CONSUMER
RELATIONS
CONSORTIUM

February 26, 2014

Monica Jackson
Office of the Executive Secretary
Bureau of Consumer Financial Protection
1700 G Street, NW
Washington, DC 20552

Re: Response of the Consumer Relations Consortium
Advance Notice of Proposed Rulemaking – Debt Collection
CFPB-2013-0033; RIN 3170-AA41

Dear Ms. Jackson:

On behalf of the Consumer Relations Consortium, please find a response to the Advance Notice of Proposed Rulemaking – Debt Collection.

Please contact the undersigned if you have questions.

Respectfully,

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This response to the Advance Notice of Proposed Rulemaking ("ANPR") is submitted on behalf of the Consumer Relations Consortium ("CRC").

Who We Are

The CRC was formed by a group of "larger market participant" collection industry executives who believe that a reasonable and knowledgeable voice is needed to address both issues and solutions in the collection industry. We firmly believe that communication – "relations" – is the key to respectful resolution of a consumer's financial situation.

Collaboration

Our mission is to collaborate with regulatory agencies to affect change resulting in industry reform that not only provides the best level of service to consumers but also ensures the critical role collections plays in the economic cycle survives, and allows product and service providers to continue to make affordable credit available to the Consumer.

Proactive Outreach

The CRC brings a unique approach to the marketplace by proactively engaging with consumer advocacy groups to bridge the gap of understanding and expectations often present between consumers and collectors. We believe that there is a true common interest among all constituents in the debt collection space; our work will yield solutions to issues that impact the ultimate stakeholder, the Consumer.

Forward-Looking Thought Leaders

The CRC is open to industry leading and forward-looking organizations that fall under the CFPB's definition of larger market participants (LMP). While industry associations have been actively engaged in this area, the LMPs collectively have the reach and resources to champion customer-centric solutions. Our client footprint, volume of accounts serviced, and ability to affect meaningful change were paramount in creating the CRC. The CRC will seek to collaborate with industry associations and work to create a catalyst for change.

Significant Impact

The founding member organizations of the CRC have a considerable impact in the debt collection space. Collectively, these members:

- serve the largest financial institutions and consumer lenders in the country
- service every major asset class in the industry including: credit cards, student loans, mortgages, auto loans, unsecured personal loans, healthcare, telecom, and utilities
- initiate millions of communications to consumers every month

Every stakeholder in the debt collection space has their own special interests. The CRC is a unique assembly of leaders that have a passion for fair, respectful, and progressive collaboration to address what is not working, and dispel misconceptions that persist in the debt collections space. We believe communication is the foundation for reform and ultimately success.

How We Operate

The CRC operates on multiple fronts:

- Quarterly chief executive meetings with the senior most executive of each participating member, to discuss the strategic direction of the CRC, the progress being made, and prioritize future focus and activities
- Quarterly functional executive meetings to discuss issues at an operational level and recommend solutions through the review of consumer needs and business best practices
- Regular meetings and discussions with the various government agencies to provide perspective, expertise, and practical, data-driven, recommendations for further consideration or implementation
- Regular outreach to consumer groups to encourage a deeper mutual understanding and create the conditions for productive discussion and data-driven compromise

Members of the CRC include:

Accounts Receivable Management, Inc.
AllianceOne Receivables Management, Inc.
Automated Collection Services, Inc.
Complete Payment Recovery Services
EOS CCA
Firstsource Advantage LLC
Integrity Solution Services, Inc.
iQor
NCB Management Services, Inc.
NCI, A Subsidiary of Altisource
Premiere Credit of North America
Radius Global Solutions
Credit Collection Services
United Recovery Systems, LP
Vital Solutions, Inc.
West Asset Management, Inc.

Collaboration with Consumer Groups

One primary objective of the CRC is to collaborate with consumer groups to find common ground and common sense solutions to debt collection issues consumers confront today. We have met informally with a number of consumer groups. Most recently, on January 24, 2014, the CRC hosted a Summit in Washington D.C. that was attended by the following consumer advocates:

Jeanne Hogarth, Vice President, Policy – Center for Financial Services Innovation

Dalié Jiménez, Associate Professor of Law & Jeremy Bentham Scholar – University of Connecticut School of Law

Patricia Hasson, President & Executive Director – Clarifi; member of the CFPB Consumer Advisory Board

Linda Sherry, Director, National Priorities – Consumer Action

Margot Saunders, Of Counsel, National Consumer Law Center

During a panel discussion and subsequent meeting at the Summit involving these consumer advocates and representatives of CRC, several issues addressed in the ANPR were discussed. The collection industry media posted the following article about the meeting and the views of the consumer advocates:

http://www.insidearm.com/daily/debt-buying-topics/debt-buying/collection-industry-tries-to-find-common-ground-with-consumer-groups/

While the consumer advocates and members of the CRC did not agree on all issues, there was generally discussion about the following:

1. Creditors and debt owners should be doing more to provide information to third party debt collectors. Debt collectors should have access to more information before commencing collection, in the event of a dispute.

2. Consumers are often concerned about whether a debt collector is legitimate and truly authorized to collect an account. Potential solutions for this would include requiring that debt collectors register with the CFPB which would make the list of registered debt collectors available to the public. Also, requiring the seller of an account to provide a "goodbye" letter to a consumer when selling an account, providing information about the purchaser, would further reduce issues regarding debt collector legitimacy and authority.

3. Pertinent information about an account, including dispute information gathered by the creditor and collection agencies, should be shared with all subsequent agencies. Information should travel with the debt. However, the idea of debt information

repository raises security concerns and duplication issues since other credit bureaus already exist.

4. Balance information is often concerning to consumers. A uniform system should be implemented to explain to the consumer how the balance was calculated. In particular, consumers need to be apprised of the balance at the time of charge-off and the addition of fees and interest to an account after it leaves the creditor.

5. Consumers would prefer non-paper, electronic communications – as opposed to U.S. Mail -- if done correctly and with consent. This could perhaps be achieved by requesting consent in the validation notice. Once consent is obtained, all communication should be electronic. Text messages will require different consent and there are restrictions on the size of the text and disclosures required. Would it be possible to waive the mini-Miranda on subsequent communications by text?

6. The validation notice language should be simplified. Further, the validation notice could contain a link to additional disclosures promulgated and approved by the CFPB and included on the debt collector website. These additional disclosures from the CFPB would address topics such as the right to cease communications or retain an attorney. In addition, could the validation notice provide an address for a website where the consumer could go to obtain verification of the debt?

7. Many consumers do not listen to voicemails. If a voicemail is left, there should be systems in place to ensure that information about the debt is not disclosed to a third party. However, if a message is left on the consumer's mobile phone, the debt collector may presume that the consumer is not sharing the mobile phone and thus may leave a robust message. In addition, if a message is being left (subject to the third party disclosure concerns discussed above), consumers would prefer information about the original creditor that would help identify the purpose of the call. Debt collection voicemails would be an excellent area for further research and testing by the CFPB.

8. The issue regarding calls continuing after a verbal cease was concerning to all participants. Further, it was suggested that a debt collector should verify with a consumer that it is a convenient time to talk before proceeding with a collection call after a right party contact is verified and the required disclosures are given.

Data Responsive to the Advance Notice of Proposed Rulemaking

For many of the issues addressed by the ANPR, the CFPB requests data. The CRC understands and supports the need for data, which is critical to implementing rules that will be most beneficial to consumers. However, the CRC is unable to provide data responsive to the ANPR because a multitude of variables will impact the data results. For instance, data regarding credit card accounts will vary greatly in some key aspects to data regarding education, health care or telecommunications accounts. Further, data regarding primary accounts (those with a first collection agency) will differ from secondary and "older" accounts. In addition, purchased accounts have key differences from those accounts owned by the original creditor. While these are just some of the data differences, they demonstrate that analysis of debt collection data can be like a "Rubik's cube" where any change in numerous factors can impact the data results as a whole. Thus, for debt collection data to be meaningful, dozens of factors must be programmed and constant, otherwise they may skew the results.

In an effort to assist the CFPB with its efforts to achieve data-driven regulations that positively impact consumers, the CRC is willing to devote its expertise in debt collection data to collaborate in analyzing data the CFPB gathers regarding the debt industry. In addition, individual CRC members may be interested in coordinating with the CFPB on consumer testing of communications disclosures.

Q1: What data are available regarding the information that is transferred during the sale of debt or the placement of debt with a third-party collector and does the information transferred vary by type of debt (e.g., credit card, mortgage, student loan, auto loan)? What data are available regarding the information that third-party debt collectors acquire during their collection activities and provide to debt owners?

The information provided during the sale of debt or the placement of debt with a third party collector varies widely. Typical data made available to buyers and third party collectors includes:

- Name of Account Owner;
- Account Number(s);
- Consumer's Name, Address(es), Phone Number(s),
- Current Balance
- Last Payment Date
- Last Payment Amount
- Date of Origination
- Date of Charge off
- Charge-Off Balance
- Date of First Delinquency
- Original Creditor Name
- Social Security Number
- Interest Rate

Data available for transfer during debt sales is a function of a variety of factors, including:

- Whether the originator is required by current law to keep and maintain certain records;
- Technological limitations on the seller or buyer side on the transfer of data;
- Length of time current law requires the originator to keep and maintain such records;
- Whether the originator is a going concern, is a successor by merger or acquisition, or has altogether ceased operations;
- Nature of the original obligation;
- Type of documentation that evidences the debt;
- Agreement between the originator and purchaser;
- Size and sophistication of the originator and buyer;
- Sale volume;
- Age of debt;
- Timing of the sale relative to defaults;
- Whether the debts are consumer or commercial;
- Whether the obligors are jointly or severally liable;
- Whether the obligor is a guarantor or a surety;
- Data and information collection practices of the originator;
- Proprietary client-relationship management systems and coding;
- Duration of the original relationship between the originator and consumer;
- Occurrence of events affecting the obligation, including modifications to the governing terms and conditions, court and regulatory orders, bankruptcy proceedings, changes in federal or state law or regulations, death or incapacity of a borrower or co-borrower;
- Change of contact information of the obligor;
- Data losses resulting from system failures, conversions or errors;
- Past and future developments in electronic storage, document management and archiving practices;
- Whether the debt was serviced by a third party on behalf of the debt owner during the life-cycle of the debt, which may or may not have been provided to the debt owner.

The type of information transferred does vary by type of debt. The obligation of an originator to retain records, and which records it is required to maintain, is a function of the legal requirements imposed on the industry. Mandatory recordkeeping requirements do not exist across industries and markets. For example, under current law, originators of open end consumer debts are required to retain records for two years, and effective January 10, 2014, for certain transactions, three years. 12 C.F.R. § 1026.25, amended, 78 FR 11410 (Feb. 15, 2013) (eff. Jan. 10, 2014). HIPAA regulations do not include medical record retention requirements, but the Centers for Medicare and Medicaid Services (CMS) requires that patient records for Medicare beneficiaries be retained for a period of 5 years (see 42CFR482.24 (b)); http://www.hhs.gov/ocr/privacy/hipaa/faq/safeguards/580.html. Federal student loan recordkeeping requirements are specified in 34 CFR §682.414, but private student loan record retention requirements vary depending on state laws governing the lender.

Information acquired by third party-debt collectors and provided to the owner of the debt varies widely. Third party debt collectors may or may not acquire some, none or all from the following sources during their collection activities:

- The consumer;
- Credit reporting agencies;
- Data vendors;
- Attorneys, debt adjustors or persons authorized to act as agents, representatives or under a power of attorney for the consumer;
- Public records;
- Internet resources, such as court dockets, social media, news sources;
- Originator, debt buyer, or preceding collector;
- Banks;
- Employers;
- Third parties familiar with the debtor or the debt.

Whether some or all of this information is provided to the owner of the debt depends on the contractual and work standard reporting requirements of the debt owner, the agent for the owner, and/or servicer acting on behalf of the debt owner. The transfer of this data may also be limited by technological limitations on transferring the data on the part of either the debt owner or third party collector.

Q2: Does the cost of a debt that is sold vary based on the information provided with the debt by the seller? Are there certain types of debts that are not sold, such as debts a consumer has disputed, decedent debt, or other categories of debt?

Under recent industry practices, the cost of a debt sold is primarily a function of the prospect for recovery and not largely based upon the amount of information provided by seller. As regulatory scrutiny increases, it is expected that the amount of information provided with the sale will become a more relevant factor in the price of the portfolio.

Whether or not debts sold include disputed, deceased or other categories, varies across industries, asset sale terms, and sellers. Typical sale agreements would exclude deceased, bankrupt or fraud accounts. Some debt buyers, however, specialize in the collection of decedent or bankrupt accounts and therefore such accounts may not be excluded from the sale.

Q3: The OCC recently released a statement of best practices in debt sales which recommends that national banks monitor debt buyers after sales are completed "to help control and limit legal and reputation risk." What monitoring or oversight of debt buyers do creditors currently undertake or should they undertake after debt sales are completed or after debts are placed with third parties for collection?

Many of the large issuers have recently adopted or are in the process of adopting some level of monitoring or oversight over debt buyers. In the recent past, however, substantive programs to monitor and oversee debt buyers were not the norm. Until recently, the source of any oversight or control over debt buyers by creditor was contained in the purchase and sale contracts.

The CRC supports the concept requiring large issuers to have reasonable oversight over debt buyers, including many of the best practices contained in the debt sales guidelines issued by the

OCC on July 17, 2013. Specifically, the CRC supports a reasonable initial screening/certification process by large issuers on debt buyers to include:

- Confirming that the debt buyer is an established business
- Confirming the financial soundness of the debt buyer
- A review of regulatory or legal actions currently taken against the debt buyer or its owners/principals
- A review of the debt buyer's compliance management systems

The CRC also supports limited and reasonable ongoing (post-sale) monitoring by large issuers including:

- A periodic review of any significant changes in processes, operations, personnel, or the marketplace.
- A periodic review of the volume and type of consumer complaints, as well as applicable remediation.

Care needs to be taken, however, to make sure ongoing oversight requirements do not become overly burdensome in terms of cost and liability which, if not narrowly tailored, could have the practical effect of eliminating debt sales as a viable method for large issuers to recover losses which would in turn have a negative effect on the ability of consumers to obtain affordable credit.

Note that a recent study published by the Federal Reserve Bank of Philadelphia Research Department found that the supply of consumer credit decreased as State law restrictions on debt collectors increased. *Debt Collection Agencies and the Supply of Consumer Credit* Fedaseyeu (May 20, 2013):
http://www.phil.frb.org/research-and-data/publications/working-papers/2013/wp13-38.pdf

Thus, the CFPB should consider the impact any additional restrictions on debt collectors will have on the supply and price of credit for consumers.

While many of the large issuers only recently adopted some level of oversight on debt buyers, large issuers have a well established practice of extensive oversight over third party servicers. This oversight includes periodic (usually quarterly) auditing of all critical functional areas of the servicer to assure compliance with applicable laws and regulations as well as the contractual terms of the engagement. Audit findings require the servicer to perform a root cause analysis and remediation of defects discovered. Aside from periodic audits, most large issuers also perform monthly reviews and scoring of their servicer's call recordings with consumers for compliance. In many cases, the servicer's market share is negatively affected or financial penalties may be levied based on poor call scores or if significant audit findings are discovered. Creditors also impose significant operational and structural requirements on their third party service providers, including physical site requirements, surveillance technology, biometric access technology, computer and electronic infrastructure requirements, and a host of other physical, electronic, and social controls to avoid risk.

Q4: If debt buyers resell debts, do purchasers typically receive or have access to the same information as the reseller? Do purchasers from resellers typically receive or have access to information or documentation from the reseller or from the original creditor? Do conditions or limitations on purchasers from resellers obtaining information from the resellers or the original creditors raise any problems or concerns?

When debt buyers resell debt, they generally provide the same core information to the purchaser they received at the time of sale, such as the original creditor name, account number, account balance, date of last payment, consumer name, address, phone, and social security number. They may also provide the purchaser with updated account information learned or gathered during the time period of the seller's ownership, such as payment history, dispute information, deceased consumers, bankruptcy, etc. The purchaser from a reseller will generally be provided access to the same type of account media made available by the original creditor to the reseller. The purchaser, however, is normally not permitted by contract to request account media directly from the original creditor and may be required to pay the reseller's marked up costs to obtain the media.

There are conditions and limitations typically placed on access to account information from the original creditor that do raise problems and concerns. As discussed above, original creditors usually limit requests for account data or documentation to the direct buyer by contract. This means that the purchaser must go through the reseller for data and media requests. The lack of direct access to the original creditor often causes delays in responding to consumer disputes, ranging from 60 to 120 days (or longer). The cost of obtaining media is also increased by the number of parties involved in responding to these requests, which may limit a purchaser's ability to obtain account data and respond to consumer disputes.

The CRC would support rules that require original issuers to make available basic account data and documentation to current debt owners at a reasonable charge reflecting the actual costs to produce such information.

Q5: To what extent do debt owners transfer or make available to debt buyers or third party collectors information relating to: disputes (e.g., that a debt had been disputed, the nature of the dispute, whether the debt had or had not been verified, the manner in which it was verified, and any information or documentation provided by the consumer with the dispute);unusual or inconvenient places or times for communications with the consumer (e.g., at the consumer's place of employment); cease communications requests; or attorney representation? What would be the benefits and costs of debt buyers and third-party collectors obtaining or obtaining access to this information upon sale or placement of the debt? To what extent do third-party debt collectors provide this information to debt owners? What would be the costs and benefits of third-party collectors providing this information to debt owners?

As discussed in response to Question 1, the extent any of this information is made available by debt owners to debt buyers or third party agencies varies based on a number of factors. Also, the CRC supports a policy that would encourage creditors to share information obtained from previous debt collectors with subsequent debt collectors.

Disputes

Some debt owners do include in the sale file sent to debt buyers status codes for each account which, include disputes. It is not industry practice for debt owners to include details about the dispute, including the nature of the dispute or the status of the dispute. Some debt owners (usually large creditors) will notify third party agencies if there is a dispute on the account and will either instruct the agency to put the account on hold or recall the account.

Some debt owners also segregate placements with third party collectors based on disputed status, such as debts placed for litigation. For example, if a creditor has previously received a Fair Credit Billing Act dispute that was resolved against the consumer, and the consumer continues to dispute the debt and refuses to pay, placement for litigation as a disputed account may nonetheless occur. Creditors would not ordinarily include the specific nature of the dispute at the time of placement, but would make that information available on request of the third party collector.

Unusual or inconvenient places or times for communications with the consumer (e.g., at the consumer's place of employment)

Some creditors do segregate placements with third party collectors based on communication restrictions, with direction to handle such accounts according to restrictions on time, place or manner of communications. Many third party debt collectors and debt purchasers do not receive this type of information when accounts are placed for collection or purchased as a customary business practice.

Cease communications requests

Some creditors do segregate placements with third party collectors based on known communication restrictions, with direction to handle such accounts according to restrictions on time, place or manner of communications. Many third party debt collectors and debt purchasers do not receive this type of information when accounts are placed for collection or purchased as a customary business practice.

Attorney representation

Some creditors do segregate placements with third party collectors based on prior notice of attorney representation, with direction to handle such accounts according to restrictions on time, place or manner of communications. Many third party debt collectors and debt purchasers do not receive this type of information when accounts are placed for collection or purchased as a customary business practice.

What would be the benefits and costs of debt buyers and third-party collectors obtaining or obtaining access to this information upon sale or placement of the debt?

The benefits of debt buyers and third-party collectors obtaining this information are that it increases the likelihood that a consumer will receive consistent treatment in accordance with the account status after the account is sold or outsourced. For example, the debt buyer or third party collector will only contact the consumer's attorney to collect the debt if the seller/creditor provides this information to them.

It is important to note, however, that a transfer of information of this kind from one account owner to the next may act to limit or completely eliminate communication with the consumer and the potential of resolving the matter short of forcing the consumer into litigation. The FDCPA has no "dispute resolution" mechanism contained in the statutory text. If a consumer continues to dispute a debt after a creditor and third party debt collector's efforts to communicate with the consumer and obtain a voluntary resolution or compromise, the only method for resolving the dispute is to engage in litigation and resolve the dispute in court.

The cost to the financial services industry in providing this information would be focused on improving technology to accommodate the efficient and accurate transfer of this information along with a credit account. It is also important to note that many smaller creditors may not have the technical resources to provide information electronically – such as pulling credit applications -- and thus will incur the cost of manually obtaining information would ultimately increase the cost for the consumer.

<u>To what extent do third-party debt collectors provide this information to debt owners?</u>

Whether the information is provided to the owner of the debt depends on the contractual and work standard reporting requirements of the debt owner, the agent for the owner, and/or servicer acting on behalf of the debt owner. Most often, this type of information is communicated via an account "status code" which explains the current status of an account.

<u>What would be the costs and benefits of third-party collectors providing this information to debt owners?</u>

Current practice in the industry typically requires debt collectors to convey updates on the status of collection efforts through the use of status codes, including notice of attorney representation, disputed, and cease and desist. Current industry practice allows account closure for specified reasons, such as deceased, bankrupt and extenuating circumstances. Additional detail on the nature of the representation, reasons for the dispute, specifics on the communication restriction are not provided.

Q6: To what extent do debt owners transfer or make available to debt buyers or third-party collectors information relating to: the consumer's understanding of other languages (if the consumer has limited English proficiency); the consumer's status as a servicemember; the consumer's income source; or the fact that a consumer is deceased? What would be the benefits and costs of debt buyers and third-party collectors obtaining or obtaining access to this information upon sale or placement of the debt? To what extent do third-party debt collectors provide this information to debt owners? What would be the costs and benefits of third-party collectors providing this information to debt owners?

Some of the additional information discussed in this section is not conveyed by debt owners to debt buyers or third party collectors because the information is neither immutable nor static and its utility depends on timing as to whether it is current. The benefit transmitting this information does not outweigh the cost of providing it because the information is unreliable, variable, and would cause consumers more harm than good to transmit it because it is not easily verifiable and constantly changing.

<u>The consumer's understanding of other languages (if the consumer has limited English proficiency).</u>

This information is not customarily transferred to debt purchasers or third party debt collectors. Please note that most large debt collector agencies provide Spanish collection letters and access to Spanish speaking collectors upon request. Unfortunately, case law punishes debt collectors that seek to communicate with consumers in any language other than English. See *Ehrich v. IC System* 681 F. Supp. 2d 265 (ED New York 2010). In *Ehrich*, the Court held that the debt collector's inclusion of the following information overshadowed the validation notice: "Si ud tiene alguna pregunta acerca de esta cuenta llame 268*268 800/279-9420 y referir al numero de su cuenta." [per the case, the Plaintiff translated this as: "If you have some questions regarding your account call 800/270-9420 and refer to your account number."]

<u>The consumer's status as a servicemember.</u>

Consumer status as a servicemember is not ordinarily conveyed by debt owners to debt buyers or third party collectors, as one's status as active duty military servicemember changes over time. The period of active duty military service deployment since 2001 for servicemembers has varied from as little as 3 months, to more than 24 months for some, and often involved periods of redeployment. See http://projects.militarytimes.com/polls/2012/results/duty-status-deployments/. The value of this information would be minimal because of its capacity to change so often, rendering it unreliable. Any process or procedure built upon reliance of the timeliness or accuracy of this type information would not be effective.

<u>The consumer's income source.</u>

A consumer's income source is a variable that changes over time, and while some debt sales, or debt owners may transfer information to third party collectors regarding place of employment or income source, debt collectors are nonetheless required to verify the information is up to date before acting on it. The value of this information would be minimal because of its capacity to change so often, rendering it unreliable. Any process or procedure built upon reliance of the timeliness or accuracy of this type information would not be effective.

<u>The fact that a consumer is deceased.</u>

The fact that a consumer is deceased may be included in information accompanying a debt sale, as noted above. But where a suggestion of death is acquired for the first time by a third party debt collector, the information on a consumer's death would flow the other direction from the collector to the debt buyer or owner, and require verification.

What would be the benefits and costs of debt buyers and third-party collectors obtaining or obtaining access to this information upon sale or placement of the debt?

The utility of the information depends on it being up to date and accurate. Outdated information that has to be transmitted and retransmitted would serve no purpose and actually causes harm to consumers and unnecessarily increases the costs of collecting the account. If such a requirement were imposed, third party collectors should be allowed to rely on the information without resorting to further investigative steps to verify the accuracy of the information.

To what extent do third-party debt collectors provide this information to debt owners?

Third party debt collectors may provide information regarding a consumer's limited English proficiency, status as a servicemember, income source (or lack thereof), deceased status, depending on the reporting requirements of the debt owner. In most instances, deceased status, lack of income, and active duty military status are required to be reported to the debt owner.

What would be the costs and benefits of third-party collectors providing this information to debt owners?

Under most circumstances, information regarding a consumer's limited English proficiency and income source (or lack thereof), does not affect the consumer's obligation to repay a debt. Information regarding a consumer's deceased status may or may not trigger a response directed to the estate of the consumer, depending on the policies and practices of the debt owner. Information concerning the consumer's status as a servicemember may affect the interest rate applicable to the debt, and it may affect the course of state court judicial proceedings to reduce the debt to judgment, but again, such information ordinarily does not affect the consumer's obligation to repay a debt. A collector may determine whether a consumer is on active duty military status, either through a data vendor such as Lexis Nexis or directly from the Department of Defense via https://www.dmdc.osd.mil/appj/scra/scraHome.do.

In order to acquire active duty military status information on a given individual with a high degree of accuracy, the creditor or debt collector must match its records with the records contained in the DOD database, on last name, first name, date of birth and social security number. During the past five years, DOD did not consistently provide third parties with access to records requests, making it difficult to determine one's status as active duty military. The risk here is of consumer litigation alleging that the debt collector provided incorrect information to the creditor causing downstream harm to the consumer. We recommend that the Bureau provide a website or other clearinghouse of accurate and updated information regarding the status of individuals as servicemembers.

Q7: Is there other information that has not yet been mentioned that should be required to be transferred or made available with a debt when it is sold or placed for collection with a third-party collector? What would be the costs and benefits of debt buyers and third-party

collectors obtaining or obtaining access to this information upon the sale or placement of a debt?

Possible additional information could include whether the debt is subject to arbitration, choice of law, provides for collection costs or attorney's fees in the event of a default, subject to a specific statute of limitations, whether the statute of limitations is tolled, reset, or has run, what the governing interest rate is and whether or not that is stated in the underlying agreement, whether interest is simple or compounded, itemized balance due showing pre-charge-off principal, pre-charge-off interest, and pre-charge off fees; total payments; and payment application hierarchy.

The utility of the information depends on its accuracy. Outdated information that has to be transmitted and retransmitted would serve no purpose and actually causes harm to consumers and unnecessarily increases the costs of collecting the account. If such a requirement were imposed, third party collectors should be allowed to rely on the information without resorting to further investigative steps to verify the accuracy of the information.

The CRC supports a policy that would encourage creditors to share information obtained from previous debt collectors with subsequent debt collectors. However, it is important to note that it is data – and not paper – that is needed, especially from previous agencies.

Q8: Please describe debt collectors' access rights to documentation such as account statements, terms and conditions, account applications, payment history documents, etc. What restrictions are most commonly placed on these access rights? Do these restrictions prevent or hinder debt collectors from accessing documentation?

Current industry practices restrict the obligation of debt originators to provide documentation or media to debt buyers. In turn, debt collectors seeking documentation must work through the links in the chain of title to secure documentation from the debt originator. The documentation available varies from creditor to creditor and portfolio to portfolio and debt type.

Common restrictions on a debt buyer obtaining access include temporal limitations (e.g., requests for media must be made within a stated number of months from the date of sale) and per page fees (i.e., $5 per page).

These current industry practices limit and restrict a debt collector's ability to access documentation. The CRC would support reasonable requirements imposed upon the original creditor to provide direct access to media on all accounts sold to current account owners or debt collectors at either no charge or at cost basis. Note that in some instances a debt buyer may not have access to some account documentation whereas a creditor likely will.

Q9: Part III.A below solicits comment on whether the last periodic statement or billing statement provided by the original creditor or mortgage servicer should be provided to consumers in connection with the validation notice. If these documents are not required in connection with the validation notice, what would be the costs and benefits of debt buyers and third-party collectors obtaining or obtaining access to this documentation when the debt is sold or placed for collection?

The cost to a credit originator of obtaining the last periodic statement or billing statement for an account is a function of the number of accounts the original creditor or servicer is selling to a debt buyer or placing with a third party debt collector, whether a duplicate or an original record is required. The more accounts at issue, the greater the cost.

The benefit of having the last periodic statement or billing statement depends on whether the information contained on the last periodic statement is disputed by the consumer. As a summary of the information contained on the statement is already provided to the consumer in the validation notice and thus, having a copy of the statement is not expected to be of substantial assistance to the consumer.

In some States, evidence of last purchase on the account (e.g., extension of credit) is more indicative of who used the account, where the account was used, and when the statute of limitations began to run, than the last periodic statement. See e.g. Hawkins v. Barnes, 661 So.2d 1271, 1272–73 (Fla.Ct.App.1995); Smither v. Asset Acceptance, LLC, 919 N.E.2d 1153, 1159 (Ind.App.2010); Slayback v Alexander, 179 A.D. 696, 698, 167 N.Y.S. 194, 196 (1917); Roots v. Mason City Salt & Mining Co., 27 W.Va. 483 (W.Va. 1886); Toth v. Mansell, 207 Ill. App. 3d 665, 672, 152 Ill. Dec. 853, 566 N.E.2d 730 (1st Dist. 1990); President of Union Bank v. Knapp, 20 Mass. 96, 112, 1825 WL 1533, *12 (Mass. 1825); R.N.C. Inc. v. Tsegeletos, 231 Cal. App. 3d 967, 972, 283 Cal. Rptr. 48 (1st Dist. 1991). This information is often not contained on the last periodic statement.

Q10: Are there other types of documents that would be useful for debt buyers and third-party collectors in their interactions with consumers? What types of documentation would it be most beneficial to consumers for debt buyers to have or have access to? For instance, would it be beneficial to consumers for debt buyers to have: (1) a contract or other statement evidencing the original transaction; (2) a statement showing all charges and credits after the last payment or charge-off; or (3) a charge-off statement? What would be the costs and benefits of debt buyers and third-party collectors obtaining or obtaining access to each of these types of documentation when a debt is sold or placed for collection?

Current contact information for consumers is crucial to a third party debt collector, to facilitate communication with the consumer. Obsolete contact information for a consumer increases the risk of inadvertent third party disclosures, attempted communications at a place of employment and the need to resort to location information communications. Requiring current contact information for a consumer has the potential to reduce or eliminate failed communication efforts, expediting the process of determining whether the consumer has any intention of repaying a debt through voluntary arrangements, and eliminating inadvertent third party disclosures.

It would also be beneficial for consumers if debt buyers and third party collectors had access to the financial transaction history including payments, finance charges and any other financial transactions post charge-off. Access to other documentation may be helpful, but original contracts and statements rarely assist a consumer in verifying the current owner and the balance owing.

Finally, requiring "goodbye" letters from the seller of the account identifying the party to whom the account is sold to would assist in reducing consumer confusion over the current owner of their account.

The CRC believes that all parties would benefit from access to this information. Consumers will benefit since the current owner will have access to the basic information to demonstrate that the right amount is owed by the right party. The debt buyer and third party collector is interested in quickly resolving disputes and not wasting time correcting incorrect amounts from incorrect parties.

If these requirements are adopted into regulations, careful consideration should be given to make these requirements effective prospectively, similar to the Fair Debt Buying Practices Act recently passed in California which has similar requirements that apply to debt sold or resold after January 1, 2014.

Q11: What privacy and data security concerns should the Bureau consider when owners of debts provide or debt buyers and third-party collectors obtain or obtain access to documentation and information when a debt is sold or placed for collection?

There is a strong argument for limiting the information access to non-debt owners (third party agencies) to a need to know basis. Most consumers know they owe the debt and do not dispute it. Having significant amounts of information in the possession of a third party agency that they don't need does not seem to be in the consumer's best interest of the vast majority of consumers.

It is important to note that for third party debt collectors, the creditors for whom they collect are usually subject to HIPAA, GLBA or other security standards. The creditors impose and enforce those security standards on the third party debt collectors through auditing and oversight.

Creditors, debt buyers and third party collectors may secure copies of a consumer's credit report, and incorporate some of that information in their recordkeeping systems. The Fair Credit Reporting Act (FCRA) prohibits any person from using or obtaining a consumer report for anything other than permissible purposes. See 15 U.S.C. § 1681b(f). The FCRA restricts the ability of a user of credit reports from re-disclosing information beyond the stated purposes for acquiring the credit report. 15 U.S.C.A. § 1681e; 12 C.F.R. §1022.31. The FCRA also requires entities to secure nonpublic information to reduce the risk of identity theft and to dispose of information contained in or derived from credit reports in accordance with the Interagency Guidelines Establishing Information Security Standards. 12 C.F.R. §§ 41.83, 171.83, 222.83, 334.83, 391.21, 571.83, 717.83, 682.3.

In addition, as provided under 15 U.S.C. § 1692c, "[e]xcept as provided in section 1692b of this title, without the prior consent of the consumer given directly to the debt collector, or the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a post judgment judicial remedy, a debt collector may not communicate, in connection with the collection of any debt, with any person other than the consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector." 15 U.S.C. § 1692c(b). A debt collector that provides documentation or information to facilitate collection activities by an unaffiliated third party debt collector, has the potential to violate this prohibition.

Various state laws restrict a debt collector's ability to share information gathered in the course of collection with third parties. Ariz. Admin. Code R20-4-1512(B); Ark. Code Ann. 17–24–504(b); Cal. Civ. Code § 1788.12(c), (e); Col. Rev. Stat. Ann. § 12-14-105; Conn. Agencies Reg. § 36a-647-4(b); 225 ILCS 425/9(a)(17); Iowa Code § 537.7103(3)(a);La. Rev. Stat. Ann. § 9:3562; 32 Me. Rev. Stat. § 11012; Md. Code Ann. Com. Law § 14-202(5); Mn. Stat. Ann. § 332.37(15); Mn. Stat. Ann. § 325F.92, subd. 3; NH Rev. Stat. Ann. § 358-C:3(IV); 6 RCNY § 5-77(b); N.C. Gen. Stat. § 75-53(1)(a); N.C. Gen. Stat. §§ 58-70-105(1)(b); 73 Pa. Stat. Ann., § 2270.4; S.C. Code Ann. 37-5-108(5)(b); Wash. Rev. Code Ann. § 19.16.250(10); Wis. Stat. Ann. § 427.104(1)(e); Wis. Admin. Code § 74.14(6).

To the extent that a creditor, debt buyer or third party collector acquires documentation or information and seeks to provide that information, or re-disclose such information to third parties, existing laws must conform to the proposed requirement.

Q12: Would sharing documentation and information about debts through a centralized repository be useful and cost effective for industry participants? If repositories are used, what would be the costs and benefits of allowing consumers access to the documentation and information about their debts in the repository and of creating unique identifiers for each debt to assist in the process of tracking information related to a debt? What privacy and data security concerns would be raised by the use of data repositories and by permitting consumer and debt collector access? Would such concerns be mitigated by requiring that repositories meet certain privacy and security standards or register with the CFPB? What measures, if any, should the Bureau consider taking in proposed rules or otherwise to facilitate the debt collection industry's use of repositories? What rights, if any, should consumers have to see, dispute, and obtain correction of information in such a repository?

The recent high-profile security breaches at the National Security Agency and the retailer Target call into serious question whether creating a database of consumer information as suggested in this question would be prudent. While such a repository may have some benefits to consumers, the CRC opposes the creation of a repository.

Sharing certain up to date and accurate documentation and information about debts in a central repository may be beneficial to both the consumer and the debt buyer/third party agency. The CRC believes strongly in the proposition of collecting the right debt from the right party.

We believe a central repository could have the following benefits:

- Ensure the consistent integrity of account-level data as it is transferred between companies and legal entities.
- Provide for a permanent record of transactions enabling creation of a clean chain of title, even if one or more of the prior owners is no longer in existence.

- Records from the repository demonstrating chain of title could meet applicable evidentiary standards and be used in legal collection as evidence of ownership.
- Provide the originating creditor a perpetual window into the current ownership of a debt after it has been sold, even if it has been re-sold multiple times.
- Enable immediate access to summarized account and ownership information for consumers.
- It would act as a barrier of entry preventing criminals from wrongfully seeking payment on accounts they do not own.

The more difficult question is whether a central depository would be cost effective. Before any rulemaking is considered in this area, more study needs to be done on the costs involved in "registering" debt into a central repository, how those costs would be assessed, and the type of debt that should be registered. It is important to keep in mind that, ultimately, the costs of collection get passed onto the consumer and affect consumer access to affordable credit.

The privacy and data security concerns with a central repository would be similar to the privacy and data concerns currently required to be addressed by financial institutions and are discussed in response to Q11 above. To the extent that a creditor, debt buyer or third party collector acquires documentation or information and seeks to provide that information, or re-disclose such information to third parties, existing laws must conform to the proposed requirement. We do believe that these privacy and data security concerns could be mitigated by requiring these repositories to meet certain privacy and security standards or register with the CFPB.

Q13: Do debt owners, buyers of debt, or third-party collectors currently notify consumers upon sale or placement of a debt, other than through the statutorily-required validation notices or through required mortgage transfer notices?

Current industry practice is that debt owners, debt buyers and third-party collectors do not send a separate notification to consumers upon sale or placement of a debt, other than the statutory prescribed validation notice or as required by State law. For instance, Florida law requires as follows:

559.715 Assignment of consumer debts.--This part does not prohibit the assignment, by a creditor, of the right to bill and collect a consumer debt. However, the assignee must give the debtor written notice of such assignment within 30 days after the assignment. The assignee is a real party in interest and may bring an action in a court of competent jurisdiction to collect a debt that has been assigned to such assignee and is in default.

Wisconsin law provides as follows:

425.104 Notice of customer's right to cure default.
(1) A merchant who believes that a customer is in default may give the customer written notice of the alleged default and, if applicable, of the customer's right to cure any such default (s. 425.105).

(2) Any notice given under this section shall contain the name, address and telephone number of the creditor, a brief identification of the consumer credit transaction, a statement of the nature of the alleged default and a clear statement of the total payment, including an itemization of any delinquency charges, or other performance necessary to cure the alleged default, the exact date by which the amount must be paid or performance tendered and the name, address and telephone number of the person to whom any payment must be made, if other than the creditor.

In other jurisdictions, the FDPCA validation notice will usually inform the consumer if the debt has been sold or placed for collection.

The CRC supports a system that would require a "goodbye" letter to be sent to the consumer by an entity after an account is sold. This letter would identify the seller and also identify the purchaser of the account.

Q14: What would be the costs and benefits of requiring notification to a consumer when a debt has been sold or placed with a third party for collection? If such a notice were required, what additional information should be provided to the consumer and what would be the costs and benefits of providing such additional information?

As discussed in response to Q13, the required validation notice will usually also inform the consumer if the debt has been sold or placed for collection. Assuming this information could continue to be sent in the same validation letter, the additional costs should be negligible. Clear and concise “safe harbor” language permitted to be contained in the validation notice that includes (i) the name of the seller; (ii) the name of the buyer; (iii) the name of the servicer; and (iv) the date of the sale would be supported by the CRC.

Q15: What would be the respective costs and benefits of requiring a debt buyer or a debt owner to provide notice that a debt has been sold? What would be the respective costs and benefits of requiring that a third-party collector or a debt owner provide notice that a debt has been placed with a third party for collection?

The benefit of requiring a debt buyer or debt owner to provide notice that a debt has been sold (a “goodbye” letter) would be to lessen consumer confusion when their account is sold and to ease their concerns when a validation letter is received from the buyer. Both the consumer and the debt buyer would benefit in this scenario. The debt buyer is interested in a smooth transition of the account with a lower probability of a dispute. The consumer is benefited by receiving a confirmation from both the seller and the buyer on the location of the account and the current party that has the legitimate right to collect on the account. Many consumers are wary to resolve a debt upon the sale of the account because they are contacted by an unfamiliar party. A “goodbye” letter sent by the seller would assist in adding credibility to the buyer.

There would be an added expense for requiring a seller to send goodbye letters, but we believe the benefits described above would outweigh such costs.

Q16: Where the current owner of the debt is not the original creditor, should additional information about the current owner, such as the current owner’s address, telephone

number or other contact information, be disclosed in the validation notice or upon request? Would this information be helpful to consumers so that they may contact the current owner directly about the debt, or about the conduct of its third-party collector?

Section 1692g (b) of the FDCPA currently requires the name of the current owner on the validation notice. We support requiring the current servicer of the debt provide, upon request from the consumer, the address and telephone number of the current creditor if different from the servicer of the account. Mandating the disclosure of this additional information in the validation notice may have the unintended result of confusing the typical consumer who needs to communicate with the entity that is currently servicing the account. As a result, we believe the customer's right to this additional information is best provided upon request.

Typical contractual terms between the debt owner and servicer require the servicer to provide complaint information to the debt owner. Consumers can now also file direct complaints against the debt owner via the CFPB's complaint portal. We don't believe there would be any material benefit to providing this additional information to consumers in the validation notice.

Q 16A: The Bureau specifically solicits comments on the alternatives discussed below for itemizing the total amount of debt. The Bureau also solicits comments on whether there are other alternatives it should consider. For each alternative, the Bureau solicits comment on the benefits and costs of providing each itemization, including the costs for creditors and debt collectors in tracking or collecting data and in providing this itemization on the validation notice. The Bureau also solicits comment on: (1) the types of debts for which or situation in which each alternative would be most useful to consumers and (2) how should relevant terms for each alternative be defined.

Alternative 1: (1) principal; (2) interest; and (3) fees and other charges?

Of the proposed alternatives, we believe this simple breakdown provides the most meaningful breakout for the consumer while minimizing the risk of population errors for the debt collector. This alternative also would likely work for most types of debt. To the extent this information is available to the current debt owner, transferring such data to the debt collector should be minimal. For the reasons set forth in response to Q17 below, we believe the better approach is to make this information available to consumers upon request, rather than populating these amounts on the validation notice.

In addition, it is important to note that the information needed to itemize the debt under this alternative may not be available to the current owner of the debt (especially where the current owner is not the originator). It would not be possible for many current owners to accurately itemize the debt for the consumer under any of these alternatives. Any requirement to provide itemization should only apply to debt sold or resold after a date certain in the future so that the requirement can be incorporated into the portfolio transfer and sale documents. (See the Fair Debt Buying Practices Act recently passed in California which has similar requirements that apply to debt sold or resold after January 1, 2014).

There also needs to be clearly defined terms and a recognition that standard definitions for itemization are difficult and can lead to errors, despite the good faith of the servicer of the account. Any new itemization requirements, therefore, should provide for a bona fide error defense/ reasonableness standard and available to debt collectors who act reasonably and in good faith to supply this information to the consumer.

Alternative 2: (1) the amount of debt at the date of charge-off or default; (2) total of interest added after the date of charge-off or default; (3) total of all fees or other charges added or credits posted after the date of charge-off or default; and (4) any payments or credits received after the date of charge-off or default.

We believe the last two options fail to provide sufficiently meaningful information to the consumer when compared to the risk of population errors that will be introduced. Moreover, many consumers generally do not understand the concept of "charge-off" and providing charge-off as any type of bench mark is not likely to be beneficial to consumers and may act to confuse consumers.

Alternative 3: (1) the amount due shown on the last periodic statement given for the account; (2) any additional outstanding balance that became due after the closing date of such periodic statement; (3) any interest imposed after the closing date of such periodic statement; (4) any fees or other charges imposed after the closing date of such periodic statement; and (5) any payments or credits received after the closing date of such periodic statement.

We believe the last two options fail to provide sufficiently meaningful information to the consumer when compared to the risk of population errors that will be introduced. Moreover, consumers may not be receiving periodic statements on non-credit card debt and using a last periodic statement benchmark would not be possible.

Q17: Are there other approaches to itemization of the total amount of debt on validation notices that the Bureau should consider, and if so, for what type of debts should this itemization apply? For example, the Bureau recognizes that the three alternatives described above might work best for credit-based debt. Are there other approaches that might work better for other types of debts? Are there advantages to consistency in itemization across different types of debt or would it be more helpful, for consumers and collectors alike, to require different itemizations standards depending on the type of debt? Or could a standard set of information be required, with certain augmentation for specific types of debt?

We believe that the Bureau should consider requiring any itemization upon request for validation by the consumer and not require such itemization to be provided in the validation notice. The Bureau is correct that itemization process is not standard across types of debt and perhaps the better approach for the consumer is to provide the documentation/media on the account which shows the make-up and calculation of the existing balance. For example, this can take the form of a full transactional history on the account in the case of a non-revolving consumer loan or copies of the last periodic statement before charge-off on a credit card account. The documents will speak for themselves and errors relating to debt collectors trying to itemize and break down the current balance into separate categories would be minimized.

Furthermore, as discussed above, there also needs to be a recognition that standard definitions for itemization are difficult and can lead to errors, despite the good faith of the servicer of the account. Any new itemization requirements, therefore, should provide for a bona fide error defense/ reasonableness standard and available to debt collectors who act reasonably and in good faith to supply this information to the consumer.

Q18: What additional information should be included in the validation notice to help consumers recognize whether the debts being collected are owed by them or respond to collection activity? For example, which of the following pieces of information would be most useful to consumers?

As discussed below, the CRC would support the inclusion of the original account number and original creditor name in the validation letter to assist the consumer in recognizing the debt.

The name and address of the alleged debtor to whom the notice is sent.

This information is already typically provided in the validation letter.

The names and addresses of joint borrowers.

We believe providing joint borrower information would be of minimal value to consumers in assisting them to recognize the debt. In most cases, joint borrowers are spouses and they are joint borrowers on multiple accounts. Providing the address of joint borrowers can also lead to privacy concerns for joint borrowers who may not want their information shared with the joint borrower.

A partial Social Security number of the alleged debtor.

Social security numbers are not always available to a creditor or agency and may not have been provided by the consumer at the time the debt was incurred.

The account number used by the original creditor or a truncated version of the account number

To the extent the debt collector possesses this information, we believe the original creditor account number (or truncated version) would assist consumers in identifying the debt. This information is already typically provided by debt collectors in many cases in the validation notice along with the original creditor name because debt collectors share an interest with consumers to make the account recognizable to the consumer to facilitate an efficient resolution to the matter.

With respect to debt buyers, the introduction of this requirement should not be applied retroactively to existing portfolios but should apply to portfolios purchased after a certain date so that the requirement can be incorporated into the portfolio transfer and sale documents.

Other identifying information.

As stated above, we believe providing the original creditor account number is the most effective way to assist the consumer to identifying the debt.

The name of the original creditor (if different from current owner).

To the extent the debt collector possesses this information, we believe the original creditor name would assist consumers in identifying the debt. This information is already typically provided by debt collectors in many cases in the validation notice along with the original creditor account number because debt collectors share an interest with consumers to make the account recognizable to the consumer to facilitate an efficient resolution to the matter.

With respect to debt buyers, the introduction of this requirement should not be applied retroactively to existing portfolios but should apply to portfolios purchased after a certain date so that the requirement can be incorporated into the portfolio transfer and sale documents.

Type of debt (e.g., student loan, auto loan, etc.)

We believe that the vast majority of consumers should be able to identify the debt when presented with the name of the original creditor and the original creditor account number. The benefit of providing this information would not outweigh the risks of data population errors by debt collectors.

Date and amount of last payment by the consumer on the debt.

We believe that the vast majority of consumers should be able to identify the debt when presented with the name of the original creditor and the original creditor account number. The benefit of providing this information would not outweigh the risks of data population errors by debt collectors.

Copy of last periodic statement.

We believe that the vast majority of consumers should be able to identify the debt when presented with the name of the original creditor and the original creditor account number. Even if these documents were available, which they are not for every type of debt, the cost of including a copy of the periodic statement with every validation letter would be significant and not outweigh the benefits where the vast majority of consumers don’t need a copy of the statement to recognize the debt. Further, the last periodic statement usually does not contain last charge or last payment information because charge-off occurs after either of these events.

Q 18A: To what extent is this information available to debt collectors and debt buyers and what would be the cost of requiring that it be included in the validation notice? What privacy concerns would be implicated by providing any of this information (e.g., the name and addresses of joint borrowers, partial Social Security numbers, and account numbers) and how might the Bureau address such concerns?

Our response to these questions is provided in more detail to the examples in Q18 above.

Q19: Are the statements currently provided to consumers regarding these FDCPA rights understandable to consumers? If consumers do not understand the statements that collectors currently include on validation notices as to their FDCPA rights, please provide suggested language for how these statements should be changed to make them easier to understand.

We do not have data addressing whether the rights that are currently disclosed in validation letters are understandable to consumers. We would support the adoption of safe harbor language that is created after a careful study is performed on the proposed disclosures.

Q20: Should consumers be informed in the validation notice that, if they send a timely written dispute or request for verification, the debt collector must suspend collection efforts until it has provided the verification in writing? Would any other information be useful to consumers in understanding this right? Should consumers be informed in the validation notice of their right to request that debt collectors cease communication with them?

We don't believe requiring these additional "cease and desist" disclosures in the validation letter will be beneficial to the consumer. The judicial development of case law regarding overshadowing, as codified in 15 U.S.C. 1692g(a)(5)(b), provides for adequate protection for the consumer within the intent of Congress:

> Any collection activities and communication during the 30-day period may not overshadow or be inconsistent with the disclosure of the consumer's right to dispute the debt or request the name and address of the original creditor.

The plain language of the FDCPA do not provide for requiring this information in the validation notice. Moreover, including such a disclosure would add to the length and complexity to the validation notice without any overriding benefit.

Q21: Are there any other rights provided in the FDCPA that should be described in the validation notices? For example, would it be helpful to consumers for the validation notice to state that the consumer has the right to refer the debt collector to the consumer's attorney, to inform a debt collector about inconvenient times to be contacted, or to advise the collector that the consumer's employer prohibits the consumer from receiving communications at work? If so, please identify the costs and benefits of including each right that should be included in the validation notice.

See response to Question 20 above. In addition, the CRC is willing to work with the CFPB to draft and test a notice of these additional rights, along with a statement of the potential consequences if a consumer invokes the rights. For instance, if a consumer ceases a debt collector on an account, there is the possibility (in some circumstances) of negative creditor reporting or legal action on the unresolved account. Further, the validation notice could contain a link to additional disclosures promulgated and approved by the CFPB and included on the debt collector website. These additional disclosures from the CFPB would address topics such as the right to cease communications or retain an attorney. In addition, could the validation notice provide an address for a website where the consumer could go to obtain verification of the debt?

Q22: What would be the costs and benefits of disclosing FDCPA rights in the validation notice itself, as opposed to the Bureau developing a separate "summary of rights" document that debt collectors would include with validation notices?

As stated in the answer in question 20, the plain language of the FDCPA does not provide for requiring this information in the validation notice. Moreover, including such a disclosure would add to the length and complexity to the validation notice without any overriding benefit. However, if a separate "summary of rights" is written effectively, it could enhance consumer awareness of rights, and add consistency across the industry.

The benefit of this approach is that it would add consistency for these notices across the industry. If the "summary of rights" is written effectively, it could also enhance consumer awareness of rights. Consumers would be best served if the CFPB provided sample language which the collector could chose to provide in the letter or could choose to provide a web link to the information. A web link would involve negligible cost and would benefit the consumer in that the information would be provided to them in a separate, easily accessible format.

Q23: What additional information do debt collectors typically include on or with validation notices beyond the mandatory disclosures? Do debt collectors typically include State law disclosures on the validation notices? If so, do debt collectors typically use a validation notice that contains the State law disclosures from multiple States, or do debt collectors typically tailor validation notices for each State?

Debt collectors typically provide the their hours of operation, a toll-free telephone number to reach the debt collector, an address where payments and correspondence may be mailed, file number unique to the debt collector, and state law disclosures.

State law disclosures are included by debt collectors in the additional validation notices. This is generally handled in 2 ways: a) either all state disclosures are provided as a "backer" to the validation letter, or b) the specific state disclosure applicable to the consumer's state of residence is provided through systemic programming. There is no identifiable consensus in the industry as to which approach is used, and some debt collectors use both methods depending on portfolio and account system.

Q24: How common is it for collectors to communicate with consumers or provide validation notices in languages other than English?

This is not a common practice across the country, however may occur more often in traditionally bilingual regions or at the request of a specific client. Unfortunately, case law punishes debt collectors that seek to communicate with consumers in any language other than English. See *Ehrich v. IC System* 681 F. Supp. 2d 265 (ED New York 2010). In *Ehrich*, the Court held that the debt collector's inclusion of the following information overshadowed the validation notice: "Si ud tiene alguna pregunta acerca de esta cuenta llame 268*268 800/279-9420 y referir al numero de su cuenta." [per the case, the Plaintiff translated this as: "If you have some questions regarding your account call 800/270-9420 and refer to your account number."]

Q25: If collectors were sometimes required to provide validation notices in languages other than English, what should trigger that obligation? For example, should it be triggered by the request of the consumer, by information from the original creditor indicating that the consumer communicated in a language other than English, by the language used in the original credit contract, or by information gathered by the collector during the course of its dealing with the consumer? What would be the costs of requiring validation notices in languages other than English using each of these triggers?

We believe that the California Rosenthal Act satisfies the language translation issue. The California law provides as follows:

If a language other than English is principally used by the third-party debt collector in the initial oral contact with the debtor, a notice shall be provided to the debtor in that language within five working days.

Any other proposed solution runs the risk of providing a notice to the consumer in an incorrect language.

Q26: Do collectors currently provide validation notices to consumers electronically? If so, in what circumstances, by what electronic media (e.g., email), and in what format (e.g., PDF, HTML, plain text)?

Debt collectors do not currently provide validation notices to consumers electronically because of a lack of regulatory guidance on consent and security requirements along with concerns in reconciling with state law. We welcome guidance on when electronic communications are permitted and the requirements in obtaining consent. Debt collectors predominantly provide validation notices by postal mail and look to the CFPB for guidance on rules when electronic communications may be used and a safe harbor against third party disclosure claims. We would support the ability to electronically send the validation notice to the consumer which would benefit the consumer in receiving the validation notice on an expedited basis and benefit the debt collector by lowering mailing costs. Also, see comments above regarding collaboration with consumer groups who generally support utilizing electronic communication under appropriate circumstances and with appropriate security measures.

Q27: Does the consent regime under the E-Sign Act work well for electronic delivery of validation notices? If a consumer consents to electronic disclosures pursuant to the E-Sign Act prior to the account being moved to collection, are debt collectors currently requiring E-Sign consent again when the account moves into collection? When the account is sold or placed with a new collector, is the new collector currently requiring a new E-Sign consent? If a consumer consents to electronic correspondence, what process do debt collectors currently require to revoke this consent?

Debt collectors do not currently provide validation notices to consumers because of a lack of regulatory guidance on consent and security requirements along with concerns in reconciling with state law. We welcome guidance on when electronic communications are permitted and the requirements in obtaining consent.

Q28: Do debt collectors currently treat emails, text messages, or other forms of electronic communications as satisfying the "in writing" requirement to exercise the three rights described above? If so, what would be the costs and benefits of treating them as satisfying the "in writing" requirement?

While debt collectors will generally treat emails communications as a written communication, regulations should address concerns with use of unauthorized mail or email addresses, cell phone (texting) number and fax numbers, which may go unmonitored, may no longer be in use or are personal addresses not intended for consumer use.[1] The industry would expect that communication via email should constitute consent to a response via email as this is frequently the only valid contact information the agency may have for the consumer once the email is received.

Q29: Have industry organizations, consumer groups, academics, or governmental entities developed model validation notices? Have any of these entities or individuals developed a model summary of rights under the FDCPA that is being given to consumers to explain their rights, or a model summary of rights under State debt collection laws? Which of these models, if any, should the Bureau consider in developing proposed rules?

The American Collectors Association has provided model validation notices for agency consideration.

Q30: Is there consumer testing or other research concerning consumer understanding or disclosures relating to validation notices that the Bureau should consider? If so, please provide any data collected or reports summarizing such data.

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[1] Agencies often receive faxes at numbers that are not used for consumer communications. This happens, for instance, when consumers somehow find a fax number through some bulletin board web site (i.e. Rip-Off Report). The CRC asks that the CFPB create rules that will shield agencies from claims by consumers based on their having forwarded communications through a channel that is not expressly for use by consumers. For instance, use of a fax number or email address shown on letterhead may be deemed properly received, whereas using any other email or fax number is not deemed received and processed by the agency in a timely manner.

We do not have any testing or research to provide at this time. However, the CRC is willing to collaborate with the Bureau to test disclosures.

Q31: What types of consumer inquiries do debt collectors currently treat as "disputes" under the FDCPA? What standards do debt collectors currently apply in distinguishing disputes from other types of consumer communications? What data exist to indicate the percentage of debts that are disputed, and what definition of "dispute" is being used to arrive at this percentage? What data exist to indicate how disputes are resolved by debt collectors?

See statement in section titled "Data Responsive to the Advance Notice of Proposed Rulemaking."

Q32: Are certain types of debts (e.g., credit card vs. student) disputed at higher rates than others? Do dispute rates differ between debts being collected by debt buyers versus those being collected by third-party collectors?

See statement in section titled "Data Responsive to the Advance Notice of Proposed Rulemaking."

Q33: What data or other information are available regarding how disputed debts are resolved? What percentage of disputed debts are verified? What percentage of debt disputes are never investigated? Where disputes are investigated, what percentage of the investigations reveal that there was an error?

See statement in section titled "Data Responsive to the Advance Notice of Proposed Rulemaking."

Q34: Should the Bureau define or set standards for what communications must be treated as "disputes" under the FDCPA and, if so, how? What are the advantages and disadvantages of the definition recommended?

Yes, such definitions or standards will provide guidelines for consumers to understand what constitutes a dispute and also provide guidance for debt collectors to respond to disputes. One of the primary drawbacks to previous data gathered by the FTC regarding debt collection is that every communication from a consumer regarding a collection agency was deemed a dispute. Since some of the communications were not truly disputes, this resulted in skewed data gathered and reported regarding the industry.

Q35: Should consumers be required to provide particular information or documentation as part of their disputes to debt collectors to trigger an investigation requirement under the FDCPA? What would be the costs and benefits of requiring that consumers provide the same or similar information as required under the FCRA when making disputes directly to debt collectors? Should a consumer's obligation to provide this information about the basis for their disputes be contingent on having received a validation notice with requisite information? Why or why not?

The CRC recommends that consumers be required to provide a minimum level of information to facilitate the resolution of their dispute to trigger an investigation requirement. At minimum, the information necessary to investigate a dispute includes Name, address, telephone number, account number (if available), the nature of dispute and any documentation or information regarding the dispute. The CRC also asks that the CFPB address the possibility that a consumer may repeatedly send the same or similar disputes concerning his or her debt and that agencies be shielded from having to continuously and repeatedly respond to the same questions about an account that was already investigated.

Q36: Do consumer disputes typically specify what is being disputed, or do consumers simply make general statements that they dispute the debt? If consumers do make specific statements, are those statements typically relevant to the consumer's particular circumstances or the alleged debt, or do they typically appear to be unrelated to the consumer's particular circumstances or the alleged debt? What types of specific disputes are most commonly received by debt collectors (e.g., identity theft, wrong amount, do not recognize the debt, previously paid, previously disputed)?

The CRC's members typically see a significant number of disputes that fail to specify the nature of the dispute. Often, these disputes are boilerplate documents that appeared to be obtained by consumers off the internet without any real explanation of why they are disputing the debt or how the debt collector can assist in resolving the dispute. At a minimum, it would benefit the consumers, the agencies and the creditors if consumers would provide some minimal amount of information to make clear the nature of the dispute so that the agency and/or creditor can conduct a proper investigation of the claim.

Q37: What practices do debt collectors follow when they receive a dispute after the 30- day period following receipt of the validation notice has expired? Do collectors usually follow the same verification procedures as for disputes that are received during the 30-day period? What would be the potential costs and benefits of a debt collector following the same investigation and verification procedures for disputes received within the 30-day period.

While practices vary by client and portfolio, debt collectors will generally recognize disputes received, whether verbally or in writing, after the 30 day validation period and at any time.

Q38: How long does it typically take after a debt has been disputed for the collector to investigate and provide verification to the consumer? Would establishing a specific time period for responding to a dispute be beneficial to consumers? Does the prohibition on collection until verification has been provided give collectors a sufficient incentive to investigate expeditiously and appropriately? What costs and burdens would establishing a specific deadline for an investigation impose?

We do not have empirical evidence to provide at this time as to the amount of time it typically takes to respond to consumer disputes. However, we do believe that there is sufficient incentive in the FDCPA to provide a timely response since all other attempts to collect the debt must cease. Access to the data necessary to respond to the dispute may vary depending on the nature of the dispute, the efficiencies of the debt owner, type of debt, and location of the information. It would be difficult, therefore, to create a meaningful and appropriate deadline. Nonetheless, consumers remain protected by the cease and desist requirement until the debt is validated.

Q39: What steps do collectors take to investigate a dispute under the FDCPA? Do collectors request information from the debt owner or any other parties? Do they look beyond confirming that the information contained in the validation notice is consistent with their records? Are the steps debt collectors are taking adequate?

Typically, debt collectors will go beyond a review of their own records and request a copy of the contract/application and statements showing the balance of the account in response to the dispute from the debt owner or previous debt owner. We believe these are adequate steps to verify most debts.

Q40: What steps should debt collectors be required to take to investigate a dispute? Would a "reasonableness" standard benefit consumers and debt collectors? Would more specific standards or guidance be useful to help effectuate such a standard? For example, should debt collectors be required to review account-specific documents upon receiving the consumer's dispute? Should debt collectors be required to consider the accuracy and completeness of the information with a portfolio of accounts, including whether the information is facially inaccurate or incomplete? Should debt collectors be required to consider the nature and frequency of disputes they have received about other accounts within the same portfolio?

Typically, debt collectors will go beyond a review of their own records and request a copy of the contract/application and statements showing the balance of the account in response to the dispute from the debt owner or previous debt owner. The CRC does not believe a "reasonableness" standard will provide meaningful guidance in how to proceed with a dispute since each dispute response is different. Such a standard is likely to trigger claims and lawsuits against collection agencies for failure to perform a reasonable inquiry but provide no meaningful benefit for consumers.

The CRC does ask for an important clarification of the validation requirements as set forth in 1692g(b). Specifically, the statute is ambiguous as to whether or not validation must be provided by the creditor to the consumer or by the agency to the consumer. Out of an abundance of caution, agencies interpret the language in the section to require them to provide the validation. However, this may not be in the consumers' best interests for a number of reasons. First, the creditor and not the agency is likely in the best position to research the dispute and validation request and provide appropriate information; second, the information often can be provided in a more timely fashion by the creditor to the consumer, rather than having it first sent to the agency and then sent to the consumer. Finally, some creditors insist that they be the ones to send the information directly to the consumer. Thus, if the statute requires that agencies respond, then they are necessarily out of compliance because of the creditors' position. Therefore, the CRC asks that the CFPB issue a rule that clarifies that validation can be provided either by the creditor or the agency and not strictly the agency.

Q41: How should the investigation required vary depending on the type of dispute? For example, if a consumer states the balance on a debt is incorrect, what information should a debt collector review for its investigation? If a consumer states that she is not the alleged debtor what information should a debt collector be required to obtain or review? If a consumer disputes the debt by stating that she does not recognize it, what information should a debt collector obtain or review? If the consumer claims prior payment of the debt, what information should a debt collector obtain or review? Please comment on other common dispute scenarios that may require review of specific types of information.

Typically, debt collectors will go beyond a review of their own records and request a copy of the contract/application and statements showing the balance of the account in response to the dispute from the debt owner or previous debt owner. Debt collectors will review these records when investigating a dispute to confirm that the amount demanded in the validation notice and the consumer listed in the validation notice conforms to the underlying contract for the debt and account statements. Debt collectors are not qualified to, and should not be required to, act as a "judge and jury" beyond this basic review to determine the merits of the dispute or the validity of the underlying documents.

Q42: What percentage of debt collectors are "furnishers" under the FCRA? How many FCRA disputes do debt collectors receive? What percentage of FDCPA disputes do collectors treat as direct disputes under the FCRA? How do debt collectors fulfill their responsibilities to investigate disputes that are covered by both the FDCPA and the FCRA? To what extent do debt collectors stop collecting debts disputed pursuant to the FDCPA and the FCRA without investigation? To what extent do debt collectors stop reporting debts disputed pursuant to the FDCPA and the FCRA without investigation?

We do not have empirical evidence to provide at this time. Typically, when a debt collector completes an investigation triggered by the FCRA which would require a review of the records pertaining to the account, the debt collector will normally concurrently fulfill the validation requirement under the FDCPA.

Q43: What percentage of disputes are repeat disputes that were already subject to a reasonable investigation and do not include any new information from consumers? How do debt collectors currently handle repeat disputes or disputes that are unclear or incomplete? Do debt collectors receive a significant number of disputes from credit repair organizations? Is any data available as to the number of repeat disputes or disputes from credit repair organizations that debt collectors receive?

Debt collectors, if required under the FCRA as a result of reporting the debt, will either respond to each "frivolous" dispute, and, as is more common, indicate that the dispute has previously been responded to.

Q44: Should the Bureau consider including in proposed rules for debt collection an exception for "frivolous and irrelevant" disputes, similar to the one found in the FCRA? Are the incentives of those collecting on debts different from the incentives of other

furnishers and CRAs with respect to information included on consumer reports? What would be the costs and benefits of allowing collectors not to investigate "frivolous and irrelevant" disputes?

A rule addressing frivolous disputes and limiting a debt collector's responsibilities as a result of receiving such dispute would be welcome. We believe the incentive of debt collectors who are furnishers under the FCRA or debt collectors who are not furnishers should be the same: collect the right amount from the right party. Frivolous and irrelevant disputes from consumers don't advance the interest of either party and simply drive the costs of collection up (which ultimately get passed onto the consumer) and make it more likely that the account will be subject to litigation.

Q45: What information do debt collectors currently provide to verify a disputed debt? Do debt collectors typically provide documentation (media) to consumers to verify a debt?

Typically, debt collectors will either provide account media to the consumer to verify the debt or provide the consumer with the information in the records of the debt collector.

Q46: Under which circumstances, if any, should collectors be required to provide consumers with documentation (media) to verify a debt? Would providing the last periodic or billing statement related to the account be sufficient to verify most disputed debts?

The CRC supports a requirement to provide consumers with documentation to verify a debt if reasonably available to the debt collector, provided that duplicative, frivolous and irrelevant disputes are excluded and that debt collectors may cease attempts to collect on the debt without providing such documentation. Providing the last periodic of billing statement would be sufficient to verify most disputed revolving credit card debt, where the balance is disputed. It would not be sufficient to verify a dispute on a non-credit card debt where a statement may not be issued and would not resolve a dispute where the consumer disputes being the responsible party for the debt. Further, there should be no requirement to provide documentation to a consumer on an account that a collection agency no longer has in active inventory.

The cost to a credit originator of obtaining the last periodic statement or billing statement for an account is a function of the number of accounts the original creditor or servicer is selling to a debt buyer or placing with a third party debt collector, whether a duplicate or an original record is required. The more accounts at issue, the greater the cost.

The benefit of having the last periodic statement or billing statement depends on whether the information contained on the last periodic statement is disputed by the consumer. As a summary of the information contained on the statement is already provided, having a copy of the statement is not expected to be of substantial assistance to a debt collector. In some States, evidence of last purchase on the account (e.g., extension of credit) is more indicative of who used the account, where the account was used, and when the statute of limitations began to run, than the last periodic statement. See e.g. Hawkins v. Barnes, 661 So.2d 1271, 1272–73 (Fla.Ct.App.1995); Smither v. Asset Acceptance, LLC, 919 N.E.2d 1153, 1159 (Ind.App.2010); Slayback v Alexander, 179 A.D. 696, 698, 167 N.Y.S. 194, 196 (1917); Roots v. Mason City Salt & Mining

Co., 27 W.Va. 483 (W.Va. 1886); Toth v. Mansell, 207 Ill. App. 3d 665, 672, 152 Ill. Dec. 853, 566 N.E.2d 730 (1st Dist. 1990); President of Union Bank v. Knapp, 20 Mass. 96, 112, 1825 WL 1533, *12 (Mass. 1825); R.N.C. Inc. v. Tsegeletos, 231 Cal. App. 3d 967, 972, 283 Cal. Rptr. 48 (1st Dist. 1991). This information is often not contained on the last periodic statement.

Q47: What would be the costs and benefits of requiring particular forms of information to verify a debt? Are there any particular types of verification that would be especially beneficial to consumers or particularly costly for collectors to provide?

Disputes can vary greatly in facts and the information required to resolve the dispute will likewise differ. It would also be beneficial for consumers if debt buyers and third party collectors had access to the financial transaction history including payments, finance charges and any other financial transactions post charge-off. Access to other documentation may be helpful, but original contracts and statements rarely assist a consumer regarding the two most common disputes: verifying the current owner and the balance owing.

While providing this type of information would be helpful on a going forward basis, we believe there should be recognition that some or this account documentation may not be available to the current owner of the debt or the servicer and it may not be possible to provide this media to verify the debt. Any requirement to provide this documentation to verify the debt, therefore, should only apply to debt sold or resold after a date certain in the future so that the requirement can be incorporated into the portfolio transfer and sale documents. (See the Fair Debt Buying Practices Act recently passed in California which has similar requirements that apply to debt sold or resold after January 1, 2014).

Further, any requirements regarding documentation must be balanced against the reality that a majority of accounts are resolved with dispute and the cost of obtaining information can be great.

Q48: Section 809(b) of the FDCPA states that verifications must be "mailed" to the consumer. Do debt collectors currently provide the verifications only by postal mail, or are debt collectors providing verifications in other formats, such as email or text message? Do collectors obtain consumer consent if they wish to provide the verification electronically and, if so, what type of consent are they obtaining (e.g., do they follow E-Sign standards)?

Debt collectors predominantly provide verification by postal mail and look to the CFPB for guidance on rules when electronic communications may be used and a safe harbor against third party disclosure claims. We would support the ability to electronically send the verification documents to the consumer which would benefit the consumer in receiving the verification on an expedited basis and benefit the debt collector by lowering verification costs. See comments above regarding collaboration with consumer groups and the generally positive response of the consumer groups regarding electronic communications.

Q49: If consumers disagree with the verification of disputed debts provided by debt collectors, or if they do not receive verification of the disputed debts, should consumers be afforded the opportunity to file statements with collectors that explain the nature of their disputes with the debt collector, and should the debt collector then be required to provide

that statement to the owner of the debt or subsequent collectors? What would be the costs and benefits of requiring debt collectors to accept and communicate consumers' statements of dispute?

Consumers already have the ability and do in fact currently file statements with the debt collector voicing their disagreement with the verification of the debt. In a third party servicing arrangement, typically debt collectors provide this information to the current creditor. If required, the current creditor would be in the better position to pass this information along to subsequent buyers or debt collectors since the current debt collector may not know or have control over where the account is subsequently serviced.

The more significant question that must be answered is what is the effect of communicating this information down the chain? For example, will this create a cease and desist situation for all subsequent debt collectors, limiting their options to collect on the debt to filing litigation against the consumer? Limiting the debt collector's option to litigation is not usually beneficial to either the consumer or the debt collector.

Q50: To what extent do debt collectors attempt to verify a debt that is disputed? What do debt collectors currently do when they are unable to verify a disputed debt? What, if anything, should debt collectors be required to do when they are unable to verify a disputed debt? Do third-party collectors typically return the account to the debt owner when it is disputed, without attempting to verify it?

Debt collectors generally take two approaches to debt verification requests - either obtaining verification and forwarding to the consumer, or documenting the consumer's verification request, ceasing collection, returning the account to the owner and informing the consumer. We believe the consumer is protected with either approach and believe both options should be accepted as the owner of the debt, and not the debt collector, is often in the best position to investigate the consumer's concerns.

Q51: If a debt collector's investigation reveals errors or misrepresentations with respect to the debt, do collectors report those findings to the consumer? When and how are such findings conveyed to consumers?

Reporting errors with respect to the debt to the consumer will vary by debt owner and debt collector. Typically, the debt collector will correct the error, which will result in a demand of the corrected balance, a demand to the corrected party, or a cease and desist on collection of the account. Unfortunately, because the FDCPA is a strict liability statute, any effort by a debt collector to correct an error can and will result in liability for the debt collector. The difficulties with correcting errors in the debt collection context were examined in the podcast below:

http://www.insidearm.com/daily/collection-laws-regulations/collection-laws-and-regulations/collection-letter-mass-mailing-errors-and-other-crisis-responses/

The CRC recommends that the Bureau create a safe harbor from liability for debt collectors seeking in good faith to correct errors.

Q52: Do owners of debts sell disputed but unverified debts to debt buyers or place them with new third-party collectors? Are these debts reported to CRAs? What limitations should be placed on the sale or re-placement of unverified disputed debts? For example, should the owner of the debt or the collector be required to inform debt buyers and new collectors that it is an unverified disputed debt when it is sold or re-placed? Should the new debt buyer or collector be required to verify the debt before making collection efforts? What would be the potential costs and benefits of such restrictions or conditions?

Typically, unverified disputed accounts would not be included and specifically excluded as an "unqualified" account in a purchase and sale agreement. There are infrequent instances where a portfolio will include the sale of disputed debt. If the account is reported, they are generally reported as in dispute.

In the event that unverified accounts are sold or replaced for collection, we would support a requirement that the debt owner identify these accounts for the buyer or debt collector prior to the placement or sale these accounts and require the buyer or debt collector to have possession or access to the information needed to validate the debt prior to commencing debt collection efforts. We believe this would serve the purpose of making sure the current debt owner has access to verify the debt should the consumer dispute the debt after receiving the validation notice from the new debt owner.

Q53: What would be the costs and benefits of prohibiting collectors from reporting a debt to a CRA during the 30-day window?

The CRC would support this prohibition. Allowing this 30-day window would allow the consumer time to dispute the debt and eliminate reporting errors before they take place.

Q54: In addition to telephone and mail, what technologies, if any, do debt collectors currently use on a regular basis to communicate or transact business with consumers? For which technologies would it be useful for the Bureau to clarify the application of the FDCPA or laws regarding unfair, deceptive, or abusive acts or practices? What are the potential efficiencies or cost savings to collectors of using certain technologies, such as email or text messaging? What potential privacy, security, or other risks of harm to consumers may arise from those technologies and how significant are those harms? Could regulations prevent or mitigate those harms? Should consumers also be able to communicate with and respond to collectors through such technologies, including to exercise their rights under the FDCPA and particularly when a collector uses the same technology for outgoing communications to the consumer? What would be the potential costs and benefits of such regulations?

The FTC has expressed its belief that debt collectors should be allowed to use all communication technologies, including new and emerging technologies, to contact consumers, provided that consumers are not subjected to unfair, deceptive, or abusive acts and practices (and are not charged for the communication). *2009 FTC Modernization Report*, page vi. Some researchers indicate that over half of all adult Americans use texting to communicate, 62% use email, and

64% use Facebook. *http://www.factbrowser.com/facts/11609/* Moreover, 93% of all adult Americans under the age of 50 own cellular phones. *Quanria Strategies LLC report on TCPA/student loan collections 072013.*

In general, collectors have tread cautiously into emerging communication arenas, because of the uncertainty of how the FDCPA might be applied to technologies not envisioned when the Act was passed, and because of the poor track record of courts and regulators in defining clear and workable solutions for the use of now ubiquitous technologies such as answering machines and cell phones. The collection industry would welcome clarification by the CFPB as to the application of the FDCPA and UDAAP laws for new and not-so-new technologies.

- Cell phones: Although this question inquires about technologies other than "mail and telephones," cell phones are a technology inadequately treated under current statutory and decisional law, and should be addressed by the CFPB. Calls to cell phones should be permitted as any other call, within existing limits on abusive, repeated or continuous calls. The CRC believes that rules promulgated by the CFPB should contain the presumption that a cellular call is received in the time zone of the consumer's last known address, unless the collector reasonably believes the consumer is located in a different time zone.

- Text messaging: Text messaging presents a blend of telephone and letter considerations. It would seem to lend itself to the same treatment as telephoning with regard to time-of--day restrictions, but to treatment as lettering for content and number-of-contacts purposes. While the risk of debt-collection disclosure to third parties would not appear to be great with this technology, assuming the collector uses the same protocols for disclosures as with landlines, the case of the borrowed phone would be an issue raised by consumer advocates. The CRC advocates for a safe harbor presumption regarding who possesses the telephone and accesses the message.

- Email: Email is perhaps the technology with the greatest potential to facilitate written communication between consumers and debt collectors, and the CRC would welcome a workable framework for facilitating this type of communication.

- Faxes: Communication by fax is little used by collectors, unless a consumer specifically requests that an item be faxed to him or her. In such a case, the collector should be protected against any claim arising from a third party seeing the faxed materials.

- Time-of-day issues are addressed under a different heading, but we should strive for safe harbor provisions, such as the presumption that the communication is received when sent, and in the time zone of the consumer's last known address unless the collector has reason to know the consumer is located in a different time zone.

An overarching consideration would be that the parties should be able to agree on the form and format of electronic communications, even if outside the rules established by the CFPB.
The savings associated with written electronic communication technologies include postal services costs, as well as stationary and labor expenses. We would likely have upfront

programming costs and ongoing technology costs, but overall it would seem that collectors would be able to reduce their communication expenses. Electronic communications are beneficial for consumers seeking information quickly about an account that is easily accessible by the consumer.

Unlike a mailed letter, written electronic communication does not have the physical barrier of a paper envelope concealing its contents, and so the possibility of a third party inadvertently viewing the content of the communication is a concern. However, at least with email, a specific process could be implemented that mimics the current postal mail model. Perhaps the agency could be required to put all dunning/debt related information in an attachment or a link to a secure website. The actual email itself would serve as the envelope and should not disclose anything that indicates that the communication is from a debt collector (including, no debt-collector logos or debt information). We do, however, advocate for including non-debt collection information – such as the original creditor and partial account number – in the subject line of an email. The mini-miranda disclosure required by Section 1692e(11) should not be required in the body of an email if it is contained in the attachment or linked website.

Increasingly, consumers prefer electronic communication over paper communication, and allowing electronic communication in the debt collection field would serve the interests of consumers and collectors alike. These important issues should be addressed by the CFPB in crafting collection industry rules:

- The parties should be able to agree on the form and format of electronic communications, even if outside the rules established by the CFPB. The CFPB rules should be flexible and recognize that parties are free to establish appropriate communication parameters that are most convenient for them.

- Contact information provided to a creditor by a consumer should be presumed to be available to the creditor’s collection agency, much like the FCC has determined that a cellular number provided to a creditor represents prior express consent under the TCPA for the creditor and its collection agency to contact the consumer at that number. A consumer will always have the right to cease unwanted communication, but allowing the collector an opportunity to establish contact in an effort to assist the consumer in resolving the consumer’s debt is fair to both parties.

- The CFPB should define message content that does not reveal the existence of a debt or collection agency involvement, not to be a “communication” that requires the disclosures contemplated under 15 U.S.C. 1692e(11), e.g., a message that merely leaves the name of the individual collector (or abbreviated name of the agency) and a call-back number, or that delivers a request to visit a specified URL, or that contains an account number with no indication the account number pertains to a delinquent debt (please see the response to question 82 for further comment on the treatment of message content).

The savings associated with written electronic communication technologies include postal services costs, as well as stationery and labor expenses. Collectors would likely have upfront programming costs and ongoing technology costs, but overall it would seem that collectors would be able to reduce their communication expenses if electronic communications were broadly available. Communicating electronically in "one-off' or even fairly limited instances (such as when a consumer advises that all communication must be via email) creates no measurable cost saving, and in fact tends to increase costs because each such communications must be reviewed for compliance before being delivered.

We believe that a consumer should be able to exercise his or her FDCPA rights, such as ceasing communication, under any written method that the consumer has previously established with the collector. However, allowing a consumer to, e.g., cease communication via email or fax when no communication previously occurred would be unworkable, as the risk of those emails being filtered out, not received by the correct party at the agency or not linkable to an account would be high. Further, both parties should be permitted to identify what numbers or addresses are permissible for communication or notice purposes. For example, the collector should be able to designate an email address, fax number and/or postal address for contact with the collector, including cease communications or other requests. This will create greater reliability and efficiency because fewer channels need to be monitored by the collector. Allowing a consumer to cease communication by emailing any one of hundreds of employees in the collection company, or by sending a letter to the collector's outsourced letter vendor's address, would vastly increase the risk that the request would be filtered out and never acted on (which is in fact the intent of some consumers). Also, a problem that collectors often face is trying to identify an account or contact telephone number associated with a cease request, and this would be an opportunity for the CFPB to establish minimal information requirements that a consumer should provide when exercising a cease communication request (e.g., account number if known, telephone number or address where communications were received), so as to enable the collector to promptly comply with such a request. Thus, the CRC desires a rule that protects the rights of consumers who legitimately wish to cease communication or obtain information, and that promotes the ability of collectors to promptly comply with those requests. Such a rule would provide that notice can be delivered to any address or number agreed to by the parties, or designated by the collector in its communications to the consumer, or published by the collector (such as on a website); and such a rule would require a minimum of information as mentioned above to be effective for cease communication and debt-verification purposes. Finally, any such rule should recognize that a reasonable amount of time is required and allowed to act on a request or demand after receipt thereof.

Time-of-day issues need careful consideration. Agencies do not and cannot control when electronically-delivered messages are received by the consumer. The CRC believes that the CFPB should provide safe harbor provisions, such as the presumption that the communication is received when sent, and in the time zone of the consumer's last known address. For instance, a cease request may require a brief period of time (up to a week perhaps) to be properly logged and channeled to the correct party and then implemented. Calls or letters may have already been in progress and inadvertently made during that time. Those inadvertent communications should not result in strict liability for the agency.

Q55: Are there nascent communication technologies, or communication technologies that are likely to arise in the future, whose use in connection with debt collection might materially benefit or harm debt collectors or consumers? What additional challenges do

those communication technologies present in applying the FDCPA or the DoddFrank Act's prohibition against unfair, deceptive, and abusive acts and practices to debt collectors?

New communication technologies no doubt will continue to emerge. The CRC would desire that the CFPB have a process to promptly establish rules that treat the use of new technologies in a manner that is fair to collectors and consumer alike. Highly technical interpretations of statutes by the consumer bar and conflicting court interpretations make changes responsive to consumer expectations burdensome for the industry.

Q56: What complications or compliance issues do social media present for consumers or collectors in the debt collection process? How, if at all, should collector communications via social media be treated differently from other types of communications under debt collection rules? What privacy concerns are raised by various social media platforms?

Consumer privacy and disclosure of the debt are the greatest compliance issues presented by social media. If a communication from a collector can be delivered privately (or if privacy requirements are waived by the consumer), and if the proper disclosures can be provided, then communication via social media should be treated the same as other written communication. The CRC recognizes that a debt collector cannot use false means to gain access to a consumer through social media. But if access is allowed or available, then communication should be allowed subject to privacy protections. Likewise, if the consumer requests communication through social media channels then that should also be permitted, though not required.

Q57: FDCPA section 808(11) declares it to be a false, deceptive, or misleading representation for collectors to fail to disclose that a communication is from a debt collector. This section also requires in the collector's initial communication what is often called a "mini-Miranda" warning, in which the collectors state that they are attempting to collect a debt and any information obtained will be used for that purpose. Standard industry practice is for third-party debt collectors to provide the mini-Miranda warning during every collection call. What are the costs and benefits of such collectors including the mini-Miranda disclosure when they send communications via social media?

It is reasonable to expect that the same standard that is in place for other written communications would be applied to communication via social media, including the disclosure requirements and protections against publicly disclosing information about the debt. That said, consumers may desire and request that communications be made through a particular channel. The CFPB should permit (though not require) such communications when requested by the consumer, without imposing on the collector the risks of third-party disclosure.

Q58: How frequently do debt collectors communicate with third parties about matters other than the location of the consumer? What other topics are discussed and for what reason? What are the potential risks to consumers or third parties? Would additional regulation to address this issue be useful?

Collectors are not permitted to communicate with third parties about matters other than location unless they have express permission to do so from the debtor. This is often the situation when the debtor has an attorney, where they are working with a credit counseling or credit repair organization, or where another party is helping out/taking responsibility for the payment and arrangements for the debtor. In these situations, it would be reasonable to expect that the agency will communicate with the third party on all the same issues and in the same manner as they would if they were dealing with the consumer directly. Potential risk includes the third party consumer representative mismanaging the consumer's affairs, however this is a risk the consumer accepts and cannot reasonably be imposed on the agency.

The only other circumstance where a debt collector would communicate with a third party, other than to determine the location of the consumer, is where a call is placed to the consumer's phone number and someone other than the consumer answers. There are no regulations or guidance in place for if or how a debt collector may leave a message with a third party for the consumer to contact the debt collector. The CRC urges the CFPB to issue regulations governing such messages. Please see the response to question 82 in this regard, as well.

One area where regulation would be helpful for consumers and agencies concerns the interpretation of Section 1692c(b). That section appears to require that any consent given by the consumer debtor to the agency to discuss a debt with a third party must be given directly from the consumer to the agency. Often consumer debtors will give powers of attorney or other authorizations to family, friends or others to act on their behalf concerning the debt, specifically, or their financial affairs, generally (e.g. person is disabled gives general power of attorney to sibling). However, a fair reading of 1692c(b) prohibits agencies from communicating with those third parties unless the authorization is provided directly; a third party sending the signed consent on behalf of the consumer is not sufficient. This creates a challenge for the debt collector to discuss matters with a legally authorized third party. Such circumstances include; disabled family member previously signed durable power of attorney in anticipation of some future disabling occurrence; military personnel did likewise; party working with debt resolution company provides authorization, etc.

To solve the dilemma about third party communications, the CFPB should consider a rule that would clarify that a power of attorney or other written authorization from the consumer that clearly names the authorized party and expressly declares that party is authorized to communicate about the consumer debtor's financial matters is sufficient, even if it is presented by a third party and not the consumer himself. This would benefit the consumer who is otherwise unable or unwilling to contact the agency directly but who desires to resolve the matter.

Also, some clarification is needed with respect to the meaning of the term "consumer" under Sections 804 and 805 of the FDCPA, however. For purposes of Section 805, the term "consumer" includes the consumer's spouse, parent (if the consumer is a minor), guardian, executor, or administrator. It is not clear if the term "consumer" has the same meaning for purposes of Section 804.

Q59: What would be the costs and benefits of setting a standard for when a debt collector's belief about a third party's erroneous or incomplete location information is reasonable?

This section of the FDCPA appears contradictory and likely in need of revision. In practice, the CRC generally does not advocate additional calls to a third party premised on "erroneous or incomplete location information" that is now correct or complete.

Q60: Some individuals employed by debt collectors use aliases to identify themselves to third parties when seeking location information about a consumer. Should this practice be addressed in a rulemaking? If so, how?

The FDCPA expressly prohibits "[t]he use of any business, company, or organization name other than the true name of the debt collector's business, company, or organization." 15 U.S.C. § 1692e(14). The FTC and courts generally permit the use of a validly registered DBA without violating this requirement. FTC's Statements of General Policy or Interpretation Staff Commentary on the FDCPA, 53 Fed. Reg. 50097, 50107 (Dec. 13, 1988). See also Sheldon, *FTC Informal Staff Letter* (Oct. l, 1980); *Boyko v. Am. Intern. Grp., Inc.*, No. Civ. 082214 RBK/JS, 2012 WL 2132390, at *3, 2012 U.S. Dist. LEXIS 81229 (D.N.J. June 12, 2012); *Mahan v. RetrievalMasters Credit Bureau, Inc.*, 777 F. Supp. 2d 1293, 1297 (S.D. Ala. 2011). And several states similarly prohibit debt collection companies from using any name other than the name under which they are licensed or registered. See, e.g., Ariz. Admin. Code R2041507; Haw. Rev. Stat. Ann.§ 443B18(1); 225 Ill. Comp. Stat. 425/9(a)(7); Mass. Regs. Code tit. 209, § 18.13; New York City; N.Y., Rules, Tit. 6, § 577(d)(13); Tex. Fin. Code Ann. § 392.304(a)(l).

There is no need for the CFPB to address the use of collection company aliases because it is already expressly and uniformly prohibited by the FDCPA, several states, the FTC and established case law. But the universal prohibition on the use of company aliases does not extend to the use of aliases by individual collection employees.

The FDPCA expressly requires individuals employed by debt collectors to meaningfully disclose the caller's identity. 15 U.S.C. § 1692d(6). Courts examining this provision require collectors to disclose the name of the individual collection employee making the call, the name of the debt collection company, and the nature of the debt collection company's business. See, e.g., *Baker v. Allstate Fin. Servs., Inc*., 554 F. Supp. 2d 945, 94950 (D. Minn. 2008); *Costa v. Nat'l Action Fin. Servs*., 634 F. Supp. 2d 1069, 107475 (E.D. Cal. 2007); *Hosseinzadeh v. M.R.S. Assocs., Inc*., 387 F. Supp. 2d 1104, 1112 (C.D. Cal. 2005); *Wright v. Credit Bureau of Ga., Inc.*, 548 F. Supp. 591, 597 (N.D. Ga. 1982). And while a collection employee must disclose their identity, the FTC has determined that the use of an alias constitutes meaningful disclosure under the FDCPA if the alias is consistently used and the true identity of the employee is easily ascertainable. FTC Statements of General Policy or Interpretation Staff Commentary on the FDCPA, 53 Fed. Reg. 50097, 50105 (Dec. 13, 1988). A couple states have enacted similar statutes permitting the use of an alias by a collection employee so long as the true identity of the employee can be determined. See e.g., R.I. Gen. Laws § 1914.97(p); Cal. Civ. Code § 1788.11(b).

The FTC has determined that the use of an alias constitutes meaningful disclosure under the FDCPA if the alias is consistently used and the true identity of the employee is easily ascertainable. FTC Statements of General Policy or Interpretation Staff Commentary on the FDCPA, 53 Fed. Reg. 50097, 50105 (Dec. 13, 1988). A couple states have enacted similar statutes permitting the use of an alias by a collection employee so long as the true identity of the employee can be determined. See e.g., R.I. Gen. Laws § 19-14.9-7(p); Cal. Civ. Code § 1788.11(b).

The FTC's interpretation fairly balances the employee's privacy rights and personal safety with the need for a consumer or debt collection company to accurately identify the true identity behind every employee alias. Further CFPB rulemaking is not necessary to preserve this balance and risks conflicting standards of care.

Q61: Under FDCPA section 804(1), debt collectors are permitted to identify their employers during location communications only if the recipient of the communication expressly requests that information. Does providing the true and full name of the collector's employer upon request risk disclosing the fact of the alleged debt to a third party? If so, how could the risk be minimized? What would be the costs and benefits of minimizing or otherwise addressing this risk?

If the name of the company reveals that the caller is from a collection agency, then this can lead to the inference that the call pertains to collection of a debt. Notwithstanding, at least one court examining such issues concluded that mere inferences that a call is regarding a collection account do not give rise to violations for third party disclosure.[2] Third parties receiving location calls are also consumers. It is reasonable for them to ask and to expect to hear the name of the business that is calling them. Therefore, it is in the best interests of these consumers, the agency and the debtor to establish reasonable standards. The CRC suggests that the CFPB adopt a rule that in such circumstances, if asked for the name of the business, the agency representative respond truthfully with the legal name and that such disclosure shall not be considered a violation of the FDCPA for disclosure of the existence of a debt. Alternatively, the CFPB could adopt a rule that, where possible, the agency shorten its name or provide an accepted nickname or trade name for purposes of such a response that would not reveal that the caller is a collection agency.

The benefit of allowing the collector to use a shortened name or nickname would include reducing the risk of embarrassment to the consumer. There would be no cost to anyone in allowing this. This would be even more compelling if there is a national registry of agencies that includes any/all shorthand nicknames.

Q62: FDCPA section 804(5) bars a debt collector from using any language or symbol on an envelope or elsewhere in a written communication seeking location information if the name indicates that the collector is in the debt collection business or that the communication relates

[2] *Zortman v. J.C. Christensen & Associates, Inc.*, 870 F.Supp.2d 694, 704-705 (D. Minn. 2012) ("The . . . listener would then have to make a second assumption—that the only reason a debt collector calls is to collect a debt." "Inferences or assumptions by [a] . . . listener are not 'indirect communications.'")

to the collection of the debt.153 How should such a restriction apply to technologies like email, text message, or fax?

It is reasonable to apply the same rules to technology if it is being used to obtain location information from a third party who is not the debtor.

Because texts and emails present a blend of telephone and letter considerations, hybrid solutions are required. As to texts, allowing the number called from to display, without disclosing the caller's identity, would seem to be the approach that best serves the debtor's privacy concerns. As to emails, a name that does not disclose the debt collector's identity or purpose would minimize the consumer's exposure to third party disclosure. But the industry needs to have a clear rule that provides protection for those who comply with the rule, and that resolves the conflict between requiring disclosure of a collector's identity and/or the debt collection nature of the communication, and prohibiting third party disclosure.

Notwithstanding, at least one court examining such issues concluded that mere inferences that a communication is regarding a collection account do not give rise to violations for third party disclosure.[3] The CRC suggests that the CFPB adopt a rule that agencies disclose their true identities and that such disclosure in and of itself not be considered a violation of the FDCPA for disclosure of the existence of a debt. Alternatively, the CFPB should adopt a rule that, for purposes of such a communication, permits the agency to use a trade name, acronym, or shortened form of its name that does not reveal that the company is a collection agency.

Q63: Does sufficiently reliable technology exist to allow collectors to screen to determine whether a given phone number is a landline versus a mobile phone?

Current technology is not sufficiently reliable to allow collectors to know for certain if a telephone number is a cell phone or land line. With the ability to port numbers to and from cell phones and land lines, area codes and prefixes are no longer sufficient to determine if a number is a landline or cell phone. Screening services are subject to delays from the time a number is ported to the time that the database is updated.

If so, should collectors conduct such screening before relying on an area code to determine a consumer's time zone?

While screening services can provide information on whether or not a number is a cell phone (subject to the limitations discussed above), no publicly available service is known that can determine an individual's location at the time of the call. The FDPCA requires that a collector cannot contact a debtor "at any unusual time or place or a time or place known or which should be known to be inconvenient to the consumer. "15 U.S.C. § 1692c(a)(1). "Absent knowledge of circumstances to the contrary," the collector must call between 8:00 a.m. and 9:00 p.m. local time for the consumer's location. 15 U.S.C. § 1692c(a)(1). If the collector cannot readily determine the debtor's location and time zone, this may lead to violations. The area code

[3] *Zortman v. J.C. Christensen & Associates, Inc.*, 870 F.Supp.2d 694, 704-705 (D. Minn. 2012) ("The . . . listener would then have to make a second assumption—that the only reason a debt collector calls is to collect a debt." "Inferences or assumptions by [a] . . . listener are not 'indirect communications.'")

associated with a landline phone is generally thought to be a good indicator of the time zone of the recipient. The area code associated with a cell phone at this point in time is also still a good, though not perfect, indicator of the time zone of the recipient. Although many people do not change their cell phone number (and thus the area code) when they move, the majority of people still have an area code that relates to their current state of residence http://www.fcc.gov/guides/portability-keeping-your-phone-number-when-changing-service-providers (last visited December 5, 2013) ("[I]f you are moving from one geographic area to another, however, you may not be able to take your number with you.")

The FDCPA provides a defense for violations that are "not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error." 15 U.S.C. § 1692k(c). In this regard, area code selection should be considered a procedure "reasonably adapted to avoid" the error of calling cell phones either before 8:00 a.m. or after 9:00 p.m. The CRC urges the CFPB to adopt safe harbor rules that will protect agencies who are calling a particular area code within the permitted hour's local time for the geographic locations generally served by those area codes. No cell phone screening would be required. However, should a consumer notify the agency that they are located in a different time zone, than that should be controlling.

What would be the costs and benefits of requiring such screening?

It would be unreasonable to require such screening unless and until it can be verified that screening is reliable and accurate. Current screening, as good as it might be, ranges in price. The benefits of course are that the consumer is not inconvenienced and the debt collector reduces complaints and suits.

Should collectors be allowed to rely on information provided by consumers at the time they applied for credit, such as when a consumer provides a phone number identified as a "home" number or a "mobile" phone number on an initial credit application without screening the area code?

Yes. This would be a reasonable and manageable safe harbor. Consumers can easily control this information by updating their creditors if and when this information is changed. Further, if a call is made by a collection agency, the consumer is in the best position to know if their telephone and address data, including time zone, is accurate. Agencies should be afforded a safe harbor for contacting a consumer based on this information, as long as they are also obligated to update the information if new or different information is subsequently provided by the consumer.

Q64: Should collectors assume that the consumer's mailing address on file with the collector indicates the consumer's local time zone? If the local time zone for the consumer's mailing address and for the area code of the consumer's landline or mobile telephone number conflict, should collectors be prohibited from communicating during any inconvenient hours at any of the potential locations, or should one type of information (e.g., the home address) prevail for determining the consumer's assumed local time zone?

As set forth the response to Q63, if the collector does not know the time zone of the recipient of the call, this can lead to violations of the FDCPA for contacting persons at inconvenient times if the call is made assuming the area code for the cell phone matches the location of the debtor. If there is a conflict between the local time zone for the consumer's mailing address and the area code associated with the consumer, the collector should be permitted to rely on the area code associated with the debtor phone. This is based on the economics of the situation. Even if the address is slightly more reliable than the area code for predicting the location of the debtor, this results in a significant cost increase to the collector. The collector incurs the cost of querying its collection database to (1) associate an address with an area code; (2) compare the address area code and contact area code; and (3) update this comparison every time the contact address or contact area code is changed. This increase in costs is not justified by the de minimis harm where a collector occasionally happens to call a cell phone when the person has traveled to another time zone or kept an old area code and phone number. Further, there are often times when there is no good address on file for an account, for instance where there is a mail return. Instead, as suggested in the previous answer, the CRC urges the CFPB to establish safe harbor rules that permit calls during the times that would ordinarily be permitted by the area code of the telephone number being called, but also require agencies to adjust the calling times in the event that the consumer debtor advises that they are located in a different time zone.

Q65: A main purpose of designating certain hours in the FDCPA as presumptively convenient apparently was to prevent the telephone from ringing while consumers or their families were asleep. Do similar concerns exist for other technologies? Should any distinction be made between the effect of a telephone ringing and an audio alert associated with another type of message delivery, such as email or text message, if a mobile phone is on during the night?

The CRC supports the proposition that a collector should be responsible for the sent time of any electronic communication and not the received or delivered time. Any electronic communication should be sent during allowed hours.

The FDCPA was designed to regulate the most used forms of communications by collectors: phone calls and letters. As it stands, those communications are still preferred by collectors. This is for several reasons. First, there is generally more success in convincing a debtor to resolve an account via live phone call. Second, use of e-mail or text messages may subject the collector to more FDCPA exposure than regular mail. FTC Workshop Report, Collecting Consumer Debts, The Challenges of Change, Feb. 2009 at http://www.ftc.gov/bcp/workshops/debtcollection/dcwr.pdf (last visited December 5, 2013)(noting third party disclosure concerns have dissuaded collectors from using e-mail more frequently). Therefore, as a practical matter, collectors are going to make more phone calls than text messages or emails. Moreover, emails and text messages are less likely to be associated with an audio alert than phone calls. Finally, the Telephone Consumer Protection Act, 47 U.S.C. 227 et seq. already regulates harassing text messages sent without consent. Therefore, it does not make sense to grant those methods of communications the same level of restrictions that apply to telephone calls.

Q66: Should a limitation on usual times for communications apply to those sent via email, text message, or other new media? Should it matter whether the consumer initiates contact with the collector via that media? Is there a means of reliably determining when an

electronic message is received by the consumer? Are there data on how frequently consumers receive audio alerts when either emails or text messages are delivered? Are there data showing how many consumers disable audio alerts on their devices when they wish not to be disturbed?

The CRC supports the proposition that a collector should be responsible for the sent time of any electronic communication and not the received or delivered time. Any electronic communication should be sent during allowed hours.

There should be no new restrictions on these types of communications, regardless of whether the consumer initiates contact with the collector via that media. Although text messages and emails can also be considered "disruptive," the Telephone Consumer Protection Act, 47 U.S.C. 227 et seq. already regulates harassing text messages sent without consent. That would leave only e-mails. However, emails are essentially treated the same as letters under the FDCPA, which do not have time restrictions, and therefore should remain treated the same as letters.

Q67: Is there a general principle that can guide the incorporation of standards on unusual times for communications to newer technologies? For instance, should such restrictions apply only to technologies that have "disruptive" effects, like phone calls, and if so, how might "disruptive" be best defined? What would be the costs and benefits of applying any such general principles?

See response to Q66.

Q68: Especially with the advent and widespread adoption of mobile phones, consumers often receive calls at places other than at home or at work. Under what circumstance do collectors know, or should know, that the consumer is at one of the types of places listed below? What would be the costs and benefits of specifying that such locations are unusual or inconvenient, assuming the debt collector knows or should know the location of the consumer at the time of the communication?

Churches, synagogues, mosques, temples, or other places of worship

Military combat zones or qualified hazardous duty postings

Daycare centers

The purpose and intent of Section 805 of the Fair Debt Collection Practices Act does not specifically define "inconvenient times and places" other than creating a presumption that calls before 8:00 a.m. or after 9:00 p.m. are inconvenient. The CRC believes that Congress intentionally declined to further clarify the meaning of this phrase because it is inherently personal to each individual consumer. The only certain way of knowing that a particular time or place is inconvenient is where the consumer specifically notifies the collector of his or her preferences. Furthermore, while it is true that there is an ever increasing percentage of individuals using cell phones, a collector does not have any means of identifying the location of a consumer by virtue of their mobile device. There is no legal way for private companies to track the location of individuals through their cell phone number. It should be noted, however, that the use of mobile phones and the portability of phone numbers complicates a debt collector's compliance with Section 805. Historically, debt collectors relied on the area code associated with a consumer's phone number to determine the time zone of the consumer. A consumer with a mobile phone could be anywhere in the world at the time of a call and even landline numbers can be ported from one time zone to another. The CRC recommends that the Bureau maintain the current standard where consumers have responsibility for notifying debt collectors if there are specific times and locations that are inconvenient. The Bureau should also clarify Section 805 by establishing a presumption that calls to a consumer's phone number are presumed to be within the permissible calling times if made between 8:00 a.m. and 9:00 p.m. in the location associated with the consumer's area code even if the consumer is not in that time zone when the call is actually received.

Q69: Are there additional places not listed above that would be inconvenient places for consumers to be contacted?

As noted above, the CRC does not recommend trying to identify specific places that are automatically inconvenient for consumers. Each person's situation is different and it is not unreasonable to place some responsibility on the consumer to communicate to callers the times and places they would prefer not receiving calls.

Q70: Under what circumstances are communications at a consumer's place of employment inconvenient, even if the employer does not prohibit the receipt of such communications? What would be the potential costs and benefits of prohibiting communications at a consumer's place of employment due to inconvenience, assuming that the collector knows or should know the consumer's location? To what extent does the inconvenience depend on the nature of the consumer's workplace or on the consumer's type of employment at that workplace?

As noted in the response to Question 68, collectors have no means of determining a consumer's location at any given time without the consumer providing that information. There is no technology available that allows private companies to track a person's whereabouts through their mobile phone. Consumers benefit from receiving communications from creditors and debt collectors to alert them of past due bills that may negatively impact the consumer's financial wellbeing if not addressed in a timely manner. There is no reliable evidence that consumers are being damaged in any systemic way under the current rules related to calls at their place of employment. If the consumer or their employer indicates that such calls are not allowed or are not preferred, the FDPCA requires that debt collectors cease such calls and provides adequate remedies in cases where such directives are not honored.

Q71: Do employers typically distinguish, in their policies regarding employee contacts at work between collection communications and other personal communications? Are employers' policies concerning receipt of communications usually companywide, specific to certain job types, or specific to certain individuals?

This requires a depth of knowledge of employer policies that are company-specific. It is reasonable, however, to think at least some companies would have policies that vary by type of job or level of position. For example a line worker in a factory is less likely to be allowed calls at work than is an office worker. And a front line call center worker is less likely to be allowed calls at work that is a call center manager or executive.

Q72: Collectors may have many accounts with consumers employed by the same large employer, such as a national chain store, and this may enable collectors to become familiar with the employers' policies regarding receipt of personal or collection communications in the workplace. Can collectors reliably determine consumers' employers and their policies with regard to receiving communications at work?

As touched on above, one employer may have different policies for different workers. A collector cannot reasonably determine the employer's policy without the employer expressly providing it.

If so, what would be the costs and benefits of requiring that collectors cease communications at work for all consumers working for a certain employer if collectors are informed by one (or more) consumer(s) that the employer does not permit personal communications for any of its employees overall, or at a particular location or job type (e.g., retail premises employers)? What would be the costs and benefits of requiring that collectors cease communication at work if they learn of the employer's policy through other means, such as the policy being posted on the employers website?

Employers' rules and policies can vary by position, by location, and over time. Thus, by way of fictitious example only, MegaMart stores with locations throughout the United States may have different policies for office workers, cashiers, stock clerks, floor personnel, etc. Policies may be subject to alteration or exception at a supervisor, manager, or general manager level. And the ultimate policies may vary over time as new or different rules are adopted and new or different supervisors, managers or general managers take on the positions. It would be impossible and unwise for an agency to assume that because one debtor at a particular company has indicated that he/she is subject to a particular policy that the same policy would apply to all other debtors at that company. As well, simply because a debtor at one point in history may have worked for a particular employer does not mean that at the time of a subsequent call that they are still working at that place of employment.

It is unusual for a debt collector to possess detailed information regarding a consumer's job. The collector may have the consumer's work telephone number, but rarely will the debt collector know what the employer's line of business is, the consumer's job title, hours, etc., let alone company policies which could change at any time. It is unreasonable to expect a debt collector to know an employer's policy regarding collection communications without having expressly been informed about this by the particular consumer at issue.

Q73: The FDCPA's restriction on contacting consumers represented by attorneys does not apply if "the attorney fails to respond within a reasonable period of time." How do

collectors typically calculate a "reasonable period of time" for this purpose, and does the answer vary depending on particular circumstances?

Section 805(a)(2) of the FDCPA does not prescribe what "reasonable period of time" a collector must wait for a consumer's attorney to respond, before resuming attempts to contact the consumer directly, nor does it prescribe a method by which attorney representation must be confirmed. There also does not appear to be any case law on the issue.

Generally, a collector will attempt to confirm attorney representation of a consumer or otherwise communicate with the attorney via letter(s) and/or telephone calls. If by telephone, the collector will typically make more than one attempt to reach the attorney or the attorney's support staff. Collectors will typically wait a minimum of fourteen (14) days from the time contact is attempted with the attorney before resuming direct contact with the consumer. Further, when resuming contact with the consumer, the agency will advise the consumer that it has attempted unsuccessfully to confirm the representation elicit a response from the attorney.

If the CFPB were to issue a "reasonable period of time" standard before resuming direct contact with the consumer, the CRC recommends fourteen (14) days from the time the collector attempts communication with the attorney. Further, because the FDCPA does not limit the method by which a debt collector can communicate with a consumer's attorney, the CRC would want to ensure that any rules would not limit such communications to just mail or telephone calls.

Q74: How common is it for consumers to be represented by attorneys on debts? When consumers have multiple debts, do attorneys usually represent them on one debt, all debts, or some number of debts less than the total? How often do consumers with debts change their attorney?

Aside from consumers who retain attorneys to represent them in bankruptcy matters, the number of consumers who retain attorneys is infinitesimal. There are a number of reasons a consumer could be represented by an attorney, such as a personal injury attorney representing the consumer on a medical bill relating to the underlying incident, a consumer attorney seeking to negotiate debt settlement, an attorney operating as a credit repair organization for consumers, a family member/friend doing a favor for the consumer, etc.

When multiple debts are involved, an attorney usually represents the consumer on all debts, but there are common exceptions (for example, a personal injury attorney will usually represent the consumer only on the debt related to the treatment of the injury). We note that the case law is very clear and well-reasoned that a collection agency is not required to assume legal representation exists for accounts that are placed *after* notice of an attorney's involvement on a current account. Thus, notice of attorney representation on a particular account does not prohibit an agency from contacting a consumer on an account placed after that notice. See *Robinson v. Transworld Systems, Inc.*, 876 F.Supp. 385, 390 (N.D.N.Y. 1995) (citing *Graziano v. Harrison*, 950 F.2d 107, 113 (3d Cir. 1991); *Udell v. Kan. Counselors*, Inc. 313 F. Supp. 2d 1135 (D.Kan 2004); See also FTC Statements of General Policy or Interpretation[;] Staff Commentary on the Fair Debt Collection Practices Act, 53 Fed. Reg. 50097, 50098, 50104 (1988). (The FTC recognizes that requiring a collection agency to know when a debtor is represented by counsel with respect to future debts would place an "unreasonable burden" on the debt collector. Id. at 50098.) That being said, most attorneys seek to represent consumers only with regard to a specific account, and not to any subsequent account that is placed. The CRC does not have good data on the number of consumers who change their attorney, but believes the percentage to be very small.

Q75: How prevalent is the practice of requesting or requiring, as part of a credit application or credit contract, contact information and consent to contact a servicemember's commanding officer or other third parties? Are such consent agreements to contact a consumer's employer or boss as common among civilian consumers? How frequently do debt collectors employer or boss as common among civilian consumers? How frequently do debt collectors actually contact servicemember's commanding officers or other third parties identified in credit contracts? Are servicemembers harmed in unique ways by communications with their commanding officers? Relatedly, do such harms suggest solutions that are unique to servicemembers, either in the disclosures they receive as part of credit applications or regarding limits on communications with commanding officers?

The CRC is not aware of any circumstance in which a credit application or contract would include consent to speak to a servicemember's (SM) commanding officer; however, the CRC will defer to credit grantors that respond to the ANPR on this topic. With regard to the remaining questions, the only permitted communications with a third party allowed under the FDCPA are set forth in Sections 804 and 805(b).

Q76: How common are the practices mentioned below? Collectors may communicate with spouses while servicemembers are deployed to combat zones or qualified hazardous duty areas. Collectors may ask military spouses to pay the debts of these consumers during periods when it is difficult for the spouse to contact these consumers, or when such contact may interfere with combat readiness. Alternatively, collectors may contact military spouses during the potentially sensitive period immediately following the death of a servicemember serving in a combat zone or qualified hazardous duty done, with the hope of obtaining payment from the spouse's military death gratuity.

As a preliminary matter, the author of the response to this question on behalf of the CRC has not only been deployed to a combat zone, but is still serving as a Senior Non-Commissioned Officer in the Army National Guard. As a servicemember (SM), this author has a firsthand understanding that the "real world" does not stop just because of a deployment to a combat zone or other hazardous duty area. That is why the military ensures SM's and their families are prepared for these hard times by providing seminars prior to the deployment that stress the importance of appointing a dependable power of attorney to handle the financial affairs of the SM while deployed. The military also provides assistance, whether it be through a JAG attorney or some other assistance office, to SM's and their families or other appointed power of attorneys.

Prior to an SM being deployed, it is strongly encouraged that a SM provide the person who is handling the SM's financial affairs with a signed power of attorney in case that person needs to provide it to the SM's creditors, etc., during the course of handling the SM's financial affairs. In the case of a married SM, the spouse is usually appointed by the SM as the power of attorney. Please note that under Section 805(d) of the FDCPA, the term "consumer" includes the consumer's spouse as well as other exempted persons. Therefore, it is believed that the SM's spouse is afforded the same protections under the FDCPA that the consumer is. The spouse also has the option of retaining an attorney to assist him or her through the local JAG office at no cost to the spouse.

Two issues exist when it comes to spouses and other appointed powers of attorney: 1) In some States the term "consumer" does not include the spouse; and 2) Section 805(b) of the FDCPA requires consent directly from the consumer before the debt collector can speak to a third party about the consumer's debt--meaning the consent must be received by the collector directly from the consumer (whether verbal or written); a third party sending the signed consent on behalf of the consumer SM is not sufficient. This creates a challenge for the debt collector to discuss matters with a legally authorized third party. See discussion of this issue in more detail in the response to question 58.

It further detracts from the combat readiness of the SM because the SM needs to take the extra time to contact the debt collector to provide direct consent, when the SM already provided the person responsible for his or her financial affairs a signed power of attorney, which is an accepted document in most if not all other areas of the financial landscape, except debt collections.

To solve the dilemma about third party communications and states that prohibit contact with a spouse, the CFPB should consider a rule that would clarify that a power of attorney or other written authorization from the consumer that clearly names the authorized party and expressly declares that party is authorized to communicate about the consumer debtor's financial matters is sufficient, even if it is presented by a third party and not the consumer himself. This would benefit any consumer, not just a SM consumer, because there would not need to be the extra step of obtaining direct consent from the consumer to speak to a third party, when the consumer has already provided this authority through a power of attorney or other signed document.

As for the question about contacting a spouse during the potentially sensitive period immediately following the death of a servicemember serving in a combat zone or qualified hazardous duty zone, please be assured that reputable agencies, including members of the CRC, do not engage in this practice. In general, please refer to Questions 77, 79 and 80, which discusses communications about a decedent's debts.

Q77: During a consumer's lifetime, a collector can communicate with a consumer's spouse about the consumer's debt. When a consumer dies, the FDCPA does not specify whether a consumer's surviving spouse continues to be the consumer's "spouse," such that collectors may continue to contact the person without violating section 805(b). How often do collectors contact surviving spouses and what is the effect of such contacts? What would be the potential costs and benefits of regarding surviving spouses as "spouses" under section 805(b)

The CRC supports a rule holding that a "surviving spouse" is a "spouse" for purposes of the FDCPA. This position is supported by the statements of the FTC. On July 27, 2011, the Federal Trade Commission issued a Statement regarding the collection of debts owed by deceased individuals. Here is a link to that Statement:

http://www.ftc.gov/os/2011/07/110720fdcpa.pdf

In the Statement, the FTC asserted:

> One commenter argued that the term ''spouse'' in Section 805(d), 15 U.S.C. 1692c(d), does not cover widows or widowers because marriage terminates at the death of a spouse. *See* Nat'l Consumer Law Ctr. at 1–2. Therefore, the commenter maintained that collectors should not be permitted to discuss the decedent's debts with surviving spouses. This is incorrect. In 1996, Congress created an omnibus definition for ''spouse'' to apply ''[i]n determining the meaning of any Act of Congress, or any ruling or interpretation of the various administrative bureaus and agencies of the United States.'' 1 U.S.C. 7. The only court to address whether a surviving spouse is a ''spouse'' within the omnibus definition held that a surviving spouse remains a ''spouse'' in determining the meaning of any Act of Congress. *Taing* v. *Napolitano,* 567 F.3d 19 (1st Cir. 2009). The court expressly rejected the government's arguments that the use of the present tense in the omnibus definition and what the government contended was the common, ordinary meaning of the term compelled the conclusion that the plaintiff ceased being a ''spouse'' upon her husband's death. Rather, the court stated that the traditional meaning of ''spouse'' includes surviving spouse and cited *Black's Law Dictionary* to note that ''surviving spouse'' is subsumed within the dictionary definition of ''spouse.'' *Id.* at 24–26. *See Federal Register, Vol 76, No. 144, page 44918, footnote 29.*

Q78: Are there circumstances under which a collector should not be permitted to contact a consumer's spouse, for example, the individuals are estranged or the consumer has obtained a restraining order against her spouse? How frequently do these circumstances occur? What would be the costs and benefits of prohibiting or limiting communications with a consumer's spouse upon the consumer's request?

If the parties are married, the FDCPA permits contact with the spouse. This avoids requiring collectors making judgment calls on the legal status of the individual. If the spouse does not want contact, the agency should honor a request not to communicate with him or her.

Q79: The FDCPA permits collectors to communicate with "executors" and "administrators" about a decedent's debts. State laws may allow individuals other than those with the status of "executor" or " administrator" under State law, for example, "personal representatives," to pay the debts of a decedent out of the assets of the decedent's estate. How frequently do collectors contact individuals who are not "executors" or "administrators" but still have the authority under State law to pay the debts of decedents out of the assets of decedents estates? What is the effect of these

contacts? What would be the potential costs and benefits of treating any person who has the authority to pay the debts of the decedent out of the assets of the estate as "executors" or "administrators?" To what extent do spouses, executors, and administrators pay decedents' debts out of their own assets? Do collectors state or imply that such parties have an obligation to pay these debts?

See response to question 77. The CRC is willing to assist the CFPB in analyzing any data regarding this question. In addition, the CRC notes that a majority of deceased accounts are not delinquent and thus are not disputed by the decedent.

Q80: Do owners of debts or collectors inform executors and administrators when collecting on debt that was disputed by the decedent prior to the decedent's death?

See response to question 77. No, this is not typical. In addition, the CRC notes that a majority of deceased accounts are not delinquent and thus are not disputed by the decedent.

Q81: A third party who is not a "consumer" under FDCPA section 805(d) may know details about the consumer's debt and contact a debt collector to settle a consumer's debt. For example, the parent of a non-minor child may reach out to a collector to assist with the child's debt. How often are such contacts made? Should collectors be permitted to assume that the consumer has consented to the third party contact, where a third party already knows about the consumer's debt and is offering to repay the debt? When would it be appropriate to allow collectors to rely on this theory of implied consent?

Yes, this happens with some frequency. We advocate for a rule providing that if the third party has access to information disclosed in a first class letter mailed to the consumer – such as the collection agency account number – this should act as implied consent or proof of consent. It would certainly be helpful for agencies if they could assume that the person has permission to discuss the matter and pay the debt (as is most often the case). Please see, also, response to question 58.

Q82: How should a rule treat recorded messages, if at all? What benefits do recorded message (as distinct from live phone calls) offer to debt collectors or consumers?

I. INTRODUCTION

Impediments to collection communications hurt consumers who may not be aware that the status of accounts in collection and could result in credit reporting or litigation to recover the balance. As stated by Director Cordray: "Collection of consumer debts serves an important role in the proper functioning of consumer credit markets.[4]"

[4] http://www.consumerfinance.gov/newsroom/director-cordray-remarks-at-the-debt-collection-advance-notice-of-proposed-rulemaking-press-call

The CRC advocates use of a message that achieves two primary objectives of consumers:

1. The risk of a third party disclosure is minimized; and,
2. The risk of confusion of the consumer is eliminated.

II. <u>STATEMENT OF THE PROBLEM</u>

Congress passed the FDCPA in response to "abundant evidence of the use of abusive, deceptive, and unfair debt collection practices."[5] The Act regulates collection conduct in a variety of ways. The FDCPA also includes competing requirements that a debt collector disclose his or her identity and that a collector refrain from communicating a consumer's debt to a third party.[6] However, Congress did not anticipate the challenges that would be created by the wording of the FDCPA with respect to our modern voicemail lifestyle.

Current case law and interpretations of the FDCPA materially and adversely impact consumers. If a telephone message is considered a "communication" under 15 USC 1692a(2), then the agency is required to leave the mini-Miranda which will disclose that they are debt collectors. But if overheard by a third party, those same "beneficial" disclosures can embarrass the debtor.

Before *Foti*, collectors would leave simple, but effective voicemail messages for debtors. These messages would typically follow a script much like the following, never revealing the debt:

Hello, this is John Smith calling from ABC Financial. I am calling about an important personal business matter that requires your attention. Please call back 1–800–234–5678. Please reference file number 7891234. This is not a solicitation.[7]

Such messaging was a fair balance between the need for the consumer debtor to know that there was a matter requiring attention without disclosing that a debt was being collected and the need for the agency to have a reasonable opportunity to reach the consumer debtor.

The *Foti* court found held:

> Defendant's voicemail message, while <u>devoid of any specific information</u> about any particular debt, clearly provided <u>some</u> information, even if indirectly, to the intended recipient of the message. Specifically, the message advised the debtor that the matter required

[5] 15 U.S.C. § 1692(a).
[6] *See* 15 U.S.C. §§ 1692c(b), 1692d(6), and 1692e(11).
[7] See, e.g., *Foti* at 648.

> immediate attention, and provided a specific number to call to discuss the matter.[Emphasis supplied.]

Where agencies would once leave messages as a matter of routine, now they are very reluctant, leaving the consumer debtor potentially unaware of the existence of a debt and unable to resolve it in a reasonable and timely manner. Further, agencies will now make many more attempts to reach a consumer debtor in an effort to make direct contact without leaving a message.

III. THE PROPOSED SOLUTION AND BENEFITS TO THE CONSUMER

The CRC proposes that the CFPB adopt a new rule or rules to clarify that simple call back messages left for consumer debtors are permissible and that such messages do not constitute "communications" within the definition of 15 USC 1692a(2).

At the time of leaving a message, the agency is not engaging the consumer or risking disclosure of information that the consumer would otherwise keep private. Thus, the mini-Miranda disclosure is not needed until such time as the consumer debtor returns the call. Further, by facilitating such messaging, the CFPB will help avoid the unintended consequence of numerous hang up calls where no message is left.

A. Create a New Rule

Proposed rule: "CALL BACK MESSAGES. Leaving a call back message for a consumer debtor that does not reveal the existence of or otherwise discuss a debt, and that includes no more than: i) the name of the caller and/or their company; ii) the name of the person being sought (without referencing them as a debtor); iii) a return telephone number; and iv) may or may not include an account number, shall be permissible and shall not require the disclosures set forth in 15 U.S.C. 1692e(11) or any other disclosures that could reveal to a third party the existence of a debt. Mention of an "account number," "file number," "reference number," or the like, shall not, in and of itself, or in combination with the other elements listed above, be considered conveying of information about the debt or disclosure of the existence of a debt. This rule shall apply to messages left on an answering machine, by electronic voicemail or other means of recording, or with a third party. Other messages that may be left for a consumer debtor are not addressed by this rule."

B. Create Safe Harbor Language for Recorded Messages.

Proposed preamble and safe harbor language to accompany the proposed rule: "Pursuant to this rule, the language quoted below may be used when leaving a recorded message for a debtor. This language shall be considered compliant with the FDCPA and these regulations:

> Hello, this is <name of caller> calling to speak with <name of debtor>. This concerns an important personal matter. Please call back at <toll-free telephone number> and reference account number <account number>. Thank you.

Alternatively, should the CFPB conclude that the disclosures under e(11) are mandated even in a simple recorded call back message (notwithstanding that the agency must give them at the outset of any conversation with a debtor), then the CFPB is requested to establish a rule or rules that shield agencies from leaving messages that contain those disclosures, even if the messages are overheard by third parties.

C. *ZORTMAN* DOES NOT RESOLVE THE ISSUES OF CONCERN IN *FOTI*.

In a decision from 2012, a federal court considered a creative voicemail left for a debtor. In *Zortman v. J.C. Christensen & Assoc., Inc.*, the collector, while attempting to collect a debt, left the following message on the consumer's voicemail:

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

The message seemingly discloses the existence of the debt, but it does not provide the name of the debtor. The debtor argued that his rights had been violated by disclosure of the existence of his debt to a third party in his household who had overheard the message. The court disagreed, holding instead that without a name connected to the message, there were multiple plausible explanations.

There are difficulties with the *Zortman* message. Since the message did not specify which person was being called, if multiple users have access to the voicemail message including the debtor, there is no way to be sure who will return the call. If it is the debtor, the agency will look up the number, verify the right party contact and continue the discussion about the account. However, if a third party with whom the collector is prohibited from sharing any information contacts the collector, the caller encounters frustration when told by the agent that no further information can be shared.

Further, the Federal Trade Commission ("FTC") addressed the issue of telephone message requirements in a Stipulated Order.[8] In that order, the FTC prohibited (with limited exceptions)[9] the debt collector from leaving a message that includes the first or last name of the debtor *and* discloses that the caller is a debt collector

[8] The order is available at: http://www.ftc.gov/os/caselist/1023201/130709ncoorder.pdf.

[9] The FTC order allows the agency to provide both the name of the consumer *and* the debt collector disclosure if: (1) The recorded greeting discloses the person's first and last name, and only that person's first and last name, which are the same as the person owing the debt; or (2) the agency has previously spoken with the person on at least one occasion using the telephone number associated with the messaging system.

attempting to collect a debt.[10] This restriction reveals the FTC's position that a "*Foti* compliant" script is not universally appropriate.

Q83: What would be the costs and benefits of allowing the following approaches to leaving recorded messages?

A. **When leaving recorded messages on certain media where there is a plausible risk of third party disclosure, the collector leaves a message that identifies the consumer by name but does not reference the debt and does not state the mini-Miranda warning.**

Please see response to Question 82.

B. **The collector leaves a recorded message identifying the consumer by name and referring the consumer to a website that provides the mini-Miranda warning after verifying the consumer's identity.**

Please see response to Question 82. Further, given the concern about third party disclosures, referring the party to a web site may compound that risk. Presumably, the web site will identify that the matter concerns a debt and provide the consumer with options on communicating with the agency and/or making payment. Thus, if the message was overheard by a third party and that party then visited the web site, this would result in inadvertent disclosure of the existence of the debt and possible embarrassment to the consumer.

C. **The collector leaves a recorded message identifying the consumer by name, but only on a system that identifies (e.g., via an outgoing greeting) the debtor by first and last name and does not identify any other persons.**

Please see response to Question 82.

D. **The collector leaves a recorded message that identifies the consumer by name and includes the mini-Miranda warning but implements safeguards to try to prevent third parties from listening.**

Please see response to Question 82. Other than a rule from the CFPB that would shelter agencies from leaving the mini-Miranda where it may be overheard by third parties (and assuming that such a rule would not be subject to challenge by plaintiffs as being beyond the allowable scope of regulation insofar as the rule may contradict the express terms of the statute), it is difficult to imagine safeguards that would placate debt collectors who are currently reluctant to leave messages due to rampant claims that are made for doing so. Better would be the rule proposed in the response to Question 82 that can be more easily justified under the regulatory scheme because it would clarify that a communication does not include leaving a message for a consumer where the agency is not engaged directly with that consumer.

E. **The collector leaves a recorded message that indicates the call is from a debt collector but does not identify the consumer by name.**

[10] *See id*. at p.13.

Please see response to Question 82 and the discussion of the *Zortman* case and the dilemma created by attempting to leave such a message.

F. The collector leaves a message that does not contain the mini-Miranda warning, but only after the consumer consents to receiving voice messages without the mini-Miranda warning.

This suggestion would likely be unworkable. This would require first that the agency have the opportunity to speak with the consumer debtor, which may not otherwise occur unless the agency can leave a message. Next, it requires having a dialog with the consumer debtor that must adequately explain the debtor's rights to receive the mini-Miranda disclosure and then obtain a clear and conspicuous opt out. Such explanation must occur within the confines of the least sophisticated consumer standard applicable to communications with consumer debtors.

Q84: Some of the proposed solutions described above would permit a collector to leave a recorded message without leaving the mini-Miranda warning. Should collectors be permitted, in their communications with consumers, to ask consumers if they will opt out of receiving future mini-Miranda warnings? If consumers are permitted to opt out of receiving future mini-Miranda messages, what factors or limitations, if any, should limit consumers' right to opt out? Should consumers be allowed to opt out both in writing and orally? Should the opt out provision extend to mini-Miranda warnings given in other communications besides recorded messages?

Please see response to Question 83(F), above. A better approach to the problem is outlined in the response to Question 82.

Q85: What would be the costs and benefits for collectors in transmitting caller ID information? In addition to the benefit of consumers being able to screen calls, how do consumers benefit from receiving caller ID information? Do space limitations constrain the ability of collectors to disclose information (e.g., the collector's identity) via caller ID? What are the risks of third party disclosure by caller ID? The Bureau is particularly interested in data showing how many consumers currently use telephones that provide technologies such as caller ID, and whether these technologies display for consumers only a telephone number or whether they display additional information, such as the name of the caller. How can collectors use these technologies to minimize third party disclosure risks while still providing consumers with relevant, truthful, and non-misleading information?

Caller ID is very limited as to what information can be transmitted. While consumers may desire more comprehensive information (such as name and number), privacy issues raise concerns for us as far as disclosing the debtor collector's name. Unless safe harbor provisions are established permitting the display of the company name (or an alias that does not reveal the debt collection nature of the call), we would support displaying the telephone number only.

Q86: Should debt collectors be prohibited from blocking or altering the telephone number or identification information transmitted when making a telephone call, for example by

blocking the name of the company or the caller’s phone number or by changing the phone number to a local area code? What technological issues might complicate or ease compliance with regulation regarding caller ID technologies?

The CRC supports providing "real' caller ID information to consumers if safe harbor provisions are established which allow the transmitting of the company name without liability for third party disclosure. Failing that, the collector should be allowed to display its number without more. A collector should be able to broadcast any number that it "owns." The number should not have to match up with the individual piece of equipment or circuit from which the call actually originates. Further, a technical limitation exists in that some carriers (generally the smaller ones) cannot provide the service to the dialed party, or limit the information that can be displayed, and not all consumers’ phones allow the information to be displayed. Collectors should not be liable for such limitations.

Q87: Should the email provider’s privacy policy affect whether collectors send emails to that account? For instance, where a collector knows or should know that an employer reserves the right to access emails sent to its employees, should the collector be prohibited from or limited in its ability to email a consumer at the employer provided email address? Should a collector be prohibited from using and employer provided email address if a collector is unsure whether an employer or other third party has access to email sent to a consumer? How difficult is it for collectors to discern whether an email address belongs to an employer?

The collector should not be responsible for information outside of its knowledge, such as the privacy policy of an account-holder’s email provider. The consumer should be able to and responsible for making the determination as to what email address is most useful for communicating with creditors and collectors. Any email that a consumer provides to a creditor or the collector as a contact address should be assumed to be approved by the consumer for use by the collector. The consumer should, without question, have the ability to cease an email address at any time. The collector should never be able to "skip trace" and use an independently-located email address without the consumer’s consent. Currently, no database or technology exists to confirm in any reliable way whether an email address belongs to an employer. Even if we can identify a consumer’s employer, we may not be able to confirm that the email domain belongs to the employer. Also, many people have multiple email address and have them forwarded to a single address for ease of access. We would have no way to identify or control these actions by the consumer.

We are trying to foster open communication. If a consumer consents to having email sent to an email address, the collector should be able to send it there. The consumer is in the best position to determine the viability of using a particular email address, and to know the policies of the email provider.

Currently, no database or technology exists to confirm in any reliable way whether an email address belongs to an employer. Even if we can identify a consumer’s employer, we may not be able to confirm that the email domain belongs to the employer. Also, many people have multiple

email address and have them forwarded to a single address for ease of access. We would have no way to identify or control for these actions of the consumer.

Q87A: Newer technologies also raise an issue similar to the *Foti* dilemma relating to the requirement to provide the mini-Miranda and the simultaneous prohibition against third-party disclosures. All collection communications, including those made via new communication technologies, are subject to the requirements of FDCPA section 807(11), which requires that collectors clearly disclose in both initial and subsequent communications that the communication is from a debt collector. Debt collectors may be concerned that this requirement is in tension with the prohibition on third-party disclosure under FDCPA section 805(b). To prevent such disclosures with traditional communication technologies, FDCPA section 808(8) prohibits the use of debt-collection-related language or symbols on the envelope of any communication, such as a communication through postal mail or telegram. The Bureau seeks comment on whether analogous prohibitions might be useful to prevent third-party disclosures in sending of emails, text messages, or other communications made via newer technologies.

The CRC would support this. The most important thing for us is clarity of the approved process, so that if we choose to use the technology we can be assured that we can do so in compliance with the law. Notwithstanding, at least one court examining such issues concluded that mere inferences that a communication originated from a collection agency is regarding a collection account and thus does not of itself give rise to violations for third party disclosure. The CRC suggests that if the CFPB adopts rules that require agencies to disclose their true identities that agencies making such disclosures be sheltered from liability. Alternatively, the CFPB should adopt a rule that, for purposes of such a communication, permits the agency to use a trade name, acronym, or shortened form of its name that does not reveal that the company is a collection agency (e.g., Absolute Best Collectors, Inc. could be "ABC, Inc.," or "ABC"; XYZ Collections could be just "XYZ"; Baltimore Collection Corp. could be "Baltco").

Q88: What third-party disclosure issues arise from providing FDCPA section 807(11)'s mini-Miranda via email, text message, or other means of electronic communication? Are an email's subject line and sender's address akin to the front of an envelope mailed by post, and should it be subject to the same restrictions? Should the restrictions apply to the sender's name on a text message or to the banner line on a fax?

As to email, to protect a consumer's privacy and prevent disclosure, information regarding the debt should be disclosed only in an attachment. As with a paper envelope and letter, the content of such an email communication would be protected except from the deliberate and unauthorized intrusion of third parties. As to text messaging, the name that displays on the consumer's phone is the name that the consumer establishes in his/her phone directory, so the collector should not be held responsible for the "display name." If no name is set up in the consumer's phone directory, only the collector's telephone number will appear. Possibly technology will advance to where the caller can display a preferred name. We would support a rule that anticipated such advancements by permitting the collector to display its number alone, but if safe harbor provisions were established, to also display the collector's name or alias. As to faxes, the CRC would be amenable to the same restrictions applying to the banner line, so long as we have clarity in the rule.

Q89: What would be the costs and benefits of allowing consumers to limit the media through which collectors communicate with them? What would be the costs and benefits of allowing consumers to specify the times or locations that are convenient for collectors to contact them? What would be the costs and benefits of allowing consumers to provide notice orally or in writing to collectors of their preferred means or time of contact? Should there be limits or exceptions to a consumer's ability to restrict the media, time, or location of debt collection communications? Should consumers also be allowed to restrict the frequency of communications from debt collectors?

The CRC believes the FDCPA already provides consumers with a right to force collectors to cease communicating with them through certain types of media. To the extent the Bureau believes there is any confusion on that point, such a clarification could be made with little to no impact on creditors or debt collectors as the majority of such entities would already honor such a request. Allowing consumers to specify specific times and methods of contact may present problems as the operating systems used by most debt collectors does not have functionality that would allow such restrictions. Furthermore, the CRC believes that these types of regulations would tend to create more roadblocks for creditors or debt collectors to communicate with consumers. While that may sound beneficial to consumers at first blush, the end of result of voluntary communication being cut off is that creditors and collectors are then left with no other option but to consider taking legal action and reporting accounts to a consumer's credit report. The CRC believes that the Bureau should work to create rules that encourage voluntary resolution of delinquent accounts.

Q90: How often do debt collectors provide notices or disclosures to consumers required by other Federal consumer financial laws? What would be the advantages and disadvantages to consumers of receiving these notices and disclosures notwithstanding their cease communication requests?

In addition to the disclosures referenced above, debt collectors who purchase accounts may be required under the Gramm-Leach-Bliley privacy rules to send annual privacy notices to consumers. The notices required under these federal rules and regulations are not attempts to collect a debt. It is recommended that the Bureau provide a clarifying regulation that any disclosures or communications required by state or federal laws or regulations do not violate the FDCPA notwithstanding a consumer's cease communication request provided that such communications do not demand payment.

Q91: Some jurisdictions require that collectors provide consumers with contact information. At least one jurisdiction has required that collectors provide not only contact information, but also a means of contacting the collector that will be answered by a natural person within a certain time period. How would the costs and benefits of providing contact information compare to those associated with a natural person answering calls within a certain period of time.

In the opinion of the CRC, neither a general requirement to disclose contact information, nor a law requiring a natural person to answer calls within a certain time, would be cost-beneficial. Under the FDCPA, a debt collector must provide "meaningful disclosure" of its identity when placing telephone calls to consumers. (15 U.S.C. § 1692d(6).) Case law has indicated that this requires the collection agent to disclose his/her name, the name of the collection agency he/she represents, and the nature of the debt collector's business. (See e.g. Costa v. NAFS, 634 F.Supp.2d 1069, 1074 (E.D. Cal. 2007).) The additional disclosure of various types of contact information (address, toll-free telephone number and/or fax number, etc.) is required in some states. (See e.g. 4 Colo. Code Regs. § 903-1, Rule 2.15 and Ga. Comp. R. & Regs. § 120-1-14-.23(d).) Furthermore, with respect to artificial or prerecorded voice messages which are subject to the TCPA, the FCC has held that all parties (including debt collectors) must state their phone number in the message. (47 C.F.R. § 64.1200(b)(2).) The disclosure of contact information should generally not be very burdensome to a debt collector. In fact, it should be in the collector's best interest to disclose its contact information in most circumstances. A major goal for a debt collector is to get the consumer on the phone, and it is therefore beneficial to the debt collector if the consumer knows the collector's contact information. Otherwise, the communications between the collector and the consumer will be a one-way street, leading to less actual conversations and fewer debts paid. In this author's experience, most debt collectors disclose their contact information voluntarily and regardless of whether they are so required by statute, so that they can be contacted by consumers who want to pay their debts. Because of this, there is no reasonable need to impose a statutory requirement on debt collectors to provide their contact information in telephone calls and voice messages to consumers. The benefit is low (because most debt collectors already disclose their contact information anyway, and the failure to disclose does not cause significant damage to consumers) and the cost is high (because of the additional expense to debt collectors to ensure compliance, and due to increased litigation for alleged violations). In New York City, debt collectors must provide the consumer with a call-back number to a telephone which shall be either answered by a natural person qualified to address the consumer's debt collection inquiries, or routed to such a natural person within 60 seconds. The rule applies during business hours only. (6 R.C.N.Y. § 2-194.) The CRC believes that such a law is unnecessary and too onerous on debt collectors. Debt collectors already have an interest in connecting an incoming telephone call from a consumer to a natural person. If the debt collector does not do so, it is less likely that the consumer will pay his/her debt. Accordingly, most debt collectors have a reasonable system in place whereby incoming calls are either answered by, or routed to, a natural person who can discuss the debt with the consumer. A law regarding this is therefore unnecessary. Moreover, some consumers might not want to be connected to a natural person. They may feel that it is more convenient and less embarrassing to pay an overdue debt via an automated telephone system, without having to speak to anyone about their financial situation. In addition, there appears to be very little justification for a law which allows a consumer to sue a debt collector because he/she had to wait a few extra seconds before being connected to a natural person, or because the consumer feels that the natural person who answered the call was not sufficiently qualified to address the consumer's inquiries. In contrast, the cost for a debt collector (and the court system) to ensure compliance with these requirements, and pay judgments/settlements for technical violations which cause negligible damage to consumers, is significant. Furthermore, a likely consequence of a "60-second rule" is that debt collectors might automatically terminate calls after 59 seconds to avoid a potential code violation. This would not benefit anyone.

Q92: Should the Bureau incorporate all of the examples in FDCPA section 806 into proposed rules prohibiting acts and practices by third-party debt collectors where the natural consequence is to harass, oppress, or abuse any person? Should any other conduct by third-party debt collectors be incorporated into proposed rules under section 806 on the grounds that such conduct has such consequences? If so, what are those practices; what information or data support or do not support the conclusion that they are harassing, oppressive, or abusive; and how prevalent are they?

It is the CRC's opinion that it is not necessary to incorporate all of the examples listed in FDCPA section 806 as this would be duplicative. It should not be necessary to incorporate rules that are already clearly defined in the FDCPA, such as examples (1) through (4). Rather, the CRC believes the CFPB should propose rules that provide clarity on current areas of contention in section 806, such as examples (5) and (6).

The plain language of the FDCPA, combined with differing Court opinions and conflicting official commentary from the FTC do not provide clear guidance for the language "repeatedly or continuously" in example (5) and has resulted in a cottage industry of litigation over call volume. Official commentary of the FTC defined continuously as "making a series of telephone calls one right after the other," and repeatedly as "calling with excessive frequency under the circumstances." Court decisions vary across the country and have included mathematical equations for call volume per day, week, or month, considerations whether a message was left, whether calls are to different numbers for the consumer rather than the same number, and a myriad of other factors considered in an effort to bring definition to this section. The CRC would request the CFPB to clarify the definition of "repeatedly or continuously" in example (5) of section 806 and propose a rule that would give the collection industry clear boundaries of acceptable behavior.

Additionally, in regards to example (5) the CRC recommends the CFPB include in any proposed rule an outline of factors that should be considered to determine whether there exists an "intent to annoy, abuse, or harass." Factors that could be considered in the outline could include: frequency of total calls to consumer, frequency of calls to a particular number, time between when the calls are made, whether the result of the calls should impact future attempts, whether calls were made during permissible hours, whether calls were made after speaking with the consumer the same day, whether a message was left, whether the consumer responded to the calls or messages, whether the consumer disputed the debt, or whether the consumer requested calls to cease or limit the volume or timeframe of the calls. When considering any rule proposing to limit the volume or frequency of attempts to contact the consumer, the CRC would strongly encourage the CFPB to consider the effect doing so would have on contact rates with consumers. The CRC believes that limiting the frequency of permissible attempts to contact the consumer would result in lower contact rates, which would not be in the best interest of the consumer. The CFPB should consider proposing rules that do not negatively affect consumer contact rates so that collection agencies may help consumers resolve their accounts according to their best interests.

In regards to example (6) of section 806, the CFPB should propose a rule that adjusts the requirement of "meaningful disclosure of identity" to address the use of modern technology. Factors for the CFPB to consider when creating a rule to clarify what constitutes a meaningful disclosure of identity should include a discussion of caller identification information, the requirements for disclosure when speaking to a live person rather than a voice mailbox, and whether agency names reflect the identity of the company or are sufficiently known to the public as a collection agency.

The CRC would like to suggest that the CFPB consider also including conduct related to non-traditional forms of communication in any rule proposing to limit the volume or frequency of contact attempts. Non-traditional forms of communication the CFPB should make sure to consider in making any rule regarding example (5) would include email, text messages, private internet messaging, and other communications other than a telephone call or letter. Additionally, the CFPB should consider providing separate and distinct rules for communication via regular mail or in the alternative, excluding letters sent by regular mail from being included in communication calculations due to the inability to determine when letters are received by the consumer.

Q93: Should the Bureau include in proposed rules prohibitions on first-party debt collectors engaging in the same conduct that such rules would bar as abusive conduct by third party debt collectors? What considerations, information, or data support or do not support the conclusion that this conduct is "abusive" under the Dodd-Frank Act? Does information or data support or not support the conclusion that this conduct is "unfair" or "deceptive" conduct under the Dodd-Frank Act?

It is important to note that the FDCPA does not define "first party debt collectors" and "third party debt collectors." Thus, the use of these terms may cause confusion regarding what entities are subject to the FDCPA. 15 U.S.C. Section 1692a(6) defines debt collector as follows:

The term "debt collector" means any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. Notwithstanding the exclusion provided by clause (F) of the last sentence of this paragraph, the term includes any creditor who, in the process of collecting his own debts, uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts. For the purpose of section 808(6), such term also includes any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the enforcement of security interests. The term does not include--

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

(B) any person while acting as a debt collector for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a debt collector does so only for persons to whom it is so related or affiliated and if the principal business of such person is not the collection of debts;

(C) any officer or employee of the United States or any State to the extent that collecting or attempting to collect any debt is in the performance of his official duties;

(D) any person while serving or attempting to serve legal process on any other person in connection with the judicial enforcement of any debt;

(E) any nonprofit organization which, at the request of consumers, performs bona fide consumer credit counseling and assists consumers in the liquidation of their debts by receiving payments from such consumers and distributing such amounts to creditors; and

(F) any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent such activity (i) is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement; (ii) concerns a debt which was originated by such person; (iii) concerns a debt which was not in default at the time it was obtained by such person; or (iv) concerns a debt obtained by such person as a secured party in a commercial credit transaction involving the creditor.

For purposes of the response to this question, we shall presume that "first party debt collectors" are defined as any person or entity not included or expressly excluded from the definition of debt collector in 1692a(6). Further, we shall presume that "third party debt collectors" are defined as any person that falls within the definition of debt collector as set forth in 1692a(6).

It is the CRC’s position that Congress expressly provided an exemption from the FDCPA for first-party collections because first-party efforts are distinct from third-party efforts and there exists less potential for abusive practices due to the dynamics of first-party efforts. At the time of the FDCPA’s enactment, first-party collections received an exemption because there was not a concern of widespread abusive practices. A main distinction from third-party efforts is that consumers are viewed as current customers as they are not in default. This view causes collectors and creditors to be more brand conscious, striving to create long-term customer relationships not to be lost indefinitely over a single account. To that end, first-party efforts are more akin to customer service calls, rather than collection oriented. Indeed, many if not most, first-party collectors have traditional compensation structures, rather than operating on a contingency basis, which further promotes the view that the call is customer service oriented. Furthermore, lenient standards for first-party efforts will benefit consumers as these efforts are crucial to preventing negative consequences to account status, account balance, and the consumer’s credit profile. Additionally, including first-party efforts within the purview of proposed rules could have the unintended consequence of regulating virtually every consumer transaction. It is the CRC’s belief, that first-party efforts received an exemption because they were not a concern at enactment of the FDCPA and those same considerations should be recognized by the CFPB today.

Q94: FDCPA section 806(3) enjoins debt collectors from “the publication of a list of consumers who allegedly refuse to pay debts, except to a consumer reporting agency or to persons meeting the requirements of 603(f) or 604(a)(3) of [the Fair Credit Reporting Act].” Should the Bureau clarify or supplement this prohibition in proposed rules? If so,

how? The Bureau notes that in communicating with debtors through social media, the use of this media might cause collectors to make known the names of debtors to others using that medium. Should the Bureau include in proposed rules provisions setting forth what constitutes the publication of a list of debtors in the context of newer communications technologies, such as social media? If so, what should these provisions prohibit or require and why?

From CRC's perspective, the use of social media to communicate with debtors is infrequently, if ever, used. Thus, CRC is unaware of any particular problems that might be caused by communicating through social media, and is unaware of any instances in which debt collectors' communications through social media might constitute any kind of third-party disclosure of a debt, let alone a "publication of a list of consumers who allegedly refuse to pay debts" that would be prohibited by § 806(3) of the FDCPA.

It is possible in the future that some consumers may prefer to communicate through some sort of social media, like Facebook, for example. If debt collectors respond to this preference by communicating with consumers through such means, the existing laws relating to third-party disclosure of debts will govern those communications. Hence, in CRC's view, such communications will be permissible only if they are private in nature (such as a Facebook private message). It seems self-evident, even without any rulemaking by the CFPB, that a public message (e.g., posting a message on a consumer's Facebook "timeline") would be a third-party disclosure of a debt, and therefore prohibited by the FDCPA.

CRC would support a rule by the CFPB that provided that communications through social media would be subject to the privacy of the form of communication involved. Moreover, like e-mails and text messages, CRC believes that consumers should receive communications using social media only if the consumer has provided consent to communications using that medium, and subject to the consumer's right to opt out of such a communications medium later. However, beyond those basics, CRC does not believe that any particular problems exist with respect to communicating through social media, and any third-party disclosure problems that do occur are already prohibited by existing law.

Q95: FDCPA section 806(5) bars debt collectors from "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." Should the Bureau clarify or supplement this prohibition in proposed rules? If so, how?

See response to question 97.

Q96: The FDCPA does not specify what frequency or pattern of phone calls constitutes annoyance, abuse, or harassment. Courts have issued differing opinions regarding what frequency of calls is sufficient to establish a potential violation. Courts also often consider other factors beyond frequency, such as the pattern and content of the calls, where the calls were placed, and other factors demonstrating intent. Should the Bureau articulate standards in proposed rules for when calls demonstrate an intent to annoy, harass, or abuse a person by telephone? If so, what should those standards be and why?

See response to question 97.

Q97: At least one State has codified bright-line prohibitions on repeated communications. Massachusetts allows only two communications via phone — whether phone calls, texts, or audio recordings — in any seven-day period. The prohibition is stricter for phone calls to a work phone, allowing only two in any 30-day period. If the Bureau provides bright-line standards in proposed rules, what should these standards include? Should there be a prohibition on repetitious or continuous communications for media other than phone calls and should that prohibition be in addition to any proposed restriction on phone calls? Should all communications be treated equally for this purpose, regardless of the communication media, such that one phone communication (call or text), one email, or one social networking message each count as "one" communication? What time period should be used in proposed rules in assessing an appropriate frequency of communications?

These questions – relating to call frequency – address one of the topics to which there is much industry uncertainty, and where a rule would provide needed standards for debt collectors. But in tackling this subject, the Bureau must carefully weigh consumer sentiment regarding call frequency against the fact that too-strict limitations on communications will inevitably reduce the positive outcomes of consumers paying their debts. A rule that limits communications between debt collectors and consumers too much would have the consequence of reducing consumer payments of legitimate debts, leading to negative consequences for consumers: more collection lawsuits filed against them, and more negative credit reporting. CRC supports a rule in this area, because it will give debt collectors much-needed clarity on how to structure their operations. But a rule that imposes arbitrary and strict limits on telephone or other communications will work to the detriment of consumers.

The discussion around call frequency has sometimes been one-dimensional, focusing on perspectives on how many telephone attempts are "too many," based on the speaker's subjective ideas on the subject. But data relating to telephone contact between debt collectors establishes several important premises that must factor in to any rulemaking on this subject.

First, there is a direct relationship between a debt collector's contact with a consumer who owes a debt and the successful resolution of that debt. These resolutions are not merely payments in full, but also compromises such as payment plans, settlements in full, or (in the case of student loans) successful forbearances, deferments or administrative resolutions that completely relieve the consumer of the obligation to pay the debt.[11] Data provided by CRC's members shows a direct, linear relationship between the number of "right party contacts" established by the members, and the number of accounts that are resolved.

For these consumers, the fact that a debt collector undertook the effort to contact them – sometimes involving many attempts over a long period of time – worked to the consumers' benefit. The payment or settlement of a debt is typically reflected on a consumer's credit report

[11] Federal student loans can be administratively resolved in case of the borrower's death, disability, or incarceration; once the qualifying event is established, no further collection activity occurs with respect to the debt.

by the credit grantor, and a paid debt is certainly more favorable to a consumer than an unpaid one. Further, if a debt collector is unable to reach a consumer and resolve the debt, the creditor is left with no choice but to file a lawsuit (or in the case of student loans, recommend administrative wage garnishment or tax refund offset) against the consumer.

There are other benefits to establishing contact with consumers as well. Once there is communication between a debt collector and a consumer, the consumer has the opportunity to dispute the debt, tell the collector that it has been paid, or provide other information that can resolve the situation in the consumer's favor. A rule that prevents communication – and therefore reduces the number of right-party contacts – will also prevent these successful outcomes.

It is clear, then, that contact between debt collectors and consumers is not only necessary to the payment of legitimate debts, but also to protect consumers from more serious repercussions if contact is never made with them. These facts suggest that the CFPB's rulemaking in this area should seek to maximize successful contact between debt collectors and consumers, while prohibiting communication efforts that are unlikely to result in right-party contacts. In the view of CRC's members, the data showing when and how right-party contacts are made supports limitations on call frequency, but the data shows that different frequencies are effective for different types and stages of debt. In short, a "one size fits all" rule is not appropriate here, because consumers with different types of debts, or in different stages of delinquency, may require more or less effort for a successful contact to be made. An arbitrary limit on call frequency would not only be unsupported by data, but also would work to the detriment of consumers who are successfully contacted by efforts that would go beyond the level set in a "one size fits all" rule.

In the view of CRC's members, the subject of call frequency should be addressed in a way that is consistent with the data discussed above, and consistent with the fact that maximizing right-party contacts is in the best interest of consumers. For this reason, CRC and its members would support a rule with the following parameters:

- The CRC suggests that the CFPB provide a "safe harbor" with respect to a permissible number of contact attempts per day by telephone. This number should be set at the industry average that shows that up to 5 attempts per account, per day, can be necessary to establish contact with a consumer. Busy and SIP tones will not count toward this total. Further, there would be allowed 1 message or contact per day.

- CRC and its members also believe that it would be sensible for the CFPB to establish "waiting periods" between calls to the same telephone number. Repeated calls to the same number within a short period of time are unlikely, in CRC's view, to result in a right-party contact, and several calls to the same number are much more likely to be effective in achieving contact if they are spaced out at different times of the day. Therefore, CRC would support a rule that imposed a minimum time between calls to a particular phone number, in the range of 1-2 hours.

- CRC would also support a rule, consistent with the practices of its members, that a successful contact with the consumer on a particular account should cause all further telephone communication efforts to cease on a particular day, unless the consumer requests or consents to another telephone call. Further, the CRC does not object to inquiring during that contact if it is a convenient time for the collector to communicate with the consumer.

- Further, and also consistent with the practices of its members, CRC would support a rule that provides that no more than one message may be left at a single telephone number in a day per account.

- CRC also believes that it is appropriate for debt collectors to space attempted calls to consumers out, so that consumers do not receive phone calls or messages every day. It is the experience of CRC members that right-party contacts are not increased by daily call attempts, as opposed to attempts where a day passes between attempts (which gives a consumer the opportunity to return a message left by the collector). Thus, CRC would support a rule that required collectors to wait a day between telephone attempts, unless the consumer requests or consents to a telephone call the following day.

The Bureau's question 97 asks if the Bureau should adopt a rule similar to that in Massachusetts, which not only limits telephone contacts where the consumer is reached[12] to an arbitrary maximum, but also applies to all other forms of communication as well. The answer, based on the data and discussion above, is that adopting such a rule would not only be unsupported by the data, but would work to the tremendous detriment of consumers. The Massachusetts rule cuts off attempted communications to consumers at a level far below that which is useful for achieving contact with them, and as such, prohibits telephone calls that are reasonably likely to result in right-party contacts and, in turn, successful resolutions of debts. Adopting this standard nationally will cause more consumers to have unresolved debts, leading to more negative credit reporting and more collection lawsuits. Moreover, the lower rate of resolution of debts that is caused by too-strict communications limits is also reflected in greater losses to creditors, which in turn is likely to either cause the cost of credit to rise, or its availability to decrease, for those consumers who are more likely to fall delinquent. None of these impacts is in the best interest of consumers.

[12] Massachusetts regulation, 209 CMR 18.14(1)(d) states:

> if the debt collector engages 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, provided that for purposes of 209 CMR 18.14(1)(d), a creditor may treat any billing address of the consumer as his place of residence (emphasis supplied);

While the CRC is not aware of any case law interpreting the language, the limitation as worded appears to restrict the number of times an agency initiates and successfully contacts the consumer, not strictly the number of attempts at contact.

Moreover, the idea that all communications – whether telephone, email or text – should be subject to a single, over-arching limit ignores the fact that the different communication methods reach different consumers, and that e-mail and text messages are far less susceptible of being used for harassment than telephone calls. A single limit on the number of communications of any sort would force collectors to attempt to guess which method of communication will be most effective for a given consumer, rather than reaching out to the consumer in all ways that might be effective. And, because CRC supports the right of consumers to opt out of receiving e-mail, social media and text messages, consumers can always stop such messages if they do not wish to receive them.

The very nature of e-mail, social media and text communications dictates that sending large numbers of them to a single consumer is unlikely to be effective, and CRC doubts whether any legitimate collector would send repetitive messages using these methods. If the Bureau is worried about abuse by a small segment of the collection community by the use of repeated text, social media or e-mail messages, CRC would support a limitation on such messages to [two per week] per each medium of communication. In CRC's view, such a limitation would allow collectors to use e-mail, social media and text messages properly and would eliminate any possibility of rogue collection firms "spamming" consumers with repeated messages.

But the experience of CRC's members is that many consumers, and especially younger ones, prefer to communicate through non-telephone means like e-mail, social media messaging, text messaging, or through web sites. An arbitrary rule that unduly restricted contact through consumers' preferred communication channels would not only frustrate those consumers' desires, and would likely prevent contact with many of them altogether, in turn reducing the ability of those consumers to resolve their debts and imposing further negative consequences on them.

In sum, these questions address an issue that is critical for consumers, debt collectors and creditors. The CFPB must balance the competing interests involved in this area by reference to the data that shows that restricting communications too strictly will work to the detriment of consumers. Given the complexity of this subject, CRC anticipates that further discussions may be warranted for all interested parties to exchange ideas and data and discuss a resolution that takes all perspectives into account. CRC would be pleased to participate in such discussions with the CFPB, consumer groups, and other industry organizations.

Q98: What are the costs and benefits to consumers and collectors of using predictive dialers? How commonly are they used by the collection industry and what are the different ways in which they are used? How often do consumers receive debt collection calls resulting in hangups, dead air, or other similar treatment?

See Response to question 99 below.

Q99: Should there be standards limiting call abandonment or dead air for debt collection calls, similar to the standards under the FTC's Telemarketing Sales Rule? Are there reasons why debt collection standards should be more stringent or more lenient than standards for telemarketing?

Predictive dialers are ubiquitous in the collection industry because they are absolutely essential, not only for the efficiencies they create in contacting consumers, but also because of the consumer protections that they offer relating to call frequency and timing. Any rulemaking the Bureau contemplates in this area should encourage the responsible use of this technology.

As long as a substantial number of consumers use telephones as a primary method of communication relating to their debts, there will be a need for collectors to communicate using the telephone. Predictive dialers, when used appropriately, make the process of such telephone communication much more efficient, allowing more contacts to be made with fewer personnel. This reduces the cost of debt collection, which not only provides market benefits in reducing the overall cost of extending credit by creditors, but also directly benefits consumers whose debt obligations are subject to the addition of collection costs incurred by their creditors.

But the benefits of predictive dialing systems go well beyond mere economics. Dialer systems allow collectors to exercise a number of compliance-related controls that are impossible to replicate using manual dialing with a handset. Those controls include the following:

- The ability to directly control the number of attempts that are made to any given telephone number in a day, by either allowing a certain number of attempts, or (in dialing systems that have manual modes) by blocking or logging manual attempts beyond a certain number.

- The ability to control the timing of phone calls to a number, both to prevent calling too early or too late, and to prevent calls from occurring in close succession to one another (and, again, to log and detect any instances in which closely-spaced calls may occur).

- Many automated dialers create automatic logging of all calls and call attempts into the collection notes used by a collection agency, which makes review of accounts for activity and in response to complaints much easier and more reliable, and enables collection firms to engage in more effective account review audits that will actually show all contacts or attempted contacts with a consumer.

- Because dialers also log all activity, they create data sets that can easily be used for exception reporting, to promptly detect and remedy any instances in which consumers are called at an inappropriate number or time.[13]

Although collection firms have tools to monitor the conduct of their representatives (like phone recording and monitoring), and can also train employees on proper conduct, there is no question

[13] Such exception reporting is necessary because, in some circumstances, consumers request a call outside of the normal window in which collectors place calls, or they may request a follow up call shortly after a call ends. This may cause a call to be placed outside the normal time window, or may create two calls in close proximity to one another. To accommodate these kinds of consumer requests, it is necessary for collection firms to allow manual-mode calls through their dialer systems. However, to ensure that such instances are confined to appropriate circumstances, exception reporting can be run from dialer systems, and any instances of outside-of-time calls or successive calls can be easily detected and investigated.

that the compliance tools offered through automated dialer systems provide a significant and effective additional measure of control and monitoring. Any rulemaking that the Bureau undertakes that relates to the use of predictive dialers should take these consumer benefits into account, and should not discourage the use of automated dialers in the collection industry.

The question above asks about the incidence of "dead air" or hangups on calls placed through predictive dialers. In the experience of CRC's members, such events are very rare. It makes no business sense for a collection firm to program its dialer in a manner that results in such problems. As noted throughout this response, making successful contact with consumers is the fundamental objective of collectors, and the success in making such contacts determines every other facet of a collector's success in resolving debts. "Dead air" calls or hangups are, self-evidently, contrary to this critical objective. Thus, a great deal of effort is made within collection firms, at least those that are CRC members, to program dialers in a way that will avoid these problems.

For this reason, CRC does not believe rulemaking is necessary to address this issue; business sense should cause collectors to refrain from such conduct, and if a collector fails to do so, the Bureau's generalized authority under the FDCPA would be more than sufficient to remedy improper conduct using an automated dialer.

Q100: With respect to each of the areas covered in FDCPA section 807, should the Bureau clarify or supplement any of these FDCPA provisions? If so, how? Are there other representations or omissions that the Bureau should address to prevent deception in each of these areas? For each additional representation or omission you believe should be addressed, please describe its prevalence and why you believe it is material to consumers.

We believe that Section 807(5) can be clarified to include a safe harbor for agencies who do intend (and actually pursue the filing of) legal action in pursuit of the accounts receivable it services. Additionally, with respect to Section 807(11), we believe that the industry and the consumer population as a whole would benefit from safe harbor language for voicemail and answering machine messages transmitted for the purpose of reaching the consumer who is the account owner as this consistency would greatly reduce the uncertainty in these communication options, benefit the consumer by facilitating important communication, and provide protection against potential third party disclosure. Please refer also to our response to Question 82.

Q101: Do collectors falsely state or imply that the Servicemembers Civil Relief Act does not apply to debts? What would be the costs and benefits of requiring collectors to disclose information about rights related to debts subject to the Servicemembers Civil Relief Act to a consumer, consumer's spouse, or dependents? What debt collection information related to the Servicemembers Civil Relief Act should be communicated?

We do not believe that responsible collectors provide any false statements to any consumers, especially regarding the SCRA; however, we feel that for placement agencies, the SCRA communication should be between the original creditor and the consumer to avoid inconsistency. We feel that communication should be limited to referring the servicemember (or his or her family member and representatives) to the original creditor for account servicing.

Q102: The Bureau has heard reports of debt collectors falsely stating that they will have a servicemember's security clearance revoked and threatening action under the Uniform Code of Military Justice if the servicemember fails to pay the debt. How prevalent are these threats?

We do not believe that these threats are prevalent and if heard by our call monitors, our members would immediately terminate any person responsible for these deceptive and disrespectful statements. We do acknowledge that unscrupulous debt collectors have, in the past, used these types of threats to their advantage; however, we strongly condemn any threats of this nature made to any servicemember. Regardless of the servicemembers' superior officers having a right to know about the personal conduct of those in their charge, we feel that disclosing any information to third parties is contrary to the consumer protection principles that our members strive to protect.

Q103: Spouses and surviving spouses of alleged debtors may be asked by collectors to pay the spouse's individual debt in circumstances in which the non-debtor spouse is not legally liable for the debt. Do debt collectors state or imply that the non-debtor spouse or surviving spouse has an obligation to pay debts for which they are not liable? What would be the costs and benefits of requiring that collectors, where applicable, use disclosures or other approaches to convey that non-debtor spouses or surviving spouses have no legal obligation to pay the spouse's individual debt?

We do not support the practice of stating or implying that non-debtor spouses have an obligation to pay debts for which they are not liable and do not communicate these statements. We would caution against a requirement that collectors convey that these spouses do not have an obligation to pay the debts due to the varying degree of financial responsibility that may be placed on these spouses who could be executors, administrators or beneficiaries of probated estates. We oppose any requirement to provide advice on these types of rights, for both non-debtor and surviving spouses. Collectors should not be required to provide legal advice on such issues of State law.

Q104: Authorized users on credit cards are sometimes contacted by debt collectors and asked to pay debts in circumstances where the cardholder is liable but the authorized user is not. How often are authorized users asked to pay debts for which they are not liable? What would be the costs and benefits of requiring that collectors disclose to authorized users, where applicable, that they have no legal obligation to pay the debt?

Members of the CRC do not engage in such practices and we do not support the practice of asking a non-accountholder to pay a debt for which he or she does not owe. We would also caution against a requirement that collectors convey that these users do not have an obligation to pay the debts due to possible future liability that may attach due to divorce, separation, estrangement or other legal issues.

Q105: What technological limitations might prevent mini-Miranda warnings from being sent via text message? Should consumers be able to opt in to collector communications via text message that do not include a mini-Miranda warning? If so, what type of consent

should be required and how and when should it be obtained? Could the mini-Miranda warning be more succinctly stated so that it fits within the character constraints of a text message?

The major technological limitation which prevents mini-Miranda warnings to be sent via text message is the limited character space to include both the required language and crucial information about the debt. We believe texting a secure link or other protected access key would be sufficient for consumers to be directed to an Internet page with all appropriate language and disclosures. Consumers should be able to opt-in (and subsequently opt-out) of these communications electronically, verbally, or as part of the original credit agreement (which consent should extend to collectors downstream in the account servicing process). As an alternative, the mini-Miranda warning could be more succinct, such as "ABC Co. is a debt collector" or "We are collecting a debt"

Q106: What technological innovations (e.g., links, attachments) might facilitate the delivery of mini-Miranda warnings via text message? For instance, what would be the potential costs and benefits of allowing a collector to send the consumer a text message that does not contain the mini-Miranda but contains only a link to a website, PDF, or similar document that provides the mini-Miranda as well as other information about the consumer's debt? Should the acceptability of relying on a link or an attachment depend on the frequency with which persons who receive such links or attachments go to the linked material or open the attachment? Would relying on a link or an attachment raise privacy or security risks? If so, how significant are those risks?

We do not believe that the link or attachment would raise privacy risks; rather, we believe the risks would be lower as compared to mail, voicemail messages that might be accessed by others, and other non-secure forms of communication.   However, it should be noted that not all consumers will have access to the internet.

Q107: Are there challenges in providing the mini-Miranda warning via other newer technologies, such as email or social networking sites? If so, what, if anything, should be included in proposed rules to address these challenges?

The challenges associated with social media sites generally involve the risk of third party disclosure; however, if collectors could be permitted to send secure links or other methods of leading consumers to information that only he or she could view, we believe these consumers would be better served by using these methods to improve their financial situations. Email does not contain the same risks of third party disclosure, although email may be subject to multiple users (a family email address) or other authorized viewing (emails at place of employment where policies permit viewing of all emails sent over company servers). For this reason, email should require an opt-in by the consumer to show consent to be reached in that manner. Upon providing such an opt-in, the collectors should be allowed a safe harbor in the event of third party disclosure.

Q108: Which methods of payment do consumers use to pay debts? How frequently do consumers use each type of payment method? In particular, how often do consumers pay collectors through electronic payment systems?

A non-exhaustive list of payment methods may include:

- Check Reproduction
- ACH
- ACH via Check Conversion
- Credit Card
- Western Union
- Cash
- Money Order
- Personal Check
- Cashier's Check

It is the experience of the members of the CRC that the overwhelming majority of payments are processed by either check reproduction or ACH.

Q109: Do collectors charge fees to consumers based on the method that they use to pay debts? How prevalent are such fees for each payment method used? How much is charged for each payment method used?

Some agencies add fees depending on the method of payment used and the type of debt at issue. These fees may range from a flat rate processing amount to a percentage of the payment being processed. The fees often vary based on size of payment, and could range from $2.00 to $20.00, and are designed to recoup the internal and external costs of providing the immediate payment service desired by the consumers. The CFPB should allow assessing a transaction fee where it is agreed upon by the consumer, where a no-cost option is made available and where it is otherwise permitted by applicable law. To do otherwise might restrict payment options made available to the consumer[14]. The CFPB should expressly recognize that such an agreement between the consumer and the agency, if voluntarily reached, is not in violation of 1692f(1) [15]In any case, the CRC supports rulemaking that would provide clarity and uniformity to the addition of transaction fees.

Q110: Do collectors make false or misleading claims to consumers about the availability or cost of payment methods? If so, how prevalent are these claims and why are they material to consumers?

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[14] It is important to note that there is no requirement that agencies provide mechanisms for payment by phone or over the internet; thus it is reasonable that if consumers desire and choose these options that they also pay reasonable costs that are associated with these payment channels.

[15](1) The collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.

The CRC encourages and promotes compliance with all applicable rules and regulations including prohibiting false or misleading claims concerning the availability or cost of payment methods. The CRC would support rulemaking that would encourage fair disclosures concerning the availability and cost of individual payment methods.

Q111: Do consumers understand the costs of using specific payment methods to pay their debts or the speed with which their payment will be processed depending on which payment method they choose? Should disclosures be required with respect to the costs, speed, or reversibility of alternative payment methods and, if so, what type of disclosures?

The CRC would support rulemaking that required fair disclosures concerning the amount of any transaction fee and speed of varying payment methods when the fee being charged for the method used is paid to the agency itself. The CRC does not believe agencies should be required to disclose the costs for a consumer to use a particular third-party product or service (i.e. if the consumer chooses to use Western Union to send payment, that is a matter between the consumer and Western Union for which the agency may not have the ability to quote the cost. Consumers necessarily make informed choice about whether to incur this type of cost.). Additionally, the CRC would like to point out that requiring a disclosure concerning the reversibility of individual payments methods could lead the unintended result of increasing the amount of reversed payments. Rather, the CRC suggests a potential disclosure that outlines when payment disputes would need to be handled with a third party, for example, if the consumer would like to pay using Western Union.

Q112: Should the Bureau incorporate the examples from the from FDCPA section 808 into proposed rules prohibiting unfair or unconscionable means to collect or attempt to collect any debt by third- party debt collectors? Should any of the specific examples addressed in section 808 be clarified or supplemented and, if so, how? Should any other conduct by third-party debt collectors be incorporated into proposed rules prohibiting unfair or unconscionable means of collection? If so, what are those practices; what information or data support or do not support the conclusion that they are unfair or unconscionable; and how prevalent are they?

Yes, for the sake of clarity, the examples should be incorporated and to the extent possible, clarified.

Section 808(1) prohibits the collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law. The rules should clarify that if any interest, fee, charge, or expense incidental to the principal obligation is expressly authorized by the agreement creating the debt, a debt collector is not required to restate the fact that such interest, fee, charge, or expense incidental to the principal obligation will be or has been incurred because the consumer is already aware of that fact pursuant to the agreement creating the debt. This Section should further be clarified to allow an agency to recover its costs and expenses related to providing the payment option for the convenience of the consumer.

The rules should explicitly bar intentionally providing false information on a consumer's Caller ID device. Further, the rule should provide that a debt collector is not obligated to provide any information to be displayed on a Caller ID.

In addition, the Section should be clarified to provide that the placement of a call without disclosure the mini-Miranda via caller ID is not a concealment of the true purpose of the call.[16]

Q113: Should the Bureau include in proposed rules prohibitions on first-party debt collectors engaging in the same conduct that such rules would bar as unfair or unconscionable by third- party debt collectors? What information or data support or do not support the conclusion that this conduct is ''unfair'' under the Dodd-Frank Act? What information or data support or do not support the conclusion that this conduct is ''abusive'' or ''deceptive'' conduct under the Dodd-Frank Act?

It is unnecessary to include in proposed rules prohibitions on first-party debt collectors engaging in the same conduct under their own name.

As the Senate Committee considering the FDCPA wrote, "The committee intends the term 'debt collector,' subject to the exclusions discussed below, to cover all third persons who regularly collect debts for others. The primary persons intended to be covered are independent debt collectors. The Committee limited the coverage of the FDCPA because "unlike creditors, who generally are restrained by the desire to protect their good will when collecting past due accounts, independent collectors are likely to have no future contact with the consumer and often are unconcerned with the consumer's opinion of them." S.Rep. No. 95-382, 95th Cong., 1st Sess., *reprinted in* 1977 U.S.Code Cong. & Ad.News 1695, 1696 & 1697.

Further, some of the examples of unfair practices in section 808 would not be considered unfair by a consumer when performed by a first-party collector, as consumers are not likely to be embarrassed to have others learn that a first-party debt collector is communicating with them.

Q114: Section 808(1) of the FDCPA prohibits collecting any amount unless it is expressly authorized by the agreement creating the debt or permitted by law. Should the Bureau clarify or supplement this prohibition in proposed rules.

As indicated by the question, collection fees may be imposed on consumers under the circumstances set forth in the FDCPA. However, case law on this section of the FDCPA has made it unclear for creditors how they may recoup their actual costs of collection. See *Gathuru v. Credit Control Services* 623 F.Supp.2d 113 (2009); *Kojetin v. C.U. Recovery* 212 F.3d 1318 (8th Cir. 2000). Thus, the CRC requests clarification from the Bureau.

The holding in *Gathuru* is harmful to consumers and agencies alike. In *Gathuru*, the Court was troubled by the common practice of an agency adding a contingent percentage collection fee at the time of sending its initial notice. The Court reasoned that since no amount had yet been paid

[16] Caller-ID technology is not equipped to deal with a lengthy disclosure, nor is it easily controlled by debt collector or their long-distance provider. Requiring disclosures in caller-ID has the practical impact of prohibiting collection calls which is not in the creditor's, consumer's, agency's or economy's best interest.

to the creditor, the creditor was not yet obligated to pay any collection fee. Thus, *Gathuru*, held that such a letter violated the FDCPA as the collection fee was "not yet recoverable and could not have been collected by the creditor."

We believe that the *Gathuru* opinion contains a fundamental faulty premise. The *Gathuru* court was oblivious to the needs of consumers and other real world considerations. The court stated that the proper method for collecting both the amount of the debt and the collection fee would be for the collection agency first to send a letter containing only the principle amount and further indicate that due to the existence of other charges, the balance could change and advising the consumer to call to learn the actual balance. So on its face, the Court would put consumers in the position of having to call the agency despite having received a letter that should explain what is required to extinguish the claim. And if the consumer called in they would likely receive a confusing explanation and different scenarios to account for different payments.

The Court continues by suggesting once the principal amount due the creditor is collected, the collector would then be able to engage in additional collection efforts to attempt to recover the collection fee. Thus, the consumer would be forced through a second round of collection activity when they thought they were through with the matter.[17] The Court ignores that such a procedure would be confusing to the consumer and likely expose the agency to liability under the FDCPA for failing to state in the first letter the amount due.

This precise issue was recently addressed in *Murr v. Tarpon Fin. Corp*[18] where the court acknowledged that such a second stage of collections would violate the FDCPA. ("Such a second round itself may violate the FDCPA, as the total amount of the debt must be reflected in the initial communication.") Other federal courts have taken the same position.[19] In addition to the harm imposed on consumers, such a procedure unreasonably puts creditors at risk that they will not be made whole.[20]

Kojetin appears to make a percentage collection fee per se a violation of the FDCPA rather than imposing on the consumer the actual costs of any single collection account. The Court unfairly penalizes the creditor (and forces higher costs of credit) by ignoring that the true cost to the creditor is the percentage fee charged by the agency and that is reasonably imposed on the consumer who has not paid his or her bill. Anything less results in a creditor receiving only a partial recovery of the amount due from the consumer, despite the consumer's express agreement to make such payments.

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[17] Consider, also, that if a partial payment was made, part of the funds received would then be applied to the principal and part to the fee; subsequent correspondence would then have to explain how the funds were applied and show an upward adjustment to the balance on account of those fees already paid.

[18] 3:10-CV-372, 2014 WL 546690 (E.D. Tenn. 2014); see also *Fields v Wilber Law Firm, P.C.*, 383 F.3d 562 (7th Cir. 2004)(" When a consumer has contractually agreed to pay attorneys' fees and collection costs, a debt collector may, without a court's permission, state those fees and costs and include that amount in the dunning letter. Doing so does not violate the FDCPA. Indeed, refusing to quantify an amount that the debt collector is trying to collect could be construed as falsely stating the amount of debt.")

[19] Taylor v Luper Sheriff and Niedenthal, 74 F.Supp.2d 761 (S.D. Ohio 1999)

[20] Id. At 767.

The CRC supports any guidance from the CFPB on what are reasonable collection fees and how creditors working with collection agencies may recoup those fees. Also see response to question 109 on transaction fees.

Q115: The FDCPA expressly defines the amount owed to include "any interest, fee, charge, or expense incidental to the principal obligation." Section 808(1) makes it unlawful for debt collectors to collect on these amounts unless authorized by the agreement creating the debt or permitted by law. Should the Bureau clarify or supplement this prohibition in proposed rules?

Please see response to Questions 114, above. Please also see response to question 109 on transaction fees.

Q116: What communications technologies could cause consumers to incur charges from contacts by debt collectors? What are the costs to consumers and how many consumers use these technologies? For instance, how common is it for consumers to be charged for text messages and what is the average cost of receiving a text message? How common is it for consumers to be charged for mobile phone calls and what is the average cost of receiving an average-length call? Does incurring such charges vary by demographic group? If so, how?

The CRC is willing to work with the CFPB to analyze data responsive to this request.

Q117: Should proposed rules presume that consumers incur charges for calls and text messages made to their mobile phones? Should the failure to use free-to-end-user services when using technologies that would otherwise impose costs on the consumer be prohibited? What would be the costs and challenges for collectors of implementing such requirements?

It is beyond dispute that there is a plethora of options available to consumers with regard to mobile communications. Cell phone providers offer numerous plans, many of which feature unlimited calls, unlimited text messaging, unlimited data, or a combination of the three. Moreover, the rapidly changing mobile communications market, and competition between the various providers, is likely to continue to change the marketplace, and how consumers use and pay for mobile communications. A rule promulgated by the CFPB that makes assumptions about consumers' use of these communication tools, and the costs they pay, is extremely likely to become obsolete in short order, because the pace of technological and market change may be faster than the pace of the CFPB's ability to amend a rule to take new developments into account.

Rather than attempting to make a rule that dictates the nature of interactions between collectors and consumers, the CFPB should adopt a simpler, more elegant solution that will not become obsolete with time. That solution is to allow consumers to decide what communication tools they wish to use. CRC would support a rule that would require collection firms to obtain consumer consent before communicating by e-mail, text message or social media, and that would also allow consumers to withdraw that consent (and "opt out") from any of those communication methods at any time. With respect to cellular telephones, CRC would support a rule allowing consumers to stop calls to their mobile phones at any time (which they already can do, under existing law). This ability to choose – both at the beginning of a relationship and at any time thereafter – allows individual consumers to control any costs they might incur in communicating about their debts, because they will always have the superior knowledge about those costs and their willingness to incur them.

If a collector uses text messages to make contact with a consumer and request consent to continue using text messages, CRC believes it would be appropriate to require free-to-end-user (FTEU) messages to establish that initial contact and seek the consumer's consent to further text messages. We are unaware of any comparable FTEU option with respect to e-mail and social media messages, but we believe it is likely that such messages would impose either no costs or extremely small costs on consumers.

In short, in assessing this issue, CRC supports the right of consumers to choose the manner in which they communicate regarding their debts. That choice is the ultimate tool for preventing unwanted communications charges for consumers while allowing consumers the greatest flexibility in determining how they want to communicate, and the Bureau should orient any rule designed to address consumer communication costs around the concept of consumer choice, rather than trying to create a regime of communication rules based on an ever-changing communications environment.

Q118: Should proposed rules require collectors to obtain consent before contacting consumers using a medium that might result in charges to the consumer, such as text messaging or mobile calls? If so, what sort of consent should be required and how should collectors be required to obtain it?

As noted above in response to Question 117, CRC and its members support the right of consumers to choose the manner in which they communicate regarding their debts. For the reasons that follow, CRC believes that a rule requiring consent to text messages would be appropriate, but that the rule should treat telephone calls to a cellular phone differently.

The reason for the difference in proposed treatment stems from several factors. First, the history of how consumers have chosen to communicate regarding their financial obligations is strongly rooted in telephone contact. Traditionally, consumers have been asked to provide telephone numbers in connection with credit applications, and it is now commonplace for those applications to contain consents for the consumers to be contacted. In addition, because of the provisions of the Telephone Consumer Protection Act (TCPA), it is commonplace for creditors to have extensive disclosures relating to contact through mobile telephone calls. Because telephones have traditionally been a medium for communication between creditors/collectors and consumers, and because consumers very frequently provide contact telephone numbers to creditors for the very purpose of communication relating to their financial obligation, a rule requiring such consent is unnecessary.

By contrast, text messaging has not traditionally been a medium for debt-related communications. It may become more prevalent because of consumer choice, but CRC nevertheless does not believe that consumers have an established expectation that text messages will be used to communicate with them regarding financial obligations. Thus, text messages should be used for communication only with the consumer's consent, which consent may be given to the debt collector or to the original creditor (either when creating the underlying obligation or through subsequent interaction with the creditor).

The second reason that any proposed rule should treat mobile phone calls and text messages differently is because of the impact on successful contact between collectors and consumers. As discussed in detail in response to Questions 95-97 above, contact between collectors and consumers is critical to allowing consumers to resolve their debts and minimize more serious consequences to themselves. Today, many consumers do not have home telephone numbers, and use their mobile phones exclusively. A rule that required consent before contacting a consumer by mobile telephone would create an enormous barrier to successful communication between collectors and consumers, and would greatly reduce the ability of consumers to resolve their debts. This, in turn, would both increase the cost of credit (because creditors would experience greater losses) and would also cause more consumers to be subject to collection lawsuits, garnishments and other involuntary collection methods, because creditors unable to contact consumers would be left with no other choice.

A rule requiring consent before text messaging would not have such a dramatic negative impact. The use of text messaging in connection with consumer financial transactions is still fairly new, and neither consumers nor creditors have begun to rely heavily on text messaging. For this reason, a requirement that collectors have consent to send text messages would not be nearly as disruptive as one that applied to mobile telephone calls.

Finally, since these questions are based on the concern about costs that consumers may incur to receive communications, there is another difference that supports treating text messages and mobile telephone calls differently. With a mobile telephone call, a consumer concerned about charges from his or her communication provider can avoid those charges merely by refusing to answer an incoming call. But text messages are delivered automatically without any intervention by the consumer, and charges would be incurred without the consumer making any choice to accept the message. This is yet another reason to treat the two forms of communication differently.

This question also asks about the manner in which consumers should give consent to be contacted. In this regard, CRC suggests that the Bureau adopt a flexible standard that will allow consumers to consent to various forms of communication in any way that can be documented and recorded, either by the original creditor or the collector. Examples of forms of consent that should be permitted include the following:

- Consenting in a credit application or loan agreement
- Providing consent verbally in a telephone call with the creditor or a collector[21]
- Providing consent through a web site
- Consenting by responding to a free-to-end-user text message

[21] For consent given verbally, CRC would also support a "double authentication" standard, under which the consumer would receive a text messaging to confirm his or her consent and would need to respond to that text message affirmatively to establish consent.

In addition, as noted above, CRC believes that consumers should also be able to withdraw their consent to receiving either mobile telephone calls or text messages. As with providing consent, CRC believes that consumers should have the flexibility to withdraw consent in a variety of ways, coextensive with the manner in which they can provide consent. CRC would support a rule that required collectors to honor requests from consumers to withdraw consent verbally, in writing, via the internet, or through a "stop" text message.

In determining how to handle this issue, the Bureau should take into account the very substantial differences between mobile telephone calls and text messages, and should craft any proposed rule accordingly. In addition, although the Bureau does not have rulemaking authority under the TCPA, any proposed rule relating to mobile telephone calls and text messages should be consistent with the requirements of the TCPA as interpreted by the federal courts and the FCC, because collectors will be required to comply with the TCPA with respect to these communications methods.

Q119: Should proposed rules impose other limits beyond consent on communications via media that result in charges to the consumer and if so, what limits? For example, would it be feasible to require in proposed rules that consumers have the right to opt out of communications via certain media to avoid the possibility of being charged? If so, should initial communications via such media be required under proposed rules to include a disclosure of the consumer's right to opt out? Should proposed rules include limits on the frequency with which collectors use such media?

CRC's views with respect to this question are already set forth in its responses to Questions 95-97 and 118, so those are not repeated in depth here. In short, CRC would support a requirement that consumers can opt out of receiving mobile telephone calls and/or text messages at any time, as set forth in its response to Question 118, above. Further, CRC supports a requirement that consumers providing consent to text messages would be informed that they can withdraw that consent at a later date if they so choose. If any disclosure is made regarding a consumer's right to request no communication via texts, emails or other electronic means, CRC believes that the initial validation notice sent by a collector is the most appropriate medium for such a disclosure. Moreover, providing such a disclosure in the initial validation notice provides it to the consumer in writing, in a form that the consumer can keep, and eliminates any dispute about whether a verbal disclosure was made during a telephone call to a mobile number.

With regard to limits on frequency, as noted above in response to Questions 95-97, CRC does support restrictions on frequency with respect to telephone calls, whether made to a mobile number or another number. The CRC would support a rule limiting text messages to [two per week per account], unless the consumer requests or consents to more communications, or the collector is sending messages to respond to a consumer communication.

In addition, CRC believes that any rule proposed by the Bureau should permit a collector to send one final communication to a consumer to confirm receipt of, and adherence to, the consumer's request to stop receiving communications in a particular manner. This benefits the consumer by providing confirmation that the consumer's request has been received and will be followed, and gives the consumer evidence to use in later discussions if communications occur again for some reason.

Q120: FDCPA section 810 states, "If any consumer owes multiple debts and makes any single payment to any debt collector with respect to such debts, such debt collector may not apply such payment to any debt which is disputed by the consumer and, where applicable, shall apply such payment in accordance with the consumer's direction." Should the Bureau clarify or supplement this prohibition in proposed rules? If so, how? In addition, what information or data support or do not support the conclusion that conduct that violates FDCPA section 810 is unfair or abusive conduct under the Dodd-Frank Act? Why or why not?

The CRC would like to note that section 810 does not provide for any guidance on how to apply payments in the absence of direction from the consumer. The CRC would support rulemaking that would provide direction for best practices in relation to the application of payments when no direction is given by the consumer. The CRC would urge the CFPB to consider the following factors when drafting such a rule: interest rates, late charges or other fees, the charge off date, and the amount of the balance. Each of these factors could hold different value to each consumer depending on their individual situation or preference. The CRC believes the collection industry would be better served having clear guidance on how to consider each of these factors absent direction from the consumer.

Q121: Should proposed rules require that payments be applied according to specific standards in the absence of an express consumer request or require a collector to identify the manner in which a payment will be applied? Should proposed rules require that the payment be applied on or as of the date received or at some other time?

Please see the answer above. The CRC supports rulemaking that would provide uniform standards that would clarify how payments should be applied in absence of specific instructions from the consumer. Such a rule may incorporate a combination of considering uniform factors outlined by the CFPB, as well as require agencies to have a clear policy that notifies consumers how payments will be applied should instruction not be given. However, the CRC does not think it necessary to inform a consumer how the payment will be applied for each payment as that would be overly burdensome. Rather, the CRC would suggest agencies give a one-time notice of their payment policies or disclose that their policies are available upon request or online on their website. Finally, the CRC would support additional rulemaking that would propose a standard timeframe for which payments must be applied after receipt of the payment.

Q122: To what extent do debt collectors currently provide consumers with a receipt or other documentation showing the amount they have paid and whether it is or is not payment in full? Should such documentation be required under proposed rules? Are there any State or local laws that are useful models to consider?

The CRC believes instituting a mandatory receipt requirement for each payment detailing whether the account was settled in full would unduly burden the collection industry, result in confusion to the consumer, would not prevent abusive practices, and is unnecessary considering current financial institution requirements and modern technology used to process payments. Should the CFPB determine rulemaking is necessary in regards to payment receipts, the CRC would make two suggestions. First, the CRC does not support a mandatory receipt requirement for every single payment considering the massive volume of payments processed. Instead, the CRC would suggest rules that would allow for the consumer to "opt-in" to receiving payment receipts at their request. Secondly, the CRC would support a uniform rule that would require a confirmation letter sent to the consumer at the time an account was settled or paid off, similar to current bank and jurisdictional requirements, but also asks that provision be made for such letter to be provided by email and/or through a web site.

Currently, the FDCPA and other jurisdictional requirements have resulted in requiring a multitude of letters that must be sent on every single account, whether or not a payment is made. In addition to the required dunning letter, agencies must send reminder letters and confirmation letters when depositing post-dated checks, letters outlining settlement agreements, and validation letters only to list a few. Requiring a receipt for each payment made by the consumer will result in a substantial addition to the already voluminous amount of pieces of mail being received by the consumer. Additionally, the CRC is concerned this type of requirement has the potential to conflict with the already required letters and create confusion for the consumer should different letters be received on the same day or out of the order they were sent. Adding to the already required number of letters will increase collection costs, burden the consumer with additional mail, and has the potential to create undue confusion.

Further, the CRC is concerned that a proposed rule requiring a receipt detailing whether or not the account is paid off would not necessarily stop the unfair practices the rule is intending to prevent and is only necessary when the account is actually closed. If the CFPB is concerned that there is potential for an agency to accept a partial payment on an account as payment in full and then subsequently sell or transfer the account to another agency, rather than closing the account as promised, the requirement of a payment confirmation receipt will not prevent this practice. Any agency attempting such an unfair and illegal practice would simply not send the confirmation letter and transfer the account. The requirement of a receipt provides no benefit for the consumer in this situation. In the alternative, should the CPFB be concerned with consumers sending partial payments in belief the payment will be accepted to settle the account in full pursuant to an agreement with the agency, only to have the agency break that promise, the CRC believes the small benefit of requiring a receipt detailing partial or full payment for every transaction is vastly outweighed by the burden on collection agencies for the cost of sending and tracking those receipts. Instead, the CRC would propose an alternative solution. It is the CRC's experience that many large bank creditors currently require either a settlement or payoff confirmation letter to be sent to the consumer when an account is closed. Similarly, the City of New York requires a settlement confirmation letter. The CRC believes the CFPB could address this issue by creating a rule similar to these practices requiring that a letter be sent to the consumer when the account is actually settled or paid in full and the account is closed, rather than after each payment. And finally, if any rule is imposed that an agency confirm receipt or other information in writing, that the CFPB permit the notification to be made through a web portal over the internet and/or email in an effort to help agencies reduce costs and consumers to reduce paper that is received.

Finally, the CRC believes rulemaking in regards to mandatory receipts is unnecessary in today's environment considering the current requirements and practices of financial institutions, as well as the current technology associated with payment processing. Several state jurisdictions only require a receipt for any method of payment that does not already produce evidence of the transaction. In today's world, the vast majority of payment methods provide information detailing the transaction either immediately when the transaction takes place or subsequently on some type of financial statement, many times, both. If a consumer were to pay by a check either by mail or over the phone, after the check is deposited, the check will eventually be returned to the consumer or posted as an image online, in addition to having the bank list the transaction on their account statement. It is unnecessary for the CFPB to draft a rule mandating a receipt for each transaction because at the very least, the consumer will automatically have evidence of the transaction from their financial institution and likely other evidence as well. Instead, the CRC would suggest that the CFPB propose a rule allowing consumers the choice to opt-in to receive payment receipts for methods of payment that do not already provide evidence of the payment.

Q123: Should the Bureau's proposed rules impose standards for the substantiation of common claims related to debt collection? If so, what types of claims should be covered and what level of support should be required for each such claim? What would be the costs and benefits to consumers, collectors, and others of requiring different levels of substantiation? Would a case-by-case approach to substantiating claims instead be preferable? Why or why not?

See response to question 126.

Q124: Should the information or documentation substantiating a claim depend upon the type of debt to which the claim relates (e.g., mortgage, credit card, auto, medical)? Is it more costly or beneficial to substantiate claims regarding certain types of debts than others?

See response to question 126.

Q125: Should the information or documentation expected to substantiate a claim depend on the stage in the collection process (e.g., initial communication, subsequent communications, litigation) and if so, why?

See response to question 126.

Q126: What information do debt collectors use and should they use to support claims of indebtedness

- **prior to sending a validation notice;**
- **after a consumer has disputed the debt;**
- **after a consumer has disputed the debt and it has been verified; and**
- **prior to commencing a lawsuit to enforce a debt?**

This series of questions follows a discussion in the ANPR about a series of enforcement actions brought by the FTC, but the nature of those enforcement actions, in CRC's view, has little to do with "substantiation" as the Bureau uses that term in these questions. A review of the actions cited in footnote 230 of the ANPR reveals that they concern instances in which collection firms either (a) failed to investigate or respond to disputes under the FDCPA; (b) ignored known errors in information provided to them by creditors; or (c) made outright false statements to consumers that were not capable of substantiation:

- *United States v. Luebke Baker & Assoc.*, No. 1:12-cv-01145 (C.D. Ill. May 23, 2012) (FTC found that debt collector made statements that it was a law firm, or that it was affiliated with Ed McMahon, and made statements about lawsuits and garnishments that the collection firm did not plan to initiate);

- *United States v. Asset Acceptance, LLC*, No. 8:12-cv-00182 (M.D. Fla. Jan. 31, 2012) (FTC found that debt collector made false statements about disputed accounts, and accounts for which the collector knew that the data provided to it was likely unreliable);

- *United States v. Allied Interstate, Inc.*, No. 0-10-cv04295 (D. Minn. Oct. 21, 2010) (FTC found that collector ignored disputes and failed to investigate them, and continued collecting on such disputed accounts);

- *United States v. Credit Bureau Collection Services*, No. 2-10-cv-169 (D. Ohio Feb. 24, 2010) (FTC found that collector ignored disputes and failed to investigate them);

- *FTC v. EMC Mortg. Corp.*, No. 4:08cv-00338 (E.D. Tex. Sept. 9, 2008) (FTC found that mortgage servicer made claims about debts when it knew that data provided to it was incomplete or unreliable);

- *FTC v. Countrywide Home Loans, Inc.*, No. 2-10-cv-04193 (C.D. Cal. June 7, 2010) (FTC alleged that mortgage servicer added and collected fees that were not authorized by the underlying agreement or applicable law).

These enforcement actions do not appear to relate to the substantiation of debts in the ordinary instance, but rather to specific types of improper conduct that the FTC found specific companies to be engaged in, that violated existing law. They therefore do not support the conclusion that any rulemaking is necessary with respect to substantiation of debts.

However, CRC believes that the CFPB could help to establish certainty in this area by defining the responsibilities of creditors and collectors with regard to the provision of information about a debt. To that end, CRC suggests the following for the Bureau's consideration with respect to this issue.

At or prior to the time of placement of a debt with a collection agency, the creditor should be required to make representations to the collector that the debts being placed for collection are valid and that the data provided to the collector is accurate. The collector, in turn, should be entitled to rely on that representation unless the collector detects some problem with the debts or the data through its own analysis of the data or through an unusual pattern of consumer complaints or disputes.

This allocation of responsibility for the accuracy of debt information reflects the real-world fact that the creditor has superior knowledge and information relating to the debt, and is in a far better position to detect problems than the collector is. After all, the creditor frequently has a longer-term relationship with the consumer, and usually will have communicated the existence, amount and status of the debt to the consumer over a period of time. If there is some problem or inaccuracy with the creditor's information, the creditor will be best-suited to detect that problem in the first instance, though communications from the consumer (complaints or otherwise). A collection firm, which is assigned the debt for the first time and has no history with it, is poorly-situated to police the accuracy of the creditor's information. For this reason, CRC and its members believe that creditors, not collectors, should be responsible for the accuracy and validity of debt information at the time of placement with a collection agency. CRC would support a rule that provides that any placement of debt with a collector carries the implied representation that the debts are valid and that the information provided by the creditor is accurate.[22] This scheme would place responsibility where the greatest access to information resides, and would also be consistent with the fundamental relationships in which collectors are service providers to creditors, not the other way around.

If a debt is disputed by the consumer, a collection agency generally must employ the assistance of the creditor to respond, because the creditor usually will have the necessary information. From the standpoint of CRC's members, validating a debt should properly require the creditor to provide to the collector, and the collector to the consumer, information responsive to the dispute (for example, if appropriate, a copy of: the agreement or promissory note governing the debt, credit card terms & conditions, payment history, or account statements showing the amount due and how it was arrived at). CRC's members typically seek documentation from creditors, and place accounts on hold (with no collection activity) while the documents are being sought from the creditor. Once those documents are received, they are provided to the consumer, and collection efforts resume. If the creditor is unable to provide such documents, the common practice is for the collection agency to close the account and stop working it altogether, returning the account to the creditor. CRC believes that this process is both logistically feasible and sufficient to inform the consumer of the basis for the debt, and suggests that any rule impose requirements along these lines. CRC also notes that this is precisely the information that the Bureau required a credit card issuer to have in its possession to support the collection of delinquent accounts, in a consent order entered in October 2012.[23] The CRC also asks that the CFPB clarify that any documentation necessary for validation or other substantiation of a debt may be sent either by the agency or the creditor to the consumer. Requiring the documentation only from the agency creates an additional step in the process of providing the consumer with this information, and that can lead to delays and errors or omissions.

There is one other pertinent point that CRC believes that the Bureau must take into account in any rulemaking relating to substantiation of debts and responses to disputes. Although some disputes are submitted in good faith by consumers who genuinely may dispute their debts, the

[22] Many creditors are making such representations in their agreement with collection firms now.
[23] *See* American Express Centurion Consent Order, October 1, 2012, at 7-8.

overwhelming majority of disputes received by collection agencies are simply form letters downloaded from the internet by consumers who seek to use the dispute opportunistically to avoid paying a debt. In addition, large numbers of disputes are sent in by debt settlement companies, who use the disputes in the same opportunistic manner.

In formulating any rule relating to collection firms' obligations to respond to disputes, the Bureau must take into account that the dispute process must not only work for the small percentage of consumers who use it properly, but also for collection firms faced with a barrage of unsupported, form-letter disputes that have no merit. To require significantly more effort to respond to disputes would be to reward this opportunistic behavior, because collectors and creditors may decide that responding to disputes is more expensive than it is worth, especially when collecting small-balance debts. And if debt settlement companies are enabled to stop collection activity indefinitely or for long periods of time by rules requiring expensive and time-consuming investigations in response to disputes, their appeal to consumers will increase, and CRC is certain the Bureau does not intend to make debt settlement companies more attractive to consumers, because of the significant consumer protection problems the Bureau has encountered with respect to such companies.

Q127: In July 2013, the Bureau released a compliance bulletin explaining that representations about the effect of debt payments on credit reports, credit scores, and creditworthiness have the potential to be deceptive under the FDCPA and the Dodd-Frank Act. What information are debt collectors using to support the following claims:

- **the consumer's credit score will improve if the consumer pays the debt;**
- **payment of the debt will result in the collection trade line being removed from a consumer's credit report;**
- **the consumer's creditworthiness will improve if the consumer pays the debt; and**
- **the collector will furnish information about a consumer's debt to a CRA?**

CRC's members believe that this question raises what is largely a moot point, at least with respect to their own operations. After the CFPB's Bulletin in July 2013 regarding this issue, CRC's members responded by eliminating any references to credit scores or creditworthiness from their consumer communications, to the extent that such concepts were present in the first place (which was not commonplace, for reasons described below). So, from CRC's perspective, there is no need to discuss the support for consumer communications regarding credit scores and creditworthiness, because CRC's members view such statements as "off limits" after the Bureau's July 2013 Bulletin. As to the last bullet regarding providing information about a consumer's debt to a CRA, collection agencies that report debt to CRAs should be allowed to so advise consumers.

The CRC would support a rule that would provide collection agencies and creditors with "safe harbor" language that they can use to respond to consumer questions about credit reporting. Consumers do frequently make inquiries about the relationship between unpaid debts and their credit reports, and it is the desire of collection agencies (and creditors as well, we are sure) to be responsive to those inquiries. It would assist the industry if the CFPB were to provide language that a collection agency or creditor can use to respond to such inquiries from consumers, and it would also assist consumers, who frequently are interested and concerned about the credit reporting implications of their actions with respect to an unpaid debt. CRC's suggestion is that such language should be simple and to the point, and should reflect the actual credit reporting practices of the collection agency or creditor client. For example, CRC believes it should be permissible for a collector to say, "if you pay this debt, it will be reported as paid to credit reporting agencies," or "if this debt is not paid, it will continue to be reported as delinquent and unpaid to credit reporting agencies." If these statements are accurate in terms of what will actually be furnished to credit reporting agencies, they should be permitted, and CRC would welcome a rule by which the Bureau would make clear what can be related to consumers about this important subject.

Q128: What services are provided to debt collectors in connection with the collection of debts and who provides them? Are the types of services the same for first-party and third-party collectors? What information or data support or do not support the conclusion that such services provided are material to the collection of debts?

Debt collectors receive services from a variety of providers in connection with the collection of debts. These services include several that are common to most any business: utility services (electricity, gas, water); phone service; computer hardware and software providers; internet access; security services; insurance; accounting, licensing and legal services. In addition, debt collectors receive services from a group of providers that are collectively unique to the debt industry such as letter vendors, collection software companies, telephone dialer companies and consumer location data sources. All of the sources of services mentioned herein – both those that generally provide services to numerous business and the group that collectively provides services unique to the debt industry – are not "material to the collection of debts" and do not constitute "substantial assistance" to a covered person or service provider under the Dodd-Frank Act.

Q129: Are there specific acts or practices by service providers that should be specified in proposed rules as constituting unfair, deceptive, or abusive acts or practices in connection with the collection of debts? How prevalent are such acts or practices? In addition to the prohibition on unfair, deceptive, and abusive acts and practices by service providers, section 1036(a)(3) of the Dodd-Frank Act prohibits "any person [from] knowingly or recklessly provid[ing] substantial assistance to a covered person or service provider in violation of the provisions of section 1031 or any rule or order issued thereunder."

The CRC is unaware of any cases holding a debt collector liable for the acts of a servicer identified in response to Question 128 above.

Q130: Who provides substantial assistance to debt collectors? Is the assistance provided to first-party collectors the same as the assistance provided to third-party collectors? What measure should be used to assess whether such services provided are material to the collection of debts?

See response to questions 128 and 129 above. The measure that should be used to determine if services provided are material to the collection of debt is whether the services are rendered by an employee or independent contractor under the control or supervision of the debt collector.

Q131: In what types of circumstances, if any, are persons knowingly or recklessly providing substantial assistance to collectors who are a "covered person" or "service provider" as defined in the Dodd-Frank Act with respect to acts or practices by the covered person or service provider that violate section 1031? How prevalent is conduct by such persons?

See responses to questions 128 through 130 above.

(Questions 132 – 140)

<u>Consumer Relations Consortium CFPB ANPR Response</u>

Section VI – Time Barred Debts (Questions 132 – 142)

I. Statement of the Problem

The ANPR devotes an entire section to collection of time-barred debts and notes the CFPB "is generally interested in comments about the need for and the costs and benefits of proposed rule provisions concerning the collection of time-barred debt. The Bureau particularly is interested in comment about the need for and the costs and benefits of requiring debt collectors to provide consumers with information relating to time-barred debts." *Id.* at 67875. The ANPR relies heavily on the FTC's action against Asset Acceptance, where the FTC alleged it was deceptive for Asset Acceptance to fail to disclose to consumers that they could not be sued if they did not pay. *Id.* The ANPR notes Asset Acceptance agreed to a settlement (http://www.ftc.gov/opa/2012/01/asset.shtm) under which the company is required to disclose such information when it collects on debts that it knows or should know are time barred. *Id.* The Asset Acceptance-required disclosure states that: (1) "The law limits how long [the consumer] can be sued on the debt," and (2) "Because of the age of [the consumer]'s debt, we will not sue [the consumer] for it." *Id.* at n. 240.

The ANPR also mentions the amicus brief the FTC/CFPB submitted to the Seventh Circuit in *Delgado*, where the FTC/CFPB averred "consumers may be deceived in connection with the collection of time-barred debts. Consumers, in some circumstances, may infer from a collection attempt the mistaken impression that a debt is enforceable in court even in the absence of an express or implied threat of litigation. Accordingly, where a debt is not legally enforceable, a debt collector may be required to make the affirmative disclosure to that effect to avoid misleading consumers." *Id.* at 67875.

The ANPR asks several questions in an effort to decide whether to issue a rule requiring certain disclosures be provided in order to collect on time-barred debts. The CFPB is also concerned "consumers do not understand that partial payments in some jurisdictions may revive the entire balance of the debt for a new statute of limitations period. Specifically, consumers may believe that when they make a partial payment on a time-barred debt they have only obligated themselves in the amount of the partial payment but in many circumstances that is not true. Under the laws of most states, a partial payment on a time-barred debt revives the entire balance of the debt for a new statute of limitations period." *Id.* at 67876.

Citing the FTC's 2010 report entitled "Repairing a Broken System: Protecting Consumers in Debt Collection Litigation and Arbitration," http://www.ftc.gov/os/2010/07/debtcollectionreport.pdf, the ANPR states "in many circumstances in States where laws provide that a partial payment on a time-barred debt revives it, a collector's attempt to collect time-barred debt may create a misleading impression as to the consequences of making such a payment, in violation of section 5 of the FTC Act and FDCPA section 807. [In its 2010 report,] [t]he FTC stated that to avoid creating a misleading impression, collectors in many circumstances would need to disclose clearly and prominently to consumers prior to requesting or accepting such payments that providing a partial payment would revive the collector's ability to sue to collect the balance. Apart from avoiding a misleading impression, consumers also may benefit from receiving affirmative statements regarding the impact of partial payments in making decisions about whether to pay debts and in what order to pay them. Indeed, some State and local governments have started requiring collectors to disclose similar types of information when seeking partial payments on time-barred debts both to prevent deception and assist consumers in making better informed decisions." *Id.*

The ANPR asks several questions regarding revival of time-barred debts through partial payments in an effort to decide whether to issue a rule requiring certain disclosures be provided to consumers before such payments are made.

The CFPB also "seeks comments concerning developing model or standard language and formats for disclosures relating to time-barred debts." *Id.* The ANPR asks several questions relating to proposed, model language and forms.

II. Responding to the Perceived Problem

A. No Legal Right to File Suit on Time-Barred Debt (Q 132- Q 134)

Q 132: Is there any data or other information that demonstrate or indicate what consumers believe may occur when they do not pay debts in response to collection attempts? Does it show that consumers believe that being sued is a possibility?

There is no demonstrative data that indicates what consumers believe may occur if they do not pay debts in response to collection attempts. Although consumers often execute written contracts related to establishing credit and opening accounts, the least sophisticated consumer is generally unaware of the Statue of Limitations ("SOL") in the State they reside. There are indications that the least sophisticated consumer and/or the general public believes that as long as a debt is reported on a credit bureau, it is collectable, but nothing indicates whether consumers are aware of whether they can be sued or not.

Q 133: Should the Bureau include in proposed rules a requirement that debt collectors disclose when a debt is time barred and that the debt collector cannot lawfully sue to collect such a debt? Should the disclosure be made in the validation notice? Should it be made at other times and in other contexts? Should a rule be limited to situations in which the collector knows or should have known that the debt is time barred? Is there another standard that the Bureau should consider?

No, the Bureau should not include a requirement that collectors disclose when a debt is time barred and the collector cannot legally sue to collect said debt. Every State has different Statue of Limitations ("SOL") codes for Oral, Written, Signed, Promissory Note and Open Accounts, presenting hundreds of permeations of SOL date calculations. In addition, a non-lawyer layperson likely would not be able to determine which statute would apply given that will require an understanding of which state's laws apply (i.e. where the contract was formed, where the consumer currently resides, where the consumer resided at the time of the agreement, whether there exists a choice of laws provision within the agreement, etc). Further, a disclosure should not be required and it should not be presented in the validation notice, which is already confusing to the least sophisticated consumers and the courts. Subject to the caveat discussed above on determining the appropriate statute of limitations, no collector should knowingly sue a time barred debt, therefore; if a rule is promulgated it should only be for those debts that are already time barred.

Q 134: The FTC in its *Asset Acceptance* consent order and several States by statute or regulation have mandated specific language disclosing that consumers cannot be lawfully sued if they do not pay time-barred debts. Please identify what language would be most effective in conveying to consumers the collector cannot lawfully sue to collect the debt, and why.

A jurisdiction-specific disclosure applies to Massachusetts, New Mexico, New York City, and North Carolina. No disclosure should be made in Louisiana and Utah because neither payment nor a promise may be deemed sufficient to renew the statute of limitations. Further no effort should be made to collect on time-barred debts in Mississippi and Wisconsin.

The CRC reiterates its opposition to any requirement that collectors be required to give legal advice on the operation of statutes of limitation, including the renewal thereof. If such advice were required, for States where the laws do allow for partial payment or acknowledgement to renew the statute of limitations, we would recommend the following language, but only with "safe harbor" protections for the collector and provided that the agency has clear guidelines from the CFPB to ascertain that the statute of limitations has run (see response to question 133 regarding the difficulty in determining the running of the statute of limitations):

> The law limits how long you can be sued on a debt. Because of the age of your debt, our client will not sue you for it. In many circumstances, you can renew the debt and start the time period for the filing of a lawsuit against you if you take certain actions, including, without limitation, making certain payment on the debt or making a written promise to pay. You should determine the effect of any actions you take with respect to this debt.

Subject to the same opposition noted above, for States where the laws do not allow for a partial payment to renew the statute of limitations, we would recommend the following language, but only with "safe harbor" protections for the collector:

> The law limits how long you can be sued on a debt. Because of the age of your debt, our client will not sue you for it. In many circumstances, you can renew the debt and start the time period for the filing of a lawsuit against you if you take certain actions, including, without limitation, making a written promise to pay. You should determine the effect of any actions you take with respect to this debt.

B. <u>Revival of Statute of Limitations with partial Payment of Debt (Q 135- Q 140)</u>

Q 135: Is there any data or other information indicating how frequently time-barred debt is revived by consumer's partial payments? How frequently do owners of debts and collectors sue to recover on time-barred debts that have been revived?

The use of a partial payment to revive an otherwise expired statute of limitation period is not a collection tactic that is used by members of the CRC. The CRC recognizes that inducing a consumer to make a nominal payment in an effort to have the consumer unknowingly revive a limitation period is potentially deceptive and unfair. However, when CRC members seek a partial payment on a debt, it generally occurs in the context of either a settlement offer or a payment plan. Though there appears to be a concern expressed both by the FTC and CFPB that there is an abusive use of partial payments to revive statute of limitations, there is little evidence that this occurs in the industry. There are few cases in the FDCPA context where this conduct is challenged.

If the partial payment is made in response to a settlement offer, the partial payment has the effect of satisfying the entire debt, and there would remain no outstanding balance subject to a potential collection lawsuit. Therefore, there is no limitation period that is being revived.

If the partial payment is part of a payment plan, there would not be a collection lawsuit because the consumer is already paying on the account.

Q 136: Is there any data or other information bearing on what consumers believe are the consequences for them if collectors demand payment on debts and they make partial payments?

CRC members do not solicit partial payments to induce consumers to unwittingly revive the limitations period. If a CRC member seeks a partial payment on a debt, it generally occurs in the context of either a settlement offer or a payment plan. If the consumer then makes a partial payment, the reasonable expectation for the consumer is that the payment will be credited to the account to reduce the balance as part of the payment plan, or to satisfy the debt in full as part of an accepted settlement offer.

Q. 137: Should the Bureau require debt collectors seeking or accepting partial payments on time-barred debts to include a statement in the validation notice that paying revives the collector's right to file an action for a new statute of limitations period for the entire balance of the debt if that is the case under State law? What would be the benefits to consumers of receiving such disclosure? What would be the costs to debt collectors in making such a disclosure? How should such a disclosure be made effective? Are there any State or local models that the Bureau should consider in developing proposed rules concerning disclosures and the revival of time-barred debts?

Please note that a partial payment may not renew the statute of limitations pursuant to the laws in a number of States. A disclosure to the consumer that making a partial payment on the debt may revive the limitation period should not generally be required because this is not a collection strategy employed by members of the CRC. Including a disclosure that will incentivize consumers to not pay a valid debt will only operate to harm both the consumer, by being subject to continuing collections, credit reporting, etc., and adversely affect the credit industry by adding to the total of unpaid debts.

If a particular debt collector utilizes the tactic of reviving a statute of limitation period by accepting partial payment, that debt collector should so advise the consumer. However, requiring every debt collector to warn consumers about a theoretical and unexercised right will adversely affect both the consumer and the debt collector.

Unless the debt collector is going to attempt to revive the limitation period by accepting a partial payment, there is no appreciable benefit to the consumer. In fact, the consumer will be harmed because the consumer may become less likely to pay an otherwise valid debt, (*see Goldsmith, Timothy E. and Martin, Natalie*, Testing Materiality under the Unfair Practices Acts: What Information Matters When Collecting Time-Barred Debts?), thereby forfeiting an opportunity to resolve the account on either a convenient payment plan or with a partial payment to satisfy the entire debt in full for a reduced amount. It is not in the interest of the consumer to receive disclosures that encourage non-payment of debts. Regardless of whether a debt cannot be legally enforced in court, generally the debts are still valid and owing (except for Mississippi and Wisconsin). Proving a disclosure to a consumer that will result in continued non-payment of the account will only subject the consumer to continued collection activity and possible misunderstanding that the debt is no longer valid in any context.

Q. 138: Some debts may become time barred after collectors have sent validation notices to consumers. In this case, if a collector is still attempting to collect debts after they become time barred, should the collector be required to disclose information about the debt being time barred, the right of the collector to sue, and the effect of making partial payment to these consumers, and if so, when and how should it be provided?

No, the collector should not be required to supplement previous disclosures after a debt potentially becomes time-barred.

First, as the FTC has recognized, determining the correct applicable limitation period is difficult. The disclosure could adversely affect both the consumer and collector, if a wrong limitation period is applied. If wrong information is provided, the consumer may conclude that the debt is no longer enforceable, and refuse to pay. *See Testing Materiality under the Unfair Practices Act, supra*. The collector, meanwhile, could face exposure for making a false statement under the FDCPA.

Second, the disclosure could have a chilling effect on prior collections. Consumers who are making payments as part of a payment plan, or have negotiated alternative payment arrangements, and are benefiting from these payment plans, will respond adversely to the disclosure and cease making payments. Disclosures should not be provided that motivate consumers to avoid paying debts that are legitimate and due.

If such a disclosure is required, the CRC believes that there should be a generic disclosure provided with the initial written communication that advises the consumer about the possibility of a statute of limitation defense. Such a disclosure should be given at the outset of collection activity, should avoid providing the consumer with legal advice and should not expose a collector to a false statement claim under the FDCPA. One template disclosure should be approved for use by the CFPB to ensure consistency for the consumer and uniformity in the industry. Please see the response to question 134 for recommended disclosures.

Q. 139: A substantial period of time may transpire between the time of the first disclosure that the debt is time barred and of the consequence of making a partial payment and subsequent collection attempts. Should collectors be required to repeat the partial payment disclosure during subsequent collection attempts? If so, when and how often should the disclosure be required?

No; this question presupposes that an initial disclosure should be provided to consumers that a debt is time barred. For the same reasons that an initial disclosure should not be given, there is no benefit for making a supplemental disclosure.

Assuming that the initial disclosure is required, it is akin to and should be treated as part of the validation notice required by 15 U.S.C. § 1692g – the disclosure should be given at the outset of communications with the consumer. If an account is placed with a different collector, that collector can again provide the disclosure along with a new validation notice under § 1692g. However, like the validation notice, the same collector should not be required to remind a consumer of rights that were previously explained.

Q. 140: How frequently do actions by consumers other than partial payment (*e.g.*, written confirmation by the consumer) revive the ability of debt collectors to sue on time barred debts? Should debt collectors be required to provide the same type of disclosures to consumers before they take one of these actions that they would be required to provide in connection with payment on time barred debt?

A consumer providing a written acknowledgment of the debt would, like making a partial payment, affect the running of the limitation period. The limitation period can also be tolled by things like pending bankruptcy proceedings. *See 11 U.S.C. 108(c).* Regardless of actions that can toll or revive limitations period though, such disclosures should not be required for the reasons discussed above. And if a disclosure is required, there should be a uniform, generic disclosure, as discussed above, provided in the initial written communication from the collector to the consumer. *See 15 U.S.C. § 1692g.*

C. <u>Consumer Testing of Time-Barred Debt Disclosures (Q 141 – 142)</u>

Q141: Have industry organizations, consumer groups, academics, or governmental entities developed model time-barred debt notices?

Guidance on this issue was provided by the Federal Trade Commission's Asset Acceptance Decree language which has been statutorily adopted by the states of California and Connecticut in 2013:

1. *When collecting on debt where the debt is not past the date for obsolescence provided for in Section 605(a) of the Fair Credit Reporting Act, 15 U.S.C. § 1681c:*

    - *The law limits how long you can be sued on a debt. Because of the age of your debt, we will not sue you for it. If you do not pay the debt, we [Asset Acceptance, LLC], may [continue to] report it to the credit reporting agencies [as unpaid].*

2. *When collecting on debt where the debt is past the date for obsolescence provided for in Section 605 (a) of the Fair Credit Reporting Act, 15 U.S.C. § 1681c:*

    - *The law limits how long you can be sued on a debt. Because of the age of your debt, we will not sue you for it, and we will not report it to any credit reporting agency.*

Q141A: Have any of these entities or individuals developed a model summary of rights under the FDCPA or State debt collection laws related to time-barred debt?

The CRC is unaware of any model summary of rights or guidance under the FDCPA or state debt collection laws related to time barred debt. See response to question 134.

Q141B: Which of these models, if any, should the Bureau consider for proposed rules?

See response to question 134. Limits on the time for debts to be collected (statutes of limitations) are matters of state law. Therefore, it would be problematic to create a model that would be consistent with potentially 50 different sets of limitation as controlled by the consumer's state of residence or other factors such as the state where the debt was first incurred and any choice of law provisions contained within the contract creating the obligation.

As an alternative, the CRC would support the actions of the CFPB in developing a uniform national consumer notice that a debt collector could provide to the consumer via a link to the debt collector's website.

Q142: Is there consumer testing or other research concerning consumer understanding or disclosures relating to time-barred debts that the Bureau should consider? If so, please provide any data collected or reports summarizing such data.

The CRC is unaware of such testing. The CRC supports such testing as anecdotal information suggests that consumers seldom read such notices contained in current loan or privacy disclosures.

Q159: Should the Bureau propose rules to require debt collectors to register? Should any such registration system be used to register individual debt collectors, debt collection firms, or both? What information should be required for registration, and are there any particular State models that the Bureau should consider? Are there data on how consumers have benefitted from similar systems now operating in States? Are there data on the costs imposed on collectors by registration? How could a registration system be structured to minimize the cost of registration for debt collectors, while still providing adequate information for those who use the registration system?

For responses to questions 159 and 160, please see below.

Q160: The Nationwide Mortgage Licensing System and Registry ("NMLSR"), which was originally used by State regulators for the registry of mortgage loan originators, is increasingly being used as a broader licensing platform, including for the registration of debt collectors. Would it be desirable for NMLSR to expand or for some other existing platform to be used to create a nationwide system for registering debt collectors rather than having the Bureau create such a system? What could the Bureau do to facilitate the sharing of information among regulators who are part of the NMLSR or other nationwide system to safeguard confidentiality and protect privileged information?

For responses to questions 159 and 160, please see below.

I. INTRODUCTION

The Collection industry currently does not require a federal registry for debt collection agencies. Presently, states retain individual control over licensing and registration requirements, which vary greatly.

Nationwide Mortgage Licensing System & Registry (NMLSR) is the system of record for non-depository, financial services licensing or registration for participating state agencies including DC and US Territories of Puerto Rico, the US Virgin Islands, and Guam. In these jurisdictions, NMLSR is the official system for companies and individuals seeking to apply for, amend, renew and surrender license authorities managed through NMLSR by 58 state or territorial governmental agencies. NMLSR itself does not grant or deny license authority.

Currently, 4 states have transitioned the collection agency licensing to NMLSR: Massachusetts, Rhode Island, Indiana, and Idaho. AllianceOne has transitioned successfully with MA, RI, IN, and awaiting confirmation with ID.

Licensing for collection agencies varies by state; some states have stringent licensing requirements, requesting a lot of information about a company, while other states may not. NMLSR has created a system that will house *all* information that may be requested of a company from any particular state agency. The initial set up includes company name, FEIN, date of incorporation, officer information or control persons, address, telephone numbers, primary contacts, and questionnaire about background information regarding the organization. Once the information is completed states can insert their individual requirements easily and documents can be uploaded into NMLS to satisfy state requirements, i.e. copies of surety bonds, debt collector annual reports, trust account information, etc.

As more states transition the debt collector licensing to NMLSR, it has become much simpler to complete these transitions as most information is already available to the states. It's as simple as clicking the state and requesting the transition.

II. STATEMENT OF THE PROBLEM

CONSUMERS NEED ONE CENTRAL SOURCE WHICH IDENTIFIES DULY REGISTERED COLLECTION AGENCIES AND WHICH PROVIDES HELPFUL INFORMATION TO THEM REGARDING THOSE AGENCIES.

- Consumers need a simple, easy way to determine the legitimacy and authority of an entity that contacts them to collect a debt.

- Consumers need basic information about collection agencies that will allow them, among other things, to more effectively communicate with them.

COLLECTION AGENCIES NEED A MORE STREAMLINED, CONSISTENT AND EFFICIENT PROCESS FOR LICENSING AND REGISTRATION SINCE STATE REQUIREMENTS VARY SO GREATLY AND ARE OFTEN INCONSISTENT WITH EACH OTHER

- Licensing submissions are not standardized into one format.

- The lack of consistency in state licensing and/or registration requirements is inefficient.

- The duplication of requirements among states is inefficient and time-consuming, which benefits neither consumers nor collection agencies.

III. THE PROPOSED SOLUTION – FEDERAL REGISTRATION OF COLLECTION AGENCIES THROUGH THE CFPB

- List of information that would be part of the licensing requirement
    - Name of company
    - Address (all locations of a company would be covered by a single registration)
    - Trade names (d/b/a, fictitious names)
    - Executive management (officers, directors, ownership)
    - Direct contact information – for complaints, disputes, and licensing questions
    - More standardized application process to promote efficiency and lack of duplication
    - Uniform information requirements as opposed to varying information
    - Deadlines – one uniform deadline for all states

    - Promoting sharing of information between states

- Create a uniform national licensing and registration system for the industry

IV. BENEFITS TO THE CONSUMER

- Easy identification of legitimate authorized collection agencies by providing information on one central platform/source.

- A credible registration/licensing platform may help to reduce and eliminate entities which are not legitimate collection agencies and/or are not authorized to collect debt.

- Better consumer access to key information about collection agencies, including contact information.

- Improves ease of communication with collection agencies and sharing of information between consumers and collection agencies.

- Promotes transparency of debt collection industry to consumers.

Q161: What records do creditor and collectors currently retain relating to debts in collection? Should proposed rules impose record retention requirements in connection with debt collection activities? If so, what requirements should be imposed and who should have to comply with them? What would be the costs and benefits of these requirements?

For responses to questions 161 and 162, please see below:

Q162: How long do creditors and debt collectors currently retain records, and how does it differ based on the type of debt or type of record? Should the length of time that debt collection records are retained relate to how long a debt may generally be reported in a consumer report, how long a collector may collect upon the debt, or how long a consumer has to bring private action under the FDCPA? Or is another time period more appropriate?

For responses to questions 161 and 162, please see below:

Record Keeping Requirements

I. INTRODUCTION

The FDCPA currently does not contain specific record retention requirements. Consequently, collection agencies maintain a variety of records and the retention of those records varies according to statute of limitations, regulatory requirements, client-creditor requirements, and in-house policies.

II. STATEMENT OF THE PROBLEM

THERE ARE A LACK OF UNIFORM REQUIREMENTS FOR THE RETENTION OF RECORDS BY COLLECTION AGENCIES

- Consumers need to know what records and documents are available regarding their debts and for how long they are available
    - Consumers don't know because it varies so much from each agency. Records and documents retained and the length of retention varies greatly among agencies due to such factors as , statute of limitations, regulatory requirements, client-creditor requirements, and in-house policies
    - Consumers have difficulty fairly resolving their debts without account information.
    - Lack of uniform guidelines for retention of records creates confusion for collection agencies, and in the case of records kept longer than necessary, increased costs.

- Retention and storage of many digital and physical records, especially call recordings, is burdensome and expensive if it is for a significant period of time

III. THE PROPOSED SOLUTION

- A minimum retention period should be set for collection agency records.

- One year minimum for records corresponds with the one year FDCPA statute of limitations

- Two year minimum for records relating to credit reporting

- Longer storage / retention periods can be extremely burdensome and expensive, especially of call recordings. Storage capacities and technologies vary widely among collection agencies.

- New York City presently requires one year for call recordings and six years for documents. New York City Code, Section 2-193(d).

- The FTC required 90 days for retention of call recordings in the 2013 consent order with NCO.

IV. BENEFITS TO THE CONSUMER

- Consumers are better informed as to what records are kept by collection agencies and for how long.

- The retention of records allows collection agencies to provide information to consumers that will help them fairly resolve their debts.

- Uniform retention periods will clarify the availability of records and decrease consumers' frustrations in obtaining helpful information.

- Maintenance and retention rules will improve transparency of collection agencies to consumers.