Lessons in Collections
Compliance for Outbound Communications
Legal Disclaimer
This information contained in this whitepaper 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.
Introduction

There is no larger issue right now in collections than outbound-communications compliance. There are many rules to follow, and requirements will continue to evolve. Collections organizations need a process — for predictive dialing and outbound interactive voice response (IVR) systems in particular — that enables them to meet the requirements and dynamically create new rules for residential phones, mobile phones, and text messaging.

This white paper conveys key lessons in collections compliance for outbound communications, including:

- an overview of the compliance landscape, namely the Fair Debt Collection Practices Act (FDCPA), the Telephone Consumer Protection Act (TCPA), and impending rules from the Consumer Financial Protection Bureau (CFPB)
- requirements and restrictions for making collections outreach
- best practices in obtaining consent for debt collection communications

Compliance Landscape

Collection agencies are under intense scrutiny and their compliance risks are at an all-time high. There are many different kinds of regulations coming across at the state and federal levels as well as those imposed by collections organizations’ own internal governance. Collections organizations must comply with all of them.

Maintaining compliance can be complex and time-consuming. Collection agencies must have a contact strategy to control frequency, manage mobile opt-in, and ensure they are using proper language.

Non-compliance can result in huge penalties. Litigation often is in the form of class action, and the fines are hefty. The average FDCPA fine is $1,000 per action, and in the TCPA world, it can be anywhere from $500 to $1,500 per unsolicited phone call or text message sent to a consumer. These cases result in bad public relations for debt collectors and ultimately negatively impact customers.

Debt collection is among the most regulated industries, with myriad rules and regulations governing how, when, and why they can reach out to debtors. On the federal level, the “Big 3” are the top rules and regulations impacting outbound collections communications. These are detailed on page [insert page number].

The FDCPA, enforced by the Federal Trade Commission (FTC), governs practically all aspects of debt collection, including how third-party debt collectors can communicate with consumer debtors. The FDCPA has a significant focus on prohibiting deception, harassment, or abusive behavior.

The TCPA, enforced by the Federal Communications Commission (FCC), regulates and restricts the use of automated technology to initiate phone calls, with different sets of rules for residential phones versus mobile phones and text messages. Recently there has been a surge in TCPA class-action suits. In California alone, five to ten lawsuits are filed each week in federal court, according to law firm Loeb & Loeb LLP.
A new set of rules will be issued by the CFPB, a powerful new regulatory and rule-making agency created under the Dodd-Frank Act. The CFPB has more than 1,300 employees, more than half of which are in supervision and enforcement.

The CFPB shares collections oversight with the FTC; however, unlike the FTC, the CFPB has rule-making authority. The CFPB is concerned with accuracy of information and making sure consumers know their rights.

In its short existence, the agency has opened its complaint database to debt collection complaints and issued letter templates for consumers to help them respond to debt-collection organizations. It also has identified unfair, deceptive, and abusive practices (UDAAP) for debt collectors to avoid. It issued a separate bulletin providing guidance on how to comply with the FDCPA and the Dodd-Frank Act, specifically when it comes to making representations to consumers about the impact of paying debt in relation to their credit reports, credit scores, and creditworthiness.

In addition to the federal rules and regulations, many states place further limitations and requirements on organizations’ outbound collections communications.

**Best Practices**

Compliance is complex, time-consuming, and expensive. But it is less costly than the fines levied for non-compliance and the subsequent fallout. Every organization must determine its own balance of risk tolerance and effort. While no two organizations are the same, there are best practices that virtually every collections organization would benefit from adopting.

These best practices can help compliance organizations mitigate risks and reduce errors and costs; maintain compliance and enhance the customer experience; and improve collection rates and efficiency.

Every organization should have a compliance strategy. Often it takes legal guidance and advice to write and audit outbound communications. The strategy should include following all the rules in addition to thorough record keeping and having a rapid-response system proving action taken.

When looking at obtaining consent for debt collection communications, for both voice and text messaging, organizations must understand what consent means. Providing a cell phone number to a creditor (e.g., as part of a credit application) may seem to reasonably evidence prior express consent by the cell phone subscriber to be contacted at that number regarding the debt – however, case law often suggests otherwise. Clear consent language on applications, explaining that by providing a cell phone number, consumers are consenting to calls from the first-party creditor as well as from the creditor’s business partners, provides a collection agency with better protection.

The FCC also has said that “persons who knowingly release their phone numbers have in effect given their invitation or permission to be called at the number which they have given, absent instructions to the contrary.” Yet, while the FCC has stated this, there is also clear precedent showing that many courts expect there to be explicit, clear, and consumer-friendly disclosures about what it will mean to a consumer when he shares his cell phone number on an application.
It’s important to remember that once consent is given, it also can be revoked. The Seventh Circuit Court of Appeals has said, “There is no long-term consent to call a given cell number.”

Within that framework, these best practices can help collections organization remain compliant:

- Obtain consent in writing and separately.
- Get consent at the outset of the consumer relationship, or during if necessary.
- Use clear disclosures, where possible: name the specific creditor; consider naming third-party debt collectors or other agents; consider naming assignees/assigns that may collect the debt; and consider disclosing to consumers that they will receive autodialed, artificial voices and/or prerecorded message calls.
- Make clear that calls will be made to the phone number provided.
- Mention the purpose of the call (i.e., debt collection, matters relating to your account, etc.).
- Stop contacting an opted-in mobile number when: consent is withdrawn or a consumer cancels mobile service.
- Be aware of number portability, from residential to mobile.
Methods to obtain consent include:

- Traditional paper form: purchase agreements, sales slips, credit and loan applications
- Website: online purchase or sale; login or sign-in process
- Telephone: customer service calls; phone keypress, IVR, voice recording
- Text: opt-in, providing disclosure about mobile alerts; double opt-in consent

In regard to the CFPB consumer complaint database, collections organizations should:

- Register so they know what information CFPB is receiving about their company.
- Respond to complaints within 60 days, as required.
- Address any issues as best they can before CFPB initiates investigative or enforcement action.

**Genesys Solutions**

Collections organizations can increase control over outbound communications compliance while reducing costs through dynamic rule builder, which delivers maximum flexibility and responsiveness to changing requirements. They can validate that their rules are working properly through built-in auditing and reporting.

Contact centers need to deploy solutions that positively impact operations and meet governance requirements. Profitable business operations: increase return-on-investment; maximize efficiencies; and provide a better customer experience. To maintain compliance, they must minimize risk, increase control, and simplify compliance efforts.

Genesys provides a suite of compliance controls. These industry-leading tools simplify and enable compliant outbound contact strategies. The compliance lifecycle is comprised of five sections:

- Prevent contact to ineligible numbers through campaign filters, suppression lists, and mobile opt-in databases.
- Control contact frequency with Rules Builder to limit contact frequency and “do not contact” dates and geographic rules.
- Track consumer mobility and phone portability through safe contact windows, time zone detection, state dial rules, and mobile identification. This ensures contact during allowed hours only.
- Manage consumer consent and profile data through channel preferences, mobile opt-in, and mobile deactivations.
- Ensure agents adhere to requirements through recording, monitor-coach-bar, and voice analytics.

Genesys brings expertise to maximize opt-ins, incorporate into existing communications, and create new opt-in programs. Its tools allow users to meet continually changing requirements and lets them dynamically create new rules. For example, if a new ruling comes into play preventing calls in Massachusetts after 4 p.m., collections organizations must be able to create that rule and put it into the dialer quickly.
The Genesys Dialer allows users to seamlessly identify landlines versus mobile devices, which in turn enables them to create different treatment strategies that allow various techniques, such as predictive dials to landlines and manual mode for mobile devices.

Real-time compliance features cannot be understated. The tools allow supervisors and managers who listen to call recordings to monitor and coach in real time so they can help agents stay compliant, including ensuring they are stating the mini-Miranda. Genesys tools soon will employ speech analytics packages that will allow collections organizations to efficiently look at their recordings and identify places where they may be out of compliance.

The Business Case

The bottom line is the fewer mistakes made, the less likely the possibility of class action lawsuits that could cost millions of dollars.

One Genesys client was challenged by the fact that its collections calls were made by agents manually dialing numbers. It wanted to transform the contact center to operate with high agent efficiency and low cost-to-collect metrics, to flex with volumes and across offices, and to meet compliance requirements. The company deployed Genesys Cloud Dialer, Predictive, Preview, and Outbound IVR. It simplified its compliance efforts with built-in capabilities, including restrict contact attempts to state-specific safe dialing windows; use preview dialing mode to call mobile number; limit contact attempts to five calls and one voice message per day.

The company experienced a 100 percent increase in the amount of debt recovered per agent and a 20 percent decrease in agent headcount while increasing overall collections. Through these products, it simplified its compliance efforts.

Another Genesys client wanted to build its opt-in database by launching large amounts of outbound IVR calls to landlines. Essentially, the bank asked its customers if they’d like to have another phone number on file and whether they can send text messages and mobile contacts to those devices. Seventy-nine percent of consumers provided the initial consent; 54 percent of them verified consent; and 10 percent of them provided another number. The cost per verified consent was $1.67 — a real savings and real revenue.
For More Information

For more information, visit http://www.genesys.com/about-genesys/free-trial-a.
Appendix: Federal Rules and Regulations, The Big 3

FDCPA
Fair Debt Collection Practices Act

Enforced by: Federal Trade Commission (FTC)
Enacted: 1977
Purpose: To protect consumers from false, deceptive, harassing, and abusive communications during debt collection

Applies to:
- Third-party debt collectors (lawyers, collection agencies, debt buyers)
- Consumer debts (personal, household, or family debts)

Does NOT apply to:
- Original creditors
- Business debt

Requirements:
- Disclose you are a debt collector attempting to collect a debt.
- Send written notice within five days of first contact detailing the amount owed, the name of the creditor, and there right to dispute the debt within 30 days.
- Stop collection effort if the debt is disputed (until verified).
- Provide name and address of original creditor upon request.
- File suit in a proper venue.
- Do NOT mislead, harass, or deceive.
- Do NOT contact debtors at unusual or inconvenient times or places; before 8 a.m. or after 9 p.m.
- Do NOT contact any debtor who has an attorney.
- Do NOT contact third parties.
- Stop all contact if the debtor sends written notification to stop.
**Dodd-Frank**  
*Dodd-Frank Wall Street Reform and Consumer Protection Act*

Enforced by: Consumer Financial Protection Bureau (CFPB), a new regulatory and rule-making authority created under Dodd-Frank  
Enacted: 2010

Applies to: Original creditors and their service providers (depository institutions and their affiliates; non-bank entities in residential mortgage or payday lending and private education lending)

Noteworthy:
- CFPB soon will be issuing new rules and regulation.
- CFPB shares oversight of debt collections with the FTC; has supervisory authority over debt collection institutions, including “larger participants” of markets for consumer debt collection and their service providers.
- CFPB issued a bulletin outlining prohibited activities and practices under the FDCPA called Unfair, Deceptive, or Abusive Acts or Practices (UDAAP).
- CFPB provides guidance on complying with the FDCPA and Dodd-Frank when making representations to consumers about the impact of paying debts in collections may have on credit reports, credit scores, and creditworthiness.
- CFPB opened its complaints database to debt collection complaints.
- CFPB released five action letters consumers can use to reply to debt collectors.
TCPA
Telephone Consumer Protection Act

Enforced by: Federal Communications Commission (FCC)
Enacted: 1991

Purpose: Regulates and restricts the use of automated technology to initiate phone calls

Applies to: Residential and mobile phone calls, text messages, faxes, voice messages, and prerecorded messages

Noteworthy:
- Residential calls
- TCPA only covers telephone calls that are initiated using an artificial voice or prerecorded voice message.
- Collection organizations can autodial residential landlines without running afoul of the TCPA
- Prior express consent is not required for debt collections calls made to residential landlines
- Debt collection calls are not considered telemarketing or advertising
- Mobile calls
- Debt collection calls to mobile phones require prior express consent
- Consent is required when using artificial voices/prerecorded messages or an autodialer regardless of call purpose
- Dual-purpose calls (e.g., collecting a debt and marketing) require prior express written consent
- For liability purposes there is no difference between a mobile voice call and a SMS text message.
- To determine if a phone number is residential or mobile, debt collectors typically need to turn to a third-party provider that can identify them appropriately.