

OPERATIONS GUIDE

CALL RECORDING



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Preview

Legal Disclosure

This information is not intended to be legal advice and may not be used as legal advice. Legal advice must be tailored to the specific circumstances of each case. Every effort has been made to assure this information is up-to-date. It is not intended to be a full and exhaustive explanation of the law in any area, however, nor should it be used to replace the advice of your own legal counsel.

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Contributors



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Call Recording: The Landscape

As part of its [debt industry examination procedures](#), the Consumer Financial Protection Bureau (CFPB) focuses on four objectives:

1. To assess the quality of the regulated entity's compliance management systems, including its internal controls and policies and procedures, for its debt collection business.
2. To identify acts or practices that materially increase the risk of violations of Federal consumer financial laws in connection with debt collection.
3. To gather facts that help to determine whether a regulated entity engages in acts or practices that violate the requirements of Federal consumer financial laws.
4. To determine, in accordance with CFPB internal consultation requirements, whether a violation of a Federal consumer financial law has occurred and whether further supervisory or enforcement actions are appropriate.

Towards that goal, the CFPB's auditors and investigators will want access to a variety of your agency's policies, procedures, and, when applicable, call recordings:

from the CFPB's "Examination Procedures"

General Considerations

Completing the following examination modules will allow examiners to develop a thorough understanding of the regulated entities' practices and operations. To complete the modules, examiners should obtain and review the following as applicable:

- Policies and procedures
- *Telephone recordings*
- Monitoring procedures

Of course, recordings can only be available to the CFPB if (a) you are in a state that allows for calls to be recorded; (b) in two-party notification states, both parties have agreed to the recording; and (c) it is your policy to record calls in the first place.

Call recording can be a valuable tool. It can be used as a defense in court cases where otherwise there would be ambiguity regarding the nature and outcome of a call. Recorded calls can be used as valuable training tools, showing collectors examples of both calls that work effectively, and showing examples of calls that cross the compliance line.

Call recordings can also be a liability. A recorded call can be an admissible record of a compliance mishap. It can be a liability when it comes to data security. Like any other piece of a compliance management system, if call recordings exist in a vacuum and aren't used as a training and educational tool, then they won't do anything to improve compliance in your agency. Call recordings with obvious compliance faux pas can even be used against your agency in litigation. They also present liability issues in data security.

If you're not going to record phone calls, you should be prepared to state why. If your reason is connected to compliance lapses that you do not want saved as a liability, you'll want to come up with a better one. And examine your hiring and training procedures, too.

As it currently stands, there is nothing compelling an agency to record any of its phone calls with consumers. Whether you record calls or not is a business decision based on the needs of your own agency. If you are not going to record phone calls – for instance, if you are in a single-party-notification state (see page 8) – you should be prepared to answer the question “Why?” If your reason is connected to compliance lapses that you do not want saved as a liability, you'll want to come up with a better one. And examine your [hiring](#) and [training](#) procedures, too.

The CFPB hasn't mandated call recording – yet. But if you are recording calls, the CFPB Auditor will want to review them. From the CFPB's Examination Procedures:

*“In assessing an entity's communications, examiners should consider documents **and recordings**, including hard copies or electronic copies of letters, **voice recordings of telephone communications**, and notes made during or after telephone calls or personal visits. Examiners should review a sample of records and listen to a sample of collection calls.*”