) proof that an underlying debt exists; (2) that there was a default on the debt by the borrower; (3) that there is an amount due and owing; and (4) proof that the entity has standing to sue to collect the debt. Also, each State's procedural and evidentiary rules will govern what evidence is required and the admissibility requirement of such evidence relating to the consumer debt.

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

Please see responses to Questions Nos. 147 and 148. The CFPB should make it clear that its rules do not apply to the contents of pleadings filed in state court or pleadings that must be served on consumers consistent with state law, such as complaint or discovery requests, which are already governed by the state rules of court or procedure.

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

No. As explained in response to Questions Nos. 147, 148 and 150, this is an area that should be left to the States to control. Each state has established its own rules of procedure and their own pleading requirements, and it is unclear that the CFPB has the authority to modify those requirements for a certain group of litigants. The CFPB should make clear that its rules are not intended to modify state pleading requirements or state rules of procedure, and that in the event of any conflict between the CFPB rules and state law governing pleading requirements or the rules of procedure, state law should control.

Part 8: State and Local Debt Collection Systems

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

The procedures and criteria contained in Regulation F place an undue burden on States in applying for and securing an exemption. At a minimum, § 1006.3 needs to be revised to lessen the requirements and demands placed on a State to seek an exemption. Moreover, on a broader issue, Regulation F implicates constitutional provisions relating to state sovereignty, including (but not limited to) the Supremacy Clause ("This Constitution, and the Laws of the United States which shall be made in Pursuance thereof ... shall be the supreme Law of the Land ... any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const. art. VI, cl. 2.) and the Tenth Amendment ("The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." U.S. Const. amend. X.).

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

This appears to be a question that is best resolved between states and the CFPB.

Exception for Certain Bad Check Enforcement Programs Operated by Private Entities

Q153: How prevalent are bad check pretrial diversion programs?

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

Q155: What do State or district attorneys usually do to ensure that the private entities that operate bad check pretrial diversion programs are subject to their "direction, supervision, and control"? Should the Bureau specify in proposed rules what State or district attorneys must do to direct, supervise, and control the

private entities that operate bad check pretrial diversion programs in order for these programs to be excluded from the FDCPA? If so, what should be required?

Q156: One of the specific requirements in section 818(2)(C) of the FDCPA is that in their initial written communication with consumers the private entities operating bad check diversion programs must provide a "clear and conspicuous" statement of the consumers' rights.268 How do private entities currently disclose this information? Should the Bureau specify in proposed rules what constitutes a "clear and conspicuous statement" of these rights? If so, what standards should be included?

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

Q158: Are there any other aspects of bad check pretrial diversion programs that the Bureau should address in a proposed rule? To the extent commenters have concerns about acts or practices involving these programs, describe how prevalent the practice is and what harm it causes to consumers?

Many states maintain very specific rules regarding bad check pre-trial diversion programs as part of their criminal proceedings. The DBA believes that these programs are better left to the states' rules of criminal procedures. Inserting federal collection practices into these targeted state programs will most likely impair the state procedures unnecessarily (*e.g.*, by creating additional cost, or lengthening their timelines, or imposing additional burdens on their already-functioning criminal processes).

Part 9: Recordkeeping, Monitoring, and Compliance Requirements

Federal Registration of Debt Collectors

Q159: Should the Bureau propose rules to require debt collectors to register? Should any
such registration system be used to register individual debt collectors, debt collection firms, or both? What information should be required for registration, and are there any particular State models that the Bureau should consider? Are there data on how consumers have benefitted from similar systems now operating

in States? Are there data on the costs imposed on collectors by registration? How could a registration system be structured to minimize the cost of registration for debt collectors, while still providing adequate information for those who use the registration system?

This is a States' issue and should be preserved for the states to govern licensing and registration. However see the response to Q160.

It is unclear how consumers benefit from a registration requirement, other than the assumption that it may keep bad actors away and keep good actors vigilant. It is unknown whether the states keep any quantitative data on the cost benefits of registration or licensing.

The cost of registration is likely minimal in most states in comparison to costs of licensing. Licensing costs for the filing fees are not normally high with the exception of the Kansas Consumer Finance license which is based on portfolio value for portfolios matching the criteria and this fee is compounded by the State receiving a duplicative fee from the creditor and the debt buyer. In other states such as Massachusetts, the cost of handling the annual audit is higher than other states due to sheer manpower and documentation requirements.

One central database for registration or licensing with centralized forms and on-line submissions would ease some of the state by state complications and could potentially contain lists of licensed debt buyers and identify the states where they are licensed. This feature of one centralized information site for consumers would likely be beneficial and less confusing.

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

If a licensing system were to be implemented, a majority of DBA members would prefer a privately owned system like NMLS as the licensing system to use. NMLS is currently the system used by Massachusetts, Idaho, Indiana, and North Dakota for licensing debt collection agencies. NMLS also maintains a trained team to assist licensees with questions and issues about the system. The main advantage of such a system is uniform information – each state can request additional unique documents, but the basic application is uniform across the system. A good system also allows instantaneous communication between the licensee and the agencies, including instant document production if necessary, which NMLS is able to do.

The downside is that it can be more expensive (NMLS processing fees on top of the regulatory fees), which is needed to pay for the system, and that burden seems to be entirely on the licensees. The system is easy to use when you learn about its functionality.

Recordkeeping Requirements

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

Creditors are required to only retain records for two (2) years under TILA. A requirement for a longer retention period under the Truth in Lending Act (TILA) combined with greater access to documentation and information by debt collectors and debt buyers may obviate issues relating to the amount and nature of the debt and the identity of the debtor. Debt collectors normally keep the records longer than two years and follow company specific retention policies. Currently, some states or cities such as Florida and New York City have retention requirements.

A uniform retention policy for creditors and debt buyers/debt collectors might prove useful if the retention requirement at a Federal level preempted the enactment of new and varying state-by state requirements. It is anticipated that consumers would benefit from a uniform retention requirement as it would allow them to obtain more information about their debts. The costs of retention of documents, with newer technologies, is lower than prior years.

Q162: How long do creditors and debt collectors currently retain records, and how does it differ based on the type of debt or type of record? Should the length of

time that debt collection records are retained relate to how long a debt may generally be reported in a consumer report, how long a collector may collect upon the debt, or how long a consumer has to bring private action under the FDCPA? Or is another time period more appropriate?

See response to Q 161. However, the response may depend on the type of information or documentation retained. Unlike documents, recordings can be expensive to maintain. The majority of DBA members retain documents longer than a year and many longer than 5 years. DBA members tend to agree that uniform record keeping guidelines would be desirable and that the retention requirements should be the same for creditors as debt collectors.