

AFSA Debt Collection Working Group
Consumer Financial Protection Bureau ~~Bureau~~ Debt Collection Rule Discussion

Purpose: The purpose of this document is to act as a thought-starter for issues related to debt collection that AFSA members would like to see addressed by the rulemaking process by the Consumer Financial Protection Bureau (CFPB). Congress enacted the Fair Debt Collection Practices Act (FDCPA) in 1977 and we are recommending that the Bureau implement rules to clarify and modernize the FDCPA. The reasons and recommendations presented below draw on a variety of sources including the ~~Bureau~~CFPB debt collection July 28, 2016, SBREFA “Outline of Proposals Under Consideration and Alternatives Considered” (“SBREFA outline”)-SBREFA outline, debt collection litigation, prior FTC guidance under the FDCPA, and industry practice.

Definitions

Section 803 (15 USC 1692a(2)). “Communication” is defined as “the conveying of information regarding a debt directly or indirectly to any person through any medium.”

Reason: Modernize the definition to include new technology. The United States Department of the Treasury recommended modernizing the forms of communication between consumers and debt collectors: “[C]urrent implementation of the FDCPA may inadvertently make interactions between debt collectors and consumers needlessly cumbersome.” (A Financial System that Creates Economic Opportunities: Nonbank Financials, Fintech, and Innovation, U.S. Dept. of the Treasury, 20 (July 2018).

Recommendation: Clarify that electronic communication is permissible – potentially using language that aligns with similar modernization efforts such as the UCC 9-102(70) definition of records, which means “information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.” We recognize that the CFPB has identified that electronic notices are an area ripe for improvement in the *Lavallee v. Med-1 Solutions, LLC* amicus brief. See *Lavallee v. Med-1 Solutions, LLC*, Case No. 1:15-cv-01922-DML-WTL, No. 17-3244 (7th Cir. April 25, 2018). We encourage the CFPB to provide a mechanism for debt collectors to communicate with consumers per E-Sign and *Lavallee* for initial validation notices and other communications. See *Electronic Signatures in Global and National Commerce*, 15 USCS § 7003(c)(2).

Section 803 (15 USC 1692a(6)). The term “debt collector” means any person who . . . regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due ~~another~~ another. There are several exceptions to the term, and AFSA recommends revisions to the following exceptions:

(A) any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor;

Reason: The industry continues to follow the reasoning contained in the FTC’s commentary and *de Mayo* opinion that individuals who collect in the creditor’s name and work under the creditor’s supervision meet this exemption because they become the de facto employees of the creditor. There is a desire for certainty in the industry that de facto

employees continue to meet the creditor exemption as it is described in the *de Mayo* opinion. To modernize the definition of “debt collector” to take into account staffing models that include agency, independent contractors, and temporary workers.

Recommendation: Clarify that “employee” includes ~~temporary~~ agency employees onsite or, if the employee is offsite, the employee is under the management of the creditor and follows the creditor’s procedures. ~~See prior FTC staff opinions such as DeMayo.~~

Reason: To modernize the definition of “debt collector” to take into account funding arrangements, such as securitization and whole loan transactions. ~~—that involve an assignment of receivables to a third party while the creditor retains servicing. Those creditors, now acting as a servicer, may use agency employees. There is no effect on the customer, yet the FDCPA is not clear that an agency employee can continue to perform as a de facto employee with respect to collecting the receivables because that employee is now acting as a de facto employee of the servicer rather than the creditor. In auto financing for example, the transaction takes place at a dealership as part of the vehicle sale process. Whether the dealer performs this function as the original creditor and immediately assigns the contract to a finance source or whether the dealer acts as the agent of the finance source should not preclude the applicability of this exception. To the consumer, those transactions are indistinguishable. In fact, even to dealers they are nearly indistinguishable because dealers frequently have an agreement with a finance company to purchase the contract even before the contract is completed.~~

Recommendation: Clarify that, for purposes of this section, use of the term “creditor” includes servicers as used in exception (F) to the definition of “debt collector” in under Section 803 so that an agency employee is not considered a debt collector -(15 USC 1692a(6)(F)(iii)).

~~(F) any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent such activity . . . (ii) concerns a debt which was originated by such person. . . .~~

Reason: ~~To remove the arbitrary distinction between direct and indirect financing transactions. In auto financing for example, the transaction takes place at a dealership as part of the vehicle sale process. Whether the dealer performs this function as the original creditor and immediately assigns the contract to a finance source or whether the dealer acts as the agent of the finance source should not preclude the applicability of this exception. To the consumer, those transactions are indistinguishable. In fact, even to dealers they are nearly indistinguishable because dealers frequently have an agreement with a finance company to purchase the contract even before the contract is completed.~~

Recommendation: Clarify that the term “originated by such person” includes 3rd party transactions and indirect financing. ~~This would include parties that acquire contracts shortly after origination and before any possible payment default.~~

(F) any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent such activity . . . (iii) concerns a debt which was not in default at the time it was obtained by such person. . . .

Reason: To provide a bright line rule for funding arrangements, such as securitization and whole loan sales, that recognizes the timing needs for creating the pools for those transactions. Agreements representing a consumer debt have payment due dates and failure to make a payment by that date is technically a “default” under the agreement but has no significance to the consumer. Using such a narrow and technical approach for application of this exception does not reflect the reality of the relationship and unnecessarily complicates funding transactions and other transfers.

Recommendation: Clarify that the term “in default” means thirty (30) days past the due date the point in time in which “negative information” would be reported to the Credit Reporting Agencies as defined under the Fair Credit Reporting Act (FCRA) or as default is defined in the underlying agreement with the consumer, if later. The significance of thirty (30) days is that it aligns with the point in time in which “negative information” would be reported by the Credit Reporting Agencies. See FCRA Section 623 (15 USC 1681s-2(7)(G)(i)). Having negative information reported by the Credit Reporting Agencies is the first event of real significance to a consumer as a result of becoming delinquent, and so that should be what is used to determine whether an account is “in default” for purposes of this exception to the definition of “debt collector” under the FDCPA.

Section 803 (15 USC 1692a(7)). ~~“~~“Location information” is defined as “a consumer’s place of abode and his telephone number at such place, or his place of employment.”

Reason: The definition is ambiguous because there are two interpretations: 1) a debt collector has location information only when it has all three pieces of information -- a consumer’s address, phone number, and place of employment; or 2) a debt collector has location information if it only has one piece of information – an address, a phone number, or place of employment.

Recommendation: Clarify that a~~A~~ debt collector does not have “location information” if it is missing one of the following pieces of the consumer’s information: Consumer’s address, phone number, and place of employment. Consider whether the rule should modernize the FDCPA by including electronic means of communication such as email.

Reason: When debt collectors are unable to connect with consumers at the consumer’s phone number, address, or place of employment, it can be unclear whether the debt collector has the consumer’s location information.

Recommendation: Clarify that d~~D~~ebt collectors should be permitted to seek location information if the debt collectors have a reasonable belief ~~reason to believe~~ that they have incomplete or incorrect location information.

Acquisition of Location Information

Section 804 (15 USC 1692b(1-3)). Any debt collector communicating with any person other than the consumer for the purpose of acquiring location information about the consumer shall --

(1) identify himself, state that he is confirming or correcting location information concerning the consumer, and, only if expressly requested, identify his employer;

(2) not state that such consumer owes any debt;

(3) not communicate with any such person more than once unless requested to do so by such person or unless the debt collector reasonably believes that the earlier response of such person is erroneous or incomplete and that such person now has correct or complete location information.

Reason: When a debt collector has contacted a third party for location information, it should be able to leave messages for the consumer with the third party if the third party asks to take a message and the message does not violate the law.

Recommendation: Clarify that debt collectors are permitted to leave limited content messages with people from which a debt collector is seeking location information. In addition, wWhen seeking location information, debt collectors should be permitted to leave a voicemail or similar message requesting that the third party returns the communication.¹ ~~(e.g., employee's name, number, and request for the third party to return the call).~~

Reason: Third parties ask why ~~is an entity~~ an entity is contacting them. When debt collectors tell third parties that the third party is being contacted for location information of a consumer, some third parties become suspicious and/or confused. To alleviate third party concerns with disclosing the information, it would be helpful if the debt collector could disclose to the third party that the third party is a reference if the consumer cited the third party as a reference.

Recommendation: For third parties that the consumer designated as references, clarify that debt collectors are allowed to disclose ~~ure~~ that the person is reference.

Reason: Unaffiliated third party entities (e.g., phone providers, Google, etc.) may display via caller ID or other applications the debt collector's name, description, etc. when debt collectors call third parties for location information.

Recommendation: Clarify that debt collectors are not liable for information a third party displays about a debt collector when the debt collector contacts a third party for location information.

Communication in Connection with Debt Collection

Section 805 (15 USC 1692c(a)(2)). “[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.”

Reason: “Reasonable period of time” is undefined. Although some states require thirty days, it is too long when consumers may suffer consequences (e.g., repossession, delinquencies, etc.) when the attorney does not respond.

¹ E.g., “Please contact [employee's name] at [number] in response to an important business matter.”

Recommendation: Clarify that for purposes of this section, a “reasonable period of time” for an attorney ~~to must~~ respond is within 10 business days after the debt collector has left a phone message, sent an e-mail, or sent a letter to the attorney.

Section 805 (15 USC 1692c(b)). Communication with third parties. Except as provided in section 804 [15 USCS § 1692b], without the prior consent of the consumer given directly to the debt collector, or the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a postjudgment judicial remedy, a debt collector may not communicate, in connection with the collection of any debt, with any person other than the consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector.

Reason: Clarify that third party communication is *actual* disclosure to a third party rather than potential disclosure. Litigants argue that a message left on an answering machine ~~and the like~~ has *potential* for disclosure and, thus, violates the law. Instead, the ~~Bureau~~CFPB should provide guidance that the FDCPA is violated when there is actual disclosure to third parties.

Recommendation: ~~Clarify Provide guidance~~ that *actual* disclosure is the standard for violating the FDCPA, and a limited content message is not a prohibited disclosure.

Section 805 (15 USC 1692c(d)). For the purpose of this section, the term "consumer" includes the consumer's spouse, parent (if the consumer is a minor), guardian, executor, or administrator.

Reason: The definition of “consumer” for contact purposes should include not only an estate and administrator but also parties responsible for handling the estate. When a consumer dies, sometimes there is no estate and no informal/formal probate. The FTC adopted in its 2011 policy statement that debt collectors can contact the person responsible for paying the deceased consumer’s bills from the estate’s assets to discuss payment by the estate. Being able to contact people responsible for handling the affairs of the estate makes it easier on the friends and family of the deceased consumer so that small estates do not need to go through the probate process.

Recommendation: Clarify that, for purposes of this section, it is permissible to contact the contacting “responsible parties” estate representatives following the FTC prior guidance. Consider whether there should be a requirement for tThe debt collector should be to make it clear to the estate representative responsible party that he/she does not personally need to pay the debt and payment should only come from estate assets or individuals obligated under the contract.

Harassment or Abuse

Section 806 (15 USC 1692d(5)). Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number.

Reason: The ~~Bureau~~CFPB is concerned with debt collection call frequencies. The ~~Bureau~~CFPB proposed in the SBREFA outline the following:

Permissible Consumer Contacts (or Contact Attempts) Per Account Per Week		
Collector Activity	Collector Does Not Have Confirmed Consumer Contact	Collector Has Confirmed Consumer Contact
Attempts per unique address or phone number	3	2
Total contact attempts	6	3
Live communications	N/A	1

Recommendation: The grid has arbitrary limits on the number of contacts, ~~which is not appropriate~~. Clarify that the appropriate call frequency should be determined by the debt collector based on all the relevant facts and circumstances including risks to the consumer such as negative credit reporting, repossession, foreclosure, external collections, lawsuit filing, etc.

False or Misleading Representations

Section 807 (15 USC 1692e(2)(A)). A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section: The false representation of – the character, amount, or legal status of any debt.

Reason: The ~~Bureau~~CFPB is concerned with time-barred debt, obsolete debt, and state revival statutes. Many consumers do not understand their statute of limitations.² The ~~Bureau~~CFPB proposed in the SBREFA outline that debt collectors provide consumers with disclosures, stop collecting on the debt, or not accepting the consumer's payment without a written statement to acknowledge that the debt is time-barred, obsolete, etc.

Recommendation: Clarify that the rule should create a safe-harbor language with regard to time-barred debt, obsolete debt, and revival statutes. When the debt reaches the statute of limitations or becomes obsolete, the next notice sent to the customer would contain the following information depending on whether the debt was time-barred, obsolete, or both. This would be a one-time notification. State law should still govern whether the statute of limitation results in the debt being time-barred or provides an affirmative defense to a lawsuit.

Time-barred debt: State law may limit how long you can be sued on a debt or provide a defense if you are sued. Because of the age of your debt, you either cannot be sued for it or may have a defense if you are. If you do not pay the debt, it may be reported to a credit

² For reference, time-barred debt is debt beyond the state statute of limitations. Obsolete debt is debt that cannot be reported to the Credit Reporting Agencies under the Fair Credit Reporting Act. State revival statutes allow a debt collector to revive the state statute of limitations after a customer makes a payment.

reporting agency. In some states, making a payment or a promise to pay could restart the statute of limitations. Please ask a lawyer if you have any questions.

Obsolete debt: The law limits how long your debt can be reported to the credit reporting agencies. Because of the age of your debt, your account ~~cannot~~~~will not~~ be reported to any credit- reporting agencies by the holder of your debt. Please ask a lawyer if you have any questions.

Section 807 (15 USC 1692e(5)). The threat to take any action that cannot legally be taken or that is not intended to be taken.

Reason: The ~~Bureau~~CFPB is concerned that consumers do not understand the implications of debt collection lawsuits and default judgments. Many consumers do not defend the litigation because of lack of resources or familiarity with the judicial system. The ~~Bureau~~CFPB is concerned that sometimes debt collectors cannot substantiate the debt and a default judgment is rendered anyway because the consumer did not defend his/her rights in court. ~~In the SBREFA outline, t~~The ~~Bureau~~CFPB proposed a “litigation disclosure” in all written and oral communications that would inform the consumer of the consequences of litigation.

Recommendation: Clarify that debt collectors do not always bring a lawsuit so any disclosure should only be used when ~~suit may be filed~~~~they intend to sue~~.

Section 807 (15 USC 1692e(8)). Communicating or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed.

Reason: ~~The FDCPA does not define a “disputed debt”, which creates uncertainty for debt collectors.~~ There is case law that interprets the requirements of 15 USC § 1692e(8) as distinct from FDCPA 15 USC § 1692g(b) and FCRA 15 U.S.C. § 1681s-2. *See e.g., Evans v. Portfolio Recovery Associates, LLC*, 889 F.3d 337 at 347-48 (7th Cir., April 18, 2018). ~~The courts recognize that the FDCPA does not define “dispute”.~~ In *Evans*, the Seventh Circuit looked to Merriam-Webster Dictionary for a definition. *Id.* at 346. The ~~Bureau~~CFPB can define “dispute” to better align from FDCPA 15 USC § 1692g(b) and FCRA 15 U.S.C. § 1681s-2 with 15 USC § 1692e(8) so that debt collectors’ obligations are clear and consistent.

Recommendation: ~~Clarify that The Bureau should define~~ “dispute” ~~should be defined~~ in the same way that the FCRA defines dispute so that debt collectors ~~have clarity and consistency about when they do not~~ need to report that a debt is disputed ~~and clarify it is not necessary to report when they receive~~ frivolous disputes, i.e., disputes that are not defined or are duplicative. 15 U.S.C. § 1681s-2 (a)(8)(F)(i) and 16 C.F.R. § 660.4 provide guidance about what a “dispute” is and this definition should be adopted when interpreting the FDCPA. 15 U.S.C. § 1681s-2 (a)(8)(D) states:

Submitting a notice of dispute. A consumer who seeks to dispute the accuracy of information shall provide a dispute notice directly to such person at the address specified by the person for such notices that—

- (i) identifies the specific information that is being disputed;
- (ii) explains the basis for the dispute; and
- (iii) includes all supporting documentation required by the furnisher to substantiate the basis of the dispute.

~~**Section 807 (15 USC 1692e(10)).** The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.~~

~~Reason: A servicer that qualifies under Section 803 (15 USC 1692a(6)(F)(iii)) may not be able to use the servicer's name that the consumer knows.~~

~~Recommendation: Allow the servicer in the servicer exception under Section 803 (15 USC 1692a(6)(F)(iii)), to be referenced as the creditor.~~

Section 807 (15 USC 1692e(11)). The failure to disclose in the initial written communication with the consumer and, in addition, if the initial communication with the consumer is oral, in that initial oral communication, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose, and the failure to disclose in subsequent communications that the communication is from a debt collector, except that this paragraph shall not apply to a formal pleading made in connection with a legal action.

Reason: Debt collectors frequently do not leave messages for consumers in case the message is overheard by a third party. Courts have interpreted the FDCPA to require debt collectors to leave a disclosure that the debt collector is calling to collect a debt (i.e., the “mini-Miranda”). If the disclosure is left and a third party overhears it, then there may be another FDCPA violation where a debt is disclosed to a third party. The ~~Bureau~~CFPB expressed concerns in the ~~SBREFA outline July 28, 2016, SBREFA “Outline of Proposals Under Consideration and Alternatives Considered”~~ that consumers feel harassed because they are receiving calls without voice messages. Likewise, leaving messages may obviate the need to call consumers as frequently. In addition, with the widespread use of cell phones and password protected voicemail, a third party is unlikely to overhear a debt collector’s voicemail message.

Recommendation: Clarify that debt collectors are permitted to leave limited content messages for consumers on their voicemail without the mini-Miranda to avoid risk of disclosing the debt to third parties. *But see* Foti v. NCO Financial Systems, Inc., 424 F. Supp. 2d 643 (S.D.N.Y. 2006) (Debt collector can leave a message on voicemail but must include mini-Miranda).

Recommendation: Clarify that debt collectors are permitted to leave limited content messages with a third party who answers a communication to the consumer. A safe harbor limited content message may include the employee’s name, company’s name if the name does not indicate it is a debt collector, phone number, and request to have the consumer call. *See Halberstam v. Global Credit and Collection Corp.*, 15-cv-5696, 2016 WL 154090 (E.D. N.Y. 2016) (Can~~not~~^{’t} leave a message with person other than debtor who picks up the phone because can~~not~~^{’t} leave mini-Miranda with third party).

Reason: Given the development of new methods of communications since the FDCPA was enacted in 1977, consideration should be given to how the Section 807 communications should be given in text messages and other short form methods of communication, which are not conducive to conveying large amounts of information to the consumer and giving the “mini-Miranda”.

Recommendation: Clarify that ~~The Bureau should allow~~ debt collectors ~~should be allowed~~ to give the consumer a limited content introductory message³ (e.g., “please contact ABC at 800-xxx-xxxx or reply to this [text] for more information by [text] about an important confidential business matter”) without disclosing that the message is from a debt collector. If the consumer responds to the message using the same technology, the debt collector provides the “mini-Miranda” in its next communication to the consumer. This process could be followed for a variety of technologies including text message, chat, or other preferred electronic communication methods. Subsequent communications using the same technology do not need to give the “mini-Miranda” each time for the same communication chain. The “mini-Miranda” should be given each time a new communication chain is started. appropriate Section 807 “mini-Miranda” communications once in a text message chain, chat chain, or other written short form at the beginning of the conversation. This will allow consumers to understand the communication is with a debt collector but then to communicate with their preferred method of communication without complicating the debt collector’s message. The consumer ~~must~~ be given the option to text or indicate “STOP” to the debt collector if the consumer’s preferences change.

Validation of Debts

Section 809 (15 USC 1692g(a)). Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing --

(1) the amount of the debt;

Reason: Difficulty in pinpointing the exact amount of the debt has resulted in Litigation related to notifying debtors when the balance will change or that it will not change (e.g., simple interest). ~~The Miller safe harbor language may or may not be “safe” after court rulings in Miller v. McCalla, Raymer, Padrick, Cobb, Nichols, & Clark, LLC, 214 F.3d 872 (7th Cir. 2000), Boucher v. Fin. Sys. of Green Bay, 880 F.3d 362 (7th Cir., Jan. 17, 2018), and Taylor v. Fin. Recovery Servs., 886 F.3d 212 (2nd Cir., March 29, 2018).~~

Recommendation: Clarify ~~Provide rules~~ that state debt collectors may use the Miller safe harbor language⁴ ~~regardless of whether~~when fees and interest are currently accruing on

³ E.g., “Please contact [debt collector] at [number] or reply to this [text] for more information by [text] about an important confidential business matter.”

⁴ As of the date of this letter, you owe \$ [the exact amount due]. Because of interest, late charges, and other charges that may vary from day to day, the amount due on the day you pay may be greater. Hence, if you pay the amount

the account. The language should just be a notice to the consumer that interest or fees may be accruing or may accrue on the account in the future (e.g., after a judgment). The rules should also state that the *Miller* language or similar safe harbor language is unnecessary when fees and interest are not accruing or not charged on the account.

Reason: The ~~Bureau~~CFPB SBREFA outline expressed concerns regarding the accuracy of the debt owed and proposed that debt collectors validate the creditor's information.

Recommendation: If clarification is required, provide that debt collectors should use the amount of the debt as of the charge-off date to validate the information instead of date of default, which is ambiguous and can be subject to variability based on contract terms.

(2) the name of the creditor to whom the debt is owed;

Reason: Many creditors retain servicing of accounts as part of securitization transactions through which ownership of the accounts is transferred to special purpose entities for funding purposes. Similar to the discussion above with respect to the definition of "debt collector," there is no effect on the consumer but technically the creditor is now acting as a servicer when interacting with the consumer. companies securitize or turn over the servicing of accounts to servicers. A consumer may only ever know the name of the servicer in connection with the consumer's debt. A servicer that qualifies in this circumstance under Section 803 (15 USC 1692a(6)(F)(iii)) should be permitted, without risk of violating this section, may not be able to use the servicer's name that the consumer knows, rather than but instead may have to use the name of a technical financing entity, like a trust, which could be. This may be confusing to a consumer.

Recommendation: Clarify that it is not a false statement for the servicer, under the servicer exception under Section 803 (15 USC 1692a(6)(F)(iii)), to be referenced as the creditor when the servicer is the ~~only~~ "creditor" the consumer already knows~~has ever known.~~

(3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;

Reason: The ~~Bureau~~CFPB proposed in the SBREFA outline adding Spanish or other non-English languages to the validation notice.

Recommendation: Suggest that the ~~Bureau~~CFPB consider an approach similar to Reg. Z, which would allow debt collectors to provide the validation notice in a language other than English but not require them to do so. Reg. Z provides that "[d]isclosures required by this part may be made in a language other than English, provided that the disclosures are made available in English upon the consumer's request."

shown above, an adjustment may be necessary after we receive your check, in which event we will inform you before depositing the check for collection. For further information, write the undersigned or call 1-800-[phone number].

(4) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and

(5) a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

Section 809 (15 USC 1692g(b)). If the consumer notifies the debt collector in writing within the thirty-day period described in subsection (a) of this section that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt or a copy of a judgment, or the name and address of the original creditor, and a copy of such verification or judgment, or name and address of the original creditor, is mailed to the consumer by the debt collector. Collection activities and communications that do not otherwise violate this subchapter may continue during the 30-day period referred to in subsection (a) unless the consumer has notified the debt collector in writing that the debt, or any portion of the debt, is disputed or that the consumer requests the name and address of the original creditor. Any collection activities and communication during the 30-day period may not overshadow or be inconsistent with the disclosure of the consumer's right to dispute the debt or request the name and address of the original creditor.

Reason: Provide clarification on what constitutes a “dispute” under 15 USC § 1692g(b) for all of the reasons stated above in our comment to 15 USC § 1692e(8).

Recommendation: Similarly, see our recommendation above to 15 USC § 1692e(8).

Reason: To modernize the FDCPA, allow debt collectors to provide “a copy of such verification or judgment, or the name and address of the original creditor” electronically instead of through the U.S. Postal Service. See our reasons for changing 15 USC § 1692a(2) stated above.

Recommendation: Likewise, see our recommendations above to 15 USC § 1692a(2) where we recommend that the CFPB modernize the forms of communication under the FDCPA. Clarify that the requirement to mail the verification or judgment can be satisfied with an electronic communication.

Reason: Provide clarification on what it means to mail the consumer “a copy of such verification or judgment, or the name and address of the original creditor.” ~~means.~~

Recommendation: Clarify that for general disputes about the debt (e.g., “I don’t owe this”), provide the consumer with a copy of the contract. For specific disputes about the amount of the debt (e.g., “Here is proof from my bank that I made a \$5,000 payment on July 1, 2017”), provide the consumer with a copy of the contract and statement of account.

Civil Liability

Section 813 (15 USC 1692k(c)). Intent. A debt collector may not be held liable in any action brought under this title [15 USCS §§ 1692 et seq.] if the debt collector shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

Reason: This section should allow for greater flexibility when an error on a document or information provided to the consumer is discovered and corrected. Debt collectors are unable to correct mistakes on documents without drawing a suit from the consumer.

Recommendation: Adopt a regulation similar to the California Civil Code (Cal Civ Code § 1788.30):

A debt collector shall have no civil liability under this title if, within 15 days either after discovering a violation which is able to be cured, or after the receipt of a written notice of such violation, the debt collector notifies the debtor of the violation, and makes whatever adjustments or corrections are necessary to cure the violation with respect to the debtor.

to establish an Office of Minority and Women Inclusion (OMWI) to be responsible for all matters of the Agency relating to diversity in management, employment, and business activities. The Act also instructed each OMWI Director to develop standards for assessing the diversity policies and practices of entities regulated by the Agency. The Agencies worked together to develop joint standards (Joint Standards) and, on June 10, 2015, they jointly published in the **Federal Register** the “Final Interagency Policy Statement Establishing Joint Standards for Assessing the Diversity Policies and Practices of Entities Regulated by the Agencies” (Policy Statement). The Agencies will use the information provided to them to monitor progress and trends in the financial services industry with regard to diversity and inclusion in employment and contracting activities, as well as to identify and highlight those policies and practices that have been successful. The primary federal financial regulator will share information with other agencies, when appropriate, to support coordination of efforts and to avoid duplication. The Agencies may publish information disclosed to them, such as best practices, in any form that does not identify a particular entity or individual or disclose confidential business information. This is a routine request for OMB to renew its approval of the collections of information currently approved under this OMB control number.

Request for Comments: Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau’s estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Dated: January 29, 2019.

Darrin A. King,

Paperwork Reduction Act Officer, Bureau of Consumer Financial Protection.

[FR Doc. 2019–00901 Filed 2–1–19; 8:45 am]

BILLING CODE 4810–AM–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2019–0003]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Consumer Financial Protection (Bureau) is proposing a new information collection, titled, “Debt Collection Quantitative Disclosure Testing.”

DATES: Written comments are encouraged and must be received on or before March 6, 2019 to be assured of consideration.

ADDRESSES: You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

- **Electronic:** <http://www.regulations.gov>. Follow the instructions for submitting comments.
- **OMB:** Office of Management and Budget (OMB), New Executive Office Building, Room 10235, Washington, DC 20503 or fax to (202) 395–5806. Mailed or faxed comments to OMB should be to the attention of the OMB Desk Officer for the Bureau of Consumer Financial Protection.

Please note that comments submitted after the comment period will not be accepted. In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or Social Security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Documentation prepared in support of this information collection request is available at www.reginfo.gov (this link becomes active on the day following publication of this notice). Select “Information Collection Review,” under “Currently under review, use the dropdown menu “Select Agency” and select “Consumer Financial Protection Bureau” (recent submissions to OMB will be at the top of the list). The same

documentation is also available at <http://www.regulations.gov>. Requests for additional information should be directed to Darrin King, PRA Officer, at (202) 435–9575, or email: CFPB_PRA@cfpb.gov. Please do not submit comments to this email box.

SUPPLEMENTARY INFORMATION:

Title of Collection: Debt Collection Quantitative Disclosure Testing.

OMB Control Number: 3170–XXXX.

Type of Review: New Collection (Request for a New OMB Control Number).

Affected Public: Individuals.

Estimated Number of Respondents: 17,750 (includes screener and survey).

Estimated Total Annual Burden Hours: 3,555.

Abstract: The Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111–203) and other Federal consumer financial laws authorize the Bureau to engage in consumer protection rule writing. The Bureau relies on empirical evidence and rigorous research to improve its understanding of consumer financial markets for regulatory purposes. This PRA clearance seeks approval from OMB to conduct a web survey of 8,000 individuals as part of the Bureau’s research on debt collection disclosures.

The survey will explore consumer comprehension and decision making in response to debt collection disclosure forms. The survey will oversample respondents who have had experience with debt collection in the past.

Request for Comments: The Bureau issued a 60-day **Federal Register** notice on June 5, 2017, 82 FR 25779, Docket Number: CFPB–2017–0013. Further, the Bureau published a 30-day **Federal Register** notice on 11/14/2017, 82 FR 52712, Docket No. CFPB–2017–0038. This request was then withdrawn by the Bureau after submission to OMB, therefore we are now re-publishing a thirty day notice for this collection and re-submitting it to OMB. Comments were solicited and continue to be invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau’s estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information

technology. Comments submitted in response to this notice will be reviewed by OMB as part of its review of this request. All comments will become a matter of public record.

Dated: January 29, 2019.

Darrin A. King,

Paperwork Reduction Act Officer, Bureau of Consumer Financial Protection.

[FR Doc. 2019-00905 Filed 2-1-19; 8:45 am]

BILLING CODE 4810-AM-P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Health Board; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Personnel and Readiness, Defense Health Board, Department of Defense.

ACTION: Notice of federal advisory committee meeting.

SUMMARY: The Department of Defense (DoD) is publishing this notice to announce that the following Federal Advisory Committee meeting of the Defense Health Board (DHB) will take place.

DATES: Open to the public February 11, 2019 from 9:00 a.m. to 12:00 p.m.

ADDRESSES: The address of the open meeting is Gatehouse, 8111 Gatehouse Road, Room 345, Falls Church, Virginia 22042 (registration requested; see guidance in **SUPPLEMENTARY INFORMATION**, "Meeting Accessibility").

FOR FURTHER INFORMATION CONTACT:

CAPT Juliann Althoff, Medical Corps, U.S. Navy, (703) 275-6060 (Voice), (703) 275-6064 (Facsimile), juliann.m.althoff.mil@mail.mil (Email). Mailing address is 7700 Arlington Boulevard, Suite 5101, Falls Church, Virginia 22042. Website: <http://www.health.mil/dhb>. The most up-to-date changes to the meeting agenda can be found on the website.

SUPPLEMENTARY INFORMATION: Due to circumstances beyond the control of the Department of Defense (DoD) and the Designated Federal Officer, the Defense Health Board was unable to provide public notification required 41 CFR 102-3.150(a) concerning the meeting on February 11, 2019 of the Defense Health Board. Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102-3.150(b), waives the 15-calendar day notification requirement. This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) (5 U.S.C., Appendix), the Government in the

Sunshine Act (5 U.S.C. 552b), and 41 CFR 102-3.140 and 102-3.150.

Availability of Materials for the Meeting: Additional information, including the agenda, is available at the DHB website, <http://www.health.mil/dhb>. A copy of the agenda or any updates to the agenda for the February 11, 2019, meeting will be available on the DHB website. Any other materials presented in the meeting may be obtained at the meeting.

Purpose of the Meeting: The DHB provides independent advice and recommendations to maximize the safety and quality of, as well as access to, health care for DoD health care beneficiaries. The purpose of the meeting is to provide progress updates on specific taskings before the DHB. In addition, the DHB will receive information briefings on current issues related to military medicine.

Agenda: The DHB anticipates receiving a progress update from the Trauma and Injury Subcommittee on its Low-Volume High-Risk Surgical Procedures Review, a progress update on the Healthy Military Family Systems: Examining Child Abuse and Neglect Review, as well as updates related to previously submitted DHB reports. Any changes to the agenda can be found at the link provided in the **SUPPLEMENTARY INFORMATION** section.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b and 41 CFR 102-3.140 through 102-3.165 and subject to availability of space, this meeting is open to the public from 9:00 a.m. to 12:00 p.m. on February 11, 2019. Seating is limited and is on a first-come basis. All members of the public who wish to attend the public meeting are requested to register by emailing their name, rank/title, and organization/company to dha.ncr.dhb.mbx.defense-health-board@mail.mil or by contacting Ms. Theresa Fassig Normil at (703) 275-6012. Registration will also be available at the door on the day of the meeting. **Special Accommodations:** Individuals requiring special accommodations to access the public meeting should contact Ms. Theresa Fassig Normil at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

Written Statements: Any member of the public wishing to provide comments to the DHB related to its current taskings may do so in accordance with section 10(a)(3) of the Federal Advisory Committee Act, 41 CFR 102-3.105(j) and 102-3.140, and the procedures described in this notice. Written statements may be submitted to the DHB Designated Federal Officer (DFO), CAPT Juliann Althoff, at

juliann.m.althoff.mil@mail.mil and should be no longer than two type-written pages and include the issue, a short discussion, and a recommended course of action. Supporting documentation may also be included, to establish the appropriate historical context and to provide any necessary background information. If the written statement is not received at least five (5) business days prior to the meeting, the DFO may choose to postpone consideration of the statement until the next open meeting. The DFO will review all timely submissions with the DHB President and ensure they are provided to members of the DHB before the meeting that is subject to this notice. After reviewing the written comments, the President and the DFO may choose to invite the submitter to orally present their issue during an open portion of this meeting or at a future meeting. The DFO, in consultation with the DHB President, may allot time for members of the public to present their issues for review and discussion by the DHB.

Dated: January 28, 2019.

Shelly E. Finke,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019-00838 Filed 2-1-19; 8:45 am]

BILLING CODE 5001-06-P

DELAWARE RIVER BASIN COMMISSION

Notice of Public Hearing and Business Meeting; February 13 and March 13, 2019

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, February 13, 2019. A business meeting will be held the following month on Wednesday, March 13, 2019. The hearing and meeting are open to the public and will take place at the Washington Crossing Historic Park Visitor Center, 1112 River Road, Washington Crossing, Pennsylvania.

Public Hearing. The public hearing on February 13, 2019 will begin at 1:30 p.m. Hearing items subject to the Commission's review will include draft dockets for withdrawals, discharges, and other projects that could have a substantial effect on the basin's water resources, as well as resolutions to: (a) Adopt the Water Resources Program for Fiscal Years 2019-2021; (b) continue the Monitoring Advisory and Coordination Committee (MACC); and (c) continue the Water Quality Advisory Committee (WQAC).

The list of projects scheduled for hearing, including project descriptions,

BUREAU OF CONSUMER FINANCIAL PROTECTION
PAPERWORK REDUCTION ACT SUBMISSION
INFORMATION COLLECTION REQUEST

SUPPORTING STATEMENT PART A
DEBT COLLECTION QUANTITATIVE DISCLOSURE TESTING
(OMB CONTROL NUMBER: 3170-XXXX)

OMB TERMS OF CLEARANCE: Not applicable. This is a new collection. There are no terms of clearance at this time.

ABSTRACT:

The Dodd-Frank Wall Street Reform and Consumer Protection Act and other federal consumer financial laws authorize the Consumer Financial Protection Bureau (BCFP or Bureau) to engage in consumer protection rule writing. This PRA clearance request seeks approval from the Office of Management and Budget (OMB) to conduct a web survey of 8,000 individuals as part of the Bureau's research on debt collection disclosures.

The survey will explore consumer comprehension and decision making in response to debt collection disclosure forms. The survey will oversample respondents who have had experience with debt collection in the past.

JUSTIFICATION

1. Circumstances Necessitating the Data Collection

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub.L. 111–203) and other federal consumer financial laws authorize the Consumer Financial Protection Bureau (BCFP or

Bureau) to engage in consumer protection rule writing. The Bureau relies on empirical evidence and rigorous research to improve its understanding of consumer financial markets for regulatory purposes.

The Fair Debt Collection Practices Act (FDCPA) establishes the rights, liabilities, and responsibilities of participants in the debt collection system, including third-party debt collectors, debt buyers, and consumers. Among other things, the FDCPA was enacted to “eliminate abusive debt collection practices by debt collectors, [and] to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged.”

To achieve these purposes, the FDCPA: (1) prohibits debt collectors from engaging in abusive, deceptive, or unfair practices; (2) imposes restrictions on debt collectors’ communications with consumers and on their communications with others to locate consumers; and (3) mandates a debt dispute process under which collectors provide consumers with basic information about their alleged debts, consumers have the right to dispute their alleged debts, and collectors must verify disputed debts before continuing to collect on them.

The FDCPA requires that debt collectors make certain disclosures as part of the collection process. Most notably, Section 809 of the FDCPA requires debt collectors to provide “validation notices” (sometimes called “g-notices”) to consumers at the start of the collection process. These notices contain information about the debt collection process, such as the consumer’s right to dispute the debt, as well as information about the debt being collected, such as the name of the debt’s owner and the amount owed.

Certain other disclosures are also required by the FDCPA. For instance, Section 807(11) requires what is commonly called the “mini-Miranda” warning. In the collector’s initial communication, it requires that collectors state that they are calling to collect a debt and that any information obtained during the course of the call may be used to collect that debt. For all communications, it also requires that debt collectors disclose that the communication is from a

debt collector.

As part of a potential upcoming rulemaking implementing the FDCPA, the BCFP is considering whether additional information should be added to the validation notice to help consumers recognize whether they owe the debts. The BCFP also is considering whether additional information about consumer rights under the FDCPA should be disclosed to consumers at the time the validation notice is given. The BCFP further is considering whether consumers should receive disclosures in validation notices or subsequent communications regarding time-barred debts (i.e., debts that are older than the applicable state statute of limitations) or if other disclosures should be provided.

2. Use of the Information

The BCFP will use information gathered as part of this research study to help assess whether it can improve the clarity of forms used during debt collection to facilitate consumer decision making. Insights from this survey may provide information about how consumers respond to disclosures that can be leveraged to inform the development of future consumer disclosures.

The BCFP plans to conduct a web-based survey that would test a number of outstanding questions related to disclosures the Bureau is developing in conjunction with its debt collection rulemaking, especially with regard to “time-barred” debt. This survey will test outstanding issues regarding the disclosures on a large sample of consumers possessing a broad range of demographic characteristics, oversampling consumers who indicate that they have experience with debts in collection.

The BCFP has retained a contractor to conduct the proposed research; the contractor will subcontract with a survey research firm to assist with administration of the web survey. The study will be conducted in English and will use the subcontractor’s proprietary online panel. The survey will not involve ongoing data collection; it is a one-time web survey. Participation will be voluntary.

The BCFP plans to share aggregated findings from the survey with the public as appropriate, for example, in a future study on debt collection or in connection with any potential rulemakings related to debt collection.

3. Use of Information Technology

The survey will be a web-based data collection effort. Respondents will be recruited from GfK's KnowledgePanel, an online panel. Panelists will receive an email containing a personalized URL (e.g., www.researchsurvey/123456) for the web survey that includes a unique, non- sequential identifier for secure login. Upon clicking on the URL that our contractor will host, the respondent will be directed to the survey. They will be asked to read a validation notice and then answer questions based on a hypothetical situation. The web instrument will automatically guide the respondent through the survey questions. Respondents may save their responses and suspend/resume the survey where they left off. At any time, respondents will be able to refer to the validation notice.

Collecting data electronically will help to reduce errors and improve data reliability by:

- Providing paradata, helping us understand how people interact with the survey (i.e. how often they refer to the validation notice and for how long, and whether they return to previous questions during the survey);
- Providing uniform question sequencing;
- Automatically skipping questions, where appropriate, based on prior answers to questions;
- Randomizing disclosure forms to participants; and
- Rejecting invalid responses or data entries.

Additionally, the subcontractor may collect data on the length of the survey and unit and item non-response rates. This type of information can be used to improve the data collection process.

4. Efforts to Identify Duplication

The proposed consumer survey will not duplicate empirical research that the BCFP has identified to date. The debt collection disclosure form alternatives that will be tested through the survey are currently being developed, informed by previous qualitative research performed under OMB Control # 3170-0055, Generic Information Collection Plan to Conduct Cognitive Research and Pilot Testing under and information collection titled “Debt Collection Disclosure Testing Quantitative Study, Pretesting of Survey Questions.” No empirical studies to date have quantitatively tested consumers’ comprehension and decision making around these debt collection disclosure form alternatives. Moreover, the quantitative testing will not be duplicative of the qualitative form testing study. The qualitative study uses much smaller sample sizes to identify any large trends in consumers’ reactions to specific aspects of the forms (e.g., the forms’ formatting and layout). The quantitative form testing study will test consumers’ comprehension and decision making using updated versions of the forms with a much larger and representative sample.

The BCFP will continue to monitor empirical research and related work by Federal Regulatory agencies and other researchers to ensure that the BCFP’s research techniques reflect the most current knowledge and best practices.

5. Efforts to Minimize Burdens on Small Entities

Not applicable. The data collection will not burden small entities because the survey will only collect information from individuals.

6. Consequences of Less Frequent Collection and Obstacles to Burden Reduction

Each surveyed individual will only participate once.

If the survey was not implemented, the BCFP would be limited in its ability to provide an analysis of how the debt collection disclosure form alternatives facilitate consumers’ comprehension and decision making.

By implementing the survey, the BCFP will be able to test for differential patterns in form comprehension and decision making across different types of disclosures. If the survey was not implemented, the BCFP would not be able to assess these critical questions.

7. Circumstances Requiring Special Information Collection

There are no special circumstances. The collection of information is conducted in a manner consistent with the guidelines in 5 C.F.R. 1320.5(d)(2).

8. Consultation Outside the Agency

In accordance with 5 C.F.R. 1320.8(d)(1), the Bureau published a *Federal Register* notice (FRN) allowing the public 60 days to comment on this proposed new, collection of information.

Further, and in accordance with 5 C.F.R. 1320.5(a)(1)(iv), the Bureau has published a notice in the *Federal Register* allowing the public 30 days to comment to OMB on the submission of this information collection request. Further, as noted above the questions in this survey were pre- tested in pilot testing conducted under OMB Control #3170-0055.

The BCFP received 9 responsive comments during the 60-day notice period, and 5 comments were directed to OMB during the 30-day notice period. Commenters included industry groups, consumer advocates, academics, and private citizens. Commenters were generally supportive of research into debt collection disclosures, but asked that we delay the information collection. In response, we pulled this collection from OMB review, and are now re-submitting for review and republishing another 30-day notice inviting the public to submit comments to OMB about this collection. We also thoughtfully considered the areas of improvement that the commenters proposed, and we address those comments below.

Disclosure Notices

Several commenters expressed concern that the PRA submission materials did not include the disclosure notices and text to which survey respondents will be asked to respond. The Bureau

has included the various versions of the model form and disclosure options that will be tested.

The Bureau has also previously released examples of possible consumer disclosures as part of the Outline of Proposals Under Consideration for the Small Business Review Panel for Debt Collector and Debt Buyer Rulemaking. The Bureau has received and continues to receive feedback from stakeholders on these examples and related topics, and these disclosures continue to be under consideration and development. Any disclosures that become part of a rulemaking will be released at a later date and will be subject to public notice and comment.

Use of Hypothetical Scenario in Survey Questions

Commenters also expressed concern about the applicability of hypothetical questions and scenarios to real world decisions. Bureau researchers acknowledge that there is a large literature suggesting that consumers may be inaccurate in predicting how they will react to hypothetical future events. The Bureau has therefore taken steps to evaluate this methodology, and believes the methods proposed are the most appropriate for three reasons: (1) The performance of the methodology in qualitative testing and consultant support (2) A focus on treatment effects over baseline estimates (3) Empirical support for the methodology. These are discussed in more detail below.

(1) Testing and consultant support of the hypothetical vignette method.

To evaluate the proposed vignette methodology, the Bureau has explored different research methodologies with expert contractors and visiting scholars, and performed qualitative testing of the disclosures and the survey instrument, including the vignette. In previous versions where consumers were asked to estimate their own behavior rather than that of a hypothetical Person A, researchers found that consumers without debt collection experience dwelled on the idea that they would never be in the position of owing a debt, which interfered with their ability to complete the survey. Switching to a third person proved easier for both those with and without debt collection experience to answer questions about the information on the form.

(2) Focusing on treatment effects

In addition, the Bureau is interested in relative differences between groups in disclosure comprehension, depending on the disclosure that each group receives; the Bureau does not intend to rely on this research project to understand incidence rates in the population. The hypothetical nature of the questions should have similar effects (if any) on participants in all experimental groups, and therefore would be a common factor across groups. Comparing relative responses across groups, as opposed to measuring the incidence rate of responses for a particular group, should render any effect of the hypothetical nature of the questions irrelevant for the Bureau's purposes.

(3) Empirical support for the methodology

Using “vignettes” (also called factorial or decision scenarios) to ask survey questions is a common methodology in the social sciences. Evidence suggests that what people express on web surveys is associated with their actual behavior in the real world,^{1,2,3} and external validation of the vignette method suggests responses are somewhat consistent among different demographic groups.⁴ For example, evidence suggests that how people respond in surveys using the vignette method of questioning is related to how they behave in field studies, although there are biases, including in the reporting of more prosocial behavioral norms compared to behavior in the real world.⁵ There may also be biases in survey responses based on automatic processes which affect consumer behavior but of which the consumer is not consciously aware.⁶ However, these biases are not limited to hypothetical questions, but rather

¹ Couper, Mick, Singer, Eleanor, Conrad, Frederick, and Groves, Robert. 2010. “Experimental Studies of Disclosure Risk, Disclosure Harm, Topic Sensitivity, and Survey Participation.” *Journal of Official Statistics*, 26(2): 287–300

² Hensher, David A. 2009. “Hypothetical Bias, Choice Experiments and Willingness to Pay.” *Transportation Research Part B*, 44: 735-752.

³ Adams, P., Guttman-Kenney, B., Hayes, L., Hunt, S. (2018). Helping credit card users repay their debt: a summary of experimental research. Financial Conduct Authority Research Note. Available online at: <https://www.fca.org.uk/publication/research/research-note-helping-credit-card-users-repay-their-debt-summary-experimental-research.pdf>

⁴ Teti, Andrea, Gross, Christiane, Knoll, Nina, and Bluher, Stefan. 2016. “Feasibility of the Factorial Survey Method in Aging Research: Consistency Effects Among Older Respondents.” *Research on Aging*, 38(7): 715–741.

⁵ Eifler, Stefanie. 2010. “Validity of a Factorial Survey Approach to the Analysis of Criminal Behavior.” *Methodology*, 6(3):139–146

⁶ Verneau, Fabio, La Barbera, Francesco, and Del Guidice, Teresa. 2017. “The Role of Implicit Associations in the

are common in surveys in general.

There are strategies to mitigate the impact of hypothetical bias that the BCFP employs in this research study. One way is to highlight the importance of the study such that “the participant cares about the results of the research, and believes that his or her answers will influence decisions to be made as a result of the research,” and to ask about the likelihood of various decisions rather than indicating a decision with “yes” or “no.”⁷ In fact, qualitative testing revealed that asking about likelihoods was more effective than asking about a list of potential behaviors. Another method the Bureau is using to minimize hypothetical bias is to probe respondents for the certainty or confidence of their answers, rather than asking consumers to indicate whether or not they will do a particular behavior.⁸

Other Survey Question Comments

Several commenters suggest that the Bureau track whether survey participants refer back to the notices during the online survey. Other commenters suggested that the Bureau look at differences in disclosure comprehension between subgroups. In addition, commenters urged the Bureau to ensure that the survey has enough statistical power to see differences between groups, and to perform robustness checks related to the study’s overweighting of people with debt collection experience. The BCFP plans to do each of these things by collecting survey paradata (which tracks respondents’ process flow throughout the survey) and individual difference measures, which we plan to use in the analysis of this study. We will also receive demographic information on respondents from Gfk as well. To the extent that it is possible to estimate the effect sizes that will be observed, the Bureau has also conducted power analyses to ensure sufficient statistical power.

One commenter suggested that a field trial would be more impactful. The Bureau agrees that field trials are highly valuable, but the Bureau cannot compel cooperation in a field trial.

Hypothetical Bias.” *The Journal of Consumer Affairs*, 51(2): 312-328.

⁷ Fifer, Simon, Rose, John, and Greaves, Stephen. 2014. “Hypothetical Bias in Stated Choice Experiments: Is it a Problem? And if so, How do We Deal With it?” *Transportation Research Part A*, 61: 164-177.

⁸ Blumenschein, Karen, Blomquist, Glenn C., Johannesson, Magnus, Horn, Nancy, and Freeman, Patricia. 2007. “Eliciting Willingness to Pay Without Bias: Evidence from a Field Experiment.” *The Economic Journal*, 118(525):

Furthermore, the Bureau believes that the survey methodology proposed by Bureau researchers will provide the necessary knowledge to evaluate the disclosures.

In addition, several commenters expressed concern about changes to the survey that the Bureau may make after the “soft launch” and before the “full launch.” The Bureau expects that any changes identified during the soft launch will not have PRA implications.

In addition to and preceding the “soft launch” the Bureau intends to pilot new questions on a small group of 200 respondents from the GfK panel, evaluate these questions for effectiveness, and decide whether to retain them in the final survey instrument. This is consistent with the spirit of PRA in that ineffective questions can be removed or refined in order to decrease the burden to the remaining respondents. The Bureau does not anticipate any changes made during the pilot will have PRA implications, as changes will consist of refining wording or excluding ineffective items, and not any substantive changes.

During the soft launch, the Bureau will review the results to make sure responses seem correct from a technical perspective. Because of the Bureau’s pretesting work, however, the Bureau believes that the probability of identifying concerns that would significantly change the questions of interest are very small.

The Bureau considered other commenter suggestions about whether to add or omit certain questions, but decided either that the Bureau found value in the current questions, or that the new questions were outside the scope of this study. One commenter disagreed with the Bureau’s plan to ask respondents about their subjective beliefs in the survey instrument. The Bureau believes that these questions are important controls to better understand how respondents are interpreting the disclosure forms.

Another commenter suggested using financial literacy questions as controls and to understand the perspective of the least sophisticated consumer. With consideration for space limitations in the survey and the challenges to consumers to answer financial literacy questions⁹, the Bureau will make use of demographic information like education, race, age, gender, and income to understand the perspectives of a very diverse group of consumers, including the most vulnerable and least sophisticated consumers.

Commenters had suggestions around objective comprehension questions: one commenter did not think the Bureau asked enough questions to ascertain whether respondents comprehend the disclosure, and another thought that the comprehension questions should be open-ended. The Bureau has added additional multiple choice comprehension questions and believes that the current number and scope of comprehension questions is sufficient to understand differences between forms.

9. Payments or Gifts to Respondents

Survey recipients will receive a cash payment, currently expected to be five dollars, as an inducement to complete and return the survey questionnaire. Recipients who fail to respond to the initial survey solicitation may receive an additional cash inducement of a similar amount.

Meta-analyses of mail surveys find that incentives given initially with the questionnaire yield significantly higher response rates than do incentives contingent on return of the survey or no incentives; furthermore, monetary incentives produce a stronger effect than non-monetary incentives.^{10, 11} Many recurring federally-funded surveys use monetary incentives, including the Survey of Consumer Finances, the Survey of Income and Program Participation, and the National Survey of Drug Use and Health, and self-administered surveys such as the Survey of Doctorate Recipients, the National Survey of Recent College Graduates, and the National Survey of Mortgage Borrowers.^{12, 13} Incentives have consistently been found to improve

¹⁰ Allan H. Church, "Estimating the Effect of Incentives on Mail Survey Response Rates: A Meta-Analysis," *Public Opinion Quarterly* 57, no. 1 (1993): 62-79.

¹¹ Fernandes, D., Lynch Jr, J. G., & Netemeyer, R. G. (2014). Financial literacy, financial education, and downstream financial behaviors. *Management Science*, 60(8), 1861-1883.

¹² Phil Edwards, Ian Roberts, Mike Clarke, Carolyn DiGuseppi, Sarah Pratap, Reinhard Wentz, and Irene Kwan, "Increasing Response Rates to Postal Questionnaires: Systematic Review," *British Medical Journal* 324 (2002):1183-1189.

¹³ Fan Zhang, "Incentive Experiments: NSF Experiences," NSF Working Paper, 2010.

¹⁴ Eleanor Singer (2002), "The Use of Incentives to Reduce Nonresponse in Household Surveys." In R.M. Groves, D.A. Dillman, J.L. Eltinge, and R.J.A. Little (eds), *Survey Nonresponse*. New York: Wiley, pp. 163-177.

¹⁵ Eleanor Singer, and Cong Ye (2013), "The Use and Effects of Incentives in Surveys." *The Annals of the American Academy of Political and Social Science*, 645 (1):112-141.

¹⁶ Martha Berlin et al. (1992), "An Experiment in Monetary Incentives." *Proceedings of the Survey Research Methods Section, American Statistical Association*, pp. 393-398.

¹⁷ Eleanor Singer, John Van Hoewyk, and M. Patricia Maher (2000), "Experiments with Incentives in Telephone

response rates across a variety of survey topics and modes.^{14,15} Incentives have been found to be cost-effective in different modes, often reducing the effort required to contact and interview sample persons or reduce the number of follow-up mailings.^{16, 17, 18}

The Public will also have an opportunity to comment on the proposed disclosures when the Bureau publishes its notice of Proposed Rulemaking for the rule that this research will support

10. Assurances of Confidentiality

The BCFP will not provide an explicit pledge of confidentiality. The BCFP shall treat the information in accordance with applicable federal law, and the Bureau's own privacy rules, and all applicable laws and regulations that apply to federal agencies for the protection of privacy, security and integrity of information.

The BCFP provides notice to individuals to explain how their information will be used through Privacy Act Statements. Privacy Act Statements are made available prior to the collection of information and explain whether the information is mandatory or voluntary; the authority for the information collection; whether there are any opportunities to consent to sharing and submission of information; how the information will be secured, and what System of Records applies.

In the survey's introduction, respondents will be informed about the study's purpose, the authority under which the data are being collected, that cooperation is voluntary, and that direct identifying information will not be provided to the BCFP or to any other party.

Regarding respondents' personally identifiable information ("PII"), the subcontracted survey research firm uses user- and role-based access by separating identifying and non-identifying

Surveys." *Public Opinion Quarterly*, 64 (2): 171-188.

¹⁸ Gwen L. Alexander et al. (2008), "Effect of Incentives and Mailing Features on Recruitment for an Online Health Program." *American Journal of Preventive Medicine*, 34 (5): 382-388.

data into different database systems, each of which has its own defined security roles. Access to survey data is limited to the relevant research staff but explicitly denied to anybody who may deal with panelists' PII. Only the subcontractor's IT, Panel Management staff, and selected vendors with a need to know have access to panelists' PII. The BCFP will not have access to panelists' PII.

The contractor will deliver to the BCFP the data as received from the subcontracted survey research firm, so that BCFP can analyze the data. The BCFP will only receive and keep response data stripped of direct identifying PII. Moreover, in order to limit the amount of potentially identifying information that the BCFP receives through demographic variables, the BCFP will seek to receive demographic variables included in the data that shall be provided by the contractor/subcontractor in ranges (e.g., age 18-34) rather than specific values (e.g., age 21) where appropriate.

Conducting this survey implicates privacy concerns because a breach of confidentiality, or re-identification, could result in an individual suffering harm. To reduce the risk of breaches of privacy, the BCFP designs recruitment materials so as not to disclose sensitive information about those it seeks to recruit, and uses appropriate security controls to protect information used in research. There is also risk related to misuse of information collected for research. Misuse might involve secondary types of research that are incompatible with the purposes of the initial collection, or a use of the information that individuals do not understand or to which they have not provided consent.

To reduce the risk of misuse, the BCFP minimizes access to PII based on need-to-know; any contractor staff assigned to the project also sign confidentiality agreements. Any responses transmitted to the Bureau from this survey will be de-identified and / or aggregated before the Bureau receives them. When appropriate, survey results will be presented in aggregated form to protect the privacy of firms or consumers, and any publicly released version of data will use disclosure protection techniques (e.g., rounding, imputation, exclusion of some variables, aggregation of categorical responses) to minimize the risk of releasing personally identifiable or otherwise sensitive information (12 C.F.R. 1070.40 et seq.). The Bureau treats the

information collected from participating persons in a manner consistent with the Bureau's privacy regulations, and all data and analyses are subject to legal and privacy review prior to their release. For the assurances of confidentiality provided to respondents by KnowledgePanel, please see: <http://www.knpanel.com/participate/privacy2.html>.

The Bureau also evaluates the potential privacy risk and harm to individuals of specific research relative to that authorized purpose, and vets research proposals to ensure that they serve an authorized purpose. Surveys will be consistent with the Privacy Act and the E-Government Act. The requisite SORNs and PIAs will document the collection, use, disclosure, and retention of PII; and the technical, administrative, and physical controls used to minimize privacy risks. This collection is covered by the CFPB.022 Market and Consumer Research Records, [77 FR 67802 System of Records Notice, and the Consumer Experience Research PIA](#).

11. Justification for Sensitive Questions

Questions about an individual's finances, for example, whether a person has experience with debt collection, are commonly considered sensitive. Nonetheless, the BCFP must ask these kinds of questions in order to understand consumer behavior and recognize financial trends and emergent risks relevant to consumers. Because these types of questions are central to the BCFP mission, we believe that we are justified in asking these types of sensitive questions.

In addition, some people may believe that questions about race or other socioeconomic factors may be considered sensitive. It is the Bureau's opinion that these consumer characteristics are important to measure: because (1) they are an important source of variance that can be accounted for, (2) this information allows researchers to determine whether Bureau disclosures operate similarly for a diverse body of consumers, from the most vulnerable to the most sophisticated. (3) Measuring demographic characteristics permits Bureau researchers to evaluate the extent to which the survey sample is similar to other samples. Finally, these types of questions are routinely asked by the online panel we are using for this study. For these reasons, we feel justified in asking these types of sensitive questions. For information collections involving questions of race/ethnicity, we will ensure that the OMB standards for Classification of

Federal Data on Race and Ethnicity (Federal Register, October 30, 1997, Volume 62, Number 210, pages 58781-59790) are followed.

Respondent participation is voluntary; subjects will be made aware of this fact. All respondents are free to opt-out of a data collection at any time and for any reason.

12. Estimated Burden of Information Collection

Information Collection Requirement	No. of Respondents	Frequency	Annual Responses	Average Response Time	Annual Burden Hours
Screening / Recruitment	17,750	1	17,750	0.05	888
Web Survey	8,000	1	8,000	0.33	2,667
Totals:	17,750*		25,750		3,555

*Respondents to the Web Survey are a subset of those who responded to the screener.

The screening and recruitment responses are estimated to require an average response time of approximately three minutes, as the number of screening questions will be limited. The estimate for average burden per response to the web survey is based on the contractors' study proposal and test plan.

13. Estimated Total Annual Cost Burden to Respondents or Recordkeepers

There are no capital/start-up or ongoing operation/maintenance costs associated with this information collection.

14. Estimated Cost to the Federal Government

There will be no annualized capital/start-up costs for the government to receive the survey information. The testing is funded with non-appropriated funds. The contract to carry out the study will cost \$ 445,806.80.

15. Program Changes or Adjustments

This is a new, one-time information collection request. Therefore, all the burden is considered to be new burden and will be accounted for as a “program change” for the purposes of OMB’s PRA inventory. The burden will be removed from OMB PRA inventory after the survey is completed.

16. Plans for Tabulation, Statistical Analysis, and Publication

The contractor’s report will provide tabulations at the aggregate level. Once the data is tabulated, it will be presented to the BCFP along with an executive summary and detailed findings about consumer comprehension and decision-making related to our debt collection form alternatives for participants in the study.

The BCFP will also receive the underlying data from the contractor, to conduct our own additional analysis, if appropriate. As discussed above, the BCFP may share aggregate findings from the survey with the public as appropriate, for example, in connection with the release of a further study of debt collection, or in connection with any potential rulemaking related to debt collection. BCFP will only release unweighted analyses as part of any publications related to this study.

17. Display of Expiration Date

The BCFP plans to display the OMB number and expiration date for OMB approval in the survey instruments. Additionally, the OMB control number and expiration date will be displayed on the Federal government’s electronic PRA docket at www.reginfo.gov.

18. Exceptions to the Certification Requirement

The Bureau certifies that this collection of information is consistent with the requirements of 5 C.F.R. 1320.9, and the related provisions of 5 C.F.R. 1320.8(b)(3) and is not seeking an exemption to these certification requirements.

BUREAU OF CONSUMER FINANCIAL PROTECTION

PAPERWORK REDUCTION ACT SUBMISSION

INFORMATION COLLECTION REQUEST

SUPPORTING STATEMENT PART B

DEBT COLLECTION QUANTITATIVE DISCLOSURE TESTING

(OMB CONTROL NUMBER: 3170-XXXX)

1. Respondent Universe and Selection Methods

Population and Sampling Frame

This research study is not intended to be representative of the U.S. population, but rather be an experimental design that tests differences in form comprehension between groups. The study sample will be chosen by selecting a sample from GfK's KnowledgePanel®, an online panel whose participants were recruited through probability sampling. KnowledgePanel currently includes about 55,000 adult members.

Since its inception in 1999, KnowledgePanel participants have been recruited based on industry standards for selecting general population surveys, first by random-digit dialing and currently by address-based sampling (ABS). The ABS methodology is a random sample of addresses from the U.S. Postal Service's Delivery Sequence File. Individuals residing at randomly sampled addresses are invited to join KnowledgePanel through a series of mailings (in English and Spanish); non-responders are phoned when a telephone number can be matched to the sampled address. Household members who were randomly selected can indicate their willingness to join the panel by returning a completed acceptance form in a postage-paid envelope, calling a toll-free hotline and speaking to a bilingual recruitment agent, or accessing a dedicated recruitment website. Non-internet households are provided a web-enabled computer and free internet access. Historical recruitment rates for participation in the panel are approximately 15-20%.

The expected survey completion rate for those selected within the panel is 60–70%, based on historical completion rates for KnowledgePanel participants. The survey will be conducted in English.

Sample Size

The target sample size is 8,000 completed surveys, approximately 5,330 (2/3) of which will be completed by panelists who have “experienced” debt collection in the past 24 months. We will

select the sample in two phases. First, we will select a random sample of adults and screen the panelists to determine whether they have experienced debt collections in the past 24 months—estimated to be 30–35% of adults with a credit file based on research by the Urban Institute¹ and the BCFP². In the second phase, we will select a sample of panelists for the full survey. All of those who have experienced debt collection in the past 24 months will be invited to participate, along with a random subsample of those who indicate they have not experienced debt collection in the previous 24 months. The total sample distribution is expected to be 2/3 “experienced” and 1/3 without debt collection experience in the past 24 months. We designed the sample in this way because we found during qualitative testing that people with experience and without experience with debt collection responded to the form differently. In this study, we wanted to ensure that the form works for both groups (because both groups could have a debt collection experience in the future). The study over-represents people who had experience with debt collection, to make sure that the form worked well for this population of consumers.

2. Describe the procedures for the collection of information.

KnowledgePanel participants will be recruited by email to take the survey. The email invitation will describe the purpose and importance of the research, identify BCFP as the sponsor, and include an email address and toll-free telephone number for helpdesk support. The recruitment email will include a personalized URL (e.g., www.researchsurvey/123456) for the web survey that features a unique, non-sequential identifier for secure login. When panelists click on the URL, they will be directed to the screening survey hosted by our contractor. The screening survey will determine whether the respondent has experienced debt collection in the previous 24 months. If selected to continue by an automated program to ensure balanced demographic characteristics and debt collection experience, the respondent will be directed to the full survey.

Panelists who do not respond to the email invitation will receive e-mail reminders starting on Day 3 and will continue to receive follow-up correspondence once per week, thereafter.

The fielding of the survey will begin with a small pilot test of up to 200 completed surveys to determine whether recently added questions are effective, followed by soft launch, targeting up to 1,000 completed surveys to ensure that the instrument is functioning as intended. Upon completing the pilot, we will pause collection, review the data, and refine or drop ineffective new questions. Following the soft launch, we will pause the survey as well, review results, and identify any technical changes that need to be made before fully launching the survey. After incorporating any technical changes, we will then re-open the survey and invite the full set of participants (additional 7,000). We expect the full survey will be in the field for three weeks.

Regarding the pilot test described above, this is to account for the fact that some aspects of the rule changed in the past year. To obtain evidence of sufficient quality to support the rulemaking, the testing must include new questions that were not included in past qualitative testing. It is not

consistent with research best practice to include new items in a large survey without first evaluating them either some kind of pilot testing. Given this, in addition to and preceding the “soft launch” the Bureau intends to pilot new questions on a small group of 200 respondents from the GfK panel, evaluate these questions for effectiveness, and decide whether to include them in the final survey instrument. This is consistent with the spirit of PRA in that ineffective questions can be removed or refined in order to decrease the burden to the remaining respondents. The Bureau does not anticipate any changes made during the pilot will have PRA implications, as changes will consist of refining wording or excluding ineffective items, and not any substantive changes.

¹ Ratcliffe, C., et al. (2014) Delinquent Debt in America. Urban Institute Report, July 30, 2014. Available at: <http://www.urban.org/research/publication/delinquent-debt-america>.

² CFPB (2014) Consumer credit reports: A study of medical and non-medical collections. Consumer Financial Protection Report, December 2014. Available at: http://files.consumerfinance.gov/f/201412_cfpb_reports_consumer-credit-medical-and-non-medical-collections.pdf

3. Describe methods to maximize response rates and to deal with issues of non-response. The accuracy and reliability of information collected must be shown to be adequate for intended uses. For collections based on sampling a special justification must be provided for any collection that will not yield “reliable” data that can be generalized to the universe studied.

Increasing Response Rate

To facilitate survey response, we will provide e-mail and telephone help desk support to respondents. All help desk staff will receive training that includes a handbook containing copies of relevant materials, such as the survey, an outline of the purpose and rationale of the survey, the process for addressing participant issues, and a summary of common questions.

GfK offers incentives to encourage panel participation. In addition, we will offer an extra \$5 incentive to ensure that we recruit our population of interest (ex: oversample people with debt collection experience) to complete the survey. This incentive will be offered toward the end of the period the survey is in the field. and is expected to boost the completion rate by 10%. Overall we expect the completion rate to be 60-70%, based on GfK’s historical completion rates for surveys of similar length.

Weighting

We will not publicly release non-response analysis for the survey respondents, or treat the data as nationally representative in publicly released reports. For this study, we plan to conduct an experimental research design and compare differences between groups to learn which debt collection disclosure forms work best to improve comprehension and how decisions around debt collection may vary based on the particular form respondents receive.

4. Describe any tests of procedures or methods to be undertaken.

The survey instrument underwent cognitive testing before the original 30 day PRA notice. New questions have been added since then and additional pre-testing will be used to assess the effectiveness of these new questions, as well as consultation with Bureau research experts.

As mentioned previously, we will include a soft launch to test the functionality of the technical administration of the survey and ensure data quality.

5. Provide the name and telephone number of individuals consulted on statistical aspects of the design and the name of the agency unit, contractor(s), grantee(s), or other person(s) who will actually collect and/or analyze the information for the agency.

BCFP

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###

North South Group
P.O. Box 121212
Pasadena, CA 91111-2222
(800) 123-4567 from 8am to 8pm EST, Monday to Saturday
www.NorthSouthGroup.com

To: Person A
2323 Park Street
Apartment 342
Bethesda, MD 20815

Reference: 584-345

North South Group is a debt collector. We are trying to collect a debt that you owe to Bank of Rockville. We will use any information you give us to help collect the debt.

Our information shows:

You had a Main Street Department Store credit card from Bank of Rockville with account number 123-456-789.

As of January 2, 2009, you owed:		\$	2,234.56
Between January 2, 2009 and today:			
You were charged this amount in interest:	+	\$	75.00
You were charged this amount in fees:	+	\$	25.00
You paid or were credited this amount toward the debt:	-	\$	50.00
Total amount of the debt now:		\$	2,284.56

How can you dispute the debt?

- **Write to us by November 12, 2017, to dispute all or part of the debt.** If you do, we must stop collection on any amount you dispute until we send you information that shows you owe the debt. If we do not hear from you by November 12, 2017, we will assume that our information is correct.
- You may use the form below or you may write to us without the form. You may also include supporting documents. We accept disputes electronically at www.NorthSouthGroup.com/dispute.

What else can you do?

- **Ask us to send you the name and address of the original creditor.** Write by November 12, 2017, and we will stop collection until we send you that information. You may use the form below or you may write to us without the form.
- **Learn more about your rights under federal law.** For instance, you have the right to stop or limit how we contact you. See the enclosed *Know Your Debt Collection Rights* document or go to www.consumerfinance.gov.
- Contact us about your payment options.
- Review state law disclosures on reverse side, if applicable.
- Póngase en contacto con nosotros para solicitar una copia de este formulario en español.



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Person A
2323 Park Street
Apartment 342
Bethesda, MD 20815

How do you want to respond?

Check all that apply:

- ☐ **I want to dispute the debt because I think:**
 - ☐ This is not my debt.
 - ☐ The amount is wrong.
 - ☐ Other or more detail: _____
- ☐ **I want you to send me the name and address of the original creditor.**
- ☐ **I enclosed this amount:** \$

Make your check payable to *North South Group*. Include the reference number 584-345.

- ☐ **Quiero esta forma en español.**

LETTER CODE: C

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Because of the age of this debt, we cannot sue you for it.

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Because of the age of this debt, we cannot sue you for it. In most cases, a debt that is this old also cannot appear on your credit report.

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Pasadena, CA 91111-2222

Person A
2323 Park Street
Apartment 342
Bethesda, MD 20815

How do you want to respond?

Check all that apply:

- ☐ **I want to dispute the debt because I think:**
 - ☐ This is not my debt.
 - ☐ The amount is wrong.
 - ☐ Other or more detail: _____
- ☐ **I want you to send me the name and address of the original creditor.**
- ☐ **I enclosed this amount:** \$

Make your check payable to *North South Group*. Include the reference number 584-345.

- ☐ **Quiero esta forma en español.**

North South Group
P.O. Box 121212
Pasadena, CA 91111-2222
(800) 123-4567 from 8am to 8pm EST, Monday to Saturday
www.NorthSouthGroup.com

To: Person A
2323 Park Street
Apartment 342
Bethesda, MD 20815

Reference: 584-345

North South Group is a debt collector. We are trying to collect a debt that you owe to Bank of Rockville. We will use any information you give us to help collect the debt.

Our information shows:

You had a Main Street Department Store credit card from Bank of Rockville with account number 123-456-789.

As of January 2, 2009, you owed:		\$	2,234.56
Between January 2, 2009 and today:			
You were charged this amount in interest:	+	\$	75.00
You were charged this amount in fees:	+	\$	25.00
You paid or were credited this amount toward the debt:	-	\$	50.00
Total amount of the debt now:		\$	2,284.56



Because of the age of this debt, we cannot sue you for it unless you make a payment or acknowledge it in writing.

How can you dispute the debt?

- **Write to us by November 12, 2017, to dispute all or part of the debt.** If you do, we must stop collection on any amount you dispute until we send you information that shows you owe the debt. If we do not hear from you by November 12, 2017, we will assume that our information is correct.
- You may use the form below or you may write to us without the form. You may also include supporting documents. We accept disputes electronically at www.NorthSouthGroup.com/dispute.

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- **Learn more about your rights under federal law.** For instance, you have the right to stop or limit how we contact you. See the enclosed *Know Your Debt Collection Rights* document or go to www.consumerfinance.gov.
- Contact us about your payment options.
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Take note: You can renew the debt and the statute of limitations for the filing of a lawsuit against you if you do any of the following: Make any payment on the debt, sign a paper in which you admit that you owe the debt or in which you make a new promise to pay, or sign a paper in which you give up or waive your right to stop the creditor from suing you in court to collect the debt.

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Because of the age of this debt, we cannot sue you for it. Even so, you may choose to make payments on the debt. However, be aware: if you make a payment on the debt, admit to owing the debt, promise to pay the debt, or waive the statute of limitations on the debt, the time period in which the debt is enforceable in court may start again.

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As of January 2, 2009, you owed:			\$ 2,234.56
Between January 2, 2009 and today:			
You were charged this amount in interest:	+	\$	75.00
You were charged this amount in fees:	+	\$	25.00
You paid or were credited this amount toward the debt:	-	\$	50.00
Total amount of the debt now:			\$ 2,284.56



If you do nothing in response to this notice, we cannot sue you to collect this debt. This is because this debt is too old.

How can you dispute the debt?

- **Write to us by November 12, 2017, to dispute all or part of the debt.** If you do, we must stop collection on any amount you dispute until we send you information that shows you owe the debt. If we do not hear from you by November 12, 2017, we will assume that our information is correct.
- You may use the form below or you may write to us without the form. You may also include supporting documents. We accept disputes electronically at www.NorthSouthGroup.com/dispute.

What else can you do?

- **Ask us to send you the name and address of the original creditor.** Write by November 12, 2017, and we will stop collection until we send you that information. You may use the form below or you may write to us without the form.
- **Learn more about your rights under federal law.** For instance, you have the right to stop or limit how we contact you. See the enclosed *Know Your Debt Collection Rights* document or go to www.consumerfinance.gov.
- Contact us about your payment options.
- Review state law disclosures on reverse side, if applicable.
- Póngase en contacto con nosotros para solicitar una copia de este formulario en español.



Mail this form to:

North South Group
P.O. Box 121212
Pasadena, CA 91111-2222

Person A
2323 Park Street
Apartment 342
Bethesda, MD 20815

How do you want to respond?

Check all that apply:

- ☐ **I want to dispute the debt because I think:**
 - ☐ This is not my debt.
 - ☐ The amount is wrong.
 - ☐ Other or more detail: _____
- ☐ **I want you to send me the name and address of the original creditor.**
- ☐ **I enclosed this amount:** \$

Make your check payable to *North South Group*. Include the reference number 584-345.

- ☐ **Quiero esta forma en español.**

Table 1			
#	ID	3 year or 10 year debt?	Disclosure language to be tested
1	X_3	1/2 3 yr	N/A
2	X_10	1/2 10 yr	
3	C_3	1/2 3 yr	The law limits how long you can be sued for a debt. Because of the age of this debt, we cannot sue you for it.
4	C_10	1/2 10 yr	
5	W_3	1/2 3 yr	The law limits how long you can be sued for a debt. Because of the age of this debt, we will not sue you for it.
6	W_10	1/2 10 yr	
7	AC_3	1/2 3 yr	According to the law, you can't be sued for debts over a certain age. Because of the age of this debt, we cannot sue you for it.
8	AC_10	1/2 10 yr	
9	AW_3	1/2 3 yr	According to the law, you can't be sued for debts over a certain age. Because of the age of this debt, we will not sue you for it.
10	AW_10	1/2 10 yr	
11	R1_10	All 10 yr	The law limits how long you can be sued for a debt. Because of the age of this debt, we cannot sue you for it unless you make a payment or acknowledge it in writing.
12	R2_10	All 10 yr	The law limits how long you can be sued for a debt. Because of the age of this debt, we will not sue you for it. Take note: You can renew the debt and the statute of limitations for the filing of a lawsuit against you if you do any of the following: Make any payment on the debt, sign a paper in which you admit that you owe the debt or in which you make a new promise to pay; Sign a paper in which you give up or waive your right to stop the creditor from suing you in court to collect the debt.
13	R3_10	All 10 yr	The law limits how long you can be sued for a debt. Because of the age of this debt, we will not sue you for it. Even so, you may choose to make payments on the debt. However, be aware: if you make a payment on the debt, admit to owing the debt, promise to pay the debt, or waive the statute of limitations on the debt, the time period in which you can be sued may start again.
14	R4_10	All 10 yr	The law limits how long you can be sued for a debt. Because of the age of this debt, we will not sue you for it. Even so, you may CHOOSE to make payments. However, BE AWARE: if you make a payment [or acknowledge in writing that you owe the debt], our right to sue you to make you pay the entire debt may START AGAIN.
15	R5_10	All 10 yr	The law limits how long you can be sued for a debt. If you do nothing in response to this notice, we will not sue you to collect this debt. This is because this debt is too old. BUT if you make a payment or acknowledge in writing that you owe this debt, then we can sue you to collect it.
16	Gex_10	1/2 3 yr	N/A
17	Gex_3	1/2 10 yr	N/A

Call out box:



[TEXT]

Above: The “call-out” box in which the disclosures tested in Table 1 will be tested.

LETTER CODE: X

North South Group
P.O. Box 121212
Pasadena, CA 91111-2222

To: Person A
2323 Park Street
Apartment 342
Bethesda, MD 20815

North South Group is a debt collector. We are trying to collect a debt that you owe to Bank of Rockville. We will use any information you give us to help collect the debt.

Our information shows:

You had a Main Street Department Store credit card from Bank of Rockville with account number 123-456-789.

As of January 2, 2009, you owed:		\$ 2,234.56
Between January 2, 2009 and today:		
You were charged this amount in interest:	+ \$	75.00
You were charged this amount in fees:	+ \$	25.00
You paid or were credited this amount toward the debt:	- \$	50.00
Total amount of the debt now:		\$ 2,284.56

**Potential Time-Barred Debt Disclosure
Would Appear Here**

How can you dispute the debt?

- **Write to us by November 12, 2017, to dispute all or part of the debt.** If you do, we must stop collection on any amount you dispute until we send you information that shows you owe the debt. If we do not hear from you by November 12, 2017, we will assume that our information is correct.
- You may use the form below or you may write to us without the form. You may also include supporting documents |

What else can you do?

- **Ask us to send you the name and address of the original creditor.** Write by November 12, 2017, and we will stop collection until we send you that information. You may use the form below or you may write to us without the form.
- **Learn more about your rights under federal law.** For instance, you have the right to stop or limit how we contact you. Go to www.consumerfinance.gov.

How do you want to respond?

Check all that apply:

- ☐ **I want to dispute the debt because I think:**
 - ☐ This is not my debt.
 - ☐ The amount is wrong.
 - ☐ Other: Please describe in writing
- ☐ **I want you to send me the name and address of the original creditor.**

Mail this form to:
North South Group
P.O. Box 121212
Pasadena, CA 91111-2222

Person A
2323 Park Street
Apartment 342
Bethesda, MD 20815

Above: BCFP Model Notice

1780 North Main Street
Pasadena, California 91107



[INSERT DATE]

Address Service Requested

A98 A97



[INSERT PARTICIPANT NAME]
5429 Campbell St.
Unit #804
New Orleans, LA 70115-2824



Northern Financial Group

www.NFG.com

Creditor: Elm Bank

Account No.: 56643-134-11145

Amount Due: \$1,547 as of 4/17/13

Telephone: (866) 555-1413

Northern Financial Group

P.O. Box 77654



Please detach at perforation and return with your payment.

YOUR DELINQUENT ACCOUNT HAS BEEN REFERRED TO THIS OFFICE FOR COLLECTION!!!!
Please remit payment in full of any disputed amount, payable to our client, in the enclosed envelope.

Unless you notify this office within 30 days after receiving this notice that you dispute the validity of the debt or any portion thereof, this office will assume this debt is valid. If you notify this office in writing with the thirty day period that the debt, or any portion thereof, is disputed, this office will: obtain verification of the debt or obtain a copy of a judgment and mail you a copy of such judgment or verification. If you request this office in writing within 30 days after receiving this notice, this office will provide you the name and address of the original creditor, if different from the current creditor.

We trust that your intention is to address this long overdue debt. If you wish to make payment arrangements, you can call our office 24 hours a day at (866) 555-1413 so we can assist you in resolving this matter. As of the date of this letter you owe the amount stated above. Because your account may accrue interest, late charges and other charges that may vary from day to day, the amount due on the day you pay may be greater. If you pay the amount above an adjustment may be necessary after we receive your check. If so, we will contact you. For further information about your balance please call your account representative.

This communication is from a debt collector. We are required to inform you that this is an attempt to collect a debt, and any information obtained will be used for this purpose.

Sincerely,
John Doe
(866) 555-1413, ext 454
Northern Financial Group
P.O. Box 77654
Pasadena, CA 91107-2876

If you have a complaint about the way we are collecting this debt, you may write to our Contact Center, 1780 North Main Street, Pasadena, CA 91107-2824 or call us toll-free at (866) 555-1413 between 9:00 A.M. P.S.T. and 5:00 P.M. P.S.T Monday-Friday

Above: G_Notice 2

Jane Doe,

Welcome to Tropicana Management, LLC ("TM, LLC")! We want to help you resolve this account, so call us at 1-800-555-1413 for you payment options. If paying this debt is difficult for you please call anyway, because we have payment options for almost every budget.

TM, LLC purchased account 976549-342-11315 on 2/12/14. All future payments and correspondence for this account, including credit counseling service payments, should be directed to us.

Statement date: [UPDATE TO RECENT DATE], 2014

Seller: Chabon Funding, Inc.

Merchant: Greer's Department Store

Original Creditor: American Bankcards, NB

Creditor to Whom Debt is Owed: Tropicana Management, LLC

Account Number: 976549-342-11315

CALL TOLL FREE AT 1-800-555-1413

to discuss payment arrangements!

Mail all checks and payments to:

Tropicana Management, LLC
P.O. Box 12221
Columbus, OH 43215-1113

Pay us online at:

www.TropicanaManagementLLC.com

Hours of Operation (EST)

Monday-Sunday 8:00AM – 7:00PM

Email: help@TropicanaManagementLLC.com



Tropicana Management, LLC

COMPANY ADDRESS: Tropicana Management, LLC P.O. Box 12221 Columbus, OH 43215-1113

DISPUTES CORRESPONDENCE ADDRESS: Tropicana Management, LLC Disputes Department, 250 Main Street, Columbus, OH 43215

DISPUTES DEPARTMENT E-MAIL ADDRESS: TM_disputes@TropicanaManagementLLC.com

DEBIT CARD TRANSACTION FEES: Third party vendors may charge a transaction fee for processing payments made by debit card; however, Tropicana Management, LLC does not charge or accept any fees. Please discuss this option with our staff if you have any questions.

QUALITY SERVICE SPECIALISTS AVAILABLE Mon-Fri 8AM to 7PM (EST)

Not happy with the way you were treated? Our company strives to provide professional and courteous service to all our customers. Contact one of our staff to discuss issues related to our quality of service to you by phone at (800) 555-1413 or by email at CustomerCare@TropicanaManagementLLC.com.

PRIVACY NOTICE: We collect certain personal information about you from the following sources: (a) information we received from you; (b) information about your transactions with our affiliates, others, or us; (c) information we receive from consumer reporting agencies. We do not disclose any nonpublic personal information about our customers or former customers to anyone, except as permitted by law. We restrict access to nonpublic information about you to those employees and entities that need to know information in order to collect your account. We maintain physical, electronic and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

This letter is from a debt collector and is an attempt to collect a debt. Any information obtained will be used for that purpose.

ACCOUNT DETAILS	
CURRENT BALANCE	\$2,788
Unless you notify this office within 30 days after receiving this notice that you dispute the validity of this debt or any portion thereof, this office will assume this debt is valid. If you notify this office in writing within 30 days from receiving this notice that you dispute the validity of this debt or any portion thereof, this office will obtain verification of the debt or obtain a copy of a judgment and mail you a copy of such judgment or verification. If you request this office in writing within 30 days after receiving this notice, this office will provide you with the name and address of the original creditor if different from the current creditor.	

Above: G_Notice 1

Debt Collection Survey Screening Questions

INTRO SCREEN

Thank you for participating in this survey. Your opinions are very important to us. Participation is voluntary and will take about 3 minutes of your time.

Your answers will be used to help the Consumer Financial Protection Bureau (CFPB) select participants for a survey to better understand how you and others perceive the current debt collection process.

Privacy Act Statement

5 U.S.C. 552a(e)(3)

The information you provide through your responses to GfK Custom Research will assist the study sponsor, the Consumer Financial Protection Bureau ("CFPB"), in evaluating your qualifications to participate in a survey on the topic of debt collection.

The CFPB will not obtain or access personally identifiable information. Information collected on behalf of the Bureau by GfK Custom Research will be treated in accordance with the System of Records Notice ("SORN"), CFPB.022-Market and Consumer Research Records SORN, 77 FR 67802. Although the Bureau does not anticipate further disclosing the information provided, it may be disclosed as indicated in the Routine Uses described in the SORN. Direct identifying information will only be used by GfK Custom Research to facilitate the study and will be kept private except as required by law.

This collection of information is authorized by Pub. L. No. 111-203, Title X, Sections 1013 and 1022, codified at 12 U.S.C. §§ 5493 and 5512.

Participation in this study is voluntary, you are not required to participate or share any identifying information with GfK Custom Research. However, if you do not include the requested information, you may not participate in the study.

For the assurances of confidentiality provided to respondents by KnowledgePanel, please see:

<http://www.knpanel.com/participate/privacy2.html>.

If you have any questions about this survey, please contact Panel Relations at (XXX) XXX-XXXX.

Paperwork Reduction Act Statement:

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The OMB control number for this collection is 3170-00XX. It expires on MM/DD/YYYY. Comments regarding this collection of information, including the estimated response time, suggestions for improving the usefulness of the information, or suggestions for reducing the burden to respond to this collection should be submitted to the Bureau at the Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW, Washington, DC 20552, or by email to CFPB_PRA@cfpb.gov.

INSTRUCTIONS

Before you begin the survey, please read the instructions about how to respond to the questions in the next page.

- Click on the **PREVIOUS** button to view your responses on a previous page. You may change your answers to entered responses. Do not use your browser's Back button. This may cause you to exit the questionnaire.

MARCH 27, 2017 – DRAFT

Q1: Do you work or have you ever worked for a company that collected debts, that is, that contacted consumers to get payments on a debt??

- ☐ Yes ☐ *Not eligible*
☐ No ☐ Continue

Q2: Do you work or have you ever worked for a non-profit organization that tried to help consumers with their rights when dealing with issues related to their finances or banking?

- ☐ Yes ☐ *Not eligible*
☐ No ☐ Continue

Q3: Would you say that you are better off or worse off financially than you were a year ago?

- ☐ Better off now
☐ About the same
☐ Worse off now

Q4: Now looking ahead—do you think that a year from now you will be better off financially, or worse off, or just about the same as now?

- ☐ Will be better off
☐ About the same
☐ Will be worse off

Q5: Do you or anyone in your household currently have a checking account?

- ☐ Yes
☐ No

Q6: Have you (or your spouse or partner, if applicable) applied for any type of credit or loan in the last five years?

- ☐ Yes
☐ No
☐ Don't Know

Q7: At any time in the past five years, did you think of applying for credit or a loan but changed your mind because you thought you might be turned down?

- ☐ Yes
☐ No
☐ Don't Know

Q8: Since [XXX], have you been contacted by someone other than the creditor (such as a debt collection firm or an attorney) trying to recover a debt from you? Do include instances when you were contacted about debts that you believed you did not owe. Do not include instances when a creditor or debt collector contacted you by mistake because they had the wrong phone number or address.

☐ Yes → Take all

☐ No → Select subsample

This document contains survey instructions, items and questions to be used in quantitative testing. Not all survey items will be included. Respondents are randomly assigned to read one of several versions of a debt collection notice; some questions are asked based on the version of the debt collection validation notice a respondent sees.

Introduction Screen

Thank you for participating in this survey! The Bureau of Consumer Financial Protection (“Bureau”) is a government agency that works to make financial products and services fair for consumers. This survey will ask you questions about debt collection.

Your opinions are very important to us. The survey is voluntary and will take about 20 minutes to finish.

Privacy Act Statement

5 U.S.C. 552(a)(e)(3)

The information you provide through your responses to ICF will assist the study sponsor, the Bureau of Consumer Financial Protection (“Bureau”), in evaluating potential debt collection disclosure forms.

The Bureau will not obtain or access personally identifiable information. The agency will only obtain and access de-identified results and aggregated analyses of those results. This information will not be disclosed as outlined in the Routine Uses for the SORN.

This collection of information is authorized by Pub. L. No. 111-203, Title X, Sections 1013 and 1022, codified at 12 U.S.C. §§ 5493 and 5512.

Participation in this study is voluntary; you are not required to participate. However, if you do not include the requested information, you may not participate in the study.

For the assurances of confidentiality provided to respondents by KnowledgePanel, please see: <http://www.knpanel.com/participate/privacy2.html>.

If you have any questions about this survey, please contact Panel Relations at (XXX) XXX-XXXX.

Paperwork Reduction Act Statement:

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The OMB control number for this collection is 3170-00XX. It expires on xx/xx/xxxx. Comments regarding this collection of information, including the estimated response time, suggestions for improving the usefulness of the information, or suggestions for reducing the burden to respond to this collection should be submitted to the Bureau at the Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW, Washington, DC 20552, or by email to CFPB_PRA@cfpb.gov.

INSTRUCTIONS

Use the buttons to get through the survey:

- Click on the **NEXT** button to save your responses and continue to the next page.
- Click on the **PREVIOUS** button to go back to a previous page. You may change your answers if you need to. Do not use your browser's Back button. This may cause you to exit the questionnaire.

Please read the scenario below about someone named Person A.

Person A bought a couch from Main Street Store 10 years ago using a Main Street Store credit card. The credit card company contacted Person A several times about the bill over the years, but Person A has not paid it off.

Person A receives a notice about the debt from North South Group, a debt collector. It says that he or she still owes some of the balance from the card. Person A knows that he or she does still owe some money, and thinks the amount on the notice looks about right. It would not be easy, but Person A probably could find a way to come up with money to pay the debt.

Click "Next" to read the notice that Person A received in the mail. You will then be asked a series of questions that relate to the information in the notice.

Alternative vignette:

[Some participants are assigned to a notice with “errors” or inconsistencies with the vignette. This is to help us determine whether different versions are more helpful in recognizing errors in a debt.]

Person A bought a couch from Main Street Store [x] years ago using a [Store name] credit card. The credit card company contacted Person A several times about the bill over the years, but Person A has not paid it off.

Person A receives a notice about the debt from North South Group, a debt collector.

Click “Next” to read the notice that Person A received in the mail. You will then be asked a series of questions that relate to the info

NOTICE. PROGRAMMER: DISPLAY NOTICE**//START DISPLAY OF THUMBNAIL OF THE NOTICE ON THE RIGHT SIDE OF THE SCREEN//**

At any time during this survey, you can look at the notice again by clicking the image on the right of the screen.

Pre_Q25a. Please look at this text that appears on the notice. You may or may not have already noticed this text when reading the notice.

The following questions relate to this text, so please make sure you read the text carefully before continuing.

//SHOW BOX WITH RELEVANT 1-2 SENTENCES//

[The Language shown will depend on the notice the respondent was randomly assigned to view.]

PreQ1. The following questions ask how likely you would be to take several different actions in response to the notice. Please answer the questions using a 5-point scale where 1 means “very unlikely” and 5 means “very likely.”

NEWQ01. If you were in Person A's situation, how likely would you be to ignore this notice and not respond to it?

- 01 1 Very unlikely
- 02 2
- 03 3
- 04 4
- 05 5 Very likely
- 88 MISSING ///HIDDEN///

NEWQ02. If you were in Person A's situation, how likely would you be to make a full or partial payment on this debt?

- 01 1 Very unlikely
- 02 2
- 03 3
- 04 4
- 05 5 Very likely
- 89 MISSING ///HIDDEN///

NEWQ03. When you answered the two questions above, what were you thinking about? Please list everything you were thinking about in the space below.

[text entry 1,000 character maximum]

Pre_Q06. Imagine that six months have passed after Person A received the notice. Person A has not done anything in response to the notice. Now Person A is applying for a car loan and the dealer is checking Person A's credit report.

Q06. Using a 5-point scale where 1 means "very unlikely" and 5 means "very likely," how likely do you think it is that this debt will appear on Person A's credit report?

- 01 1 Very unlikely
- 02 2
- 03 3
- 04 4
- 05 5 Very likely
- 88 MISSING ///HIDDEN///

Pre_Q10. In each of the following situations, how likely would the debt collector would be to sue Person A to collect the debt? Please treat each of these situations separately.

	1 – Very unlikely	2	3	4	5 – Very likely
Q10a. Person A makes a payment of \$100 toward the debt referenced in the notice.					
Q12a. Person A sends a letter to the debt collector saying, “I know I owe the debt, but I have some questions about it before I pay.”					
Q14a. Person A calls the debt collector and said, “I know I owe the debt, but I have some questions about it before I pay.”					
Q16a. Person A ignores the notice and takes no action.					
Q21. [skip if G notice] Person A thinks that there is a mistake in the notice. He or she mails in the tear-off portion on the bottom of the notice, checking the box that says “I want to dispute this debt.”					

Pre_Q11. Do you think the debt collector is legally allowed to sue Person A in each of the following situations? Please treat each of these situations separately.

	1 – Yes	2--No	3—It depends	97—Not sure/Don’t know
Q11a. Person A makes a payment of \$100 toward the debt referenced in the notice.				

Q13a. Person A <i>sends a letter</i> to the debt collector saying, "I know I owe the debt, but I have some questions about it before I pay."				
Q15a. Person A <i>calls the debt collector</i> and says, "I know I owe the debt, but I have some questions about it before I pay."				
Q17a. Person A <i>ignores the notice</i> and takes no action.				
Q22. Person A thinks that there is a mistake in the notice. He or she <i>mails in the tear-off portion</i> on the bottom of the notice, checking the box that says "I want to dispute this debt."				

CEASE1. Based on this notice, does Person A have a legal right to dispute this debt if he or she thinks that there is an error?

- 01 Yes
- 02 No
- 03 It depends
- 97 Not sure/don't know
- 88 MISSING ///HIDDEN///

Pre_Q08. Now imagine that Person A ignored the notice and took no action. Sometime in the future, the debt from the notice is turned over to a *different* debt collector who becomes responsible for collecting the debt.

Q08. How likely do you think it is that the *new* debt collector will sue Person A to collect the amount owed on this debt?

- 01 1 Very unlikely
- 02 2
- 03 3
- 04 4
- 05 5 Very likely
- 88 MISSING ///HIDDEN///

Q09. Do you think the *new* debt collector is legally allowed to sue Person A if Person A does not pay the amount owed?

- 01 Yes
- 02 No
- 03 It depends
- 97 Not sure/don't know
- 88 MISSING ///HIDDEN///

Pre_Q33. Now we have a few questions about your opinions and experiences.

Q33. Please indicate your degree of agreement or disagreement with each of the following statements about debt and debt collection, using a 5-point scale where 1 means “definitely disagree” and 5 means “definitely agree”.

	1 – definitely disagree	2	3	4	5 – definitely agree
Q3301. People should pay their debts even if money is tight.					
Q3302. If someone borrows money and then loses income (like because of an illness or losing a job), the person should not have to repay the amount he or she borrowed.					
Q3303. Debt collectors generally have accurate information about the debts that they are collecting.					
Q3304. If a debt collector asks someone to pay a certain amount, it is because the debt collector has some information that shows that the person owes that amount.					
Q3305. If a debt collector sues a consumer, it is because the debt collector has some evidence that proves that the consumer owes the debt.					

Q3306. Debt collectors will often sue consumers if they do not pay their debts.					
Q3307. If a debt collector sues a consumer, the consumer is not likely to win in court.					

Q34. How frequently do you check your credit report?

- 01 4 or more times per year
- 02 2-3 times per year
- 03 Once per year
- 04 Less than once per year
- 05 I have never checked my credit report
- 88 MISSING ///HIDDEN///

Q35. Have you ever been contacted by a debt collector attempting to collect a debt from you? Do include instances when you were contacted about debts that you believed you did not owe. Do not include instances when a creditor or debt collector contacted you by mistake because they had the wrong phone number or address.

- 01 Yes, I have been contacted about five or more debts
- 02 Yes, I have been contacted about two to four debts
- 03 Yes, I have been contacted about one debt
- 04 No
- 88 MISSING ///HIDDEN///

Q36. Have you ever been sued by a debt collector or creditor attempting to collect a debt from you?

- 01 Yes, five or more times
- 02 Yes, two to four times
- 03 Yes, one time
- 04 No
- 88 MISSING ///HIDDEN///

Q37. How well does each of the following statements describe you or your situation?

Q3701. Because of my money situation, I feel like I will never have the things I want in life.

- 01 1 Describes me completely
- 02 2
- 03 3
- 04 4
- 05 5 Does not describe me at all
- 06 Don't Know

Q3702. I am just getting by financially.

- 01 1 Describes me completely
- 02 2
- 03 3
- 04 4
- 05 5 Does not describe me at all
- 06 Don't Know

Q3703. I am concerned that the money I have or will save won't last.

- 01 1 Describes me completely
- 02 2
- 03 3
- 04 4
- 05 5 Does not describe me at all
- 06 Don't Know

Q38. How often does each of the following statements apply to you?

Q3801. I have money left over at the end of the month.

- 01 1 Always
- 02 2
- 03 3
- 04 4
- 05 5 Never
- 06 Don't Know

Q3802. My finances control my life.

- 01 1 Always
- 02 2
- 03 3
- 04 4
- 05 5 Never
- 06 Don't Know

The following are additional survey items the team will consider including. The length of the survey will not exceed 30 minutes. The final survey instrument is unlikely to include all of the items in this document.

Understanding of debt-related lawsuits

1. **When can Person A be sued by the debt collector? If you're not sure, please make your best guess.**
 - a) The debt collector can sue Person A anytime
 - b) The debt collector can sue 30 days after sending the notice
 - c) The debt collector can sue once they confirm the debt is owed by Person A
 - d) Both B and C
 - e) The debt collector cannot sue for this debt
2. **How confident are you in your answer to the previous question?**
 - Not at all confident
 - Somewhat confident
 - Very confident

[If select partial payment in TBD or revival condition, ask]

3. **You said earlier that if you were Person A, you would make a payment on this debt. Did you know that making a payment can enable the debt collector to sue for this debt?**
 - Yes, I am aware that making a payment enables the debt collector to sue for this debt.
 - **3a. Ok, you said "Yes, I am aware that making a payment enables the debt collector to sue for this debt." Could you please explain your thoughts?**
 - [text entry]
 - No, I was not aware that making a payment enables the debt collector to sue for this debt.
 - **3b. Do you remember seeing any information on the form telling you that making a payment would allow the debt collector to sue for this debt?**
 - Yes
 - No
4. **You cannot be sued for unpaid debts that are too old. Think about what "too old" means to you. How many years do you think it take for an unpaid debt to be too old for you to be sued over it?**

It takes about _____ years.

Comprehension and Confidence

(correct answers flagged with a “[c]”)

1. **Why is North South Group contacting Person A? Choose the best answer.**
 - a) They are sending Person A bill
 - b) They are a debt collector attempting to collect a debt [c]
 - c) All of the above
2. **How confident are you in your answer to the previous question?**
 - Not at all confident
 - Somewhat confident
 - Very confident
3. **Two months after reading the notice, Person A writes to the debt collector to dispute the debt. Which of the following is true?**
 - a) The debt collector will sue Person A for disputing the debt in writing.
 - b) The collector does not have to respond with evidence ~~proof~~ that Person A owes the debt. [c]
 - c) The debt collector will stop trying to collect the debt until they show evidence that Person A owes the debt.
 - d) None of the above
4. **How confident are you in your answer to the previous question?**
 - Not at all confident
 - Somewhat confident
 - Very confident
5. **According to the notice, if Person A wanted to make a payment on the debt, where would they send the payment?**
 - a) North South Group
 - b) Bank of Rockville [c]
 - c) None of the above
6. **How confident are you in your answer to the previous question?**
 - Not at all confident
 - Somewhat confident
 - Very confident
7. **Suppose Person A has questions about whether the amount owed is correct, and calls the number on the form to ask about it. Which of the following statements do you think is most correct?**
 - a) Regardless of what the debt collector says, Person A could still write to legally dispute the debt before the 30 day period ends. [c]
 - b) Person A would no longer be able to write to dispute the debt.
 - c) Person A could still write to dispute the debt, but only if the debt collector agrees that there is a problem with the debt.

- d) None of the above.
- 8. How confident are you in your answer to the previous question?**
- Not at all confident
 - Somewhat confident
 - Very confident
- 9. How confident are you that you could make a recommendation to Person A about how to respond to the notice?**
- Not at all confident
 - Somewhat confident
 - Very confident
- 10. Do you know how to dispute this debt?**
- a) I don't at all know how to dispute this debt
 - b) I somewhat know how to dispute this debt
 - c) I definitely know how to dispute this debt
- 11. Would you dispute this debt if you were Person A?**
- a) Definitely not
 - b) Probably not
 - c) Probably yes
 - d) Definitely yes

Questions related to electronic disclosures

Next, imagine you had to receive a notice from a debt collector telling you that you owe a debt. You could receive it by postal mail, email, or text message....

Version 1				
Please rate these methods of sending you the notice using the scale below.				
Receiving the notice by postal mail would be...	Not Okay	Okay	Better	Best
Receiving the notice in the body of an email would be...	Not Okay	Okay	Better	Best

Receiving the notice by clicking on a link delivered by email would be...	Not Okay	Okay	Better	Best
Receiving the notice by clicking on a link delivered by text message would be...	Not Okay	Okay	Better	Best

Version 2				
Please rate how willing you are to receive the notice through each of these methods.				
By postal mail	Not at all willing	Only a little willing	Somewhat willing	Very willing
By email	Not at all willing	Only a little willing	Somewhat willing	Very willing
By clicking a link delivered in an email	Not at all willing	Only a little willing	Somewhat willing	Very willing
By clicking a link delivered in a text message	Not at all willing	Only a little willing	Somewhat willing	Very willing

1. Do you ever review your spam folder to see if it contains emails you should read?
 - a) No, I never review my spam folder
 - b) Yes, I review my spam folder
 - c) I don't know what "spam" is
 - d) I don't have an email account or I don't use my email account(s)

2. [skip if 2 = a, c, d] If you think a message marked as "spam" might not be spam, do you open it?"
 - No, I never open email marked as spam
 - Yes, I usually open most emails marked as spam
 - Yes, but only if the subject line looks ok (does not look like spam)
 - Yes, but only if I recognize the sender
 - Yes, but only if both the subject line looks ok and I recognize the sender

3. When you get a new loan or a new credit card, do you usually sign up to get your bills electronically or online?
 - No, never
 1. Why don't you sign up to get your bills online? Check all that apply:
 1. I like getting paper versions of my bills in the mail
 2. I have tried in the past and didn't like it
 3. It was too hard to sign up for electronic versions

- 4. I'm not sure why I don't sign up
- 5. Other, please describe []
- Yes, sometimes
- Yes, always

4. Overall, how confident do you feel using computers, smartphones, or other electronic devices to do the things you need to do online?

- Not at all confident
- Only a little confident
- Somewhat confident
- Very confident

[For participants assigned a version of the notice that contains "Errors"]

1. Do you think the debt described in the notice is Person A's debt?

- This is definitely **not** Person A's debt
- This is probably **not** Person A's debt
- I'm not sure if this is Person A's debt
- This is probably Person A's debt
- This is definitely Person A's debt

2. How confident are you that the notice correctly describes a debt owed by Person A?

- I am **not at all confident** that this notice correctly describes a debt owed by Person A
- I am **somewhat confident** that this notice correctly describes a debt owed by Person A
- I am **very confident** that this notice correctly describes a debt owed by Person A.

Hypothetical Scenario Robustness Checks

Comments from the 60-day PRA period revealed concern about the use of hypothetical scenarios. The following questions may help Bureau researchers determine whether responses to hypothetical scenarios enable estimates of real behavior by measuring the prevalence of forecasting errors (mistakes in predicting what one would feel or do) in the context of receiving and responding to a debt collection notice

Based on responses to existing Q35. **Have you ever been contacted by a debt collector attempting to collect a debt from you? Do include instances when you were contacted about debts that you believed you did not owe. Do not include instances when a creditor or debt collector contacted you by mistake because they had the wrong phone number or address.**

- 01 Yes, I have been contacted about five or more debts
- 02 Yes, I have been contacted about two to four debts
- 03 Yes, I have been contacted about one debt
- 04 No

If Q35 (Have you ever been contacted by a debt collector attempting to collect a debt from you?...) 01 02 or 03, ask:

Think of your most recent experience seeing a notice from a debt collector saying that you owe a debt:

1. When you saw the notice, how did you feel?

	Not at all	A little	Somewhat	Very much
Anxious, worried, or nervous				
Sad, depressed, or down				
Angry, frustrated, or annoyed				
Embarrassed, guilty, or ashamed				
Indifferent or neutral				

2. Were the details describing the debt correct?

- a. Yes
- b. No
- c. Wasn't sure

3. What did you do in response to the notice?

- a) Nothing
- b) I called someone for advice
- c) I called the debt collector
- d) I wrote to the debt collector
- e) I made a partial payment
- f) I made a full payment
- g) I disputed the debt
- h) Other []

If 04, ask:

If you were to receive a notice that said you owe a debt (like the one you saw today addressed to Person A)...

1. How do you think you would feel when you saw what the notice said?

	Not at all	A little	Somewhat	Very much
Anxious, worried, or nervous				
Sad, depressed, or down				
Angry, frustrated, or annoyed				
Embarrassed, guilty, or ashamed				
Indifferent				

2. Imagine that the details about the debt (like the amount and who you owe) are all correct. What would you do in response to the notice?

- a) Nothing
- b) I would call someone for advice
- c) I would call the debt collector
- d) I would write to the debt collector
- e) I would make a partial payment
- f) I would make a full payment
- g) I would dispute the debt in writing
- h) Other []

3. Imagine that the amount of the debt is incorrect – it is \$240 more than what you think you owe. What would you do in response to the notice?

- a) Nothing
- b) I would call someone for advice
- c) I would call the debt collector
- d) I would write to the debt collector
- e) I would make a partial payment
- f) I would make a full payment
- g) I would dispute the debt in writing
- h) Other []

Thomas Pahl
Policy Associate Director – Research, Markets & Regulations
Bureau of Consumer Financial Protection
1700 G St. NW
Washington, D.C. 20552

Dear Mr. Pahl,

The Consumer Relations Consortium (CRC) - www.crconsortium.org – is a coalition of industry leaders representing credit issuers, agencies and technology firms. The group's primary focus is to strategically drive advancement in compliance and innovation for the collection industry through consumer-centric and common sense solutions. We accomplish our goals through multiple initiatives:

- Designing and managing strategic industry tests, and developing best practice processes that reflect the input of a range of stakeholders
- Partnering with top tech firms to close innovation gaps
- Building a trusted group of peers that is willing to share experiences
- Frequent in-person interaction with regulators and consumer advocates to help challenge and refine our positions

Formed in 2013, the CRC is a membership group run by The iA Institute for those organizations in the industry that have forward-thinking leaders, are willing to engage proactively with regulators and consumer groups and take the position that discussion must be candid to be effective. Membership is selective and the group is intentionally smaller than other industry organizations.

The following is a comprehensive proposal to address the need for debt collectors to initiate communications with consumers through modern communication methods. While this topic was a focus of discussion since the Bureau's 2013 Advance Notice of Proposed Rulemaking, the environment changed materially since that time and continues to evolve rapidly. In addition to consumers' movement away from landline phones, postal mail and fax and toward email, texting and mobile communications, a crisis of trust has emerged which presents unique challenges to the debt collection industry as it seeks to engage in the communications channels demanded by consumers while complying with Fair Debt Collection Practices Act.

We look forward to discussing this proposal with you.

Respectfully,

Stephanie Eidelman, Executive Director
Consumer Relations Consortium

Cc: John McNamara, Kristin McPartland, Gandhi Eswaramoorthy

The Challenges

Consumer Communications is Rapidly Evolving

Congress enacted the Fair Debt Collection Practices Act (FDCPA) in 1977, a time when nearly all debt collection communications were transacted by landline telephone and U.S. Postal Mail. Over the past four decades, alternative communication channels developed, including email, text messaging, web chats and more. These alternative communication channels are the preferred mechanisms of the vast majority¹ of today's consumers, most of whom do not want to be called on the phone and will not open traditional mail².

A Crisis of Trust Emerged

In the last several years, a crisis of trust reached a zenith in the United States: Because of the proliferation of scams through the mail, the phone and online, a majority of consumers do not trust anyone unknown who is seeking to contact them³. Regulators, consumer groups and the media regularly advise consumers a) not to respond to unknown callers, and/or b) not to provide any sensitive information to someone they don't know⁴.

Spurred by the vast explosion of illegal "robocalls," consumers are demanding transparency – they want to know who is calling before they decide to answer a call. The Federal Communications Commission and industry responded with a host of solutions and with each passing day, more calls are being labeled and caller ID information is being enhanced.

See exhibits A-D below. Few consumers today would answer a call from an "unknown" caller, like the one in Exhibit A. Perhaps fewer still would answer a call that looks like Exhibit B. Some calls appear like Exhibit C, but in the case of a debt collector, this is perhaps a violation of the FDCPA. Companies in the mobile ecosystem are also now offering the opportunity to present a call that looks like Exhibit D. While there are limitations to this example being the norm today, it is likely to become the norm over time – especially once the STIR/SHAKEN protocol is deployed, and the ability

¹ Rimma Kats, "Spoiler Alert: Millennials Prefer Digital for All Communications," eMarketer (Oct. 27, 2017), <https://www.emarketer.com/Article/Spoiler-Alert-Millennials-Prefer-Digital-All-Communications/1016677>; Larry Alton, "Phone Calls, Texts or Email? Here's How Millennials Prefer to Communicate," Forbes (May 11, 2017), <https://www.forbes.com/sites/larryalton/2017/05/11/how-do-millennials-prefer-to-communicate/#6986b8f86d6f>; Kenneth Burke, "73 Texting Statistics That Answer All Your Questions," Text Request (May 24, 2016) <https://www.textrequest.com/blog/texting-statistics-answer-questions/>

² Sara Vilkomerson, "You've Got Mail (You Never Open)," Observer (June 17, 2008), <https://observer.com/2008/06/youve-got-mail-you-never-open/>; David Gewirtz, "Is the U.S. Postal Service obsolete?" ZDNet (April 19, 2010), <https://www.zdnet.com/article/is-the-u-s-postal-service-obsolete/>

³ Jonjie Sena, "Consumers Don't Trust Phone Calls From Businesses. Here's How to Restore Their Faith," Forbes (Sept. 7, 2016), <https://www.forbes.com/sites/neustar/2016/09/07/consumers-dont-trust-phone-calls-from-businesses-heres-how-to-restore-their-faith/#1861810156a4>

⁴ Bureau of Consumer Financial Protection (October 2018): <https://www.consumerfinance.gov/about-us/blog/how-tell-difference-between-legitimate-debt-collector-and-scammers/>; Federal Trade Commission (February 2012): <https://www.consumer.ftc.gov/articles/0258-fake-debt-collectors>



to spoof a caller identity is minimized -- because consumers will demand it⁵. Enhanced caller ID information like that depicted in Exhibit D appries consumers of exactly what they want to know -- who is calling and why.

It is clearly only a matter of time before an unidentified (or un-labeled) caller will become the exception rather than the norm.

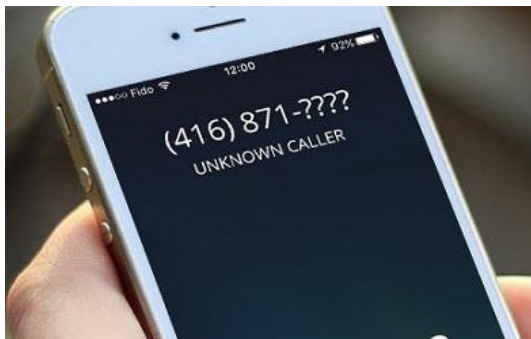


Exhibit A

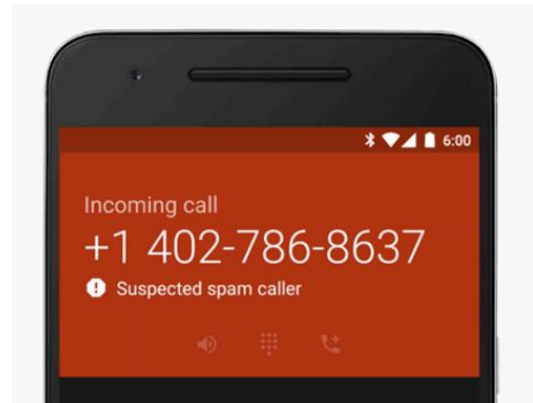


Exhibit B



Exhibit C



Exhibit D

⁵ TransNexus, "Your Guide to Everything STIR and SHAKEN," <https://transnexus.com/whitepapers/stir-and-shaken-overview/>

Prolific FDCPA Lawsuits and Inconsistent Regulatory Guidance Force Debt Collectors to Conceal Most Information Regarding Their Communications and Thus Appear "Suspicious"

The requirements of the FDCPA for communicating with consumers directly conflict with this new consumer demand for transparency. The FDCPA defines "communication" as "the conveying of information regarding a debt directly or indirectly to any person through any medium,"⁶ but the statute does not define this key term "information."

Courts established an extremely broad definition of "information" which evolved to include internal collection agency account numbers appearing through the window of a collection letter envelope and even the legal name of the debt collector in some circumstances. Further, a cottage industry of consumer attorneys generates millions of dollars in legal fees every year by suing collection agencies for the most trifling of claims⁷, relying on inconsistent interpretations of an outdated statute. These lawsuits do nothing to advance the interests of consumers and typically result in debt collectors paying cash settlements to the Plaintiffs' attorneys with precious little of this bounty trickling down to the consumers.

To avoid being sued for claims such as an unlawful disclosure of a debt to a third party, many debt collectors send mail in envelopes without clearly identifying the name of the sender (thus appearing like junk mail). Some collectors mask their true caller ID name if it is too lengthy. Most debt collectors do not leave voicemails or if they do, the messages that are left sound vague and provide little useful information. The notion of a debt collector sending an email raises further concerns⁸ and initiating communication by text – the overwhelmingly preferred communication method for a growing number of consumers – is largely untested due to further compliance concerns including third party disclosures and the difficulty with including all required disclosures in a short message.

The Unclear Definition of "Information" Created an Awkward "Authentication Dance"

To avoid potential litigation when a collector connects with a consumer on an outbound telephone call, debt collectors must confirm they are speaking with the right party before they can disclose information about who they are or why they are calling. The best practice (often dictated by creditor clients and required of credit issuers by Federal banking regulators) is to request personal data the collector can verify, such as a birthdate or the last four digits of a social security number. This is exactly the kind of data consumers are urged not to share with people they don't know.¹⁰

⁶ 15 U.S.C. §1692a(2).

⁷ Reference: <https://www.denverpost.com/2011/02/25/consumers-dealing-with-debt-collectors-become-stuck-in-a-vicious-cycle-of-lawsuits/>

⁸ [Lavalley v. Med-1 Solutions, LLC](#) (No. 1-15-cv-1922, U.S.D.C., Southern District of Indiana)

⁹ <http://insidearm.com/news/00044427-bcfp-fix-authentication-dance-between-con/>

¹⁰ <http://insidearm.com/news/00044426-debt-collector-requirement-authenticate-c/>



An uncomfortable standoff ensues¹¹, where neither the consumer nor the collector is willing to share information before the other does so first. Further, the consumer feels vulnerable because the caller has more information about the consumer and appears unwilling to share that information until the consumer divulges sensitive information to verify a right party contact.

The [Bureau's own advice to the consumer](#)¹² regarding how to tell the difference between a legitimate collector and a scam makes no mention of the requirement for a debt collector to verify the identity of the consumer before providing any information. In fact, among other things, the Bureau offers the following as warning signs of debt collection scams:

[If a caller] Withholds information from you

A debt collector must tell you information such as the name of the creditor, the amount owed, and that if you dispute the debt the debt collector will have to obtain verification of the debt. If the debt collector does not provide this information during the initial contact with you, they are required to send you a written notice [within five days of that initial contact](#).

In reading this guidance, a consumer would assume that the debt collector would initiate a communication by providing the consumer the creditor's name and the amount owed. However, no mention is made of the fact that a debt collector is only allowed to disclose this information about a debt **after the debt collector confirms a right party contact**.

Indeed, the Bureau's guidance to consumers further provides the following warning signs of a scam:

[If a caller] Asks you for sensitive personal financial information

Such as your bank account, routing numbers, or Social Security numbers. You should never provide anyone with your personal financial information unless you are sure they're legitimate. Scammers can use your information to commit identity theft.

While this is excellent advice in today's world, the information the BCFP recommends consumers withhold from debt collectors is exactly the information creditors (and bank regulators) require collection agencies to verify to confirm a right party contact.

When collectors cannot reach the consumer in any meaningful way, additional adverse consequences may result for the consumer. Many accounts which would otherwise be resolved are

¹¹ See *Prendergast v. First Choice Assets, LLC*, *Prendergast v. First Choice Assets, LLC*, 317 F. Supp. 3d 1018 (N. D. Ill., 2018)

¹² See <https://www.consumerfinance.gov/about-us/blog/how-tell-difference-between-legitimate-debt-collector-and-scammers/>

instead escalated, resulting in unnecessary negative credit reporting, debt collection lawsuits, garnishments, repossessions and other litigation against consumers.

This Authentication Dance Could be Eliminated

A rule that clearly authorizes and enables debt collectors to initiate communication through digital channels would make it possible to employ the dozens of more advanced ways to authenticate the consumer's identity.¹³ These very same methods are already in wide use by banks and other financial institutions. Enabling use of these newer methods preferred by consumers would greatly benefit the consumer from the very beginning of the collection cycle by making communication far less awkward and frightening, more immediate, more likely to be opened and not ignored – and thus less likely that an account would escalate unnecessarily.

Contact which is initiated digitally rather than via phone call would also give the consumer the opportunity to independently check out the organization that is contacting them before they engage in a live discussion. In fact, it might even remove the direct interpersonal interaction via phone entirely – in the case of a consumer who chooses to pay or dispute online.

Additionally, a rule that clarifies the definition of “information” would provide guardrails for all stakeholders. To be clear, CRC is not recommending the elimination of the US Postal mail. Rather, debt collectors simply seek to be able to use the consumers' communication channel of choice without requiring hurdles which render that channel useless.

Our Recommendations

The CRC offers five recommendations that provide a comprehensive solution to the complex set of challenges outlined above:

1. Declare that for purposes of the FDCPA, email is equivalent to U.S. Postal Mail.
2. Provide an exemption in the E-Sign law for the FDCPA's 1692g notice.
3. Clarify the meaning of “information” as it relates to a communication under the FDCPA.
4. Affirmatively declare that disclosure of the debt collector's true legal identity or a trade name by which it is more commonly known does not constitute an unauthorized conveyance of information about the debt.
5. Affirmatively declare that a limited content message does not constitute a conveyance of information subject to the disclosure requirements of the FDCPA.

¹³ Some of these modern methods of authentication may be found at <https://www.idology.com/id-verification/id-verification/> ; <https://www.twilio.com/verify> ; <https://www.trulioo.com/> and <https://blockscore.com/>

CRC's Proposed Solutions

1. Declare that for purposes of the FDCPA, email is equivalent to U.S. Postal Mail.

Collectors must undergo contortions to use email, a decades' old ubiquitous communications technology. Concerns raised about debt collectors communicating with consumers via email include the risk that a neighbor might see the contents of an email or a child might use a shared family email. These concerns are no different than those addressed (and dismissed) by the FTC in its official comments to the FDCPA regarding risks of third party disclosure regarding debt collection telephone calls, postal mail and telegraphs. The official FTC commentary to Section 805(b) of the FDCPA states¹⁴, in relevant part:

Section 805(b)--Communication with third parties. Unless the consumer consents, or a court order or section 804 permits, "or as reasonably necessary to effectuate a postjudgment judicial remedy," a debt collector "may not communicate, in connection with the collection of any debt, with any person other than the consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector."

3. Incidental contacts with telephone operator or telegraph clerk. A debt collector may contact an employee of a telephone or telegraph company in order to contact the consumer, without violating the prohibition on communication to third parties, if the only information given is that necessary to enable the collector to transmit the message to, or make the contact with, the consumer.

4. Accessibility by third party. A debt collector may not send a written message that is easily accessible to third parties. For example, he may not use a computerized billing statement that can be seen on the envelope itself.

A debt collector may use an "in care of" letter only if the consumer lives at, or accepts mail at, the other party's address.

A debt collector does not violate this provision when an eavesdropper overhears a conversation with the consumer, unless the debt collector has reason to anticipate the conversation will be overhead.

Email accounts are private and a consumer must provide credentials to access an email account. Also, email accounts are free. There is nothing that forces a consumer to use a family email to open a bank account, obtain credit, or communicate with a healthcare provider.

¹⁴ <https://www.fdic.gov/regulations/laws/rules/6500-1325.html>



In spite of email being a well-established, universal and free communication channel, debt collectors are fearful of using it for initial communications with consumers -- not so much because the regulations say debt collectors cannot use email, but because the regulations don't say they CAN use email to communicate with a consumer. Further, the few Court decisions on the issue offer little hope for consumers that prefer email or text of ever using those channels of communication to interact with a debt collector. For instance, in *Lavallee v. Med-1 Solutions, LLC*,¹⁵ the Court determined that consumers are reluctant to click on a link or open an attachment from an unknown source (and are advised by regulators, advocates, and media not to do so) and thus held that a validation notice delivered via link or attachment in an email was ineffective.

However, in *Nelson v. Receivables Outsourcing, LLC*,¹⁶ the Court examined whether a voice-to-text transposition qualifies as third party disclosure if it appears on the face of a consumer's cell phone. According to the decision by the Court, this transposition alone is insufficient for an FDCPA claim to survive a motion to dismiss, writing:

The case here is even clearer than the cases of the for-your-eyes-only letters: unlike the delivery of letters that could be opened and read by third parties, Plaintiff controls his own cell phone, and has not pleaded that Defendant (or anyone else) controls it instead. Whether overheard or textualized, the voice mails on his phone are within his control. Defendant did not communicate with a third party; it communicated with Plaintiff, whose phone—an instrumentality in his possession, as implicitly acknowledged by the pleadings—was used to convey the message to other people. As such, Plaintiff fails to allege that Defendant communicated with a third party, and his claim under § 1692b(c) is dismissed.

Another example from the archaic nature of the FDCPA regarding emails is found in Section 1692g (b) which provides as follows:

If the consumer notifies the debt collector in writing within the thirty-day period described in subsection (a) of this section that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt or a copy of a judgment, or the name and address of the original creditor, and a copy of such verification or judgment, or name and address of the original creditor, **is mailed to the consumer by the debt collector.** (emphasis added).

¹⁵ 2017 WL 4340342 (S.D. Ind., 2017).

¹⁶ 2018 WL 3854796 (D.N.J., 2018).



Common sense dictates it would be acceptable to email verification to the consumer if this is what the consumer prefers¹⁷. This would be the most expedient way to respond to the request and the most efficient way to further the communication. If collectors must follow the letter of the statute, however, even if the consumer wishes to receive the information by email, the consumer must wait for the U.S. Postal Service to deliver it by mail.¹⁸

Recommended Solution: For purposes of the FDCPA, clarify that any written notice or communication to be sent, mailed or otherwise delivered by a debt collector to a consumer may be sent by electronic mail. Further, for purposes of the FDCPA, email should be given the same treatment as U.S. Postal Mail in several important ways:

1. What's inside the "envelope" is considered private.
2. The entire contents of the email (including to/from and subject fields) are considered inside the envelope.
3. There is a presumption of delivery (i.e. receipt) unless it is returned as undeliverable.
4. Just as a debt collector may rely on a postal address provided by the consumer to the creditor, a collector may also rely on an email address provided by the consumer to the creditor.

We offer the following as proof that email – including the "to/from" and "subject" fields - is more secure, than U.S. Postal Mail:

- Postal mail requires an envelope because it is shuffled around – it goes into a mailbox, it's handled by a mail carrier and by some number of postal employees, it gets delivered to a mailbox which is likely not secure, and it may sit in a pile in a home that is shared by multiple parties. Email has no similar equivalent.
- Email is more secure than a physical letter due to additional technical controls.¹⁹
- Typically two passwords are necessary to access an email: one password to unlock the device on which emails are viewed and a second password to log into the email account to access messages.
- Typically, an email "inbox" will contain a list of emails at any given time. This makes it less likely there would be an inadvertent disclosure of any particular email. Even if an automated preview is enabled, one would need to first click on that email in order to display the preview.
- Email addresses are more reliable than physical addresses in today's world, and more likely to be linked to a specific consumer. Consumers move frequently and often do not update their address with their creditors. Regardless of where a consumer lives, the consumer typically retains his email address.

¹⁷ Reference: <https://www.forbes.com/sites/larryalton/2017/05/11/how-do-millennials-prefer-to-communicate/#49750016d6fd>

¹⁸ Even then, the non-descript mail envelope used by most agencies looks like junk mail and may be overlooked, something that is less likely via email.

¹⁹ See Electronic Communications Privacy Act (in transit) and Stored Communications Act (at rest) protections.



- A disclosure as a result of a person reading someone else's email (including to/from and subject fields) should be compared to the matter of the illegal act of someone opening another person's first class mail or even reading mail that was left out on the kitchen table.
- The provisions of the FDCPA with respect to deceptive practices, threats, etc. would apply to the subject line as well as the body of the email, so those protections already exist.

2. Provide an exemption in the E-Sign law for the FDCPA's 1692g notice²⁰.

The Electronic Signatures in Global and National Commerce Act ("E-Sign Act") provides,

Notwithstanding subsection (a), if a statute, regulation, or other rule of law requires that information relating to a transaction or transactions in or affecting interstate or foreign commerce be provided or made available to a consumer in writing, the use of an electronic record to provide or make available (whichever is required) such information satisfies the requirement that such information be in writing if [certain conditions are met].²¹

However, the E-Sign Act includes an exemption provision.

(d) AUTHORITY TO EXEMPT FROM CONSENT PROVISION.—(1) IN GENERAL.—A Federal regulatory agency may, with respect to matter within its jurisdiction, by regulation or order issued after notice and an opportunity for public comment, exempt without condition a specified category or type of record from the requirements relating to consent in section 101(c) if such exemption is necessary to eliminate a substantial burden on electronic commerce and will not increase the material risk of harm to consumers.²²

The Federal Reserve Board ("FRB") established multiple exemptions from the E-Sign Act.^{23 24} In 2007, the FRB announced amendments to Regulations B, E, M, Z and DD to clarify requirements for electronic disclosures in which they withdrew portions of the 2001 interim final rules with E-Sign

²⁰ While this proposal addresses the ability for collectors to *initiate* communication with consumers, it would make sense to also provide an E-Sign exemption for the 1692f notification requirement, if the collector has evidence that the consumer's preferred communication channel is digital.

²¹ 15 U.S.C. § 7001(c)(1).

²² 15 U.S.C. § 7004(d)(1).

²³ Letter from James D. McLaughlin, Director, Regulatory and Trust Affairs to Jennifer J. Johnson, Sec'y, Board of Governors of the Federal Reserve System (Aug. 20, 2001).

²⁴ <https://www.fdic.gov/regulations/laws/federal/01cabaebank.html> (last visited Oct. 23, 2018).

provisions that may impose undue burdens on electronic banking and commerce and may be unnecessary for consumer protection.^{25 26}

In the markets covered by Regulations B, E, M, Z and DD there is generally a point of purchase relationship, with a motivated consumer who is present, and wants to complete the transaction she initiated. In the case of debt collection, there is little consumer motivation to complete the E-Sign process. Further, it would require the ability to communicate first, which is exactly the problem we are attempting to solve. It's noteworthy that the FRB excluded the FDCPA from the list of Regulations exempted. This is likely because the enforcement of the FDCPA typically falls outside the scope of the authority of the FRB.

The writing requirement for the 1692g notice only applies when the notice hasn't been provided in the first communication and the FTC recognized that the required 1692g validation notice may be provided orally.²⁷ Thus, under the FDCPA the writing requirement for the g-notice is not absolute. Absent a mandatory written disclosure requirement, E-Sign should not be mandatory.

Today's young adults are digital first, and want expedience. If the consumer provided her creditor with an email address, the collector should be able to use it to initiate communication without first having to send a letter (which they may not respond to) or call a landline phone (which they may not even have), and complete the authentication dance (which consumers are told not to do).

***Recommended Solution:* Provide an exemption to the E-Sign Law for the FDCPA's 1692g notice and 1692f post-dated check notice. This will help to ensure that collectors can begin an important conversation with consumers so they may make informed decisions about their debt, and will also help to ensure that consumers who prefer to communicate electronically receive their recurring payment notices in the channel of their choice.**

3. Clarify the meaning of "information" as it relates to a communication under the FDCPA.

The FDCPA contains conflicting requirements in that a debt collector must disclose his or her identity to a consumer in every communication and that a collector must refrain from communicating about a consumer's debt to a third party. The FDCPA defines communication as follows:

The term "communication" means the conveying of information regarding a debt directly or indirectly to any person through any medium.²⁸

²⁵ <https://www.federalreserve.gov/newsevents/pressreleases/bcreg20071101a.htm> (last visited Oct. 23, 2018).

²⁶ Board of Governors of the Federal Reserve System, *Press Release* (Nov. 1, 2007).

²⁷ The FTC Official Staff Commentary to Section 809(a) provides, in relevant part: "5. *Oral notice.* If a debt collector's first communication with the consumer is oral, he may make the disclosures orally at that time in which case he need not send a written notice."

²⁸ 15 U.S.C. §1692a(2).

What constitutes “information” as referenced in the FDCPA has been the subject of heated debate. The Official FTC commentary to Section 803(2) provides, in relevant part:

1. *General.* The definition includes oral and written transmission of messages which refer to a debt.

The term does not include situations in which the debt collector does not convey information regarding the debt, such as:

- A request to a third party for a consumer to return a telephone call to the debt collector, if the debt collector does not refer to the debt or the caller's status as (or affiliation with) a debt collector.
- A request to a third party for information about the consumer's assets, if the debt collector does not reveal the existence of a debt.
- A request to a third party in connection with litigation (e.g., requesting a third party to complete a military affidavit that must be filed as a prerequisite to enforcing a default judgment, if the debt collector does not reveal the existence of the debt.)²⁹

The commentary by the FTC astutely recognizes that there is no communication when a debt collector does not convey certain information about the debt. This position was reinforced by the 2013 FTC consent order with NCO which prohibited the following:

Leaving recorded messages, such as on the voicemail, answering machine, or messaging service of any person, in which Defendants state both: (1) the first or last name of the debtor, and (2) disclose that they are a debt collector, are attempting to collect a debt, or that the debtor owes a debt. *Provided that*, Defendants may leave such a message if: (1) the recorded greeting on the messaging system discloses the person's first and last name, and only that person's first and last name, and that first and last name is the same as the person who allegedly owes the debt; or (2) Defendants have already spoken with the person on at least one prior occasion using the telephone number associated with the messaging system. *Provided further that*, Defendants may not leave such a message under any circumstances if the person has explicitly prohibited Defendants from leaving recorded messages on that phone number.³⁰

However, the Third Circuit Court of Appeals took a much broader approach to the definition of “information” in *Douglass v. Convergent Outsourcing*, somehow ruling that a collection agency

²⁹ <https://www.fdic.gov/regulations/laws/rules/6500-1325.html>

³⁰ <https://www.ftc.gov/sites/default/files/documents/cases/2013/07/130709ncoorder.pdf>

internal account number visible through the envelope of a collection letter was a disclosure that violated the FDCPA.³¹

Common sense and the FTC guidance make clear that an interaction is not a "communication" for purposes of the FDCPA unless it identifies: 1) a particular consumer, 2) a particular creditor, and 3) some other piece of information establishing that the caller intends to discuss a debt. This approach is consistent with the well-reasoned opinion of the Court in *Zortman v. J.C. Christensen & Associates*³² in determining whether the following message constituted a communication:

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

The *Zortman* Court examined the plain language of the statute, the history of the FDCPA and case law in concluding that the message was not a communication, explaining:

Here, in order to fit within the “conveying of information regarding a debt” language of § 1692a(2), a third-party listener would need to make two key inferences. JCC’s messages were not directed to Zortman by name. Thus, anyone who listened to the messages would not be told that Christine Zortman was being contacted in connection with a debt she owed. A person who heard the message would have to make the assumption that because it was Zortman’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. Nothing in JCC’s message removed that possibility. The unintended listener would then have to make a second assumption—that the only reason a debt collector calls is to collect a debt. Even if that is a common reason for calls, debt collectors also place calls to obtain location information. See 15 U.S.C. § 1692b. In this case, Zortman worked for a debt collector. It would not be unreasonable that a call from a debt collector related to her employment. Inferences or assumptions by an unintended listener are not “indirect communications.” JCC’s message is in contrast to the messages found to be violations in other cases that said the consumer’s name and identified a debt. See *Branco*, 2011 WL 3684503, at *1; *Valentine*, 2010 WL 1727681, at *5; *Leahey*, 756 F. Supp. 2d at 1324-25; *Berg*, 586 F. Supp. 2d at 1339. But see *Cordes*, 789 F. Supp. 2d at 1174.

Recommended Solution: Affirmatively clarify the meaning of “information” by declaring that it must include all three of the following: 1) the name of the consumer, 2) the name of the original creditor, and 3) one other element conveying that a debt is owed, such as the mini-miranda

³¹ 765 F.3d 299 (3rd Circuit 2014)

³² 870 F.Supp.2d 694 (D. Minn., 2012).



disclosure, a balance due or other clear indication of indebtedness. However, consistent with Number 4, below, disclosure of the debt collector's true legal identity or a trade name by which it is more commonly known would not, in and of itself, constitute the third element without some other clear indication that the purpose of the communication was to collect a debt.

4. Affirmatively provide that, for purposes of FDCPA compliance, disclosure of the debt collector's true legal identity or a trade name by which it is more commonly known does not constitute an unauthorized conveyance of information.

Congress did not anticipate the challenges created by the wording of the FDCPA in the context of the widespread lack of trust consumers have in today's communication channels. As a result of this lack of trust, the challenge of connecting the right consumer with a legitimate debt collector has become far more complicated than it was in 1977. While consumers demand privacy protection, the consumer demand for transparency in communications is equally as strong. Consumers want to know who is contacting them -- and why -- before making a decision whether to engage. Presently, the manner in which a collector's information appears on caller ID is inconsistent, out of the caller's control and exposes debt collectors to excessive liability.

Since the publication of the SBREFA Outline of Proposals, the proliferation of illegal and unwanted robocalls was the impetus behind a massive effort to insert call identification and blocking tools in between call originators and called parties. Hundreds of smartphone applications (apps) were developed with the goal of notifying a consumer WHO is calling, and WHY, in order to provide them with enough information to determine whether to answer a call.

Yet debt collection is the ONE INDUSTRY faced with a unique challenge in this new scenario. Under the current interpretation of the FDCPA, should one of these apps disclose on a consumer's mobile phone screen that a debt collector is calling (or texting, etc.), it could open up the collector to liability for a third party disclosure.

This potential liability caused the collection industry to propose terminology to application providers that vaguely – but accurately – describes the call. At the moment, “account servicing” has been adopted by at least one major provider. So, what happens when “account servicing” becomes synonymous with debt collection? Another term must be found? How long will it take for a clever consumer attorney to file a lawsuit against the application provider, the carrier, and the debt collector, saying his client was embarrassed because someone saw “account servicing” on her phone? Or that account servicing is somehow misleading or deceptive?



Even more concerning, debt collectors rarely control what Caller ID data or label may display when they call a consumer on a mobile device. CNAM³³ data provided by the call originator is not always displayed – or may not be displayed accurately -- either because the delivering carrier does not subscribe to the latest data, or because the consumer’s device is not compatible with it. Further, generic labels may be applied to incoming calls by carriers or software companies that have no relationship with the caller. Apps or displays that provide these labels may be on the consumer’s phone by default, or they may have installed them by choice. The opportunity for debt collector liability under the current regime is virtually endless.

Although there is a growing recognition by regulators and consumer advocates that collectors may not be able to be held liable for the actions of a third party – such as one that labels their calls – this does not prevent private lawsuits, and the expense of defending them.

In addition, debt collectors will face an increasingly un-level playing field, where most callers will be able to be transparent about their identity and the reason for the call, while debt collectors will have to remain evasive and shrouded in mystery. This will force legitimate debt collection businesses to appear illegitimate.

Also, contact limits (contemplated by the Bureau’s 2016 Outlined of Debt Collection Proposals) will harm consumers. Due to the newly emerging issue of call blocking and labeling, if imposed, contact limits will carry even greater consequences for collectors because call originators do not know when their calls are being blocked or labeled and they may make additional contact attempts, increasing the litigation risk to collectors calling in good faith.

The broad interpretation of the FDCPA’s third party disclosure rule inconveniences the vast majority of consumers who desperately seek accurate information about who is contacting them. Further, consumers need the ability to communicate about debts in their preferred channel. The more barriers regulators and the Courts erect to communications with consumers in the form of narrow interpretations of outdated laws and regulations, the more debts will end up on credit reports, turning into lawsuits, or getting re-placed with multiple collection agencies or sold because of an inability to resolve.

Recommended Solution: Affirmatively provide that for purposes of the FDCPA, unless otherwise prohibited by section 15 USC §1692b “Acquisition of location information,” a communication occurs only if, during the course of the interaction, the fact that *this* consumer owes a debt is disclosed (emphasis added). Mere disclosure of the true legal identity of the collector or a trade name by which it is more commonly known does not constitute a communication.

³³ CNAM (“Calling NAME”) is an outside telecom service that phone companies use to pair incoming numbers with names. Unlike phone numbers, CNAMs are not centralized databases. There are many different CNAMs a carrier can choose from. Each CNAM maintains its own private database on phone number/name pairs in the United States and abroad.



Examples:

- Displaying a caller's true identity (i.e. a company's legal name) or a trade name by which it is more commonly known on a mobile device does not constitute a communication under the FDCPA.
- An accurate "from" address using the collector's commonly used domain name on an email or a postal letter does not constitute a communication under the FDCPA.
- A limited content message (as described below) left for a consumer does not constitute a communication under the FDCPA.

5. Declare that a limited content message designed in accordance with the definition of "information" above is not a conveyance of information subject to the FDCPA's disclosure requirements.

In its Outline of Proposals released in advance of the Debt Collection SBREFA hearing, the Bureau contemplated a limited content message that can safely be left on a voicemail and not be deemed a "communication" under the FDCPA. The CRC supports such a message, but suggests expanding its use to additional channels, and also recommends that instead of mentioning the consumer's name, the message should refer to the creditor's name. This would be in alignment with the CRC's proposed definition of "information" above, and it would provide a piece of information that would be recognizable to the consumer.

The result of leaving a message with an unknown person's name and phone number is akin to having "unknown" or "potential spam" appear on a mobile phone. In today's world (which is materially different than it was just two-plus years ago in early 2016 when the SBREFA Outline was authored), this is unlikely to build trust or to elicit a response.

Especially if combined with the CRC's proposed "handshake communication,"³⁴ inclusion of the name of the original creditor would allow the consumer to make a more informed decision about whether to respond.

Recommended Solution: To make it practical for collectors to initiate contact with consumers through digital channels, declare that a limited content message is not a communication subject to the disclosure requirements of the FDCPA. This message could be used, for instance, in cases where the right party contact information has not yet been confirmed. The following standard message is proposed:

This is <name of person> from <company name> seeking to reach <name of consumer> regarding a matter with <original creditor>. Please contact me at <contact information>.

³⁴ The CRC is currently conducting a test to measure whether consumers who receive a "handshake notice" from the creditor just prior to their account being sent to collections -- that references the name of the collector that will have their account -- will increase consumer engagement with the collector.

Note that the proposed communication is approximately 170 characters, which would vary based on the length of the name of the caller, consumer and the creditor. A single text message (SMS) now allows for 180 characters, which should be enough to accommodate most names. Our goal is to avoid the need to create channel-specific rules, as well as to avoid the need to make disclosures within a message that might force the message to exceed the permitted character length allowed.

To Summarize, CRC proposes the following solutions:

Recommended Solution 1: For purposes of the FDCPA, clarify that any written notice or communication to be sent, mailed or otherwise delivered by a debt collector to a consumer may be sent by electronic mail to an address provided by the consumer. Further, for purposes of the FDCPA, email should be given the same treatment as U.S. Postal Mail in several important ways:

5. What's inside the "envelope" is considered private.
6. The entire contents of the email (including to/from and subject fields) are considered inside the envelope.
7. There is a presumption of delivery (i.e. receipt) unless it is returned as undeliverable.
8. Just as a debt collector may rely on a postal address provided by the consumer to the creditor, a collector may also rely on an email address provided by the consumer to the creditor.

Recommended Solution 2: Provide an exemption to the E-Sign Law for the FDCPA's 1692g notice and 1692f post-dated check notice. This will help to ensure that collectors can begin an important conversation with consumers so they may make informed decisions about their debt, and will also help to ensure that consumers who prefer to communicate electronically receive their recurring payment notices in the channel of their choice.

Recommended Solution 3: Affirmatively clarify the meaning of "information" by declaring that it must include 1) the name of the consumer, 2) the name of the original creditor, and 3) one other element conveying that a debt is owed, such as the mini-miranda disclosure, a balance due or other clear indication of indebtedness.

Recommended Solution 4: Affirmatively provide that for purposes of the FDCPA, unless otherwise prohibited by section 15 USC §1692b "Acquisition of location information," a communication occurs if, during the course of the interaction, the fact that *this* consumer owes a debt is disclosed (emphasis added). Mere disclosure of the true legal identity of the collector does not constitute a communication.

Examples:

- Displaying a caller's true identity (i.e. a company's legal name) or a trade name by which it is more commonly known on a mobile device does not constitute a communication under the FDCPA.



- An accurate “from” address using the collector’s commonly used domain name on an email or a postal letter does not constitute a communication under the FDCPA.
- A limited content message (as described below) left for a consumer does not constitute a communication under the FDCPA.

Recommended Solution 5: To make it practical for collectors to initiate contact with consumers through digital channels, declare that a limited content message is not a communication subject to the disclosure requirements of the FDCPA. This message could be used, for instance, in cases where the right party contact information has not yet been confirmed. The following standard message is proposed:

This is <name of person> from <company name> seeking to reach <name of consumer> regarding a matter with <original creditor>. Please contact me at <contact information>.

December 19, 2018

Director Kathleen Kraninger
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

Re: Ongoing Rulemaking on Debt Collection

Dear Director Kraninger,

As we approach the fifth year anniversary of the proposed rulemaking on debt collection, and the regulatory process appears to be moving forward, the 74 undersigned consumer, community, civil rights, faith, labor and legal services groups write to urge the Consumer Financial Protection Bureau (“Consumer Bureau”) to focus on protecting consumers from abusive debt collection practices in any rule that it issues. Many of our groups have submitted previous comments regarding debt collection, including responses to the November 2013 Advanced Notice of Proposed Rulemaking and more recently to the Request for Information on the Consumer Bureau’s Adopted Regulations in June 2018. We reiterate our concerns about widespread debt collection abuses that we have raised in the past and the ongoing need for better protection against these abuses.

In 2017, approximately 71 million adults in the United States had debt in collections, including medical debt, credit card debt, municipal tickets, and utility bills.¹ Households with debt in collections too often are harassed by unscrupulous debt collectors. Over 40 years since the enactment of the Fair Debt Collection practices Act (“FDCPA”), debt collection abuses remain pervasive. Debt collection problems are a leading source of consumer complaints to the Consumer Bureau, which received approximately 84,500 complaints about debt collection in 2017.² The Consumer Bureau’s 2017 survey found that one in four consumers contacted by debt collectors felt threatened.³

Through the Dodd-Frank Act, Congress delegated new authority to the Consumer Bureau to write regulations to implement the protections required by the FDCPA. The statutory purposes of the FDCPA are to “eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses.” Any regulation on debt collection must stay aligned to these purposes.

We particularly ask the Consumer Bureau to focus on preventing harassment, increasing consumer privacy, stopping the collection of time-barred debt, and improving the clarity and accuracy of debt collection notices.

¹ 71 Million US Adults have Debt in Collections, Urban Wire: Income and Wealth, Hannah Hassani, Signe-Mary McKernan, July 19, 2018. <https://urbn.is/2rKG4Fx>

² Fair Debt Collection Practices Act, CFPB Annual Report 2018, Pg. 14, March 2018. <http://bit.ly/2Bv8kjX>

³ CFPB Survey Finds Over One-In Four Consumers Contacted by Debt Collectors Feel Threatened, Jan. 12, 2017. <http://bit.ly/2T0rhCy>

Stop Telephone Harassment and Respect Consumer Privacy

One of the most prevalent problems with debt collection is harassing communications from debt collectors that violate consumers' privacy and can cause serious harm to individuals and their families. In the Consumer Bureau's survey on debt collection experiences, 42% of consumers who had been contacted by a collector in the past year reported that they had asked the collector to stop contacting them. More than a third of consumers were called four or more times a week and nearly one in five were contacted eight or more times a week. Even worse, 75% of consumers who asked to stop receiving calls reported that creditors and debt collectors did not comply. Continued harassing phone calls from debt collectors are intended to push consumers to pay debts just to stop the harassment. And this is exactly the type of behavior the FDCPA is designed to prevent. Consumers have too often used money they needed for rent, housing or medical attention to pay debt collectors, even for debts they do not owe, just to stop the harassment.

Collectors should be limited to one live conversation per week, with up to three attempted calls.

Collectors should be required to respect a consumer's verbal request that the collector stop calling.

The CFPB should not exempt any collector contacts, including "limited content" calls or messages requesting a call back, from the FDCPA.

Text and email communications should only be allowed if a consumer agrees to communicate with the debt collector electronically. These communications should be made only to the phone number or email address designated by the consumer, and in full compliance with the federal E-Sign Act. The consent the consumer provides should be limited to the current creditor or debt collector receiving that consent, and all subsequent debt collectors must be required to obtain their own consent from the consumer to communicate by text or email.

Debt collection phone calls and emails to the consumer's work phone number and email, unless in response to a consumer's request, should be expressly prohibited to protect the consumer's privacy in their workplace.

Prohibit Collection of Time-Barred Debt

Debt collectors should be banned from attempting to collect any debt that is beyond the statute of limitations. This ban should apply to collection efforts through the courts, and outside of the judicial context. Collectors should simply be prohibited from communicating with consumers about any time-barred debt. Attempts to collect time-barred debt mislead consumers who generally do not understand the statute of limitations and believe the debt collector still has a right to enforce collection of the debt. Furthermore, debt collectors may take advantage of a consumer's lack of understanding that a payment on time-barred debt may revive the collector's ability to sue the consumer for the debt.

We strongly urge the Consumer Bureau to prohibit entirely the collection and communications around time-barred debt. But if the Consumer Bureau allows such communications, they should be in writing only, and every communication must have a clear, prominent and consumer-tested disclosure that the consumer cannot be sued because the debt is time-barred. Current and subsequent collectors should be prohibited from bringing lawsuits to collect any debt that is “revived” under state law as the result of these collection efforts.

Improve Accuracy and Clarity of Debt Collection Notices

The Consumer Bureau should create a model validation notice and statement of rights that provides comprehensive, clear and accurate information about the alleged debt and the consumer’s debt collection rights. Once created, this model validation notice should undergo consumer testing to confirm that it is comprehensible to the least sophisticated consumers.

Each debt collector should be required to send a validation notice and statement of rights even if other collectors previously sent notices. This ensures that consumers are notified of the name of the collectors currently trying to collect their debt and how much this collector believes is owed.

* * *

Thank you for your consideration of these recommendations. Our organizations welcome the opportunity to discuss our recommendations and further engage with your office as you develop a rule on debt collection.

Sincerely,

Americans for Financial Reform Education Fund
Affordable Homeownership Foundation Inc.
Allied Progress
Arkansans Against Abusive Payday Lending
Arkansas Community Institute
Arkansas Community Organizations
California Reinvestment Coalition
Center for Civil Justice
Center for Economic Integrity
Center for Responsible Lending
Charlotte Center for Legal Advocacy
Colorado Cross Disability Coalition
Communications Workers of America
Connecticut Legal Services, Inc.
Consumer Action
Consumer Advocacy and Protection Society (CAPS)
Consumer Federation of America
Consumer Reports

Covenant House
Demos
East Bay Community Law Center
Empire Justice Center
Financial Protection Law Center
Florida Alliance for Consumer Protection
Florida Consumer Action Network
Georgia Watch
Greater Boston Legal Services, on behalf of its low-income clients
Green Forest CDC
Heartland Alliance
Housing and Economic Rights Advocates
Interfaith Alliance of Colorado
Interfaith Center on Corporate Responsibility
Kentucky Equal Justice Center
Legal Aid Service of Broward County
Legal Aid Society of Palm Beach County, Inc.
Legal Aid Society of the District of Columbia
Maryland Consumer Rights Coalition
Mississippi Center for Justice
Mobilization for Justice
Mountain State Justice, Inc.
NAACP
NAACP COMTWY State Conference
National Association for Latino Community Asset Builders
National Association of Consumer Advocates
National Association of Consumer Bankruptcy Attorneys (NACBA)
National Association of Social Workers West Virginia Chapter
National Center for Law and Economic Justice
National Consumer Law Center (on behalf of its low income clients)
National Consumers League
National Fair Housing Alliance
National Health Law Program
National Legal Aid & Defender Association
National Rural Social Work Caucus
Neighborhood Housing Services of Greater Cleveland, Inc.
North Carolina Justice Center
Prosperity Now
Public Citizen
Public Counsel
Public Good Law Center
Public Justice Center
Public Law Center
Reinvestment Partners
SC Appleseed
Statewide Poverty Action Network (WA)

Texas Appleseed
Texas Legal Services Center
The Bell Policy Center
Tzedek DC
U.S. PIRG
Virginia Citizens Consumer Council
Virginia Poverty Law Center
West Virginia Center on Budget and Policy
Woodstock Institute
WV Citizen Action Group