

Debt Collection Communications: Protecting Consumers in the Digital Age

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By

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National Consumer Law Center[®]

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EXECUTIVE SUMMARY

Communication technologies have changed considerably since the Fair Debt Collection Practices Act (FDCPA) was first adopted in 1977. Despite technology changes, traditional problems of abusive communications that prompted passage of the FDCPA remain rampant.

This report specifies the regulations the Consumer Financial Protection Bureau (CFPB) should adopt¹ regarding when, where, how, and how often consumers can be contacted by debt collectors and creditors engaged in debt collection.²

Key Recommendations

The CFPB should issue regulations to:

- Provide a specific limit for the number of telephone calls to consumers;
- Prohibit calls or text messages to cell phones without consumer opt-in;
- Require that collectors provide consumers with notice of consumers' right to stop collection communications and honor that request when made orally by consumers;
- Strictly limit communication to consumers at their workplace;
- Strictly limit the timing of permissible calls and texts for collection purposes, and ensure correct timing for the consumer's location;
- Clarify that any communication by a debt collector that can be viewed by others online (e.g. posts to social media, bulletin boards, chat rooms, or blogs) is prohibited;
- Require consumer opt-in before debt collectors can send email or fax communications; and
- Prohibit voicemail messages unless the consumer consents or the voicemail is clearly set up to be heard only by the consumer.

INTRODUCTION

Communication technologies have changed considerably since the Fair Debt Collection Practices Act (FDCPA) was first adopted in 1977. Then debt collectors contacted consumers in person or via landline telephone, answering machines, messages left with third parties, postal mail, or telegram. Today debt collectors also contact consumers via mobile phones, text messages, prerecorded telephone messages, emails, fax machines, and social media. Despite technology changes, traditional problems of abusive communications that prompted passage of the FDCPA remain rampant.

In light of the shifting communications landscape, this report specifies the regulations the Consumer Financial Protection Bureau (CFPB) should adopt regarding when, where, how, and how often consumers can be contacted by debt collectors and creditors engaged in debt collection. These recommendations generally refer to “collectors,” which we intend to cover both debt collectors covered by the FDCPA and creditors collecting their own debts. Although the discussion is framed around the FDCPA’s specific provisions, those provisions detail unfair, deceptive, or abusive practices that should also be prohibited for creditors who are not subject to the FDCPA.³

These recommendations are built upon the solid foundation of the FDCPA’s existing consumer protections and presume that all communications are otherwise in compliance with the law, including provisions: requiring debt collectors to identify themselves in collection communications;⁴ strictly limiting debt collection communications with third parties;⁵ and prohibiting harassment,⁶ false or misleading representations,⁷ and unfair or unconscionable practices.⁸

I. STRICTLY LIMIT COLLECTOR INITIATED PHONE CALLS

The FDCPA prohibits harassment by debt collectors but does not set a numerical limit on the number of times per week that a debt collector can contact a consumer, instead saying:

A debt collector may not engage in any conduct the natural consequences of which is to harass, oppress, or abuse any person in connection with the collection of a debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

...

(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.⁹

In the absence of specific numerical limits, consumers often receive multiple debt collection calls each day. Many people find these calls enormously stressful. The calls are highly intrusive. Multiple collection calls interfere with daily life. The calls themselves, the dread of future calls, and the fear of the dissemination of personal, embarrassing information to friends, neighbors, co-workers and employers permeate the lives of consumers struggling to make ends meet. Indeed, in some cases, aggressive collection efforts have caused such significant emotional distress as to cause physical illness.¹⁰ Multiple calls may also push consumers to make payments to the loudest or most persistent debt collector just to end the harassment, even for a debt they do not owe.¹¹ Such payments will often be at the expense of paying the rent or meeting other, more important, financial obligations.

Excessive phone calls from debt collectors are a recurrent source of consumer complaints to regulatory agencies. In its March 2015 report about the FDCPA, the CFPB noted that 53 percent of complaints about the communication tactics used when collecting debts were due to “frequent or repeated calls.”¹²

Courts have found that excessive calls state a claim for harassment in a wide variety of situations.¹³ There is also evidence about the number of telemarketing phone calls that consumers have found excessive. A survey conducted shortly after the implementation of the Do Not Call list reported that consumers were receiving about 30 calls per month before the list was implemented and an average of 6 per month after implementation.¹⁴

The idea that Americans were so bothered by 30 calls per month that *Congress intervened* stands in stark contrast to proposals by the debt collection industry suggesting that the CFPB should allow 6 debt collection calls to consumers per day, or up to 186 calls per month and 2190 calls per year.¹⁵ Moreover, where there is one debt in collection, there are most likely others as well.¹⁶ Under the debt collection industry’s proposal, up to 12 calls a day would be permitted for two debts. It is not difficult to imagine how stressful that would be to consumers.

The debt collection industry suggests that the CFPB should allow 6 debt collection calls to consumers per day, or up to 186 calls per month and 2190 calls per year.

The purpose of collectors calling consumers should only be to discuss the debt with the consumer, not to harass them into paying.

The CFPB needs to adopt a regulatory limit on the number of permissible calls. Without a bright-line rule, some federal courts have found that, despite a very high number of calls by debt collectors, plaintiffs failed to state a claim for violation of the FDCPA.¹⁷ Some courts have held that without evidence of other “egregious conduct” high call volumes were not enough to establish a violation of the FDCPA.¹⁸ The CFPB needs to make clear that call volume *alone* is sufficient to state a claim under the FDCPA.

Two states already provide reasonable limits on the number of permissible communications that can be made to consumers while collecting a debt.¹⁹ Massachusetts regulations limit phone

calls, text messages, and voicemails to two per week, while the applicable statute in Washington applies more broadly to a “communication” and limits contacts to three times per week.²⁰

The CFPB should enact a regulation that strikes a balance between allowing debt collection communications and preventing harassment such that:

- A debt collector can call a consumer about an account in collection up to **three times** a week (Sunday to Saturday), but if the debt collector speaks to a consumer by phone the collector cannot initiate any further phone calls that week unless the consumer requests additional contacts.
- If no one answers, the debt collector can leave a voicemail after each call (where the voicemail message otherwise complies with the FDCPA).²¹
- Every time that the debt collector causes the consumer’s phone to ring should count as one call – whether or not the debt collector actually speaks to the consumer or leaves a voicemail message.²²
- Calling the consumer at any of the consumer’s phone numbers counts towards the three call limit per week.
- Contacting a consumer more frequently constitutes harassment in violation of section 1692d of the FDCPA.²³
- This regulation should not preempt any state laws or regulations that provide consumers with greater protections.

Examples of Limits on Collector-Initiated Communications

1. The collector placed two unanswered phone calls to the consumer’s home phone and one to the consumer’s cell phone; each time leaving a voicemail message.
2. The collector spoke to the consumer during the first phone call.
3. The debt collector placed one call to the consumer’s cell phone, one to the consumer’s home phone, and one to the consumer’s work phone. No messages were left.

In each of the above examples, the debt collector would **not** be permitted to initiate more calls that week.

These limits should not apply to consumer-initiated communications. For example, debt collectors may answer a phone call from a consumer or make a return call in response to a voicemail message from a consumer.

In addition, the CFPB should clarify that the FDCPA's protections against harassing, oppressing, or annoying consumers apply to *all forms* of communications and, as such, frequent or repeated communications in any media can violate the FDCPA.

II. REQUIRE CONSUMER OPT-IN FOR CALLS OR TEXT MESSAGES TO CELL PHONES

As noted, the FDCPA states that, “[a] debt collector may not engage in any conduct the natural consequences of which is to harass, oppress, or abuse any person in connection with the collection of a debt.”²⁴ Absent consumer consent, calls and text messages to cell phones may rise to the level of abuse or harassment in certain circumstances.

For example, low-income consumers can be more vulnerable to excessive calls or text messages by debt collectors because:

- Some wireless services provide a limited number of calling minutes or text messages per month. Consumers who exceed the number of available monthly minutes generally face high overage fees that cause unexpected increases in their phone bills.²⁵
- Prepaid wireless plans come with a fixed number of minutes/text messages. Each call or text message made or received uses up this limited number of minutes/text messages. Receiving a large number of calls or text messages can eat into these minutes/text messages and require the consumer to purchase additional minutes/text messages or to lose service for the remainder of the month.
- Over 15 million²⁶ low-income households²⁷ maintain essential telephone service through the subsidized federal Lifeline program. Lifeline phones typically provide 250 minutes of wireless service per month for the entire household.²⁸ Excessive debt collection calls eat up the essential subsidized minutes that Lifeline households use to find work, access medical care, and communicate with childcare providers.

Repeated calls and texts to cell phones are also potentially dangerous. A letter to Congress by 54²⁹ state attorneys generals opposing loosening restrictions on calls to cell phones noted that:

Allowing robocalls to cell phones endangers public safety because of the inevitable increase in calls to wireless phones. Few can resist answering the “shrill and imperious ring” of the wireless telephone while driving. A 2009 study by the National Highway Traffic Safety Administration found that cell phone use

was involved in 995 (or 18%) of fatalities in distraction-related crashes. More calls will likely mean more distracted drivers and, inevitably, more accidents.³⁰

While the letter focuses on robocalls, hand-dialed debt collection calls and texts to cell phones also lead to distracted driving.

The Telephone Consumer Protection Act (TCPA) governs calls that are made to cell phones by auto-dialers. It prohibits robocalls or text messages³¹ to cell phones from debt collectors unless the owner of the cell phone has provided prior express consent.³² The Federal Communications Commission (FCC) has exclusive jurisdiction over the TCPA.

The FCC has said that once a consumer has consented to receiving calls to a cell phone from a creditor that the consent passes through to the collector of that loan.³³ Consent to receive autodialed calls or text messages to cell phones can be revoked³⁴ and revocation can be oral.³⁵ However, the TCPA does not regulate hand-dialed calls or text messages to a cell phone. As a result, the protections provided by the TCPA relating to calls to consumers' cell phones are relevant but not comprehensive.

Collection calls to a consumer's cell phone can cause financial hardship or even be dangerous. To guard against these potential harms, the CFPB should use its authority³⁶ to go beyond the TCPA and provide an overlay of regulation for *all* debt collection calls and texts to cell phones, whether the calls are made by a robo-dialer or by hand.

The CFPB should adopt regulations clarifying that:

- All debt collection calls and text messages to cell phones are prohibited absent prior express consent by the consumer (regardless of whether the calls are initiated by autodialer);
- Consumer consent to receive calls or text messages on their cell phone can be withdrawn at any time; and
- Consumers can withdraw their consent orally.

III. REQUIRE NOTICE TO THE CONSUMER OF THE RIGHT TO CEASE COMMUNICATIONS

The FDCPA provides consumers with the authority to require debt collectors to stop communicating with them, stating:

If a consumer notifies a debt collector in writing that the consumer refuses to pay a debt or that the consumer wishes the debt collector to cease further communication with the consumer, the debt collector shall not communicate further with the consumer with respect to such debt, except—

- (1) to advise the consumer that the debt collector’s further efforts are being terminated;
- (2) to notify the consumer that the debt collector or creditor may invoke specified remedies which are ordinarily invoked by such debt collector or creditor; or
- (3) where applicable, to notify the consumer that the debt collector or creditor intends to invoke a specified remedy.³⁷

This right is an important protection for consumers who cannot pay but may still feel pressure to make a payment that they cannot afford. For example, the CFPB reports that:

Some older consumers are unable to afford to make debt payments especially when they are retired and live on a small fixed income. Older consumers state that collectors sometimes refuse to take “no” for an answer, criticize their financial choices, and demand that the consumer pay the debt over other expenses, such as rent, utilities or medical expenses.³⁸

Unfortunately, most consumers do not know that they have the right to require debt collectors to stop communicating with them.³⁹ The FDCPA does not require that debt collectors provide consumers with notice of this right⁴⁰ and few debt collectors provide this information voluntarily.⁴¹

The right to cease communications is also cumbersome given the need to exercise it in writing. Providing written notice can be especially problematic for anyone who does not know the name and address of the debt collector.

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— *Consumer Financial Protection Bureau, November 2014*

The Federal Trade Commission (FTC) has concluded that the benefits of providing notice of the right to cease communications exceed any marginal costs on debt collectors.⁴² Indeed, some states already require debt collectors to provide notice of the consumer's right to cease communications.⁴³ Having a uniform disclosure that is required nationally might actually decrease compliance costs. Providing this notice is the best way to protect consumers against unfair practices. Specifically, the CFPB should require that debt collectors provide the following information to consumers:

We will stop contacting you if you tell us to stop or that you refuse to pay.

This disclosure should be required in *all* written and oral communications with the consumer. If the notice is in writing, it should be in large type on the front page and set off by typography, margins, or in a boxed area.

The CFPB's regulation should also require debt collectors to cease communications whether the consumer's request is made orally or in writing through any reasonable manner, including requests through the collector's website or transmitted to the collector by email. The debt collection industry has publicly stated that responsible debt collectors will not contact consumers after receiving an oral request to cease communications.⁴⁴

If, however, the CFPB does not require recognition of oral requests to stop communications, it should at least require collectors to inform the consumer of the exact procedure for making a written request when an oral request is made.

IV. STRICTLY LIMIT COMMUNICATIONS IN INCONVENIENT PLACES

The FDCPA addresses the location of collection communications by stating that:

Without the prior consent of the consumer given directly to the debt collector or the express permission of a court of competent jurisdiction, a debt collector may not communicate with a consumer in connection with the collection of any debt --

- (1) at any unusual time or place or a time or place known or which should be known to be inconvenient to the consumer . . .
...
- (3) 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 communication⁴⁵

The CFPB should clarify and reaffirm protections regarding where consumers can be contacted in light of modern communication technologies. In keeping with section 1692c of the FDCPA and existing court decisions,⁴⁶ the CFPB should require debt collectors to comply with the consumer’s expressed preferences regarding when, where, and how the debt collector should communicate with the consumer. Debt collectors should be bound by consumer preferences whether they are expressed in a writing sent by postal mail, via email, by filling out a form made available through the collector’s website, or orally. Moreover, creditors, debt buyers, and debt collectors should be required to record consumer preferences, communicate them to any subsequent debt collectors, and abide by these restrictions in future collection efforts.

A. Strictly Limit Communications to Consumers at their Workplaces

Communications at a consumer’s place of employment run the gamut from potentially causing the consumer’s discharge because of the employer’s prohibition against receiving such calls to being potentially embarrassing because of privacy reasons. Moreover, evidence suggests that communications at a consumer’s place of employment are inconvenient because the calls interrupt the consumer’s concentration. For example, one study found that even brief interruptions resulted in twice as many errors and another study reported that it takes an average of 25 minutes to resume a task after interruption and an additional 15 minutes after that to regain the same level of focus.⁴⁷

... a debt collector’s own training manual labeled communications from debt collectors to consumers who are at work as “inherently inconvenient.”

Debt collection communications are likely to be even more disruptive than other types of communications due to their stressful nature. Studies show that simply being in debt is stressful and may affect the consumer’s health.⁴⁸ Not surprisingly, debt collection efforts are likely to add to that stress. Aggressive debt collection efforts have caused such significant emotional distress as to cause physical illness.⁴⁹ Not surprisingly, a debt collector’s own training manual labeled communications from debt collectors to consumers who are at work as “inherently inconvenient.”⁵⁰

Given these concerns, the CFPB should closely limit communications to consumers at the workplace. The regulation should require debt collectors to ask, immediately after disclosing the debt collection purpose of the call, if it is convenient for the consumer to talk at that time. If the consumer responds that calls at work are inconvenient or gives any other indication during the contact that she does not wish to receive calls there, the debt collector should be required to terminate the call and make no further calls to the consumer at work.

The CFPB should also clarify and strengthen the FDCPA’s prohibition on calls to the workplace where a debt collector “knows or has reason to know that the consumer’s employer prohibits the consumer from receiving such communication.”⁵¹ Specifically, the CFPB should clarify that if a collector knows by any means—for example, the employer’s website or previous contacts with workers in that workplace—that an employer prohibits workplace calls, then the collector violates the FDCPA by calling consumers there.

B. Require Confirmation that Communication is Convenient

Unlike calls to landlines that always reach the consumer at home, debt collectors contacting consumers on their cell phones or other mobile communication devices are quite likely to communicate with the consumer in inconvenient places. For example, the consumer might be driving in the car, at work, or in a public place and unable to have a private conversation.

As previously noted, the FDCPA forbids communication with consumers when debt collectors “know” or “should know” that the place is inconvenient.⁵² Thus, debt collectors must cease communications when consumers inform them that the place is inconvenient, even if consumers do not use precise legal language to inform them of the inconvenience.⁵³ Moreover, the FDCPA’s prohibition on communications when the debt collector “should know” that the place is inconvenient strongly suggests that the collector has a burden to attempt to determine the times or places that are unusual or inconvenient for a particular consumer. This is particularly true where debt collectors knowingly make use of mobile communication devices, such as cell phones, that enable them to contact the consumers regardless of location.

Thus, when debt collectors choose to contact consumers using mobile communication devices, or when they do not know whether the number is a landline or a cell phone, the CFPB should require them to ask, immediately after disclosing the debt collection purpose of the call, if it is convenient for the consumer to talk at that time. If the answer is “no,” the collector should politely end the call by asking when it would be convenient to talk and try again at another time.

V. STRICTLY LIMIT THE PERMISSIBLE TIMING OF COLLECTION COMMUNICATIONS

The FDCPA restricts the timing of permissible collection communications by providing that:

Without the prior consent of the consumer given directly to the debt collector or the express permission of a court of competent jurisdiction, a debt collector may not communicate with a consumer in connection with the collection of any debt --

- (1) at any unusual time or place or a time or place known or which should be known to be inconvenient to the consumer. In the absence of knowledge of circumstances to the contrary, a debt collector shall assume that the convenient time for communicating with a consumer is after 8 o'clock [A.M.] and before 9 o'clock [P.M.], local time at the consumer's location.⁵⁴

The CFPB should clarify and reaffirm protections regarding when consumers can be contacted in light of modern communication technologies.

A. Limit the Timing of Phone Calls and Texts

The FDCPA defines the term “communication” broadly to mean “the conveying of information regarding a debt directly or indirectly to any person through **any medium**.”⁵⁵ As such, the 8:00 A.M. to 9:00 P.M. window when communications are presumed convenient applies generally to any medium and is not limited to a particular method of communication.⁵⁶ The CFPB should clarify that the statute applies to both phone calls and text messages.

The 8:00 A.M. to 9:00 P.M. window when debt collection communications are presumed convenient applies generally to any medium and is not limited to a particular method of communication.

Like phone calls, text messages often cause a disruptive, audible alert. Many people leave these alerts on at night so that they may be contacted in case of emergencies. One study found that “44 percent of cell [phone] owners have slept with their phone next to their bed because they wanted to make sure they didn’t miss any calls, text messages, or other updates during the night.”⁵⁷ Another study found that 65 percent of adults with cell phones say they have slept with their cell phone on or next to their bed, with even higher percentages of lower income adults and parents reporting sleeping with or next to their phones.⁵⁸

Collectors can easily time text messages so that they arrive during the 8:00 A.M. to 9:00 P.M. time period that is presumed convenient. There is no reason for collectors to send these messages at nighttime unless the debt collector has received permission to do so from the consumer.

B. Where There Is Conflicting Evidence about the Consumer’s Location, Restrict the Timing of Collection Communications until Location is Confirmed

In addition to ensuring that the 8:00 A.M. to 9:00 P.M. communication window applies to all types of communications, the CFPB should also require debt collectors to take reasonable steps to ensure that they are communicating with consumers during the window of time pertinent to the time zone where the consumer resides.

When consumers move, they may choose to keep a cell phone number with an area code that corresponds to their former home. One study found that more than 1 in 10 adults live in a different state than the one associated with their cell phone number.⁵⁹ Thus, mobile phone area codes may not correctly indicate the time zone where a consumer currently resides.

Similarly, the consumer’s mailing address may not correctly indicate the time zone in which a consumer currently resides. Over a two-year period, 12 percent of the United States population moved at least once.⁶⁰ Relocation rates are even higher with low-income consumers, exceeding 50 percent in a two-year period.⁶¹ Moreover, as debts age,⁶² the address recorded by the original creditor is an increasingly unreliable indicator of the consumer’s current location given that more than one-third of the domestic population relocates in a five-year period.⁶³

In light of these statistics, CFPB regulations should specify that debt collection communications should only be made in hours that are **convenient in all time zones where data indicates that the debtor may reside**. For example, if the debtor’s cell phone number has a Los Angeles area code but records show an address in Georgia, collection communications should be limited to 11:00 A.M. to 9:00 P.M. eastern time to avoid potentially contacting the consumer prior to 8:00 A.M. if she resides on the West coast or after 9:00 P.M. if she resides on the East coast. Debt collectors should continue to assume that they do not know the consumer’s location until they have verified it.

CFPB regulations should specify that debt collection communications should only be made in hours that are **convenient in all time zones where data indicates that the debtor may reside**.

VI. PROTECT CONSUMER PRIVACY BY PROHIBITING CERTAIN TYPES OF COMMUNICATIONS AND LIMITING OTHER TYPES EXCLUSIVELY TO CONSUMERS WHO OPT-IN

The drafters of the FDCPA were concerned about protecting the privacy of consumers facing debt collection. When enacting the statute, Congress noted that “[a]busive debt collection practices contribute to . . . invasions of individual privacy.”⁶⁴ As drafted, the FDCPA protects consumer privacy by restricting communications with third parties,⁶⁵ prohibiting “communicating with a consumer regarding a debt by post card,”⁶⁶ and prohibiting “any language or symbol . . . on any envelope when communicating with a consumer by use of the mails or by telegram, except that a debt collector may use his business name if such name does not indicate that he is in the debt collection business.”⁶⁷

The CFPB should clarify and reaffirm the FDCPA’s consumer privacy protections by prohibiting or requiring express consumer opt-in for collector-initiated communications via the following:

- **Social Media.** Social media is designed to allow users to connect and share information through websites and apps. Currently, some debt collectors contact consumers through social media. For example, a debt collector using social media to collect a debt might publicly disclose information about a debt (e.g. posting a message on a consumer’s Facebook page that is then visible to other Facebook users).⁶⁸ Such communication is analogous to a post card, and is an unfair practice in violation of section 1692f of the FDCPA. Regulations should clarify that any communication by a debt collector that can be viewed by others online (e.g. posts to social media, bulletin boards, chat rooms, or blogs) is prohibited. Such regulation would be consistent with guidance on social media issued by the Federal Financial Institutions Examination Council.⁶⁹

- **Email.** Email communications about a debt raise two issues. One issue is when emails can replace written disclosure requirements, such as the verification notice required by section 1692g of the FDCPA. If debt collectors want to replace legally required written communications with an email, they must first have obtained consumer consent and ensure compliance with the requirements of the E-Sign Act, which defines when a consumer can be deemed to have consented to receive electronic records instead of paper writings.⁷⁰

The second issue involves questions about protecting the consumer's privacy. Privacy issues arise because consumers may share an email account with another person or access their account at public computers visible to passers-by, or use an employer-provided email account where the employer reserves the right to access all employee email messages. Emails sent to email accounts that are shared or viewable by employers are analogous to post cards and prohibited by section 1692f of the FDCPA. While many consumers have personal email that others cannot access, debt collectors cannot determine whether messages to a particular email address may be viewed privately.

The best way to address privacy concerns is to only permit emails when the consumer opts-in to email communications from the debt collector. If the email is not intended to replace legally required written communications, debt collectors can allow consumers to opt-in to email communications over the phone or via online forms at the debt collector's website or by an email from the consumer to the debt collector.

- **Faxes.** Communications by fax frequently arrive at a shared fax machine in a public area, meaning that anyone with access to that area might be able to view them. As a result, faxes sent to shared machines are analogous to post cards and prohibited by section 1692f of the FDCPA. As with email accounts, some fax machines may be private to individual consumers. Again, since debt collectors cannot determine whether a machine is private from the fax number, the best way to address privacy concerns is to only permit fax messages when the consumer opts-in to fax communications from the debt collector.
- **Voicemail.** Voicemail may be private to an individual consumer or shared with multiple parties. The FDCPA requires debt collectors to identify themselves in collection communications⁷¹ and also strictly limits debt collection communications with third parties.⁷² When people hear someone else's voicemail message from a collector, the consumer's privacy is infringed. The CFPB should codify current case law⁷³ to ensure that *Foti v. NCO Financial Systems, Inc.*, 424 F. Supp. 2d 643 (S.D.N.Y. 2006) remains the rule. Unless the consumer specifically opts-in to voicemail communications from the debt collector at that phone number, collectors should be permitted to leave voicemail messages *only* when the outgoing voicemail message indicates that the message is private to the consumer who allegedly owes the debt.

When is a Voicemail Message Permitted?

In each of the following examples, a debt collector is attempting to reach the debtor Ashton Brown, who has **not** opted-in to receive voicemail messages from the debt collector. The message the debt collector hears on the voicemail determines whether the debt collector is permitted to leave a message as follows:

Voicemail Message Permitted:

Example 1: “Hi, you have reached Ashton Brown. Please leave a message.”

Voicemail Message NOT Permitted:

Example 2: “Hi, you have reached the Brown residence. Please leave a message.”

Example 3: “Hi, you have reached Ashton, Bernice, and Claire. Please leave a message.”

Example 4: “You have reached 555-1212. Please leave a message.”

Example 5: No outgoing voicemail message.

In sum, where voice mail messages, emails, or faxes may be viewed or heard by others, they should be prohibited as violations of section 1692f of the FDCPA. Debt collectors should, however, be permitted to contact consumers using these methods when the consumer specifically opts-in and agrees to receive those communications, or – as in the case of a private voicemail message – when the collector can be certain that the communication is personal to the consumer alone.

Consumers who have opted-in to one or more of these communication methods must be allowed to **withdraw their consent at any point**. The CFPB should require all debt collection email messages to provide a link to allow consumers to unsubscribe from all future email messages.⁷⁴ Consent granted to the original creditor to contact the consumer by any of these methods should not be interpreted as consent to such contact by a debt collector.

CONCLUSION

In light of changes in communication technology since the FDCPA was originally adopted nearly 40 years ago, the CFPB should modernize and clarify the FDCPA's communication-related protections for consumers by adopting regulations addressing when, where, how, and how often consumers can be contacted.

In summary, our recommendations are as follows:

- **Limits on calls.** A debt collector should be permitted to call a consumer on the phone up to **three times** a week (Sunday to Saturday), resulting in up to three voicemail messages (if permissible) per week.
 - If the debt collector speaks to a consumer by phone, the collector cannot initiate any further phone calls that week unless the consumer requests additional contacts.
 - Every time that the debt collector causes the consumer's phone to ring should count as one call – whether or not the debt collector actually speaks to the consumer.
- **Prohibit Calls or Texts to Cell Phones Absent Opt-In.** The CFPB should adopt a regulation specifying that:
 - All calls and text messages to cell phones absent consumer consent violate the FDCPA, even if the phone is dialed manually and the communication would not otherwise violate the TCPA.
 - Consumers should be able to revoke their consent to receive calls or text messages on their cell phone either orally or in writing.
- **Cease Communication Notice.** The CFPB should require that:
 - Collectors provide to consumers a notice of consumers' right to request a full cessation of communication from collectors in *all* communications, including oral ones.
 - Collectors must cease communications when the request to cease communication is made to the collector in any manner, including by filling in a request on the collector's website or transmitted to the collector by email.
 - Collectors must cease communication in response to an oral request from the consumer. Or at least, when a consumer makes an oral request that

communication cease, collectors should be required to inform the consumer of the exact procedure for making a written request.

- **Strictly Limit Communications to the Workplace.** Collectors who call consumers at work should be required to:
 - Ask, immediately after disclosing the debt collection purpose of the call, whether it is convenient for the consumer to receive calls at work, and
 - Terminate the call and make no further calls to the consumer at work if the consumer responds that calls there are inconvenient or gives any other indication during the contact that she does not wish to receive calls there.

- **Limit Times Allowed to Both Phone Calls and Texts.**
 - The allowed daily calling times in the FDCPA should apply equally to texts as it does to phone calls.
 - Communications should only be made in hours that are convenient in all time zones where data indicates that the debtor may reside.

- **Protect the Privacy of Consumers.**
 - Where online communications may be viewed or heard by others, they should be prohibited as violations of section 1692f of the FDCPA.
 - Debt collectors should be permitted to contact consumers using voice mail messages, emails, or faxes when the consumer specifically opts-in and agrees to receive those communications. Voicemail messages are also permissible when the collector can be certain that the voicemail is private to the individual consumer alone.
 - Consumers must be allowed to withdraw their consent at any point and consent granted to the original creditor to contact the consumer by any of these methods should not be interpreted as consent to such contact by a debt collector. All collection emails should include an unsubscribe link.

END NOTES

¹ The CFPB has authority to make rules “necessary or appropriate” to its ability to enforce the FDCPA and “to prevent evasions thereof.” 12 U.S.C. § 5512. It also has general authority to issue “rules with respect to the collection of debts by debt collectors.” 15 U.S.C. § 1692l(d).

² The CFPB has independent authority to ban unfair, deceptive, or abusive acts or practices. 12 U.S.C. § 5531.

³ The CFPB has independent authority to ban unfair, deceptive, or abusive acts or practices. 12 U.S.C. § 5531.

⁴ 15 U.S.C. § 1692e(11).

⁵ 15 U.S.C. § 1692c(b).

⁶ 15 U.S.C. § 1692d.

⁷ 15 U.S.C. § 1692e.

⁸ 15 U.S.C. § 1692f.

⁹ 15 U.S.C. § 1692d.

¹⁰ See, e.g., *Latimore v. Gateway Retrieval, LLC*, No. 1:12-CV-00286-TWT, 2013 WL 791258, at *2 (N.D. Ga. Feb. 1, 2013) *report and recommendation adopted*, No. 1:12-CV-286-TWT, 2013 WL 791308 (N.D. Ga. Mar. 4, 2013) (stress from collection call threatening plaintiff with jail caused gastro esophageal reflux disease symptoms to reactivate); *Gilmore v. Account Mgmt., Inc.*, No. CIV.A.1:08CV1388JOF, 2009 WL 2848278, at *11 (N.D. Ga. Apr. 27, 2009) *report and recommendation adopted as modified*, No. CIV.A.1:08CV01388JOF, 2009 WL 2848249 (N.D. Ga. Aug. 31, 2009) *aff'd in part, vacated in part*, 357 F. App'x 218 (11th Cir. 2009) (awarding damages to plaintiff who experienced chest pains after repeated collection calls and other FDCPA violations); *GreenPoint Credit Corp. v. Perez*, 75 S.W.3d 40 (Tex. App. 2002) (affirming jury verdict of \$5 million in compensatory damages against debt collector; elderly consumer suffered severe shingles-related sores, anxiety, nausea, and elevated blood pressure due to repeated telephone and in-person harassment over a debt she did not owe).

¹¹ See, e.g., Fed. Trade Comm'n, *FTC Takes Action to Stop Phantom Debt Scam That Targeted Spanish-Speaking Consumers Nationwide*, Oct. 23, 2014, <http://www.ftc.gov/news-events/press-releases/2014/10/ftc-takes-action-stop-phantom-debt-scam-targeted-spanish-speaking> (describing more than \$2 million in payments made by consumers on non-existent debts due to aggressive collection tactics); Rachel Nolan, “Behind the Cover Story: Jake Halpern on Debt, HBO and His Mother,” *N.Y. Times*, Aug. 18, 2014, <http://6thfloor.blogs.nytimes.com/2014/08/18/behind-the-cover-story-jake-halpern-on-how-his-mom-inspired-an-investigation-into-debt-collection/> (describing how Jake Halpern’s mother paid off an insistent debt collector for a debt that she did not owe to get them to stop harassing her).

¹² Consumer Fin. Prot. Bureau, *Fair Debt Collection Practices Act: CFPB Annual Report 2015* (Mar. 2015), available at: http://files.consumerfinance.gov/f/201503_cfpb-fair-debt-collection-practices-act.pdf.

¹³ See, e.g., *State of West Virginia ex rel., et al. v. CashCall, Inc. et al.*, 2012 WL 11875223, Final Order on Phase I of Trial: The State’s Debt Collection Claims at ¶¶ 50 (W.Va. Circuit Court of Kanawha County, Sept. 10, 2012) (internet-based lender admitted that “10-20 calls per day, and 1,000 calls over several months, were not unusual or unreasonable.”); *Meadows v. Franklin Collection Serv., Inc.*, 414 Fed. Appx. 230 (11th Cir. 2011) (approximately 300 calls over a two and a half year period); *Rucker v. Nationwide Credit, Inc.*, 2011 WL 25300 (E.D. Cal. Jan. 5, 2011) (approximately 80 phone calls in one year); *Krapf v. Nationwide Credit, Inc.*, 2010 WL 2025323 (C.D. Cal. May 21, 2010) (four to eight calls daily for two months).

¹⁴ *Economic Report of the President* 244 (Jan. 2009), available at: <http://www.gpo.gov/fdsys/pkg/ERP-2009/pdf/ERP-2009.pdf>.

¹⁵ Letter from Patrick Morris, Chief Executive Officer, ACA International, to Monica Jackson, Consumer Financial Protection Bureau, 40 (Feb. 27, 2014), available at:

<http://www.acainternational.org/files.aspx?p=/images/31323/aca-anpr-comments.pdf> (“Although the FDCPA does not define a specific call frequency to a consumer, ACA supports a standard to limit the number of collections call attempts to no more than six times per day per unique debt . . .”)

¹⁶ See *Meadows v. Franklin Collection Serv., Inc.*, 414 F. App'x 230, 232 (11th Cir. 2011) (“According to [debt collector's] policy, collection calls are made on a per debt basis, so the more debts that a debtor has with [debt collector] the more calls that [debt collector] makes to a debtor.”).

¹⁷ See, e.g. *Jones v. Rash Curtis & Associates*, C 10-00225 JSW, 2011 WL 2050195, at *3 (N.D. Cal. Jan. 3, 2011) (179 calls over the course of the year are insufficient to establish a violation of 15 U.S.C. § 1692d or 15 U.S.C. § 1692d (5)); *Arteaga v. Asset Acceptance, LLC*, 733 F. Supp. 2d 1218, 1227 (E.D. Cal. 2010) (even if true, plaintiff's claims of daily or almost daily calls for about six months are legally insufficient to show a violation of 15 U.S.C. § 1692d or 15 U.S.C. § 1692d (5)).

¹⁸ See, e.g., *Carman v. CBE Grp., Inc.*, 782 F. Supp. 2d 1223, 1232 (D. Kan. 2011) (Court found that “record is lacking of any indicia of the type of egregious conduct raising issues of triable fact when coupled with a high call volume” despite debt collector making 149 calls to the consumer in a two month period); *Waite v. Fin. Recovery Servs., Inc.*, 2010 WL 5209350, at *3 (M.D. Fla. Dec. 16, 2010) (“[C]ourts have found that even ‘daily’ calls, unaccompanied by other egregious conduct, such as calling immediately after hanging up, calling multiple times in a single day, calling places of employment, family, or friends, calling at odd hours, or calling after being asked to stop, is insufficient to raise a triable issue of fact for the jury.”)

¹⁹ 940 Code Mass. Regs. § 7.04(1)(f) (It is an unfair or deceptive act or practice for creditors to “[i]nitiat[e] 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 or 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 or her personal telephone number, for each debt.”) and 209 Code Mass. Regs. 18.14(1)(d) (Without prior consent of the consumer, the debt collector may not “engage[] any consumer in communication via telephone or via text messaging, initiated by the debt collector, in excess of two such communications in each seven-day period to a consumer's residence or cellular telephone and two such communications in each 30-day period other than at a consumer's residence, or cellular telephone for each debt”); Wash. Rev. Code § 19.16.250(13)(a), (b) (“A communication shall be presumed to have been made for the purposes of harassment” if the debtor is contacted more than once per week at work or the debtor or spouse are contacted more than three times per week in “any form, manner, or place.”).

²⁰ *Id.*

²¹ See discussion *infra* in Sec. VI.

²² Causing the telephone to ring repeatedly also violates the FDCPA. 15 U.S.C. § 1692d(5). See, e.g., *Meadows v. Franklin Collection Serv., Inc.*, 414 F. App'x 230, 234 (11th Cir. 2011) (“The statute itself recognizes that answering the phone is not necessary for there to be harassment. This makes good sense because a ringing telephone, even if screened and unanswered, can be harassing, especially if it rings on a consistent basis over a prolonged period of time and concerns debts that one does not owe. As Meadows testified, even though she did not answer every call, she had to stop whatever she was doing to see who was calling. And, the reason Meadows did not answer the calls was because she had previously told Franklin multiple times that she did not owe the debt and the debtors did not live with her. Thus, a reasonable juror could find that Franklin's telephone calls were harassing even though Meadows did not answer many of the calls.”).

²³ 15 U.S.C. § 1692d.

²⁴ 15 U.S.C. § 1692d.

²⁵ See Fed. Comm'n Comm'n, Consumer and Governmental Affairs Bureau, *White Paper on Bill Shock* (Oct.13, 2013), <http://transition.fcc.gov/stage/Bill-Shock-White-Paper.pdf>.

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- ²⁶ Universal Service Administrative Company, *2013 Annual Report* 9, <http://usac.org/res/documents/about/pdf/annual-reports/usac-annual-report-Interactive-Layout-2013.pdf>.
- ²⁷ Lifeline is limited to one-per-household. 47 C.F.R. § 54.409(c).
- ²⁸ Letter from Mignon L. Clyburn, Acting Chairwoman, Fed. Commc'n Comm'n, to Senator Jeff Sessions, United States Senate ¶ 6 (Sept. 27, 2013), http://www.budget.senate.gov/republican/public/index.cfm/files/serve?File_id=10178adb-99c4-4866-9265-a05870eff559 (“the typical market-driven offering for pre-paid Lifeline wireless service supports 250 minutes per month”).
- ²⁹ The letter was signed by the Attorney General of all states, Puerto Rico, Guam, American Samoa, and the Virgin Islands. Letter from 54 Attorneys General and the National Association of Attorneys General to Members of Congress (Dec. 7, 2011), available at: http://signon.s3.amazonaws.com/20111207.signon.Final_HR3035_Letter.pdf.
- ³⁰ *Id.* (internal footnotes omitted).
- ³¹ Fed. Commc'n Comm'n, *In re Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, FCC 03-153, ¶ 165 (July 3, 2003), available at: https://apps.fcc.gov/edocs_public/attachmatch/FCC-03-153A1.pdf (stating that TCPA prohibitions “encompass[] both voice calls and text calls to wireless numbers”).
- ³² 47 U.S.C. § 227(b)(1)(A).
- ³³ Fed. Commc'n Comm'n, *In re Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991: Request of ACA Int'l for Clarification and Declaratory Ruling*, CG Docket No. 02-278, FCC 07-232, ¶ 9 (Jan. 4, 2008), available at: https://apps.fcc.gov/edocs_public/attachmatch/FCC-07-232A1.pdf.
- ³⁴ Fed. Commc'n Comm'n, *In re Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, FCC 12-21, ¶ 48 (Feb. 15, 2012), available at: https://apps.fcc.gov/edocs_public/attachmatch/FCC-12-21A1.pdf (discussing automated method for revoking consent); Fed. Commc'n Comm'n, *In re Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991: SoundBite Communications, Inc. Petition for Expedited Declaratory Ruling*, CG Docket No. 02-278, FCC 12-143, ¶ 7 (Nov. 29, 2012), available at: https://apps.fcc.gov/edocs_public/attachmatch/FCC-12-143A1.pdf (confirming that consent to receive autodialed calls may be revoked). *See also Gager v. Dell Fin. Servs., LLC*, 727 F.3d 265, 270 (3d Cir. 2013). *But see Saunders v. NCO Fin. Sys., Inc.*, 910 F. Supp. 2d 464, 468-69 (E.D.N.Y. 2012).
- ³⁵ Fed. Commc'n Comm'n, *In re Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991: SoundBite Communications, Inc. Petition for Expedited Declaratory Ruling*, CG Docket No. 02-278, FCC 12-143, ¶ 13 (Nov. 29, 2012), available at: https://apps.fcc.gov/edocs_public/attachmatch/FCC-12-143A1.pdf. *See also Adamcik v. Credit Control Servs., Inc.*, 832 F. Supp. 2d 744, 750-51 (W.D. Tex. 2011).
- ³⁶ 12 U.S.C. § 5512 (authority to make rules “necessary or appropriate” to its ability to enforce the Fair Debt Collection Practices Act (FDCPA) and “to prevent evasions thereof”); 15 U.S.C. § 1692l(d) (general authority to issue “rules with respect to the collection of debts by debt collectors”); 12 U.S.C. § 5531 (authority to ban unfair, deceptive, or abusive acts or practices).
- ³⁷ 15 U.S.C. § 1692c(c).
- ³⁸ CFPB, Office for Older Americans, A Snapshot of debt collection complaints submitted by older consumers (Nov. 2014), available at: http://files.consumerfinance.gov/f/201411_cfpb_snapshot_debt-collection-complaints-older-americans.pdf.
- ³⁹ Fed. Trade Comm'n, *Collecting Consumer Debts: The Challenges of Change*, at 27 (Feb. 2009) available at: <https://www.ftc.gov/sites/default/files/documents/reports/collecting-consumer-debts-challenges-change-federal-trade-commission-workshop-report/dcwr.pdf>.
- ⁴⁰ 15 U.S.C. § 1692c(c).

⁴¹ Fed. Trade Comm'n, *Collecting Consumer Debts: The Challenges of Change*, at 26 (Feb. 2009) available at: <https://www.ftc.gov/sites/default/files/documents/reports/collecting-consumer-debts-challenges-change-federal-trade-commission-workshop-report/dcwr.pdf>.

⁴² *Id.* at 27.

⁴³ National Consumer Law Center, *Fair Debt Collection*, at 5.3.9.4 (8th ed. 2014). *See, e.g.*, Colo. Rev. Stat. § 12-14-105(e); 940 Mass. Code Regs. 7.04(i) (required notice of rights to cease communications at workplace); 209 Mass. Code Regs. 18.14(e) (required notice of rights to cease communications at workplace).

⁴⁴ This point was stated by several representatives of the debt collection industry at a meeting sponsored by Accounts Receivable Management attended by NCLC attorney Margot Saunders, other consumer representatives, and staff of the CFPB in Washington D.C. on January 24, 2014.

⁴⁵ 15 U.S.C. § 1692c(a).

⁴⁶ *See, e.g., Horkey v. J.V.D.B. & Assocs.*, 333 F.3d 769 (7th Cir. 2003) (continuing to telephone and talk to consumer at work after she said she could not talk at work and would call collector from home violated § 1692c(a)(3)); *Civerton v. Fed. Fin. Group, Inc.*, 399 F. Supp. 2d 96 (D. Conn. Sept. 30, 2005) (debt buyer violated § 1692c(a)(1), (3) by repeatedly calling after consumer expressly requested collector not to do so because he was not permitted to receive personal calls at work).

⁴⁷ Sue Shellenbarger, "The Biggest Office Interruptions Are . . ." *The Wall Street Journal* (Sept. 10, 2013), available at: <http://www.wsj.com/articles/SB10001424127887324123004579057212505053076> (summarizes findings of multiple studies).

⁴⁸ *See, e.g.,* Laura Choi, Federal Reserve Bank of San Francisco, "Financial Stress and Its Physical Effects on Individuals and Communities," *Community Development Investment Review*, available at: <http://www.frbsf.org/community-development/files/choi.pdf>; Lucia F. Dunn & Ida A. Mirzaie, *Determinants of Consumer Debt Stress: Differences by Debt Type and Gender*, Center for Human Resource Research, Ohio State University, available at: <http://www.chrr.osu.edu/content/surveys/cfm/doc/DSI-Working-Paper-07-19-12.pdf>

⁴⁹ *See, n.10 supra.*

⁵⁰ *Dauval v. MRS BPO, L.L.C.*, 2013 WL 9921550, at *9 (M.D. Fla. June 27, 2013) (debt collector's own training manual noted that calls to places of employment are "inherently inconvenient.").

⁵¹ 15 U.S.C. § 1692c(a)(3).

⁵² 15 U.S.C. § 1692c(a).

⁵³ National Consumer Law Center, *Fair Debt Collection*, at 5.3.2.4 (8th ed. 2014). *See also, Horkey v. J.V.D.B. & Associates, Inc.*, 333 F.3d 769, 773 (7th Cir. 2003) ("It is therefore enough to put debt collectors on notice under § 1692c(a)(3) when a consumer states in plain English that she cannot speak to the debt collector at work.").

⁵⁴ 15 U.S.C. § 1692c(a).

⁵⁵ 15 U.S.C. § 1692a(2) (emphasis added).

⁵⁶ National Consumer Law Center, *Fair Debt Collection*, at 5.3.2.3 (8th ed. 2014).

⁵⁷ Pew Research Internet Project, *Mobile Technology Fact Sheet*, available at <http://www.pewinternet.org/fact-sheets/mobile-technology-fact-sheet/> (last viewed Jan. 26, 2012).

⁵⁸ Pew Research Center Internet, Science & Tech, *Cell phones and American adults*, available at: <http://www.pewinternet.org/2010/09/02/cell-phones-and-american-adults/> ("Lower income adults – those earning under \$30,000 annually – are also more likely to have slept with their phone, as are parents, of whom 72% sleep with their phone, compared with 62% of non-parents.").

⁵⁹ Benjamin Skalland and Meena Khare, *Geographic Inaccuracy of Cell Phone Samples and the Effect on Telephone Survey Bias, Variance, and Cost* 1 (2013),

http://www.amstat.org/sections/SRMS/proceedings/y2012/Files/400225_500647.pdf ("about 12 percent of

cell phone-only adults reside in a state that differs from the state associated with the cell-phone number”).

⁶⁰ See, e.g., Allison Fields and Robert Kominski, United States Census Bureau, *America: A Nation on the Move*, (Dec. 10, 2012), <http://blogs.census.gov/2012/12/10/america-a-nation-on-the-move> (“Between 2011 and 2012, 12 percent of people in the country over age 1 moved at least once.”).

⁶¹ Rebecca Cohen and Keith Wardrip, Center for Housing Policy, *Should I Stay or Should I Go?: Exploring the Effects of Housing Instability and Mobility on Children 3* (Feb. 2011), <http://www.nhc.org/media/files/HsgInstabilityandMobility.pdf> (Fifty-five percent of poor families and forty-five percent of near poor families moved in the twenty-four months prior to the study as compared to thirty-one percent of non-poor families.).

⁶² See, Fed. Trade Comm’n, *The Structure and Practices of the Debt Buying Industry*, at T-7 (Jan. 2013) available at <http://www.ftc.gov/sites/default/files/documents/reports/structure-and-practices-debt-buying-industry/debtbuyingreport.pdf> (providing data on the ages of debts in collection).

⁶³ Allison Fields and Robert Kominski, United States Census Bureau, *America: A Nation on the Move*, (Dec. 10, 2012), <http://blogs.census.gov/2012/12/10/america-a-nation-on-the-move> (“35 percent of people responded that they moved at least once in the last five years”).

⁶⁴ 15 U.S.C. § 1692.

⁶⁵ 15 U.S.C. § 1692c(b).

⁶⁶ 15 U.S.C. § 1692f(7).

⁶⁷ 15 U.S.C. § 1692f(8).

⁶⁸ See Carter Dougherty, “Debt Collectors Posing as Facebook Friends Spur Watchdogs”, *Bloomberg* (Jan. 24, 2013), available at: <http://www.bloomberg.com/news/articles/2013-01-24/facebook-friends-fronting-debt-collectors-draw-u-s-regulation>.

⁶⁹ Fed. Fin. Inst. Examination Council, *Social Media: Consumer Compliance Risk Management Guidance* (Dec. 11, 2013), available at: http://files.consumerfinance.gov/f/201309_cfpb_social_media_guidance.pdf.

⁷⁰ 15 U.S.C. § 70001(c). This issue is covered in detail in the National Consumer Law Centers’ Comments to the CFPB’s Advance Notice of Proposed Rulemaking Regarding Debt Collection. Relevant recommendations are made in response to Question 27, which is available at:

http://www.nclc.org/images/pdf/debt_collection/comments-cfpb-debt-collection-anprm-2-28-14.pdf.

⁷¹ 15 U.S.C. § 1692e(11).

⁷² 15 U.S.C. § 1692c(b).

⁷³ See, e.g., *Foti v. NCO Financial Systems, Inc.*, 424 F. Supp. 2d 643 (S.D.N.Y. 2006). This issue is covered in detail in the National Consumer Law Centers’ Comments to the CFPB’s Advance Notice of Proposed Rulemaking Regarding Debt Collection. Relevant recommendations are made in response to Question 82, which is available at: http://www.nclc.org/images/pdf/debt_collection/comments-cfpb-debt-collection-anprm-2-28-14.pdf.

⁷⁴ Even if the CAN-SPAM Act does not apply in the debt collection context (see National Consumer Law Center, *Fair Debt Collection*, at 8.3.4 (8th ed. 2014)), its provisions can be used as a model for a separate CFPB regulation.

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