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February 28, 2014

Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

Re: Docket No. CFPB-2013-0033; Regulatory Identification Number 3170-AA41; 12 CFR Part 1006: Debt Collection (Regulation F) Advance Notice of Proposed Rulemaking

Dear Ms. Jackson:

This letter is submitted on behalf of Wells Fargo & Company and its affiliates ("Wells Fargo") in response to the Advance Notice of Proposed Rulemaking ("ANPR") by the Consumer Financial Protection Bureau (the "Bureau"), published in the Federal Register on November 12, 2013.

Wells Fargo commends the Bureau's intent to update the Fair Debt Collection Practices Act ("FDCPA"), and supports the underlying objectives of enhancing consumer protections within the collection environment and modernizing the Act's communication provisions. While the FDCPA does not directly apply to Wells Fargo in its role as lender and first-party servicer, we have provided commentary on potential impacts that we hope the Bureau will find helpful. We have also offered feedback in response to the Bureau's inquiries related to what conduct should constitute an unfair, deceptive, or abusive act or practice under the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act").

The primary themes in our response are summarized in the following paragraphs. Please refer to the full text of our commentary, which you will find attached, for our complete response to the ANPR.

A. **Debt collection is important to the ongoing availability and affordability of credit**. Wells Fargo appreciates the Bureau's recognition of the importance that collection of consumer debts plays in the functioning of consumer credit markets. We would ask the Bureau to continue to be mindful that regulations that inhibit appropriate collection activities could have the unintended consequence of creating a disincentive for some consumers to repay their obligations with downstream impacts on the availability and affordability of credit to consumers. Consumers will be best served by proposed regulations that are designed to serve a clear need, structured to use the least onerous mechanism for addressing the need, clearly defined (and supported by model forms, where applicable) to avoid ambiguities that lead to inconsistent treatment, and tested to ensure they are addressing concerns of harm as envisioned.

B. **Customer engagement is critical to the first-party servicing relationship.** One of the primary concerns we want to raise is the importance of ensuring new rules do not unintentionally impede customer engagement with their lender. As was recognized in the National Mortgage Servicing Standards, customers are best served if they engage with their lender early and often. Doing so helps customers avoid late fees, minimize negative impacts to their credit report, avoid account closures and additional interest accruing on open-end credit accounts, and take advantage of early intervention, loss mitigation, settlement and other programs available to assist customers in financial hardship. One of the biggest challenges a lender faces in trying to assist a customer is the customer's reticence to have an awkward conversation admitting they need help. Any rules that make the experience more uncomfortable for customers will hinder reputable lenders' ability to help their customers navigate the financial system.

C. **The distinction between first and third party collections should be maintained.** The ANPR indicates that the Bureau is examining whether rules are warranted with respect to the conduct of first party collectors and proposes harmonizing regulation applicable to first and third party collections. The types of legal disclosures and communication restrictions that may be appropriate to protect consumers in a third party collection context do not serve the consumer's best interest in a first party collection context because they inhibit communications between lenders and their customers. Further, as Congress found, application of these standards to first party collectors is unnecessary due to their inherent incentive to protect their good will, plus lenders are already subject to substantial regulatory oversight that is more extensive than the third party collection arena.

D. **Additional study and commentary should be conducted before proposing new rulemaking applicable to lenders.** Any new rules applicable to first party collections under the Dodd-Frank Act should be limited to only those circumstances where a clear consumer need exists and the benefits to the consumer outweigh the costs that result from additional regulatory requirements. At present, we do not believe there is sufficient data to indicate these circumstances exist with respect to first party collections. We would urge the Bureau not to propose new rules applicable to first party collections at this time, but instead to engage in more study to accumulate data to determine if a specific consumer protection is needed. If the study reflects that a consumer need does appear to exist, then comments could be solicited from the public to obtain feedback on the costs and benefits of adopting regulation. This approach would allow the Bureau to ultimately address any consumer protection concerns that are borne out of the analysis, and ensure a commensurate consumer benefit without imposing unnecessary costs.

E. **Any rulemaking should foster innovation in communication technology; customers prefer "self-serve" communication channels.** Wells Fargo would urge the Bureau to consider that any proposed rules account for changes in the way society communicates and foster the adoption of technological innovation within collection communications. It is our experience that customers prefer to have collection interactions through communication channels like online and mobile banking, email, and text messaging. We believe this is due to the anonymity of the channel and the customers' ability to "self-serve" at the time and place that works best for them. Similarly, it is increasingly our customers' preference to communicate via mobile phone as opposed to through a traditional "land line". Accordingly, we would urge the Bureau to keep these customer preferences in mind in any new rules proposed to allow lenders to retain the flexibility to offer a variety of contact channels that meet different customers' needs.

F. **The Bureau should preempt the field with respect to regulations of similar subject matter**. In the event the Bureau decides that it is important to issue a framework of new debt collection rules applicable to first party collections, Wells Fargo would ask the Bureau to consider expressly preempting state law relative to debt collection practices. Where fifty states enact different requirements relative to the same types of protections already offered under the federal law, this additional complexity only serves to increase the cost of compliance, the likelihood of unintentional violations, and the variability of customer treatment across the multitude of jurisdictional rules. Accordingly, in order to allow us to provide a consistent customer experience for all our customers and minimize uncertainty in application, we would ask that if the Bureau implements new rules relative to collections that it preempt the field in this area.

Wells Fargo appreciates this opportunity to provide comment, and respectfully requests that the Bureau consider adopting the suggestions made in this letter and the additional important points addressed in the Commentary section that follows. We are committed to working with the Bureau to ensure any new debt collection rules are crafted to best meet their underlying goals. To that end, we would welcome the opportunity to meet with the Bureau, or to offer further details and comments, as the proposed rules are being developed. Again, we thank the Bureau for this opportunity to provide comments.

Sincerely,

Thomas A Wolfe

Tom Wolfe
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Commentary

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COMMENTARY

I. Introduction

A. *Debt collection is important to the functioning of consumer credit markets, particularly with respect to the ongoing availability and affordability of credit.*

Wells Fargo appreciates the Bureau's recognition of the importance that collection of consumer debts plays in the functioning of consumer credit markets. As the Bureau's introductory materials note, the ongoing cost and availability of credit directly rely on lender's ability to recover on outstanding obligations. Rules that inhibit lenders' ability to contact their delinquent customer base increase lenders' collection costs, which ultimately are borne in the form of higher cost of credit for all consumers. These costs are ultimately borne by the population of performing customers in the form of increased cost of credit. Further, the increased costs that result from collection restrictions ultimately necessitate lenders tightening credit policies, which would impact some consumers' ability to qualify for credit products. We would ask the Bureau to continue to be mindful that regulations that inhibit appropriate collection activities could have the unintended consequence of creating a disincentive for some consumers to repay their obligations with downstream impacts on the availability and affordability of credit to consumers.

Further, we also stress the importance of performing cost benefit analysis to ensure any new regulation is achieving its purpose in the most cost effective way. The practical reality is that the cost of regulation is ultimately borne by the users of the financial services industry. Accordingly, consumers will be best served by proposed regulations that are designed to serve a clear need, structured to use the least onerous mechanism for addressing the need, clearly defined (and supported by model forms, where applicable) to avoid ambiguities that lead to inconsistent treatment, and tested to ensure they are addressing concerns of harm as envisioned.

B. *Customer engagement is critical to the first-party servicing relationship.*

Customers are best served if they engage with their lenders[1] early and often. Doing so helps customers avoid late fees, minimize negative impacts to their credit report, avoid account closures and interest charges on open-end accounts, and take advantage of early intervention, loss mitigation, settlement and other programs available to assist consumers in financial hardship. One of the biggest challenges a lender faces in trying to assist a customer is the customer's reticence to have an awkward conversation admitting they need help. Any rules that make the experience more uncomfortable for customers, or that inhibit lenders' ability to communicate through various communication channels, will hinder reputable lenders' ability to help their customers navigate the financial system, whether by simply providing guidance to enhance the customer's financial literacy or by walking the customer through the HAMP process.

[1] The first party collector is typically the lender or a servicer (referred to collectively herein as "lender"), whose role is managing the day to day operational aspects of the account throughout its entire lifecycle, not just during any periods of delinquency.

The ANPR indicates that the Bureau is examining whether rules are warranted with respect to the conduct of first party collectors and proposes harmonizing regulation applicable to first[2] and third party collections[3]. Wells Fargo agrees that no consumer should be subjected to unfair, deceptive or abusive collection practices from *any* institution. With that being said, the types of legal disclosures and communication restrictions that may be appropriate to protect consumers in a third party collection context may not serve the consumer's best interest in a first party collection context. For instance, as discussed in more detail below, Wells Fargo believes that providing disclosures like the mini-Miranda to its customers do not add value, and instead cause customers to feel fearful and embarrassed, which ultimately inhibits the willingness of the customers to engage in the discussions necessary to assist them in resolving their delinquency. Further, the types of legal disclosures and communication restrictions contemplated in a third party collection context are unnecessary in a first party context. First, as Congress recognized when enacting the Fair Debt Collection Practices Act ("FDCPA"), unlike a third party debt collector which may not have an ongoing relationship with customers that would lead them to be concerned about the customer's opinion of them, a lender's success is reliant on the creation of a positive customer experience in order to retain customers in existing products and to be able to market additional products to those same customers.[4] We disagree with the conclusion drawn in the ANPR that a lender is likely to "determine that a customer in default is no longer one with whom it is likely to maintain a long-term business relationship and thus may choose to devote its customers service efforts toward paying or prospective customers." At Wells Fargo, the typical customer has numerous products with the bank. A customer that is delinquent on one product often is performing on other products or will be able to recover from their existing hardship. Furthermore, a large percentage of our customer base is our deposit account customers. Even when a customer no longer qualifies for new credit products, the incentive to maintain the customers as a deposits customer exists. For example, roughly 70% of our Wells Fargo Card Services customers also have a deposit account with Wells Fargo. To further illustrate this point, we reviewed a random sample of customers experiencing delinquency in 2011 across consumer asset classes at Wells Fargo and found that we had opened additional accounts with 15.4% of those customers that remain active account holders by the year 2013. We believe this figure is significant, especially during this period of consumer deleveraging.

Second, substantial oversight of financial institutions' operating practices and treatment of customers already exists. For instance, federal laws such as the Dodd-Frank Act, the Fair Credit Reporting Act, the Federal Trade Commission Act, the Gramm Leach Bliley Act, the Truth in Lending Act, the Real Estate Settlement Procedures Act, and all of their implementing regulation already create a framework under which a lender must communicate with a customer regarding the terms and the ongoing status of the account, respond to disputes regarding transactions on the account, perform any credit reporting, safeguard the customer's financial privacy, and avoid any unfair, deceptive or abusive practices. Similarly, lenders are also subject

[2] References to "first party collections" herein are meant to delineate those collection activities of persons collecting debts that they originated, persons collecting debt that was not in default at the time it was obtained by such person, and any of the other enumerated exclusions within the definition of "debt collector" under 15 U.S.C § 1692a.

[3] References to "third party collections" herein are meant to delineate those collection activities of persons defined to be a "debt collector" as that term is defined under 15 U.S.C § 1692a.

[4] *See* S. REP. 95-382, S. Rep. No. 382, at 2 (1977) (noting that creditor's desire to protect their good will when collecting on past due accounts providing an incentive not to engage in the type of concerning conduct that resulted in the passage of the FDCPA).

to many state laws that govern how debt collection activities are performed in the state and outline appropriate processes for foreclosure, repossession, and litigation activities. Finally, lenders are heavily regulated by a number of different entities, including not only the Bureau, but also the Federal Reserve, the Federal Trade Commission, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency. Accordingly, we do not believe substantial additional rulemaking applicable to first party collection activity is necessary.

C. *Rulemaking should foster innovation in communication technology; customers prefer "self-serve" communication channels.*

As the Bureau recognizes in the ANPR, the debt collection laws are in need of modernization. There has been considerable technological advancement since the FDCPA was passed in 1977, changing not only the way Americans communicate with friends and family, but also the way they communicate with the businesses they patronize. Wells Fargo's experience is that customers prefer to engage through many of these new communication channels, as they allow customers to manage their accounts on their own terms. For instance, in measuring our customers' behavior, it is apparent they prefer to have collection interactions through communication channels like online and mobile banking, email, and text messaging. Customer preference for these alternative contact channels is evidenced in double digit adoption rates in recent years. We believe this is due to the anonymity of the channel and the customers' ability to "self-serve" at the time and place that works best for them.

Similarly, it is increasingly consumers' preference to communicate via mobile phone as opposed to through a traditional "land line". According to a news report from the Centers for Disease Control issued in June 2013,[5] more than half of American households at that time (51.7 percent) did not regularly use a land line. The majority of those, 36.5 percent, did not have a land line serving their household at all (up from 22.7% in 2008) and the rate of "cell phone only" households continues to grow at a rate of 2-3% every six months. Perhaps even a better indicator of future state is the fact that 45% of children were living in households with no land line. Accordingly, we believe any rulemaking should recognize that these communication channels are replacing the traditional land line and letters mailed through the postal system as the gold standard for having a meaningful interaction with customers. We would urge the Bureau to keep these customer preferences in mind in any new rules proposed to allow lenders to retain the flexibility to offer a variety of contact channels that meet different customers' needs.

D. *The Bureau should preempt the field with respect to regulations of similar subject matter.*

In the event that the Bureau determines that it is important to propose a framework of debt collection rules applicable to first party collections, Wells Fargo would ask the Bureau to consider expressly preempting state law relative to debt collection practices. Where fifty states enact different requirements relative to the same types of protections already offered under the federal law, this additional complexity only serves to increase the cost of compliance, increase the likelihood of unintentional violations, and the variability of customer treatment across the multitude of jurisdictional rules. Accordingly, in order to allow us to provide a consistent

[5] http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201306.pdf

customer experience for all our customers, we would ask that if the Bureau implements new rules relative to collections that it preempt the field in that area using authority granted to it under Section 1022(b) of the Dodd-Frank Act.

II. Transfer and Accessibility of Information Upon Sale and Placement of Debts

A. *Wells Fargo supports the creation of national standards related to the structure of a debt sale transaction.*

The ANPR indicates that the Bureau is considering using its rulemaking authority to develop national standards related to the transfer of specified information or documents as part of the sale of a debt or placement with a third-party collector. Wells Fargo believes uniform standards would improve the customer experience and provide clarity and consistency in the structure of debt sale transactions. Wells Fargo would respectfully recommend that the Bureau facilitate a working group of interested participants to recommend best practices and would be interesting in participating in such a working group.

B. *Any new rulemaking should distinguish debt sales from agency placements; an ongoing monitoring requirement in a debt sale transaction is not workable.*

As the Bureau contemplates proposed rulemaking relative to debt sale and placement of debts for collection, it is important to consider the differences between a debt sale and placement with a third-party collector.[6] A debt sale is a transfer, for valuable consideration, of possession and title of a portfolio of charged-off consumer debt to a person who regularly engages in the business of purchasing consumer debt for collection purposes. Placement of an account with a third-party collector, on the other hand, is the retention of a third party service provider for collection purposes. The practical import of this distinction is that there is an ongoing agency-type relationship between the third party collector and the debt owner that has placed accounts with the collector. The legal requirements associated with collecting on the account, whether they apply to the party placing the debt for collection or the debt collector, in substance are also obligations of the other party as a result of the service provider relationship. The same is not true in a debt sale transaction. The obligation to comply with collection laws applicable to the debt buyer in collecting a pool of purchased assets lies with the debt buyer. While the selling party should be responsible for its own actions up to the time of sale of the account, it should not have legal liability for the actions of the debt buyer.

Wells Fargo values its customer relationships and only considers other collection options, like debt sales, as a last resort after many months of attempting to work with the customer to resolve the situation directly. Where we are unsuccessful in helping the customer find a resolution prior to the debt being charged off as a loss in accordance with FFIEC accounting principles, we then will consider selling the debt. Wells Fargo agrees with the OCC's statement of debt sale best practices that it is prudent to carefully choose the debt buyers with which an organization does business to protect our customers as well as our brand. Accordingly, we believe it is a best

[6] It is also important to distinguish a debt sale transaction from a mortgage servicing transfer. A servicing transfer is the transfer of the rights to service an asset for the purpose of managing the day-to-day operational aspects of the account, including such things as issuing periodic statements, crediting monthly loan payments, and managing the escrow account for payment of taxes and insurance; it is not the transfer of title to the assets for a collection purpose.

practice to implement due diligence measures reasonably designed to confirm that the buyer has processes and procedures in place to achieve compliance with consumer protection laws.

What we do not believe is workable is ongoing oversight by the selling party of a debt buyer's practices post-sale. A debt sale at its core is the relinquishment of all rights to the asset, including the rights to monitor the account and know what further communications occur with the customer. Not only would sharing customer information post-sale be a potential violation of state and federal privacy laws on the part of the buyer, it would also jeopardize the "true sale" treatment of the transaction and undermine the purpose of engaging in the sale. Further, we're contented that the Bureau is empowered to govern debt buyers directly.

C. *Wells Fargo respectfully opposes the concept of creating a central repository of debts.*

Wells Fargo does not believe the value of a central debt repository outweighs the risks and costs of creating and maintaining such a system. First, compiling data about all consumers' debts in one repository creates substantial privacy and data security risk to consumers, which would require ongoing vigilance and controls to continue to safeguard the information from data breaches. Second, developing and maintaining the repository would be extremely complex, requiring a mechanism to populate the repository that "speaks" to a multitude of different servicing systems, the ability to update the repository real time, an oversight mechanism to validate that the system is reporting the data accurately, extensive data fields to capture relevant furnisher types, account types and statuses across a multitude of different types of debt and furnishers of data, and extensive controls to manage who is entitled to access which consumers' records. Third, the creation and maintenance of this repository would be very expensive. Finally, we believe the goals of the repository can be achieved through much less complex and expensive means. Such a repository is not necessary for debts held by the lender. Consumers receive regular communications, usually in the form of a periodic billing statement, that keep them informed of the status of those accounts. To the extent a debt is sold, much less onerous mechanisms (such as the proposed letter notifying the consumer of sale) could be instituted to keep the consumer apprised of the current ownership of the debt without the additional privacy and data security risks that a repository would introduce. To the extent the Bureau feels a more sophisticated solution is required, we believe it would be more cost effective to leverage the existing consumer reporting agency structure for this purpose.

III. Validation Notices, Disputes, and Verifications (Section 809 of the FDCPA)

A. *Validation Notices in a first party context add substantial cost without a commensurate benefit to customers*

The Bureau requests information on the content, form and delivery of validation notices that must be sent by debt collectors within five days of the first communication with a customer in connection with the collection of any debt, as required by section 809 of the FDCPA. As the Bureau has summarized, the validation notices must include the following information:

(1) the amount of the debt;
(2) the name of the creditor to whom the debt is owed;
(3) a statement that unless the customer disputes the validity of the debt or any portion of it within 30 days, the debt will be considered valid by the debt collector;

(4) a statement that if the customer notifies the debt collector in writing within 30 days, that the debt or any portion of it is disputed, the debt collector will verify the debt or obtain a copy of the judgment against the customer and will mail this to the customer; and
(5) a statement that upon written request within 30 days, the debt collector will provide the name and address of the original creditor, if different than the current creditor.

The main purpose of the validation notice is to provide customers with information about the debt and, as the Bureau has stated, to eliminate the recurring problem of debt collectors dunning the wrong person or attempting to collect debts that the consumer has already paid. The validation notice gives customers a way to address any mistakes and if necessary, dispute the debt.

At the outset we would note that the debt validation notice, if required in a first party context, is a disclosure that would add substantial cost without a commensurate benefit to customers. In fact, we believe it would be detrimental to customers. First, unlike in a third party collection context, the customer does not need to be introduced to the lender when they become delinquent; they will have had regular servicing interactions with the lender including, in most circumstances, the receipt of regular monthly statements detailing amounts owing and the changes that have occurred on the account since the last billing cycle. Accordingly, the notice does not provide a benefit to customers, as the customer would already be familiar with the debt, the lender, and the amount owed.

Second, such a notice could actually have a detrimental effect on customers. As mentioned above, customer engagement is critical to our ability to help a customer through home preservation and default resolution programs. This type of legal disclosure is intimidating to customers as it implies a false sense of urgency or escalation to customers in early stage delinquency. Accordingly, it could discourage them from reaching out to their lenders and engaging in honest discussions about their accounts, thus, limiting our ability to assist them.

Third, there would be a substantial cost associated with sending a notice each time an account moves to a delinquent status. It is not uncommon for a customer to go in and out of delinquency, which would presumably cause the need to send this notice repeatedly to the same customers over the life of the account. Sending this notice to all customers who fall behind on their payments would add unnecessary expense and cost to the lender's collection process. These expenses would increase the overall cost of credit and ultimately be borne by all consumers, specifically, paying consumers who are not in default, with little to no benefit to the delinquent customers that would be receiving the notices.

Finally, as lenders already possess customer data and media information, a requirement to obtain or secure data, or validate or substantiate an existing debt prior to beginning collection activity, is unnecessary. From the beginning of the credit product relationship, the customer has worked with and communicated with the lender and, if needed, has had opportunities to dispute the accuracy and validity of the debt through many channels, including the Fair Credit Reporting Act ("FCRA") and the Truth in Lending Act. Privileges and protections lenders are required to provide to customers, throughout the credit lifecycle, are well established and customers know whom to contact and how. Also, customers receive monthly or periodic statements that include account and contact information. Based on the historical customer relationship, the customer empowerments already available, and the potential to unnecessarily alarm and confuse customers, this type of validation notice should not be proposed for first party collectors.

B. *The Bureau should preempt the field with respect to debt validation notices and/or align any notice with the Massachusetts validation notice.*

The Bureau has requested feedback on the content and form of the validation notice, particularly how the total amount due would be itemized. As discussed above, Wells Fargo believes a debt validation notice requirement should not be applied to first party collectors. Should the Bureau disagree and propose a rule to the contrary, Wells Fargo would advocate that the Bureau preempt any state validation notice requirements. Recently, the state of Massachusetts began requiring such a notice and some lenders have interpreted this validation notice as an applicable requirement. If the Bureau does not preempt the field, there would be a direct conflict between the notice required by Massachusetts and any notice required by federal law; the Massachusetts notice includes a requirement for a single balance total, whereas the Bureau has suggested alternatives that would include a detailed accounting or itemization of the balance due.

In the event the Bureau chooses to propose a rule preempting state law, we would advocate that "total debt due" be itemized as explained in alternative 2, providing for: 1) the amount of debt at the date of charge-off or default; 2) total of interest added after the date of charge-off or default; 3) total of all fees or other charges added after the date of charge-off or default; and 4) any payments or credits received after the date of charge-off or default. If the Bureau chooses not to propose a rule preempting this state requirement, for consistency purposes, we would advocate for a similar format and style to the Massachusetts letter. This would ensure the consistency of customer treatment across jurisdictions and decrease the cost of compliance and the likelihood of unintentional implementation variability.

The Bureau has also requested comment regarding if any additional information should be included in the validation notice, specifically the names and addresses of joint borrowers. It is important for the Bureau to understand that lenders only have access to as much information as our customers provide on the original credit application and in some instances, subsequent communications. But a customer's contact information may change through the duration of the debt. If a joint borrower obtains a new address, apart from the primary borrower – due to separation or divorce -- the lender may not be informed of this change of address or contact information. Lenders rely on their customers for current and accurate information; there is no other mechanism for learning that customers divorced and that one obtained a new mailing address. Providing and building in some flexibility to this requirement and allowing lenders to send notices to the joint borrower at the address given on the account application, or the last known address, is a reasonable approach.

Similarly, it is important for the Bureau to perform a cost benefit analysis when evaluating the practicality of lenders communicating in a customer's preferred language. Throughout the lifecycle of the debt and as a courtesy to customers, lenders may work with, or provide services to customers in other languages. However this courtesy should not become a servicing expectation or requirement. In 2011, the United States Census Bureau attempted to determine the number of different languages spoken in the United States. While it was not able to conclusively determine the answer, it concluded there were over 300 languages, 169 of which were distinct native North American languages. *Language Use in the United States: 2011 – American Community Survey Results*, http://www.census.gov/prod/2013pubs/acs-22.pdf. Accordingly, translating documents into numerous languages would be very difficult and costly to ensure the meaning is properly captured. This is a topic that deserves thoughtful analysis and testing to determine the true benefits to the customer weighed against the substantial cost.

C. *Rulemaking should clearly define and provide standards for the dispute process and frivolous claims.*

The Bureau has requested information about the obligation of debt collectors with respect to consumer disputes and the verification of disputed debts. As discussed above, a validation notice notifies the customer of their right to dispute the debt, or any portion of the debt, being collected, and also to request the name and address of the original creditor of the debt. Customers should absolutely have a right to raise genuine concerns or dispute errors with the debt prior to a third party debt collector initiating collection on the account. However, this dispute process has been subjected to extreme abuse by debt elimination companies and credit repair schemes that are rampant in the market today. These companies often deceive customers and encourage them to wrongly or falsely dispute their debts. Having a customer send a “dispute” simply to stall collections does not assist or help customers; instead, it delays customer engagement and open discussions that could lead to resolution rather than prolong delinquency that and could cause the customer to incur unnecessary late charges, interest and negative credit reporting. Further, these frivolous disputes clog up the system and take time and resources away from customers who truly need assistance.

Wells Fargo recommends a common definition or understanding of what constitutes a *frivolous* collection dispute and thus does not require an investigation. A dispute should be considered frivolous in nature when the customer makes *non*-specific claims of accounting or balance accuracy and when the dispute lacks specific information about the error, such as 1) the account number and the name, address and phone number of the customer, 2) a sufficient description of what the customer is disputing for the collector to perform a reasonable investigation or even identify the issue and 3) an explanation for the basis of the dispute. Other examples of frivolous collection disputes and validations include claims of reporting inaccuracy where Wells Fargo provides information to a credit reporting agency that include no specific error to research, only a claim that an inaccuracy is “possible” or “probable.” When the customer makes these non-specific disputes, the dispute should be deemed frivolous and no investigation should be required.

Wells Fargo encourages the Bureau to deal aggressively with frivolous collection-related disputes and the debt elimination and credit repair schemes that are commonly behind these customer disputes. Although not subject to the debt validation notice requirement, Wells Fargo receives collections disputes from credit repair and debt elimination organizations as well as attorneys and customers. The vast majority of these disputes are frivolous, meaning the disputes are duplicate form letters asserting a blanket dispute, but providing no explanation or description of a particular error, omission, or miscalculation to research. If a customer sends in a concern – whether it be a dispute more commonly associated with a debt validation notice or a complaint about any type of servicing issue or error – lenders want to investigate and respond to that concern, even if it is not legally required. Unfortunately, the high number of frivolous disputes received delays this process and unnecessarily adds expense to all consumers.

We support a collection-related dispute process that mirrors the process for submitting a direct dispute outlined within the FCRA. Under the FCRA, a furnisher of information is permitted to specify an address, website and/or a phone number to which direct credit bureau disputes should be submitted. The Act also recognizes that for a furnisher to properly research a dispute the dispute should include: 1) sufficient information to identify the account that is in dispute, such as the account number and name, address and phone number of the customer, 2) the specific information that the customer is disputing and an explanation for the basis of the dispute, and 3) supporting documentation or information required to substantiate the basis of the dispute, such as a copy of the consumer reporting that contains the alleged inaccuracy, a police report, a fraud or id theft affidavit, a court order or account statements. 15 U.S.C. §1681s-2(a)(8)(D). Where a dispute is submitted without sufficient information to investigate the dispute or where the same dispute is submitted multiple times with no additional information, the Act creates a safe harbor for the furnisher to respond that no investigation can be completed unless and until the necessary additional information is provided to help the furnisher understand the nature of the dispute.

In responding to a customer's non-frivolous dispute, requiring collectors to perform a reasonable investigation and provide documents or media to customers, such as statements, payment history, credit applications, or promissory notes, is appropriate. Generally, most valid, disputed debts can be resolved with this type of media. However, the type of information needed would vary, depending on the facts and circumstances of the dispute. A collector should be allowed the flexibility to tailor its response and customize the data needed for each individual dispute, as opposed to an overarching requirement to send certain documents every time a dispute is received. Historically, these responses and supporting documentation have been mailed to the customer. Wells Fargo would support technological advances that could expedite a response and provide better customer service – if the customer has requested, consented and has access to obtain information through other secure channels. But we would caution the Bureau against adopting any kind of technological rule or requirement mandating how to respond, as these options should be a customer preference and choice.

If the Bureau decides to propose new standards for debt verification and disputed debts, Wells Fargo recommends the Bureau adopt and mirror the same process as the FCRA and develop requirements to deal with and limit the number of frivolous claims. Customers following such a defined protocol will enjoy the privileges of suspended collections while the dispute is in review, a determination of the request within 30 days and benefit from the quality research of lender employees focused on their requests, unencumbered by piles of frivolous claims. Customers and collectors would benefit from harmonizing these FCRA expectations into collections.

IV. Debt Collection Communications (Sections 804 and 805 of the FDCPA)

The overarching goal in customer communication is engagement and financial success. As noted above, the customer experience throughout the credit lifecycle, but especially in collections, can make the difference between earning or losing repeat business. Sections 804 and 805 of the FDCPA focus on preventing customer harm in debt collection communications. The Bureau has requested comment on how rulemaking in these debt collection communication areas could help both customers and the industry. We would recommend that any amendment or revision to these rules provide opportunities for lender outreach and enhance customer engagement. Rules or regulations that limit or restrict a lender's ability to communicate with its customers may have many unintended consequences such as higher default rates, increased fees and interest, and a higher likelihood of litigation to engage nonresponsive customers. These circumstances would be detrimental to a customer's financial success. Customers actively communicating with their lender are more likely to incur fewer fee and interest assessments, receive financial assistance, and generally improve their financial literacy. The ability to communicate and foster engagement and collaboration when a customer encounters financial difficulty dramatically improves the probability of a successful resolution and any rulemaking in this area should support and promote this result.

A. *In order to enhance customer engagement and financial success, lenders should be encouraged and have the ability to leave voicemails, emails or text to customers, particularly for communications related to outreach efforts, uninhibited by the mini-Miranda warning.*

Section 807(11) of the FDCPA requires a debt collector's initial communication to a customer to include what is commonly referred to as the "mini-Miranda warning." This "warning" requires debt collectors to state, during the initial communication with the customer who they are, that they are attempting to collect a debt and that any information obtained will be used for that purpose. In every subsequent communication they must inform the customer that they are a debt collector. The purpose of this message is to prevent debt collectors from using deceptive or dishonest tactics when speaking with a customer and misleading a customer into giving out private information they may not otherwise provide, including financial information, home address or telephone numbers.

In the first party context, the mini-Miranda warning provides no customer benefit and is counterproductive to establishing a positive, working relationship with a customer. A lender would already have customer contact and financial information. Also, when lenders reach out to their customers, they are trying to build upon and foster a positive relationship and rapport with their customers; one built on trust and respect. This type of relationship is essential in order for all parties to be able to work together towards a resolution. It is important for a lender to be able to ask questions and effectively provide appropriate recommendations, home preservation assistance, and default resolution. It is also important for the customer to feel comfortable to engage in open and honest discussions with their lender about any root issues with their account or why a payment has not, or cannot be made and if they are in need of short term or long term assistance. Customer engagement early in the delinquency is critical to jointly resolving any issues with a customer's account. Starting each conversation with the mini-Miranda warning would undermine the relationship, create an adversarial tone, and confuse the true purpose and intent of the conversation. It could also cause much trepidation and hesitation on the customer's behalf to speak with or even reach out to the lender and could end a conversation before it truly begins.

Further, while the mini-Miranda "warns" customers that the communication is an attempt to collect a debt, not all communications about a debt are collection attempts and the mini-Miranda sends the wrong message. A customer can only take advantage of a loss mitigation or default resolution program if they have the confidence to speak with their lender. The importance of this communication is evidenced by the Bureau's recently enacted servicing rules, HAMP guidelines, and investor programs such as FHA, which require multiple outreach attempts to the customer. Lenders also place calls, leave recorded messages or send communications to customers as part of many outreach efforts, to alert them of financial relief related to FEMA events, possible or suspected identity theft, unauthorized transactions or suspected fraud issues, and as a courtesy or at the customer's request to provide due date reminders or alerts related to account balance thresholds. Finally, a disclosure requiring a lender to inform the customer that it is a debt collector would be a false statement, as that term is defined under the FDCPA. Accordingly, a mini-Miranda requirement should not be imposed on first party collectors.

Should the Bureau disagree and propose a rule including first party collectors in the mini-Miranda requirement, the message could be revised from its current form, to include an introduction of who is calling but include softer language about the purpose of the call that has a more customer friendly tenor. Further, given that, as mentioned above, lenders contact delinquent customers for many reasons other than a straightforward collection call, being able to use all forms of technology, including letters, emails and texts, would be very helpful to accomplish the goal of those communications (such as keeping customers in a FEMA-designated disaster zone apprised of assistance available to them). The FDCPA requirements, and many state requirements, including the mini-Miranda, create impediments to the use of these alternative contact channels. With significantly increasing outreach efforts and requirements and customer preference for multiple channels and styles of communication, clarity as to when and if a mini-Miranda style warning is necessary on each communication and on which type of communication, would be helpful in accommodating and honoring a customer's preferences. Wells Fargo would recommend the Bureau propose a rule clarifying that a communication is only a "collection communication" requiring a mini-Miranda warning if the purpose of the communication: 1) requests payment; or 2) requests demographic or other personal information from the customer; with the following specifically enumerated exclusions: attempts to reach customers who may qualify for a loss mitigation or other default resolution program, communications made with the intent of providing assistance in a FEMA-designated disaster zone, communications with customers in a foreclosure or repossession status, inbound connections initiated by customers or customer requested call backs, and fraud alerts. These exclusions are critical to lenders' ability to maintain customer engagement and willingness to participate in communications that allow us to assist them with their delinquency.
This same logic should apply to voicemail messages. The Bureau has accurately described the conundrum that is created by the requirement to leave the mini-Miranda warning, together with the requirement to refrain from disclosing information about the customer's debt to a third party. However, for calls that are not collection attempts, but are outreach efforts, fraud alerts, or customer requested calls, the need and ability for lenders to leave a message is even greater. Being able to leave a message assists the customer. Once the customer knows the lender needs to speak with them, they have the ability to determine how and when to reply. This is an option and service that should be available to the customer, rather than a legal prohibition. We urge the Bureau to clarify that the current mini-Miranda warning is not required for voicemail messages and particularly on communications unrelated to debt collection.

B. *Collectors should be permitted to use a home address to determine what time is convenient to contact a customer.*

Section 805(a) of the FDCPA states that a debt collector may not contact a customer "at any unusual time or place known or which should be known to be inconvenient to the customer." The FDCPA has provided a more specific definition as to what time is considered convenient: between 8:00 a.m. and 9:00 p.m. local time in the customer's location. As the Bureau has stated, the FTC has previously recommended that collectors be permitted to use a customer's home address to determine an appropriate and convenient time to call. We would urge the Bureau to adopt the FTC's recommendation. Mobile phones and modern technology now make it complicated, if not impossible, to determine what time is unusual and inconvenient for a customer. A customer's location may not match the geographic location traditionally associated with the customer's area code if a customer has traveled to or moved to a new location, but kept their former mobile or landline number. A customer may take their land line phone number and forward it to a mobile phone, temporarily or even permanently. Although there are services that scrub phone numbers to try and determine if number is a land line or a mobile number, this is not done with absolute certainty or at 100% accuracy; this information also changes constantly as customers continue to change, transfer, forward and cancel their phone numbers. As a result, lenders must rely on our customers for current and accurate contact information. Based on the complexities of modern technology, Wells Fargo supports the FTC's position and encourages the Bureau to align or clarify the FDCPA rules to allow collectors to rely on a customer's mailing address to determine appropriate times to contact a customer.

Further, it should be recognized that collectors also have a limited ability to determine if a customer is in an inconvenient location. Unless a customer has specifically requested not to be contacted at a given time or through a given contact channel or phone number, we do not have a practical way to know where a customer is at any given time. As mentioned earlier, a large percentage of customers provide their mobile number as the preferred telephone number and many have no landline in which to call. It is not reasonable or appropriate for a lender to track or retain information related to where a customer is at a given time. To even try to ascertain such information would be an invasion of privacy and detriment to the customer's trust.

C. *Contacting a customer at their place of employment is a customer preference and valuable resource to reach a customer.*

In regards to contacting a customer at their place of employment, whether through a phone call or an email, each customer has a unique situation and has provided lenders with various contact information and phone numbers. Outside of notable or Fortune 500 companies and perhaps government email addresses, there is no reliable or accurate way to discern if an email is a private or corporate email address. Often times, customers use their work email address as their personal address. Further, if we are not able to reach a customer on their home phone number, contacting a customer at their place of employment can be a valuable resource to help reach a customer and resolve outstanding questions or issues with their account. If a customer determines it is not convenient or no longer an option to receive phone calls or emails at their place of employment and asks that we no longer contact them there, we would be sensitive to and honor this request. But this option of receiving phone calls or emails at work should be a customer's preference and choice, rather than a legal requirement or restriction.

D. *Wells Fargo supports a standard definition and clarity of what is a "reasonable period of time" for an attorney to respond to verification attempts and a safe harbor for collectors to resume communications with a customer.*

The FDCPA provides that a debt collector must cease communication with a customer if it knows that a customer is represented by an attorney – *unless the attorney fails to respond within a reasonable period of time to a communication from the debt collector." (*15 U.S.C. 1692c(a)(2)). There is no standard definition of what constitutes a reasonable period of time. Attorneys take advantage of the ambiguity of the current rule by refusing to respond to attempts to confirm representation, but then bring complaints or litigation actions against the collector for trying to resume communication with a customer after multiple attempts to contact the attorney have gone unanswered. The attorneys are the only ones ultimately benefiting from their lack of responsiveness and this behavior just serves to cut off communication between the lender and the customer - communication that could lead to a resolution.

The Bureau has requested comment regarding how to calculate the "reasonable period of time." We encourage the Bureau to clarify this ambiguous and highly litigious area and provide a safe harbor. We advocate for: 1) clear model language or even proposed forms to use to confirm and verify attorney representation; 2) a specific time frame that is reasonable to wait for an attorney to respond to the verification attempts; and 3) for a collector to have the absolute right to resume communication and outreach attempts with customers once that deadline has expired and there has been no response from the attorney. We would recommend an approach similar to the following: one letter sent to the firm or attorney purportedly representing the customer that would ask for the following information: confirmation that the attorney is representing the customer; contact information, including mailing address, email, and phone number; and the extent of the representation, i.e. specific accounts, all accounts, or if related to a subject matter, i.e. for loss mitigation, bankruptcy or other litigation. The attorney or firm would have 30 days to mail back this letter to a specific address identified by the collector. If 30 days have passed and the collector is not in receipt of the letter, the collector, at its sole discretion, may resume normal outreach and communication attempts with the customer, without the fear of a complaint or a lawsuit being filed by the attorney or firm for violating the FDCPA. This type of clarity will greatly improve customer and collector relations, while also honoring the attorney-client relationship.

E. *Lenders should be allowed to speak with a surviving spouse or person with designated authority about the debt and about an assumption of the note.*

Throughout the lifecycle of the account, the FDCPA allows debt collectors to communicate with a spouse[7]; but when a customer dies, the debt collector is no longer allowed to communicate with this person. The FDCPA does not currently allow for conversations with the surviving spouse or person with authority to pay the decedent's outstanding bills from the assets of the decedent's estate, if a formal executor/administrator is not appointed, whether the conversation is related to default resolution or collection activity on a delinquent account. However, unless a formal probate estate is opened and an executor or administrator is named, there is no mechanism for resolving the remaining balance of a debt absent filing a petition to force the administration of the estate or filing a lawsuit. The FTC recognized this as a concern and published an Enforcement Policy Statement indicating it would not bring enforcement actions for violations of the FDCPA if collectors followed certain defined parameters. We would urge the Bureau to adopt the FTC's methodology in a formal regulation. Further, it is also important to create a mechanism for discussion to be held with a surviving spouse or other heir residing in the real property that secured the account. Often times a surviving spouse is living in the home that is subject to a promissory note and mortgage or deed of trust that secured the decedent's loan. Many surviving spouses are interested in an assumption of the note and it is imperative for the benefit of the spouse that lenders are allowed to have these discussions and determine if the spouse qualifies. Any rules promulgated in this area need to recognize and provide an exception for survivors in this type of situation and allow for discussions related to the house or an assumption of the mortgage to occur.

F. *Customers should have the option of receiving recorded messages and interactive messages.*

The Bureau has requested feedback on the need for any proposed rules regarding how recorded messages are delivered to customers, the importance of a natural person answering customer inquiries and the content of identifying messages on customer recording devices. As discussed above, recorded messages are generally used for servicing-type messages, generally used to alert the customer to important account statuses or the indicia of fraud on the account. This type of messaging allows customers to stay apprised of the status of their account, potentially saves fees,

[7] 15 U.S.C. §1692c.

interest and other charges, and allows them to take timely action to protect the quality and availability of their credit. Bi-directional or interactive messaging empowers customers to make payments, send a message, and make adjustments to their accounts without having to interact with a live person, unless the customer affirmatively elects to do so. Wells Fargo has found while the functionality exists in our bi-directional messaging for the customer to elect to speak to a live agent, customers' commonly prefer the anonymity of, and to interact through, the automated system. Therefore, a prohibition on recorded messages or a requirement for the presence of live natural persons would eliminate a communication method that customers prefer. Further, this type of messaging is also very cost effective and helps lessen the cost of collections which in turn has a positive impact on the overall availability of credit for all consumers. Likewise, any rule that would require lenders to affirmatively discern a customer's identity from a customer's outgoing message on their answering machine or voicemail, would have the same negative effects because customers unreliably identify themselves on their personal messages and also share message devices with others. Wells Fargo would advocate for rules or standards that promote and encourage customer communication and engagement, as well as customer preference and choice, including the ability to receive recorded and interactive messages.

V. Unfair, Deceptive, and Abusive Acts and Practices (Sections 806, 807, 808, 810 and 812 of the FDCPA)

A. *General Abusive Conduct and Unfair Conduct Questions*

The Bureau requests comment on whether it should include in proposed rules prohibitions on first-party debt collectors engaging in conduct that Sections 806 and 808 of the FDCPA would bar as abusive and/or unfair conduct if engaged in by third-party debt collectors. Wells Fargo would respectfully submit that such action would introduce ambiguity into the standard of what conduct is deemed a UDAAP violation under the Dodd-Frank Act.

Section 1031(d) of the Dodd-Frank Act provides as follows:

> "The Bureau shall have no authority under this section to declare an act or practice abusive . . . unless the act or practice:
>
> (1) Materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service; or
> (2) Takes unreasonable advantage of –
> (A) a consumer's lack of understanding of the material risks, costs, or conditions of the product or service;
> (B) a consumer's inability to protect his or her interests in selecting or using a consumer financial product or service; or
> (C) a consumer's reasonable reliance on a covered person to act in his or her interests."

The prohibitions included within Section 806 of the FDCPA appear to preclude behavior that is not encompassed within the above standards for classifying "abusive" conduct under Dodd-Frank. By way of example, 15 U.S.C. § 1692d (6) states that "the placement of telephone calls without meaningful disclosure of the caller's identity" is a violation of that section. Accordingly, a debt collector leaving a voicemail message requesting a return call from a consumer without meaningfully disclosing its identity would appear to be a violation of Section 806 of FDCPA. The same behavior engaged in by Wells Fargo in attempting to contact one of its customers, however, does not seem to categorically fall within the standards for conduct that would be classified as “abusive” under the standards set forth in the Dodd-Frank Act.

The same principle applies with respect to the “fairness” standard. Section 1031(c) of the Dodd-Frank Act provides:

> “The Bureau shall have no authority under this section to declare an act or practice . . . to be unlawful on the grounds that such act or practice is unfair, unless the Bureau has a reasonable basis to conclude that -
>
> > (A) the act or practice causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers; and
> >
> > (B) such substantial injury is not outweighed by countervailing benefits to consumers or to competition.”

Section 808(8) of the FDCPA states that it is an unfair practice for a debt collector to “[use] any language or symbol, other than the debt collector’s address, on any envelope when communicating with a consumer by use of the mails or by telegram, except that a debt collector may use his business name if such name does not indicate that he is in the debt collection business.” Use of an envelope with a debt collector’s logo on it would appear to violate this section of the FDCPA. The same behavior engaged in by a lender, however, does not seem to fall within the standards for conduct that would be classified as “unfair” under the Dodd-Frank Act as it would not categorically cause substantial harm to consumers. Accordingly, we believe rulemaking defining the prohibitions of FDCPA Section 806 and 808 as “abusive” and “unfair” under the Dodd-Frank Act would run afoul of the Bureau authority under Section 1031(d) and confuse the standard for what constitutes a UDAAP violation.

We believe that extensive regulation is not necessary in a first party collection context. As discussed above, lenders already have an inherent incentive to protect their “good will” and avoid behavior that would damage their relationships with their customers. Further, substantial oversight of lenders’ operating practices and treatment of consumers already exists through laws like the Dodd-Frank Act, the Fair Credit Reporting Act, the Federal Trade Commission Act, the Gramm Leach Bliley Act, the Truth in Lending Act, and the Real Estate Settlement Procedures Act. Similarly, lenders are also subject to many states laws that govern how debt collection activities are performed in the state and outline appropriate processes for foreclosure, repossession, and litigation activities. Finally, lenders are heavily regulated by a number of different entities, including not only the Bureau, but also the Federal Reserve, the Federal Trade Commission, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency.

As mentioned in the Introduction, new regulation should be prescribed only in those circumstances where a clear consumer protection need exists and the benefits to the consumer outweigh the costs that result from additional regulatory requirements. At present, we do not believe there is sufficient data to indicate these circumstances exist with respect to first party collections. The Bureau cites the historical submission of consumer complaints to the FTC, a recent enforcement action against a first party collector that included a collection claim and the existence of state regulation of first party collectors as indicia of a potential need for regulation. These things together do not identify a need with enough specificity to constitute a proper cost benefit analysis. We would urge the Bureau not to act at this time, but to engage in more study to accumulate data to determine if a specific consumer protection is needed. If the study reflects that a consumer need does appear to exist, then comments could be solicited from the public to obtain feedback on the costs and benefits of adopting regulation. This approach would allow the

Bureau to ultimately address any consumer protection concerns that are borne out by the analysis, but not introduce ambiguity into the standards for UDAAP violations nor impose costs that ultimately could impact the cost of credit without ensuring there will be a commensurate consumer benefit.

B. *Specific Section 806 Prohibition Questions*

The ANPR also solicits feedback on a few of the specific prohibitions included within Sections 806 and 808 of the FDCPA. As previously stated, Wells Fargo believes that applying these prohibitions directly to first party collectors is not appropriate unless the particular prohibition falls within the definition of what constitutes unfair, deceptive, or abusive conduct under the Dodd Frank Act. Accounting for the possibility that the Bureau may disagree, Wells Fargo is providing its feedback on some of the questions nonetheless.

First, the Bureau request comment on whether it should clarify or supplement the prohibition within FDCPA section 806(5) related to causing a telephone to ring repeatedly or continuously with the intent to annoy abuse or harass any person at the called number. As mentioned above, Wells Fargo believes the future of collection communications is through alternative contact channels, other than telephone calls or letters. As the Bureau is considering rulemaking relative to Section 806(5), we reiterate the importance of not inadvertently placing restrictions on communications with customers through these less-invasive communication channels, which customers have shown to prefer.

With that being said, the frequency at which it is appropriate to attempt to make contact with a customer is an area of ambiguity within the FDCPA with respect to which all parties would benefit from some guidance. As mentioned above, one of the biggest difficulties a lender faces in trying to assist a customer is their reluctance to have the awkward conversation about their financial difficulties. It is only through having this conversation, however, that we can assist a customer. Therefore, it is important that we are able to reach customers. Our experience reflects that engaging in multiple attempts per day, versus just calling once and leaving a message, results in a greater propensity to make contact with customers. Accordingly, we believe it is important to attempt contact with a delinquent customer multiple times in a given day.

The difficultly is knowing when attempts to reach the customer with the intent to provide assistance start to be perceived as harassing from the customer's vantage point. The topic becomes even more complex when a given customer may have multiple products with a lender, there may be multiple borrowers on one product, multiple customers might have individual products for which they designate the phone number for contact, and most borrowers have designated two or three phone numbers at which they can be contacted.

We would encourage the Bureau to work with industry stakeholders and consumer advocates to agree on workable standard and appropriate exceptions to any proposed rule, but we would offer the following as standards that we believe would be reasonable as a safe harbor to begin the discussion:

1. First, an "attempt" should be defined to mean an outbound telephone call in which the caller is unable to make contact with the customer; excluded would be outbound calls that do not register to the consumer's caller identification, such as wrong numbers, busy signals and operator-type tones.

2. Call attempts on a particular account measured across a rolling 30 day period would be deemed appropriate if the volume of attempts is below a particular threshold, for instance the Bureau might consider setting that threshold at somewhere between 60 and 90 attempts in that 30 day period. Utilizing a monthly standard allows flexibility to account for multiple phone lines and multiple borrowers per account; setting a daily or weekly standard may impede lenders' abilities to engage customers.

3. Exemptions from the attempt frequency standard should be defined to include calls made to assist customers in a FEMA-designated disaster zone, customers in a foreclosure or repossession status, inbound connections initiated by consumers or any follow up calls at the customer's request, and attempts to reach customers who may qualify for a loss mitigation type program.

We caution the Bureau against adopting the stringent bright-line communication prohibitions codified by the state of Massachusetts. While our data in Massachusetts is limited, there is some indication that the contact restrictions result in higher early stage delinquency rates and a greater propensity for higher losses. Assuming these indications are directionally accurate, a national standard mirroring Massachusetts could have the unintended consequence of harming consumers through higher delinquency and loss rates, additional late fees and interest charges being assessed (for open-end credit), negative impacts to credit reports, and ultimately higher costs of credit for consumers as a whole.

Second, the Bureau requests comment on the cost and benefits to consumers and collectors of using predictive dialers. Automated dialers are critical to the customer experience because they house the programming by which businesses achieve compliance. The dialer is the technology by which specific call patterns of time, place and frequency are executed. It is also through automated dialer programming that we are able to differentiate place of employment, home and other call-type designations, as well as distinguishing which phone numbers are purported to be land lines versus cell phone numbers. The dialer is also the tool that is used to notify customers of potential fraud and other information they will want to receive about their account. Further, the dialer is a tool that helps maximize efficiency and minimize the costs of collection. Elimination of automated dialers would be impractical for call centers to service their customer base and would remove the technology that is standard in the industry for achieving compliance. Wells Fargo would advocate that given the high costs associated with eliminating the use of automated dialers that there are less onerous ways to achieve the Bureau's consumer protection goals through other standards suggested in the ANPR questions and ultimately improve the customer experience without negatively impacting the cost and availability of credit.

Third, the ANPR solicits feedback regarding whether there should be standards limiting call abandonment or "dead air" for debt collection calls, similar to the standards under the FTC's Telemarketing Sales Rule. While Wells Fargo would not be opposed to establishing some reasonable standards for call abandonment or dead air in debt collection calls, we are opposed to rules mirroring the very strict standards set forth in the Telemarketing Sales Rule. The standard set for telemarketing significantly impairs the sophisticated mathematical algorithms of outbound collection dialers. The result of adoption of this standard would result in the need for significantly more collections staff, which would drive up costs that ultimately are passed to the consumer, with minimal benefit to the consumer. We believe these are the reasons that Congress has specifically exempted businesses with preexisting business relationships from those rules. Accordingly, standards set to apply to telemarketing calls should not be applied to persons within whom the customer has developed a preexisting business relationship.

C. *Specific Section 808 Prohibitions*

Finally, the ANPR indicates that the Bureau is considering rulemaking to require a receipt or other documentation reflecting amounts paid to a debt collector on an obligation. Wells Fargo does not object to a requirement that customers be kept apprised of the status of their account. However, in the event that the rule would be applicable to first party collections, we believe it is important to clarify that this obligation could be met by lenders sending periodic statements that reflect any debit or credit entries that were assessed in that billing cycle. Wells Fargo would further advocate that a regular monthly or other periodic notice is unnecessary for any time period when the status of the obligation is unchanged. For instance, on open-end credit accounts, consistent with Regulation Z, it is common practice for creditors not to send a periodic statement after the account has been charged off as a loss where additional fees or interest are not being assessed to the account. Accounts post-charge off frequently go many months, sometimes years, with no transactional activity. It does not add value to the customer to send a notice reflecting no activity, but adds costs to the collector and ultimately to the consumer. Accordingly, we would ask that if the Bureau determines a rule is appropriate, the requirement be tailored to avoid adding compliance costs that do not reflect a corresponding benefit to the consumer.

VI. Time-Barred Debts

The Bureau has requested comment on the need for, and costs and benefits of requiring debt collectors to provide consumers with information relating to time-barred debts. Wells Fargo believes in providing meaningful education to customers to help them succeed financially. We are concerned, however, that this is a very complex topic to meaningfully disclose. First and foremost, we are concerned that a disclosure explaining the time frame by which a legal action must be brought may create a false impression with the consumer that the debt collector intends to sue that customer and that the provision of the disclosure itself could constitute a UDAAP violation. Accordingly, if the Bureau determines a disclosure is appropriate, we would ask the Bureau to consider drafting a safe harbor disclosure with this concern in mind, the use of which would be deemed compliant with UDAAP requirements.

Second, we are concerned that drafting a meaningful disclosure that discloses when a debt is time barred will be very challenging, given the variability of state law. Understanding the intricacies of determining the statute of limitations applicable to a given matter can be complex even for the legally trained. State laws on this topic are sufficiently variable that accurate disclosure of a particular date the statute of limitations has run would require the analysis to be done on a case by case basis. These laws vary as to what causes the statute of limitations to begin to run, the time period for bringing the action, and what action a customer may take that would cause the statute of limitations to toll or to be revived. Further, under some states' laws, the actions that could cause the statute of limitations to be revived are not a clear, enumerated list, but instead are just principles that are interpreted through the courts. To the extent the Bureau is able, we advocate for a national standard relative to the expiration of debt. This is an area where a preemptive rule would be expedient to commerce.

Third, we do not believe it is workable to provide a disclosure as to the specific time frame when the debt will become time-barred significantly in advance of the debt becoming time barred. As mentioned above, under many states' laws, the statute of limitations applicable to a claim based on contract may be renewed or revived by specific actions of the customer, such as a new promise to pay or other types of acknowledgment of the obligation. Accordingly, because the time by which the statute of limitations expires can be impacted by subsequent events, it is not possible under many states' laws to provide an accurate date certain to the customer far in advance of the statute expiring.

We do think it is possible to notify the customer when the statute of limitations has expired or is very close to expiring, but we believe this requirement should be imposed only in those circumstances where the debt collector is actively collecting on the account. Where the debt is not actively being collected, requiring a disclosure would add substantial additional cost without commensurate benefits to consumers.

VII. Conclusion

Again, Wells Fargo appreciates this opportunity to provide comment. We are committed to working with the Bureau to ensure any new debt collection rules are crafted to best meet their underlying goals. To that end, we would welcome the opportunity to meet with the Bureau, or to offer further details and comments, as the proposed rules are being developed.