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Re: Clarification of Revised Debt Collection Regulations

Dear Ms. Thompson and Mr. Monahan,

Thank you for meeting with me and some of our members to hear the concerns of the American Financial Services Association ("AFSA") regarding the recently released revised debt collection regulations, Mass. Regs. Code tit. 940, §§ 7.01 *et seq.* ("Regulations") generally, and Section 7.08 specifically. As we discussed, we represent the consumer credit industry. Our members who operate in Massachusetts are primarily in the mortgage, payment card, personal loan and vehicle finance / leasing industries. They are both prime and non-prime, both bank and non-bank finance companies.

As companies in the consumer credit industry, AFSA members have a vested interest in maintaining positive relationships with their customers, and they understand the importance of treating all customers, even those that may be delinquent, fairly and appropriately. Although the FDCPA applies primarily to debt collectors, most creditors comply with the law's provisions against harassment and abuse as a form of self-regulation and as general business practice. Therefore, AFSA members wholeheartedly support the concept behind most of the revised Regulations, which is to provide guidance and make Massachusetts' laws "more consistent with existing state and federal laws."

As we discussed during our meeting last month, however, some new and preexisting sections of the Regulations are problematic. Most notably, Section 7.08's validation of debt requirements (which AFSA members did not have an opportunity to comment on in their final form) are not appropriate for originating creditors or persons who acquire

accounts prior to default because such persons, unlike third party debt collectors and debt buyers:

- (1) Operate with more information regarding the debtors and the accounts, and thus the problems to be addressed by the validation requirements (*i.e.*, dunning the wrong person or attempting to collect debts that are already paid) do not justify the considerable expense of notice and document production;
- (2) Are restrained by the desire to protect their good will when collecting past due accounts from their customers with whom they typically have ongoing, long-term, repeat and/or continuous relationships; and
- (3) Are not required to comply with such requirements under the FDCPA or the laws of any other states, and thus currently lack the existing infrastructure, policies and procedures to implement such requirements and would need to make significant investments of time and resources to create the necessary processes to do so.

Accordingly, we reiterate our request that you state that Section 7.08 does not apply to originating creditors and creditors who acquire accounts prior to default. If you do not take such action, then we request that you provide the guidance with respect to Section 7.08 as requested below.

In addition to the validation requirements, this letter identifies for your consideration a few additional problematic sections of the Regulations, briefly describes the problems and provides suggested guidance to address the problems. As is the case with the validation requirements, our principal concern is that the additional problematic sections may unduly increase compliance costs, restrict the ability of creditors to communicate with consumers in an efficient manner or inhibit creditors' ability to take timely action to address delinquencies or realize on collateral. Accordingly, a failure to provide adequate guidance will very likely result in (i) increased costs of credit or the reduced availability of credit to consumers, (ii) reduced credit options for consumers and reduced competition among creditors, generally, as many creditors (most likely small and moderate-sized creditors, who may in fact be the most willing and able to be flexible with consumers) may choose to leave the Massachusetts market and (iii) encouraging creditors to accelerate their timetables for action or the outsourcing of collections to third parties rather than work with consumers to find less costly, less intrusive and less harsh alternatives for resolving obligations than precipitous acceleration and foreclosure.

Please let us know if we can provide you with further information or explanation for the following comments:

7.03 Definition of “Debt”

- Definition

“Debt” means money or its equivalent which is, or is alleged to be, more than 30 days past due and owing, unless a different period is agreed to by the debtor, under a single account as a result of a purchase, lease, or loan of goods, services, or real or personal property, for personal, family or household purposes or as a result of a loan of money which is obtained for personal, family or household purposes whether or not the obligation has been reduced to judgment.

- Problem with Definition

Creditors need more certainty regarding the circumstances under which a debtor will be deemed to have agreed to a time period of 30 days or less. A debtor should not be deemed to have agreed to a different period merely because a credit agreement provides for a late fee or establishes a consumer’s default if a payment is 30 days or less past due.

- Proposed Guidance

A “debt” shall not include any obligation that is less than 30 days past due unless the debtor has expressly agreed to a shorter period (in an agreement or under applicable account terms) specifically for purposes of the Regulations. Any general provision contained in an agreement or account terms pertaining to a shorter period for the purpose of imposing late fees or generally defining default for potential acceleration purposes shall have no bearing on a determination as to whether an obligation constitutes a “debt” for purposes of the Regulations. For example, a contract may provide that any failure to make timely payment will allow, but not require, a creditor to accelerate the remaining payments under the contract, and further provide that a creditor may choose, from time to time, not to exercise any particular remedy (i.e., to waive such “default”); such a provision would not constitute an express agreement to a shorter time period under the Regulations. If an agreement or applicable account term provides that a debtor is not late or in default until a required payment is some number greater than 30 days past due, such period shall be used to determine whether an obligation constitutes a “debt” for purposes of the Regulations.

7.04(1)(f) Contact with Debtors

- Prohibition

It shall constitute an unfair or deceptive act or practice for a creditor to contact a debtor by initiating a communication with any debtor via telephone, either in person or via text messaging or recorded audio message, in excess of two such communications in each seven-day period to either the debtor's residence, cellular telephone, or other telephone number provided by the debtor as his/her personal telephone number and two such communications in each 30-day period other than at a debtor's residence, cellular telephone, or other telephone number provided by the debtor as his/her personal telephone number, for each debt, provided that for purposes of Section 7.04(1)(f), a creditor may treat any billing address of the debtor as his place of residence, and provided further, that a creditor shall not be deemed to have initiated a communication with a debtor if the communication by the creditor is in response to a request made by the debtor for said communication. "Communication" is defined as conveying information directly or indirectly to any person through any medium excluding nonidentifying communications.

- Problem with Prohibition

Section 7.04(1)(f) could include attempts to contact a debtor that result in unanswered calls, not only calls in which the creditor leaves an identifying message for the debtor or engages in meaningful conversation with the debtor. The definition of "communication" suggests that Section 7.04(1)(f) should not apply to attempts that result in unanswered calls because creditors do not convey any meaningful information during such calls. Section 7.04(1)(f) should be interpreted to exclude unanswered calls because including such calls would unreasonably hamper a creditor's ability to resolve past due accounts with its customers in-house or otherwise communicate with delinquent customers for non-debt related matters, likely encouraging creditors instead to place accounts with third-parties for collection and/or with attorneys to file suit precipitously (so-called "early out" placement) so as to avoid potential liability, neither of which actions may be in the best interests of consumers. Caller identification information that may be captured by the called party may not clearly identify the specific calling party or the purpose of the call, resulting in misidentification, and so should not be deemed a "communication" by a creditor

Section 7.04(1)(f) could restrict general customer service calls, such as calls providing information on home preservation or other loss mitigation/workout options that could benefit the debtor. Section 7.04(1)(f) should not regulate such calls because they are not unfair or deceptive but rather are beneficial to consumers. Such calls should be beyond the scope of the Regulations because Section 7.02 provides that the Regulations apply only to the collection of debts, as defined in the

Regulations, and not to conduct which is not the collection of debts or any part thereof.

Finally, the circumstances under which a number would be deemed a debtor's "personal telephone number" is unhelpfully ambiguous. A "personal telephone number" should include any number designated by the debtor as a telephone number the debtor intends to be used for receiving account-related communications.

- Proposed Guidance

The limitations set forth in Section 7.04(1)(f) on "initiating" communications with a debtor only apply to communications where a creditor actually contacts a debtor and engages in meaningful discussion regarding payment of the debt with the debtor, or sends a text message, or leaves a recorded audio message for the debtor regarding the debt. Unanswered calls do not count as "initiated communications" towards these limits. Notwithstanding any limitations set forth in Section 7.04(1)(f), debtors may agree to more frequent communications by a creditor.

Section 7.04(1)(f) does not limit communications that are made for general customer service or other servicing purposes and not for collection purposes, including communications presenting alternatives to immediate payment of the outstanding debt such as loss mitigation/workout, home preservation or settlement, because such communications are beyond the scope of the Regulations insofar as Section 7.02 provides that the Regulations apply only to the collection of debts, as defined in the Regulations, and no conduct which is not the collection of debts or any party thereof is affected.

The term "personal telephone number" refers to any telephone number designated by the debtor as a primary telephone number for receiving communications regarding the debtor's account.

7.04(1)(h) Calls to Place of Employment

- Prohibition

It shall constitute an unfair or deceptive act or practice for a creditor to contact a debtor by placing any telephone calls to the debtor's place of employment if the debtor has made a written or oral request that such telephone calls not be made at the place of employment, provided, that any oral request shall be valid for only 10 days unless the debtor provides written confirmation postmarked or delivered within seven days of such request. A debtor may at any time terminate such a request by written communication to the creditor.

- Problem with Prohibition

The prohibition may subject a creditor to liability for making a call to a debtor's cellular telephone or other number that the debtor has provided but not identified as a place of employment number.

- Proposed Guidance

Section 7.04(1)(h) does not prohibit a creditor from calling any ["personal," if the comment above is adopted] telephone number that a debtor has provided to the creditor and not identified as a place of employment number regardless of whether the number can in fact be used to contact the debtor at or as his or her place of employment.

7.04(1)(i) Notice of Important Rights

- Prohibition

It shall constitute an unfair or deceptive act or practice for a creditor to contact a debtor and fail to send the debtor the Notice of Important Rights in writing within 30 days after the first communication to a debtor at his or her place of employment regarding any debt, provided that a copy of the notice shall be sent every six months thereafter so long as collection activity by the creditor on the debt continues and the debtor has not made a written request as described in 940 CMR 7.04(1)(h).

- Problem with Prohibition

It would be confusing to debtors and overly burdensome to creditors to require creditors to send a Notice of Important Rights every six months while collecting if the creditor has a policy of not calling debtors at their places of employment or of honoring oral requests to cease communications to places of employment. In addition, the prohibition may be inconsistent with provisions of the FDCPA that require debt collectors to honor oral requests to cease communications to places of employment. See 15 U.S.C. § 1692c (prohibiting a debt collector from communicating with a consumer at the consumer's place of employment if the debt collector knows or has reason to know that the consumer's employer prohibits the consumer from receiving such communication).

- Proposed Guidance

A creditor is not required to send the Notice of Important Rights if the creditor agrees not to contact a debtor at a place of employment and sends to the debtor written or electronic confirmation of that fact.

7.04(1)(m) Statements of Future Action

- Prohibition

It shall constitute an unfair or deceptive act or practice for a creditor to state that the creditor will take any action, including legal action, which in fact is not taken or attempted on such debtor's account, unless an additional payment or a new agreement to pay has occurred within the stated time period. For purposes of Section 7.04(1)(m), the time period in connection with such statement shall be presumed to expire 14 days from the date the statement is made, unless otherwise indicated by the creditor.

- Problem with Prohibition

Requiring a creditor to take action within 14 days could conflict with statutory notice requirements or a prior agreement between the creditor and debtor regarding the timing of action. Moreover, the 14-day presumption may limit creditor flexibility with respect to resolving disputes or outstanding obligations.

- Proposed Guidance

Section 7.04(1)(m) does not apply to statements made in written communications that are required by (i) oral or written agreement between creditor and debtor, (ii) any state or federal statute or regulation, including a notice of right to cure a default, a notice of intent to sell or notice of explanation of calculation of surplus or deficiency or (iii) any court rules of procedure. The term "additional payment or new agreement to pay" includes any action evidencing the debtor's intention to satisfy or otherwise resolve an outstanding obligation, including, but not limited to, the voluntarily surrender of collateral.

7.05(2), (3)(b) & 7.06(1)(a) Communicating with Third Parties

- Prohibition

It shall constitute an unfair or deceptive act or practice for a creditor to:

- (1) Imply the fact of a debt, orally or in writing, to persons who reside in the household of a debtor, other than the debtor.
- (2) Contact or threaten to contact persons who reside in the household of a debtor, other than the debtor, by placing telephone calls, disclosing the name of the business, or company of the creditor,

unless the recipient expressly requests disclosure of the business or company name; or

(3) Implying the fact of the debt to any person other than the debtor or a person residing in the household of a debtor.

- Problem with Prohibition

A debtor's privacy is not compromised if a creditor communicates with a third party regarding a debt with the debtor's permission or if the creditor leaves a message intended for the debtor that discloses the creditor's name. Accordingly, such communications should not be subject to the above prohibitions.

- Proposed Guidance

Sections 7.05(2), (3)(b) and 7.06(1)(a) do not prohibit a creditor from communicating with a person if the debtor has authorized the creditor to communicate with that person regarding the debt.

Sections 7.05(2), (3)(b) and 7.06(1)(a) apply only to actions or affirmative statements by creditors and not to the actions of others, such as the alleged capture of the creditor's name or number by caller identification.

7.07(18) and (19) General Unfair or Deceptive Acts or Practices

- Prohibition

It shall constitute an unfair or deceptive act or practice to take or threaten to take any non-judicial action to effect dispossession or disablement of property if, among other things, (i) the creditor knows or has reason to know that demands for payment and/or legal notices were not directed to the debtor's current address or (ii) the property is exempt from seizure on execution because its value does not exceed the value for exemption set forth in M.G.L. c. 235, § 34, or the property is otherwise exempt by law from such dispossession or disablement; this provision shall not apply to first mortgage foreclosures properly conducted in accordance with Massachusetts law. M.G.L. c. 235, § 34 provides that certain property of a debtor is exempt from seizure on execution, including an motor vehicle necessary for the debtor's personal transportation or to secure or maintain employment, not exceeding \$7,500 of wholesale resale value (\$15,000 for handicapped persons or persons 60 years of age or older).

It shall constitute an unfair or deceptive act or practice to take possession of or sell upon execution property that is exempt from seizure on execution because its value does not exceed the value for exemption set

forth in M.G.L. c. 235, §34, or the property is otherwise exempt by law from such dispossession or disablement; this provision shall not apply to first mortgage foreclosures properly conducted in accordance with Massachusetts law.

- Problem with Prohibitions

Section 7.07(18) should not prohibit a creditor from exercising self-help repossession with respect to any consumer who, often in breach of contract, has failed to provide timely notice of change of address to the creditor or to the U.S. Postal Service that may result in returned billing statements or other correspondence from the creditor. Given other limitations on a creditor's ability to contact a consumer by other means than mail, self-help repossession may be the least costly, least intrusive method of resolving an outstanding obligation.

Sections 7.07(18) and 7.07(19) should not prohibit self-help repossession because these regulations cannot override the Massachusetts Uniform Commercial Code - Secured Transactions which expressly permits creditors to exercise self-help repossession of collateral in which a creditor holds a security interest. See Mass. Gen. Laws ch. 106, § 9-609 (providing that after default, a secured party may take possession of collateral without judicial process if the creditor proceeds without breach of the peace).

Sections 7.07(18) and 7.07(19) also should not prohibit self-help repossession of motor vehicles because such a prohibition would create an undue hardship on creditors that rely on security interests in motor vehicles to decrease the risks associated with borrower defaults. Such a prohibition would result in increased litigation costs and/or credit losses to creditors, the negative impact of which would be increased costs of credit or the restriction of credit for other consumers. Such a prohibition would have a particularly chilling effect on the financing of low and moderately priced motor vehicles as creditors engaged in such business stop extending credit in Massachusetts or increase the cost of financing to cover the higher default risks.

Many statutes expressly allow creditors to mail communications to "the last known" address on the creditor's records in recognition of consumers' obligation to inform their creditors in a timely manner and not avoid their obligations simply by "hiding."

- Proposed Guidance

Section 7.07(18) and (19) shall not be construed as limiting the rights afforded under Massachusetts law, including the Massachusetts Uniform

Commercial Code - Secured Transactions, to secured creditors with a security interest in collateral to enforce their security interests, including, but not limited to, repossession of such collateral. Section 7.07(18) also shall not prohibit a creditor from exercising those rights in the event that a debtor has failed to provide the creditor with timely notice of a change in the debtor's mailing or residence address information.

7.08 Validation of Debts

Again, we recommend that you revise the Regulations to state that Section 7.08 does not apply to originating creditors and creditors who acquire accounts prior to default. If you are not willing to provide such interpretation, then we request that you provide the following guidance.

7.08(1) Providing Validation Notices

- Requirement

It shall constitute an unfair or deceptive act or practice for a creditor to fail to provide to a debtor or an attorney for a debtor certain information, within five business days after the initial communication with a debtor in connection with the collection of a debt, unless the information is contained in the initial communication or the debtor has paid the debt.

- Problem with Requirement

The Attorney General promulgated the Regulations to make them more consistent with other state and federal regulations of debt collectors. Indeed, Section 7.09 of the Regulations provides that provisions of the Regulations that contain language substantively identical to provisions of the federal Fair Debt Collection Practice Act ("FDCPA") should be interpreted consistently with the FDCPA. The FDCPA's validation requirement and the Massachusetts requirement was enacted to eliminate the problem of debt collectors dunning the wrong person or attempting to collect debts that the consumer has already paid. *Chaudhry v. Gallerizzo*, 174 F.3d 394, 405-07 (4th Cir. 1999). These purposes would not be served by requiring a creditor to (i) send a validation notice when collecting obligations owing pursuant to an account on which the consumer has made recent payments, (ii) send multiple validation notices when collecting on a single account, (iii) wait until the creditor attempts to collect on an obligation that has become more than 30 days past due on an account before sending a validation notice, or (iv) forego waiving a default to give the consumer more time to pay before the creditor escalated its collection efforts beyond the imposition of late payment or returned check fees. The current requirements would create unnecessary costs for creditors and the potential for confusion among consumers.

- Proposed Guidance

Section 7.08(1) requires a creditor to provide a validation notice within five days after the initial communication with a debtor in connection with the collection of a debt by affirmative demand for immediate payment, but does not require a creditor to provide a validation notice if (i) the debtor has previously paid any portion of the associated account when payments are due periodically to the creditor or (ii) the creditor has previously delivered a validation notice on the same account. For purposes of this provision, a debtor is deemed to have paid a portion of the debt that is owing on an account, for example, if the debtor has made one or more payments to the creditor on the associated account within the immediately preceding twelve calendar months.

A creditor must send a validation notice only one time with respect to a credit account, and thus, for example, does not need to send a new validation notice each time an installment payment on the account becomes more than 30 days past due.

A creditor may elect (but is not required) to provide a single validation notice at any time during the life of a credit account following a failure to make a timely payment. A creditor may send such a notice along with other communications from the creditor such as a regular monthly invoice. Thus, a creditor may (but is not required to) wait until a payment is more than 30 days past due to send a validation notice. If a creditor elects to send such a notice, the creditor would not be required to provide another validation notice with respect to any subsequent payment obligation owing on that account.

7.08(2) Providing Documents Pursuant to a Written Dispute

- Requirement

If a debtor, or any attorney for the debtor, notifies the creditor in writing within the 30-day validation period, that the debt or any portion thereof, is disputed the creditor must cease collection of the debt, or any disputed portion thereof, until the creditor verifies the debt and provides the debtor, or any attorney for the debtor, by first class mail, with certain items including, among other things:

(a) All documents, including electronic records or images, which bear the signature of the debtor and which concern the debt being collected; and

(b) A ledger, account card, account statement copy, or similar record, whether paper or electronic, which reflects the date and amount of payments, credits, balances, and charges concerning the debt, including but not limited to interest, fees, charges or expenses incidental to the principal obligation which the creditor is expressly authorized to collect by the agreement creating the debt or permitted to collect by law.

- Problem with Requirement

The federal FDCPA's validation requirement was enacted to eliminate the problem of having third party debt buyers and debt collectors dunning the wrong person or attempting to collect debts that a consumer has already paid. Consequently, courts have held that debt collectors may verify debts by confirming in writing that the amount being demanded is what the creditor is claiming and have not required debt collectors to forward copies of bills or other detailed evidence of the debt. *Chaudhry v. Gallerizzo*, 174 F.3d 394, 405-07 (4th Cir. 1999). Section 7.08(2) should conform to "validation" as historically interpreted under federal and state laws. This section should not require creditors to incur undue and duplicative costs in mailing hard copies of a large number of duplicative and irrelevant documents to existing customers. For example, mortgage lenders should not be required to incur the excessive costs associated with providing hundreds of pages of signed documents and a statement potentially reflecting decades of undisputed payment history. In addition, credit card issuers should not be required to incur the excessive costs associated with tracking down, if even possible and still available, and reproducing copies of previously provided and previously undisputed periodic statements, sales slips, and telephone or internet invoices involving merchants other than the creditor, which documents detail the entire payment history of the associated account since its inception. Documents (i) previously produced, (ii) regarding amounts previously subject to dispute under statutes similar to the federal Fair Credit Billing Act, (iii) not relevant to a new dispute or (iv) more than 4-months old, should not need to be produced.

Section 7.08(2) should not require creditors to incur the expense of providing hard copies of documents to debtors who have consented to receive documents electronically under state or federal law.

Section 7.08(2) also should not require creditors to maintain or produce documents beyond the time periods established by federal or state laws applicable to the underlying transactions like the federal Equal Credit Opportunity Act or Truth in Lending Act.

- Proposed Guidance

A creditor satisfies Section 7.08(2) by providing documents evidencing the creditor's good faith belief that the debtor is not the wrong person and has not already paid the debt. Accordingly, a creditor could satisfy Section 7.08(2)(a) by providing evidence of recent payment or, if payment has not been made within the last four months, by providing, along with an account history or copies of account statements since the amount became due, one or more of the following documents as appropriate: (i) for a residential mortgage loan, a copy of the note, the security instrument and any addenda, riders or modifications relevant to the amount due; (ii) for a closed-end installment obligation, a copy of the written or electronic retail installment contract, lease, or note and security agreement, whichever is applicable, and any modifications to those instruments; or (iii) for a credit card or other open account, a copy, if still available, of the electronic or written account application or other records demonstrating that the debtor applied for the account and/or the terms and conditions applicable to the account. A creditor does not need to provide all ancillary documents that debtors may have signed or executed as part of the transaction(s) for which the debt is due, such as ACH payment authorizations, enrollment documents for optional services or access (e.g., online account terms of service) or merchant sales slips with respect to credit card transactions. A creditor may satisfy Section 7.08(2)(b) by providing one or more monthly invoices, periodic statements or months of electronically maintained account records if such material states the amount due, the obligor's name and address and demonstrates a recent payment. A creditor may, but is not required to, provide copies of actual invoices or statements that it is not required to maintain pursuant to applicable law such as the federal Truth in Lending Act and Regulation Z thereunder.

A creditor may satisfy Section 7.08(2) by delivering copies of documents or records by email or by making such documents available on a website if the debtor has consented to receive documents or disclosures electronically.

7.08(2) Collection During the 30-Day Validation Period

- Prohibition

If a debtor, or any attorney for the debtor, notifies the creditor in writing within the 30-day validation period, that the debt or any portion thereof, is disputed the creditor must cease collection of the debt, or any disputed portion thereof, until the creditor verifies the debt and provides the debtor, or any attorney for the debtor, by first class mail, with certain items.

- Problem with Prohibition

Section 7.08(2) does not expressly indicate whether a creditor may continue to collect on an account during the 30-day period within which the debtor may dispute the debt. Debtors are unlikely to dispute accounts of creditors with whom they have previously made a payment. A validation period should not constitute a non-consensual grace period. Section 7.08(2) should be interpreted in accord with the federal FDCPA, which permits collections during the 30-day validation period and prior to the receipt of a notice of dispute from a debtor. See *Smith v. Computer Credit, Inc.*, 167 F.3d 1052, 1055 (6th Cir. 1999).

- Proposed Guidance

A creditor may attempt to collect a debt during the 30-day period following a debtor's receipt of a notice sent pursuant to Section 7.08 and prior to the creditor's receipt of a written request for validation.

Thank you for the opportunity to provide for clarification / interpretation language. Please let us know if you would like further explanation for any of these suggestions.

Sincerely,

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Proposed Guidance

7.03 Definition of “Debt”

A “debt” shall not include any obligation that is less than 30 days past due unless the debtor has expressly agreed to a shorter period (in an agreement or under applicable account terms) specifically for purposes of the Regulations. Any general provision contained in an agreement or account terms pertaining to a shorter period for the purpose of imposing late fees or generally defining default for potential acceleration purposes shall have no bearing on a determination as to whether an obligation constitutes a “debt” for purposes of the Regulations. For example, a contract may provide that any failure to make timely payment will allow, but not require, a creditor to accelerate the remaining payments under the contract, and further provide that a creditor may choose, from time to time, not to exercise any particular remedy (i.e., to waive such “default”); such a provision would not constitute an express agreement to a shorter time period under the Regulations. If an agreement or applicable account term provides that a debtor is not late or in default until a required payment is some number greater than 30 days past due, such period shall be used to determine whether an obligation constitutes a “debt” for purposes of the Regulations.

7.04(1)(f) Contact with Debtors

The limitations set forth in Section 7.04(1)(f) on “initiating” communications with a debtor only apply to communications where a creditor actually contacts a debtor and engages in meaningful discussion regarding payment of the debt with the debtor, or sends a text message, or leaves a recorded audio message for the debtor regarding the debt. Unanswered calls do not count as “initiated communications” towards these limits. Notwithstanding any limitations set forth in Section 7.04(1)(f), debtors may agree to more frequent communications by a creditor.

Section 7.04(1)(f) does not limit communications that are made for general customer service or other servicing purposes and not for collection purposes, including communications presenting alternatives to immediate payment of the outstanding debt such as loss mitigation/workout, home preservation or settlement, because such communications are beyond the scope of the Regulations insofar as Section 7.02 provides that the Regulations apply only to the collection of debts, as defined in the Regulations, and no conduct which is not the collection of debts or any party thereof is affected.

The term “personal telephone number” refers to any telephone number designated by the debtor as a primary telephone number for receiving communications regarding the debtor’s account.

7.04(1)(h) Calls to Place of Employment

Section 7.04(1)(h) does not prohibit a creditor from calling any [“personal,” if the comment above is adopted] telephone number that a debtor has provided to the creditor and not identified as a place of employment number regardless of whether the number can in fact be used to contact the debtor at or as his or her place of employment.

7.04(1)(i) Notice of Important Rights

A creditor is not required to send the Notice of Important Rights if the creditor agrees not to contact a debtor at a place of employment and sends to the debtor written or electronic confirmation of that fact.

7.04(1)(m) Statements of Future Action

Section 7.04(1)(m) does not apply to statements made in written communications that are required by (i) oral or written agreement between creditor and debtor, (ii) any state or federal statute or regulation, including a notice of right to cure a default, a notice of intent to sell or notice of explanation of calculation of surplus or deficiency or (iii) any court rules of procedure. The term “additional payment or new agreement to pay” includes any action evidencing the debtor’s intention to satisfy or otherwise resolve an outstanding obligation, including, but not limited to, the voluntarily surrender of collateral.

7.05(2), (3)(b) & 7.06(1)(a) Communicating with Third Parties

Sections 7.05(2), (3)(b) and 7.06(1)(a) do not prohibit a creditor from communicating with a person if the debtor has authorized the creditor to communicate with that person regarding the debt.

Sections 7.05(2), (3)(b) and 7.06(1)(a) apply only to actions or affirmative statements by creditors and not to the actions of others, such as the alleged capture of the creditor’s name or number by caller identification.

7.07(18) and (19) General Unfair or Deceptive Acts or Practices

Section 7.07(18) and (19) shall not be construed as limiting the rights afforded under Massachusetts law, including the Massachusetts Uniform Commercial Code - Secured Transactions, to secured creditors with a security interest in collateral to enforce their security interests, including, but not limited to, repossession of such collateral. Section 7.07(18) also shall not prohibit a creditor from exercising those rights in the event that a debtor has failed to provide the creditor with timely notice of a change in the debtor’s mailing or residence address information.

7.08 Validation of Debts

Section 7.08 does not apply to originating creditors and creditors who acquire accounts prior to default.

Alternatively:

7.08(1) Providing Validation Notices

Section 7.08(1) requires a creditor to provide a validation notice within five days after the initial communication with a debtor in connection with the collection of a debt by affirmative demand for immediate payment, but does not require a creditor to provide a validation notice if (i) the debtor has previously paid any portion of the associated account when payments are due periodically to the creditor or (ii) the creditor has previously delivered a validation notice on the same account. For purposes of this provision, a debtor is deemed to have paid a portion of the

debt that is owing on an account, for example, if the debtor has made one or more payments to the creditor on the associated account within the immediately preceding 12 calendar months.

A creditor must send a validation notice only one time with respect to a credit account, and thus, for example, does not need to send a new validation notice each time an installment payment on the account becomes more than 30 days past due.

A creditor may elect (but is not required) to provide a single validation notice at any time during the life of a credit account following a failure to make a timely payment. A creditor may send such a notice along with other communications from the creditor such as a regular monthly invoice. Thus, a creditor may (but is not required to) wait until a payment is more than 30 days past due to send a validation notice. If a creditor elects to send such a notice, the creditor would not be required to provide another validation notice with respect to any subsequent payment obligation owing on that account.

7.08(2) Providing Documents Pursuant to a Written Dispute

A creditor satisfies Section 7.08(2) by providing documents evidencing the creditor's good faith belief that the debtor is not the wrong person and has not already paid the debt. Accordingly, a creditor could satisfy Section 7.08(2)(a) by providing evidence of recent payment or, if payment has not been made within the last four months, by providing, along with an account history or copies of account statements since the amount became due, one or more of the following documents as appropriate: (i) for a residential mortgage loan, a copy of the note, the security instrument and any addenda, riders or modifications relevant to the amount due; (ii) for a closed-end installment obligation, a copy of the written or electronic retail installment contract, lease, or note and security agreement, whichever is applicable, and any modifications to those instruments; or (iii) for a credit card or other open account, a copy, if still available, of the electronic or written account application or other records demonstrating that the debtor applied for the account and/or the terms and conditions applicable to the account. A creditor does not need to provide all ancillary documents that debtors may have signed or executed as part of the transaction(s) for which the debt is due, such as ACH payment authorizations, enrollment documents for optional services or access (e.g., online account terms of service) or merchant sales slips with respect to credit card transactions. A creditor may satisfy Section 7.08(2)(b) by providing one or more monthly invoices, periodic statements or months of electronically maintained account records if such material states the amount due, the obligor's name and address and demonstrates a recent payment. A creditor may, but is not required to, provide copies of actual invoices or statements that it is not required to maintain pursuant to applicable law such as the federal Truth in Lending Act and Regulation Z thereunder.

A creditor may satisfy Section 7.08(2) by delivering copies of documents or records by e-mail or by making such documents available on a website if the debtor has consented to receive documents or disclosures electronically.

7.08(2) Collection During the 30-Day Validation Period

A creditor may attempt to collect a debt during the 30-day period following a debtor's receipt of a notice pursuant to Section 7.08 and prior to the creditor's receipt of a written request for validation.