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November 4, 2016

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Kristin,

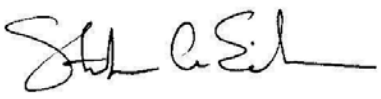
The Consumer Relations Consortium (CRC) appreciates the continuing opportunity to meet with you and the Debt Collection Regulations team to discuss the evolving proposals for debt collection rulemaking.

In preparation for our meeting on November 17, we have prepared this document to address our thoughts and suggestions in response to the July 28 Outline of Proposals Under Consideration that was distributed in advance of the SBREFA Panel.

We don't expect to discuss this entire document in detail during a 75-minute meeting, but hoped that you and your team would have had time to digest it in advance, and we would be able to talk through selected highlights.

By way of organization, the enclosed addresses the following topics in the same order they are presented in your Outline:

Respectfully,



Stephanie Eidelman
Co-Executive Director, Consumer Relations Consortium

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Information Integrity – Substantiation

The CFPB's *Outline of Proposals Under Consideration and Alternatives Considered* ("the Outline") provides guidance regarding the CFPB's plan to promulgate rules designed to provide for accurate and adequate data flow within the collections industry. The CRC generally agrees with the CFPB on the need for rules to ensure that data exchanged and utilized by all parties involved in collecting a consumer account is sufficient to allow a consumer to understand the debt and, more importantly, that the data is accurate.

However, the CRC believes that resolving the issue involves rules regulating both creditors and debt collectors, not just debt collectors. Accordingly, the CRC believes that prior to finalizing any proposed rules for data requirements for third party debt collectors, the CFPB needs to complete rule making for creditors and incorporate into that process rules assuring appropriate and required data is provided by creditors to third party collectors (debt collectors).

In the alternative, the CRC suggests that any third party rules regarding data be phased in over time to give creditors the ability to adequately comply.

We believe either alternative is prudent and in the best interest of consumers for the following reasons:

- Consumers deserve accurate and timely information;
- In the third party debt collection industry all account information belongs to the creditor;
- Current privacy and third party disclosure rules generally prohibit Collectors from transmitting consumer account information to each other;
- By first promulgating requirements of creditors to provide Collectors all of the information that will be required under the third party debt collection rules, Collectors will be better able to conduct reviews and provide required information to consumers;
- Implementing rules only on Collectors in no way assures creditors will provide that which is needed for the Collector to comply;
- Creditors hold the most negotiating leverage and will not necessarily agree to provide warranties and indemnifications to their collection vendors;
- Even if warranties and indemnification are provided, a Collector's reliance on them is after-the-fact. The best scenario for the consumer is that the CFPB mandates that requisite information be provided from creditor to Collector. This would best be ensured by issuing rules for creditors prior to issuing rules for Collectors;
- Many debt collectors, like those in the CRC, strive to meet all regulatory requirements. Requiring debt collectors to discontinue business with creditors who will not/cannot provide what the debt collectors need to comply, customarily invites Creditors' movement of that business to other, less reputable debt collectors not within CFPB's supervisory authority, which may increase potential harm to consumers.

[To assist in explaining our position, the CRC has created an illustration of the flow of data between creditors and their collector clients. Please see "*Collection Industry Account Data Flow Overview*" in the Exhibits section at the end.]

Creditors have historically provided collection agencies with enough information to accurately begin collecting the consumer's debt, but not necessarily enough information to respond to a consumer inquiry, dispute, or request for more detail.

The amount of consumer data historically provided was limited by the ability to electronically transmit and store large amounts of data. Information historically provided would normally include the consumer's name, last known address and phone number, social security number, date of birth, date of last payment, outstanding balance and type of debt. However, advances in technology over the past decade have generally removed transmission bandwidth and storage limitations. While some creditors have taken advantage of this and provide additional information, in many other cases placement files from creditors have changed very little over that same period of time

Today, when a debt collector receives accounts from the creditors, most "scrub" the data to ensure that there are no bankrupt or deceased consumer accounts in the placement file. Additional scrubs may also be performed to identify consumers covered under the Servicemembers Civil Relief Act (SCRA), and to identify cell phones and reassigned numbers.

Once a debt collector starts to work the account, additional and/or corrected data as gathered by the debt collector is added to the consumer's file. This can include the best time to contact the consumer, information about a dispute, removal of bad phone numbers, address updates, attorney information and account notes.

Creditor sophistication will determine what information is passed back to them and added to the Creditor's file, as well as whether the information will make it to the next agency. The cycle then repeats for the next agency.

Should the CFPB decide to issue final rules for the debt collection industry prior to issuing rules for creditors, the CRC urges the CFPB to suspend its rulemaking specific to the substantiation of debt until after the issuance of rules applicable to creditors.

Once final rules are issued the CRC urges the CFPB to provide a phase in period and an affirmative statement that the rules do not apply to accounts that have been previously placed with debt collectors. Applying the rules retroactively could devalue billions of dollars of portfolios having negative and unintended consequences for consumers. Most notably negative consequences could include an increase in creditor litigation of accounts. For example, if accounts were previously considered to be past the 'validation' period but will have future validation requirements (based on an issued rules' effective date), a creditor may choose to move the account into a litigation stream for immediate suit, reducing the number of times data is transferred, rather than take on onerous volumes of data and material transfer to both collection agency law firm debt collectors.

Information Integrity - Validation Notice and Statement of Rights

The CFPB's *Outline of Proposals Under Consideration and Alternatives Considered* ("the Outline") discusses the validation letter required under Section 809 of the FDCPA and proposes a new disclosure, the Consumer's Statement of Rights. The CRC supports the CFPB's goals to update the validation letter sent to a consumer. In particular, from the Outline:

1. Improve communication efficiencies, assist in the recognition of past obligations, and reduce downstream interactions by improving the amount of account information a consumer should receive.
2. Provide consumers with sufficient information to navigate the collections process and understand their rights under the FDCPA and other federal law more generally.

We respectfully submit, however, that certain proposals related to the validation notice do not effectively support these goals, and will result in a lack of communication and misunderstanding of collection process. Below is a summary of our concerns as well as suggested alternatives that support our shared goals.

Action-item tear-off
We appreciate the intent behind the proposed action-item tear-off, but strongly urge the Bureau to remove or drastically amend the tear-off. As the CFPB knows, the validation notice serves as the introduction of the debt collector to the consumer about resolution of an account – it is intended to serve as the beginning of a communication process, not the end.

While the Bureau identifies the purpose of the tear-off to allow debt collectors to respond more efficiently to customers, as drafted the tear-off will simply halt communication without resolving the dispute and/or the account.

For example, if a consumer receives the proposed validation letter, and believes the debt in question is not owed due to identity theft, the consumer will mark the tear-off as disputed, and claim the debt is not his or hers (or perhaps check multiple options). A debt collector, not knowing the context of the dispute without more information, and to mitigate potential FDCPA and/or FCRA risk, may have little choice but to mark (and report, if credit reporting) the account as disputed and return to the client. While communications with the consumer have ceased, the dispute remains open which further perpetuates an unresolved issue, and could lead to further consumer harm – the very goal the Bureau's proposal is intended to avoid.

Alternatively, the debt collector may attempt to resolve the dispute with information that is meaningless to the consumer leaving them frustrated and more likely to generate complaints that can be avoided as described below.

We do not believe a tear-off is required in the validation notice, and submit that other suggestions in the Bureau's proposal would dramatically reduce data integrity concerns at the time the validation notice is sent. As an alternative, however, we propose a tear-off whereby a consumer would still

indicate/mark the purpose of the dispute, but the tear-off would alert and allow the debt collector to contact the consumer to discuss that particular dispute. This alternative:

1. Gives the consumer the opportunity to alert the debt collector of a possible account issue;
2. Alerts the debt collector to be prepared to discuss the issue (*e.g.*, if identity theft, collector would be prepared with questions needed to be answered by the consumer to initiate an investigation); and
3. Preserves an open communication to facilitate issue resolution to reduce downstream account integrity issues.

Default date
As mentioned in previous comments, further discussion around the "default date" is required to determine what amount is actually owed. (*Please see section titled "Information Integrity – Validation Notice – Date of Default")*

Identification of the 30-day period
The proposed notice suggests a debt collector identify a specific date by which a consumer must exercise her rights under section 809 of the FDCPA. We are concerned, however, that debt collectors will be unable to truly identify such date because they would not know when a letter is received. Moreover, any specific date included in a letter reflects a particular data field that must be programmed in the letter, resulting in increased programming costs.

We recommend the model validation notice be amended to replace a specific date with a statement that the consumer may write to the debt collector within 30 days from the date the consumer received the validation letter, consistent with section 809 of the FDCPA.

Redaction of Sensitive Information
Other than a debt collector's full internal reference number, it is industry best practice and consistent with data security requirements that default creditor account information be truncated. We recommend that the default creditor account number be truncated to the last four digits, which helps protect consumers from potential identity theft concerns.

Formatting and Other Disclosures
Although we understand the CFPB's proposal is focused on FDCPA requirements, as proposed the formatting of the model validation notice would violate certain local law or otherwise prohibit use of the model notice. As proposed, the model notice is approximately nine-point font and on letter-sized paper. Certain jurisdictions impose minimum point type requirements for the entire letter or for unique disclosures that take significant space on the front of the letter.[1]

[1] Cal. Civ. Code § 1788.52(d) (requiring OOS disclosure to be in no smaller than 12-point type; agencies may make all text in the validation notice of the same type size to avoid FDCPA liability); Conn. Gen. Stat. Ann. §§ 36a-805(a)(14) (requiring OOS disclosure to be provided in no less than 10-point type; agencies may make all text in the validation notice of the same type size to avoid FDCPA liability); New York City, N.Y. Rules, § 2-191 (requiring OOS disclosure to be provided in at least 12 point type; agencies may make all text in the validation notice of the same type size to avoid FDCPA liability); Tenn. Comp. R. & Regs. 0320-2-.02(1)(b) (prohibiting any collection service to use any contract or business-inducing form containing type less than ten (10) points in size).

If meeting state requirements, the proposal would require the type size of the model notice to be larger and likely printed on legal sized paper, which dramatically increases printing, formatting, and postage costs.

In addition, in a state with multiple disclosures (*e.g.,* California, where the Rosenthal Act disclosure and proposed CFPB Out of Statute disclosure would be provided), we are concerned the model notice does not provide ample space on the front of the letter to provide all disclosures. We believe the CFPB should clarify that debt collectors providing information in the validation notice in a clear and conspicuous manner includes placing such information on the reverse of the letter so long as a clear and conspicuous statement to that effect is included on the front.

Statement of Rights

The proposed one-page statement of rights doubles the cost of the validation notice. In addition to this increased validation notice cost, there is an additional increase in cost to provide a statement in the first communication made more than 180 days after the consumer received the original validation notice.[2] More importantly, however, the statement of rights predominantly reflects what a debt collector cannot do, as opposed to what the consumer can do in an effort to resolve the account.

We believe a less-costly, more effective approach is to replace the proposed statement of rights with:

1. Keep the disclosure in the validation notice referring the consumer to the CFPB's website, which provides consumers a strong reference tool to understand their rights without imposing a significant paper, printing, mailing, and formatting cost on the debt collector.

2. Include a condensed list of consumer rights on the reverse of the validation notice which minimizes production cost but focuses on what a consumer can do (vs. enumerating prohibitions on debt collectors).

[Please see the sample letter illustrating the above in the Exhibits section at the end.]

[2] Please see included overview of environmental impact of additional printing requirements.

Environmental Impact and Effectiveness of Proposed Consumer Statement of Rights

The CFPB's *Outline of Proposals Under Consideration and Alternatives Considered* ("the Outline") recommends that debt collectors provide each individual in collections with an additional sheet of paper containing the statement of rights in all initial communications. Further, debt collectors will be required to provide a duplicate copy of the initial communication disclosure and statement of rights six months after the first communication is sent to the consumer.

According to a 2014 study conducted by the Urban Institute, approximately 77 million people have debts in collections in the United States.[3] If the CFPB's proposal is implemented in the final rulemaking, it will result in approximately 154 million additional sheets of paper that debt collectors will be required to send consumers within the first 180 days of collection.

Requiring an additional 154 million sheets of paper to be sent to consumers annually will have a substantial impact on the environment. On average, the additional required notices will amount to the consumption of 4.3 million pounds of paper and produce 205,000 bags of solid waste. Production and shipment of the statements will result in approximately 8,100 tons of greenhouse gas emissions entering the atmosphere annually, which is the equivalent to destroying 63 acres of forest or approximately 210,000 trees.[4]

Further, there is little evidence that paper notices are effective in prompting consumers to exercise their rights. In 2001, the Gramm-Leach-Bliley Act required tens of thousands of financial institutions to send nearly a billion privacy notices to consumers informing them of their privacy rights and allowing the consumer to opt-out of the sharing of their financial information with third-parties.

Despite sending the notices, the industry experienced only a small response from consumers. Data from the trade publication *American Banker* shows the approximate percentage of customers who exercised the opt-out provision was only 5 percent.[5] According to testimony from Professor Fred Cate "this appears to be consistent with response rates to other privacy-related opt-out opportunities, such as the Fair Credit Reporting Act's opt-out provisions applicable to prescreening and sharing credit reports with affiliates; the Direct Marketing Association's mail, telephone, and e-mail opt-out lists; and other company-specific lists."[6] This emphasizes that paper notices may not be an effective method to engage a consumer in exercising their rights. As stated by former FTC Chairman Timothy Muris:

> The experience with Gramm-Leach-Bliley privacy notices should give everyone pause about whether we know enough to implement effectively broad-based legislation

[3] http://www.urban.org/research/publication/delinquent-debt-america

[4] See calculator at http://payitgreen.org/business/green-calculators/footprint-calculator

[5] Lee, W.A. 2001. "Opt-Out Notices Give No One a Thrill." *American Banker* (July 2001)

[6] http://www.banking.senate.gov/02_09hrg/091902/cate.htm

> based on notices. Acres of trees died to produce a blizzard of barely comprehensible privacy notices. Indeed, this is a statute that only lawyers could love— until they found out it applied to them.[7]

Recently, the CFPB amended the annual notice requirement of Regulation P of the Gramm-Leach-Bliley Act. The amendment provides an exception to the requirement that financial institutions send an annual notice describing their privacy policies and practices to their customers. Pursuant to the Paperwork Reduction Act, the CFPB analyzed the potential paperwork burden the amendment is likely to have on the financial industry. In its analysis the CFPB notes that eliminating the annual notice would reduce approximately 63,197 hours of burden for the roughly 43,000 entities subject to the proposed rule, amounting to an approximate $3 million reduction in burden annually.[8]

Similar analysis should be conducted with the CFPB's additional validation notice and statement of rights proposal. The increased requirement for debt collectors to send additional notices is likely to increase the paperwork burden placed on regulated entities and create additional regulatory burden for the CFPB. With evidence showing that these notices will have little impact on whether a consumer exercises his or her validation rights, the increase in burden on both the industries and the environment is unreasonable and the CFPB should not implement the proposed additional paper notice requirement.

[7] Timothy J. Muris, Former Fed. Trad Comm'n Chairman, Remarks at the Privacy 2001 Conference: Protecting Consumers' Privacy: 2002 and Beyond (Oct. 4, 2001), *available at* http://www.ftc.gov/public-statements/2001/10/protecting-consumers-privacy-2002-and -beyond

[8] https://www.federalregister.gov/articles/2014/10/28/2014-25299/amendment-to-the-annual-privacy-notice-requirement-under-the-gramm-leach-bliley-act-regulation-p

Information Integrity - Validation Notice - Date of Default

The CFPB's *Outline of Proposals Under Consideration and Alternatives Considered* ("the Outline") makes the "date of default" a necessary data point to be obtained, monitored, disclosed to consumers, and used as a reference point for actions that occurred after such default. The date of default is not defined in the proposal. Presently, the "charge off date," or the date that a debt is removed as an asset on the creditor's financial records, is more commonly provided to debt collectors. While the period of time that transpires before a debt is charged off varies by creditor and type of debt, the charge off date is commonly used in most areas of the debt collection industry (but not all) as a snapshot of a debt at a certain point in time in the life cycle of the debt.

The date of default is generally not used for such purposes and in many cases, not a data point easily determined or a data point currently provided to debt collectors from debt owners. [9] If a date of default is not an easily determined and validated data point, or is simply a data point not provided at all to the debt collector and it is left to the debt collector to figure out, the proposal to use this as a reference point in the areas described below could lead to mass confusion to industry members and consumers alike.

How is the date of default used in the CFPB Proposal?

Pre collection. Required to obtain and review the following information (Appendix C):

- Account number at time of default
- Date of default
- Date and amount of any payment or credit after default
- Interest or fees imposed after default
- Chain of title after default

Validation notices. The date of default appears in the proposed validation notice requirements (Appendix F):

- The name of the creditor at the time of default
- The account number with the default creditor;
- The amount owed on the default date
- An itemization of interest, fees, payments, and credits since the default date

Responding to Generic Disputes. Required to respond with the following documentation (Appendix D):

- The first and last name, address, and account number (with the creditor at the time of default) of the debtor;
- The date of default and date of last payment;

[9] In the case of purchased debt, the subsequent buyer would not necessarily know how the original creditor might have determined the date of default.

- The name and address of the creditor at default; and
- The amount of the debt balance at default and any post-default interest and fees, and a
- Description of the amount owed.

Responding to Specific Disputes. Required to respond with documentation showing (Appendix D):

- The basis for seeking to collect any such disputed amount (e.g., late fee or a charge for purchase on a credit card and the date the charge was made), including the terms and conditions relevant to collecting any post-default interest or fees, if applicable;
- The date and amount of each payment (or other credit) after default; and

Responding to a Dispute as to the Wrong Collector. Required to respond with documentation showing (Appendix D):

- The names and addresses of all persons that obtained the debt after default (as debt owners or third-party collectors), and the date of and parties to each purchase, assignment, or transfer; and

The challenges with using the date of default as a reference point

The contract underlying the debt will control the exact date that a consumer is in default. Contracts underlying consumer debts come in all shapes and sizes. Some contracts are explicit on when a default occurs; some are silent. There are also debt owners, in the health care services field for example, without any formal contract with the consumer. Often it takes interpretation and an attorney's eye to determine the exact date that a consumer went into default. [10] Perhaps for this reason, many debt owners currently do not supply collectors with the date of default or use it as a reference point.

In the credit card arena, a default can mean more than a missed minimum payment. Consumers can be in default for failing to abide by other terms of their agreement, by exceeding their credit line, or if the credit card issuer simply believes the consumer is unwilling or unable to pay their debts on time. Here are some examples of the definitions that credit card issuers use for a default:

> Bank of America
> "You will be in default of this Agreement if: (1) you fail to make any required Total Minimum Payment Due by its Payment Due Date; (2) your total outstanding balance

[10] The term "default" is not defined in the FDCPA. Courts examining when a debt goes into default emphasize the distinction between outstanding debt and debt in default, recognizing that the former only transitions to the latter "after some period of time," and that the transition must be determined on a case-by-case basis. Alibrandi v. Financial Outsourcing Services, Inc., 333 F.3d 82, 87 (2nd Cir. 2003) ("Although judicial decisions and regulations reflect inconsistent periods of time preceding default, they all agree that default does not occur until well after a debt becomes outstanding.")

exceeds your Total Credit Line; (3) your Bank Cash Advance balance exceeds your Cash Credit Line; or (4) you fail to abide by any other term of this Agreement." [11]

Chase
"Your account will be in default if: 1) You do not pay at least the minimum payment when due; 2) You exceed your credit limit; 3) You fail to comply with this or other agreements with us or one of our related banks; or 4) We believe you may be unwilling or unable to pay your debts on time; you file for bankruptcy; or you become incapacitated or die."[12]

Capital One
"You will be in default if: (1) you do not make any payment when it is due; (2) any payment you make is rejected, not paid or cannot be processed; (3) you exceed a credit limit; (4) you file or become the subject of a bankruptcy or insolvency proceeding; (5) you are unable or unwilling to repay your obligations, including upon death or legally declared incapacity; (6) we determine that you made a false, incomplete or misleading statement to us, or you otherwise tried to defraud us; (7) you do not comply with any term of this Agreement or any other agreement with us; or (8) you permanently reside outside the United States." [13]

American Express
"We may consider your Account to be in default if: ● you violate a provision of this Agreement, ● you give us false information, ● you file for bankruptcy, ● you default under another agreement you have with us or an affiliate, ● you become incapacitated or die, or ● we believe you are unable or unwilling to pay your debts when due." [14]

In the online lending space, the lender's discretion can come into play when determining a date of default. Here is one example:

"We may declare you to be in default of this Agreement at any time if: (a) you fail to make a payment as required by this Agreement or (b) anything else happens that

[11] https://www.bankofamerica.com/content/documents/visa-mastercard-classic-gold-platinum-world-en.pdf

[12] https://www.chase.com/content/feed/public/creditcards/cma/Chase/COL00055.pdf

[13] https://www.capitalone.com/media/doc/credit-cards/Credit-Card-Agreement-for-Consumer-Cards-in-Capital-One-N.A.pdf

[14] https://www.americanexpress.com/us/content/pdf/cardmember-agreements/green/Green_06_30_New.pdf

causes us in our sole discretion to reasonably believe that the prospect of your Elastic Account being repaid is impaired."[15]

For medical debt, most providers do not provide any date of default. No regulation defines when a medical debt goes into default, and often the agreement entered into between patient and hospital specifies only that "the bill is due at the time of service." The calculation of a date of default in that industry is complicated by the various sources of payment (insurance, Medicare, etc.).[16] Aging of the debt is not consistent; with providers varying between the date services are rendered, discharge date, or the date a patient is determined to be self-pay to age accounts.

Even if a default could be easily identified, which in many cases it cannot, the question becomes which default date will be used as a reference in the proposal. During the lifecycle of a debt, a consumer may default on a debt and cure the default several times over. This is especially common in credit card debt where consumers may be in default one month, cure a default the next month, and fall back into default at some later point in time. Consumers also may pay off a portion of the outstanding balance. The question arises whether the original date of default should be used or a default that occurred at some later point. Without a clear standard definition that works for all debt types, the "date of default" could refer to different dates in the lifecycle, and debt collectors would not know which to use as the reference point, i.e. first date default, last date of default, etc.

Proposed solution

The charge off date, a reference point commonly used today in the collection industry, would offer a better reference point. While the timing of when a debt owner charges off debt will vary (120 days, 180 days, etc.), it is a fixed point in time when the owner removes the account from the asset side of its financial records. It is a fixed point where a snapshot of the debt is taken by the debt owner and the actions taken on the account before and after that date (as would be required under the CFPB's proposal) can more accurately be determined and would be less confusing to the consumer. The charge off date is also a fixed point where most credit card issuers choose to stop charging interest and fees and the balance does not increase after that point, which would seem to be in line with the proposal's requirement to justify interest and fees charged after a certain point in time.

Contrast that with a default date, which can change by interpretation of a contract and can change depending which default date is used. The charge off date also has the advantage of something that is currently being used as a snapshot in time for a debt, as opposed to the date of default which is not. Moreover, the debt collection industry has proven in large part that it can practice use the charge off date as a reference point as required under the New York Department of Financial Services rules. While not all areas of debt collection use a charge off date as a reference point, it is a reference point that at least the vast majority of consumer debt collectors have today.

[15] https://www.elastic.com/terms-and-conditions/

[16] See e.g. Church v. Accretive Health, Inc., No. CV 14-0057-WS-B, 2015 WL 7572338, at *7 (S.D. Ala. Nov. 24, 2015), aff'd sub nom. Mahala A. Church, Plaintiff - Appellant, v. Accretive Health, Inc., Defendant - Appellee., No. 15-15708, 2016 WL 3611543 (11th Cir. July 6, 2016).

Other Consumer Understanding Initiatives – Time-Barred Debt (Statute of Limitations Disclosure)

The CFPB's *Outline of Proposals Under Consideration and Alternatives Considered* ("the Outline") proposes to require disclosures when an account has past the applicable statute of limitations (SOL).

The proposal is to require disclosures when an account has past the applicable statute of limitations (SOL). The SOL is determined by state law and can vary significantly from state to state in terms of length and how it is calculated. Traditionally, the determination of which statute applies, and its length, has been determined by the state court when raised as an affirmative defense to a suit to recover the debt owed.

The Outline seeks to place responsibility for making both factual and legal determinations regarding SOL on the debt collector. However, as outlined below, the debt collector does not have the factual information necessary to make this determination. Further, the debt collector has neither the skills (nor authority) to make a legal determination as to the applicability of the SOL to any specific debt which, in fact, is a difficult determination for even the most skilled attorneys.

Which state's SOL applies?

Here are just some of the factors a debt collector may have to consider in trying to make this determination:

- In what state will the consumer reside when the debt communication is received?
- Do the terms of the contract between the consumer and creditor provide for which state law SOL applies? If it does, will the court enforce that choice (Some courts find choice of law provisions enforceable when it comes to the SOL calculation, some courts do not).
- Does the location where the payments were made control where the SOL applies? Some courts look to where the payments were made to determine which state's SOL applies.
- Does the state in which the consumer resides have a borrowing statute dictating that a state other than where the consumer resides controls the SOL? Several states have borrowing statutes dictating which state SOL applies.

Which SOL in a state applies to this type of debt?

Assuming a debt collector can determine which state law applies, they also need to determine which SOL under that state's law applies. These can vary in length depending on the type of debt that is being collected:

- Will the court view it as an oral contract, written contract, or accounts stated? Courts in the same jurisdiction often disagree whether the SOL for a written contract applies to a credit card debt. What SOL does the debt collector apply if the courts in the same state disagree? The debt collector in some circumstances will be tasked with choosing which of the

conflicting court decision to apply, even if the court decisions in the state are from judges on the same level.

- Is the SOL determined by the state's written contract SOL or the SOL involving the sale of goods under the UCC? This is not a well settled legal determination in many states and can vary from court to court in the same state.

When did the SOL begin to run and was it revived?

Assuming the debt collector can determine which state law applies and also determine which SOL provision in the state law applies to the type of debt they are collecting, they also need to be able to determine when the SOL begins to run and whether it was revived or "tolled":

- What is the date of default? This is not a data point that is currently provided to debt collectors by many debt owners. (See separate CRC document on date of default Issue). Without being supplied a date of default, debt collectors are tasked with trying to determine when the SOL started to run. This analysis may necessitate a detailed legal review of the underlying contract and the full history of each account to determine the exact date the consumer should be considered in default.
- Was it revived by a payment? This depends again on which state law applies (not easily determined as discussed above) and in some states involves an analysis whether the payment reflects an acknowledgement of the debt and recognition of the obligation to pay it (e.g., payments made "under protest" or payments applied across multiple debts without consumer specific direction may not be adequate)
- Was there a tolling? Many states provide for a "tolling" of the statutory period in recognition of circumstances where the consumer may have removed him/herself from the reach of the creditor or the creditor's right to enforce the debt is temporarily defeated

Proposed solution – No bad faith defense

For the reasons discussed above, determining the SOL is not an exact science. This would still be true even if the creditor provided every data point possible. There are still legal uncertainties on the calculation of the SOL which legitimately act to prevent debt collectors from definitively determining the exact SOL for any particular account.

If debt collectors are required to make an "educated" factual and legal determination as to whether a SOL disclosure is required in a communication, the burden of the uncertainly and risk of getting it wrong would be unfairly born by the debt collector. The consequence of getting it wrong (either providing the disclosure when the account is still legally enforceable or not providing the disclosure when it past the SOL) could lead to misleading the consumer as well as subjecting the debt collector to regulatory and private litigation risk.

As a possible solution, we would like to propose a "No bad faith defense."

Debt collectors would not be subject to liability for failing to make a required SOL disclosure (private or regulatory), unless the regulator or consumer in a private cause of action can show bad faith by the collector in calculating of the SOL.

Providing this defense would recognize the difficulties in determining the SOL and at the same time allow the consumer or regulator to hold debt collectors accountable when the debt collector has no reasonable basis for their calculation and ensuing failure to abide by the new requirements.

Collector Communication Practices - Contact Frequency

The CFPB's *Outline of Proposals Under Consideration and Alternatives Considered* ("the Outline") proposes the following regarding debt collection contacts and attempts:

Table 2: Permissible Consumer Contacts (or Contact Attempts) Per Account Per Week

Collector Activity	Collector Does Not Have Confirmed Consumer Contact	Collector Has Confirmed Consumer Contact
Attempts per unique address or phone number	3	2
Total contact attempts	6	3
Live communications	N/A	1

This proposal in the Outline is intended to provide further clarification to 15 U.S.C. §1692d(5) which prohibits:

> 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.

The Outline discusses that the CFPB is considering applying the limits in Table 2 either as a "bright-line rule but with some specific exceptions" or as a "rebuttable presumption that contacts or attempted contacts above the threshold constitute harassing, oppressive, or abusive conduct, and contacts or contact attempts at or below the thresholds do not."

How Many Calls is Too Many?

The CFPB reports that communication tactics ranked second in debt collection complaints it received in 2015 and that 52% of the complaints it received in this category (more than 8000 complaints in 2015) were about frequent and repeated phone calls.

The CFPB acknowledges that it seeks to balance the consumer harm caused by frequent collection calls with the legitimate need of collectors to communicate with consumers. What is not identified specifically in the Outline is the harm that can befall consumers when collectors are unable to communicate with consumers. Such harm can include credit reporting, litigation, foreclosures, repossessions, tax offsets and garnishments, all of which have a far greater potential for consumer harm and are avoidable if debt collectors are able to make contact with consumers.

Under the CFPB's Proposal, consumers will be in collections more than 12 weeks before speaking with a debt collector

As evidenced below, the average number of calls required for a debt collector to secure a "right party contact" with a consumer on a financial account varies between 38 and more than 42 calls. Please note this data was shared with the CFPB in the January 2014 Response to the Advanced Notice of Proposed Rulemaking submitted by the Venable Law Firm ("Venable Response"):

FINANCIAL SERVICES AVG & MEDIAN PHONES ATTEMPTED BEFORE 1ST RPC BY PLACEMENT TIER				
Tier	Minimum	Average	Median	Maximum
PRIMES	1.00	3.60	3.00	17.00
MIDPRIMES	1.00	3.75	3.00	15.00
SECONDS	1.00	3.59	3.00	18.00
Definition: The average number of Consumer telephone numbers where attempts were made before a right party contact was accomplished on a Consumer account.				

Figure 6b – Number of Unique Calls before Right Party Contact

FINANCIAL SERVICES AVG & MEDIAN ATTEMPTS ON PHONE BEFORE 1ST RPC BY PLACEMENT TIER			
Tier	Minimum	Mean	Median
PRIMES	1.00	38.07	17.00
MIDPRIMES	1.00	39.80	20.00
SECONDS	1.00	42.72	21.00
Definition: The average number of unique attempts made to a Consumer before a right party contact was accomplished.			

If the CFPB's proposed contact attempt limits described in Table 2 were implemented, it will take a debt collector, on average, more than 12 weeks to secure a right party contact on a prime financial services account (38.07 attempts divided by 3 calls per week per number). It is highly likely that otherwise avoidable credit reporting, litigation, foreclosures, repossessions and garnishments – and the attendant adverse consumer consequences of such actions – will occur during this more than 12 week period.

A Limit of Two Calls per Consumer per Day Strikes the Right Balance

In the interest of clearly defining both consumers' and collectors' rights involving repetitive telephone calls, the CFPB should adopt a bright-line limit of two call attempts per consumer per day, This limitation should serve to prevent harassment while also allowing collectors to convey

important, time-sensitive information to consumers that may allow them to avoid extraordinary collection actions referred to above.

A Safe Harbor

Offering consumers reasonable choices during the debt collection process about how and when they receive communications is crucial. If call frequency limits are set, an alternative should be available for consumers to determine the frequency acceptable to them.[17] The debt type, balance amount and creditor required default resolution remedies can influence whether post-initial contact with a consumer is necessary or wanted.

For example, Federal Education loans with balances in the thousands require payment on a rehabilitation plan over a period of ten (10) months along with submission of creditor required financial tests and documentation. Other debts, such as those with balances less than one thousand dollars, could be paid in less time and not have any creditor required financial tests. Further, a consumer facing judicial or administrative remedies to enforce a debt is different than a consumer in the early stages of delinquency.

However, in all scenarios, consumer contact is crucial to defining future financial impact to the consumer. A safe harbor allowing consumers to waive call frequency caps in an effort to allow a consented, conventional business communications to resolve a debt takes into account and ultimately ensures consumer satisfaction with a debt collector.

Did the Consumer Survey Ask the Right Questions and Does the Data Make Sense?

The CFPB consumer survey data disclosed in the Outline reflects conflicting responses from consumers regarding debt collection call frequency. The Outline states, in Appendix B, as follows:

> The reported frequency of contacts, including both successful and attempted contacts, varies considerably. In particular, 34 percent of consumers who were contacted about a collection in the prior year were usually contacted less than once per week, whereas 16 percent were usually contacted 8 or more times per week, i.e., more than once per day on average. . .
>
> The survey responses indicate that 62 percent of consumers who had been contacted about a debt in collection felt that they were contacted too often.

It is odd that 34% of consumers were contacted less than once a week, yet 62% of consumers felt that they were contacted too often. Most likely some of the consumers who were contacted less than once

[17] "Except under a strict hard cap approach, a consumer could consent to greater frequency than reflected in the caps for confirmed consumer contact status, for example, by agreeing during the first conversation about a particular account that week that the collector could call the consumer back at a specific date and time later in the week. To be effective, the consent would need to meet the minimum requirements described later in part V.D." *Outline page 26*. "Various FDCPA restrictions on communications can be waived by consumer consent. The Bureau is considering proposals to clarify the parameters of obtaining consent from consumers." *Outline p. 34*.

a week felt that was also too often. Further, it is unclear whether a survey of how consumers felt should affect the clarification of a statute premised on the **intent** of the debt collector.

The law is driven by the intent of the debt collector and not how the consumer feels

When Congress enacted the FDCPA, it sought to curb the consumer harm from frequent and abusive debt collection calls by enacting 15 U.S.C. §1692d(5). Rather than focus on a set number of calls per day or week – or on how collection calls made the consumer feel – the FDCPA looks to the ***intent*** of the caller. The emphasis on intent allows a Court to critically examine on a case-by-case basis whether there was an abuse intended by the debt collector.

While the CFPB employs a novel approach in seeking to explore through survey data whether consumers "felt that they were contacted too often," this study on how the consumers "feel" is misplaced. Congress prescribed use of the time-tested, objective standard of examining the intent of the purported wrong-doer to ascertain liability under 15 U.S.C. §1692d(5). Congress undoubtedly recognized that how a consumer feels about collection calls is too subjective and thus selected a much more concrete standard for liability. The consumer survey data regarding how consumers felt about the frequency of collection calls is certainly important, but it has no bearing on 15 U.S.C. §1692d(5) and the intent of a debt collector.

Targeted enforcement actions, not rulemaking, stop abusive practice

The primary concern of the debt collection industry regarding rulemaking by the CFPB is that it will be designed to address abusive practices employed only by fringe organizations who will not comply with *any* rules. The real fear is that the rules will hamper legitimate debt collectors – which in turn will harm consumers in the form of negative credit reporting and other adverse credit actions – and have no impact the bad actors who disregard the law.

A telling parallel to the CFPB's rulemaking can be found in our government's efforts to stop unwanted telemarketing robocalls. Congress and the FCC tried for more than 25 years to curb abusive telemarketing robocalls through rules and laws. Despite numerous lawsuits, settlements and FCC Orders regarding the TCPA, these rulemaking efforts failed to stem the tide of calls from "Rachel from Card Services" or scams seeking credit card information to pay for bogus IRS debts. Recent experience shows that the abuses of consumers from robocalls can only be stopped by targeted enforcement actions (see below links):

https://www.consumer.ftc.gov/blog/ftc-gets-rachel-robocaller-again

http://whnt.com/2016/10/23/nationwide-drop-in-irs-impostor-calls-after-raid-in-mumbai-india/

Unfortunately, the damage to consumers and industries as a result of the FCC rulemaking regarding the TCPA is untold. While consumer attorneys profit from litigation on the telephone dialing restrictions, consumers are prevented from receiving information they need from their financial institutions and others. Further, despite the best intentions of the FCC in its rulemaking, consumers see no relief from the daily barrage of robocall scams. Likewise, CFPB rulemaking on the FDCPA –

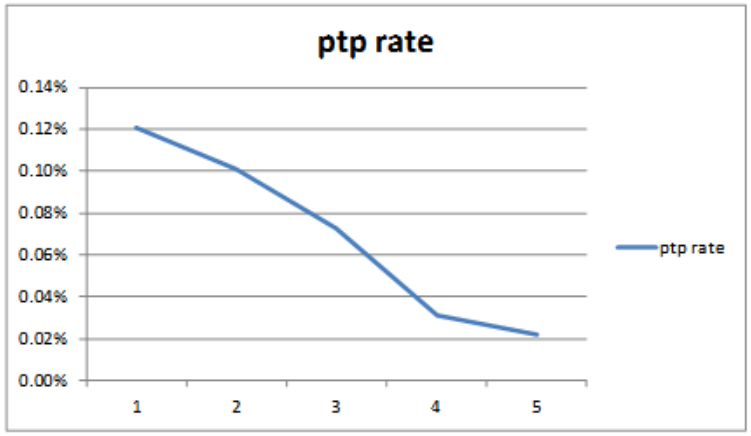
specifically as it relates to call frequency – will do nothing to stop abusive calls to consumers by illegitimate organizations and will harm consumers and legitimate debt collectors. It is only through targeted enforcement actions that the CFPB will be able to end abusive calling practices by bad actors.

Repeated and continuous calls do not collect more money

Legitimate debt collectors are aware that calling too frequently actually reduces the likelihood that a consumer will pay, as evidenced by the below data presented in the Venable response.

Figure 7 – Promise to Pay ("PTP") Rate by Daily Attempt

daily attempts	ptp rate
1	0.12%
2	0.10%
3	0.07%
4	0.03%
5	0.02%



This data evidences that legitimate debt collectors will not call consumers repeatedly or continuously with the intent to annoy, abuse or harass because these tactics are costly and do not result in additional payments to the legitimate debt collectors.

The solution is in the existing law

Case law regarding 15 U.S.C. §1692d(5) reflects that the law is working as it was designed, specifically because the Courts weigh factors such as whether calls were made after a cease request or dispute by the consumer or if there is evidence of abusive language by the debt collector in determining the intent of the debt collector. *See Bridge v. Ocwen Fed. Bank,* 681 F.3d 355 (6th Cir 2012).

Further, recent decisions by the Courts demonstrate that a "bright-line rule" regarding a number of contacts per day or week is not nearly nuanced enough to evidence even a presumption of intent. *See Atchoo v. Redline Recovery Servs., LLC* 2010 WL 1416738 (W.D.N.Y. 2010)(Consumer need not allege a specific number of calls to maintain a claim under §1692d(5)) *see also Forgues v. Select Portfolio Servicing,* 2015 WL 8272596 (N.D. Ohio Dec.8, 2015); *Regan v. Law Offices of Edwin A. Abrahamsen & Assocs.,* 2009 WL 4396299 (E.D. Pa. 2009) (Court denied Defendant's motion to dismiss where it was alleged the collector called Plaintiff regarding 2 accounts on 5 separate days within a 3 week period).

The 'cease disclosure' empowers consumers and deters abusive collection contacts

The most important enhancement of consumer protection to avoid unwanted collection calls is already contained in the Outline: namely, the requirement that a debt collector disclose to the consumer in the initial, written communication how a consumer may effectively request that the debt collector cease communication with the consumer ("the cease disclosure"). This cease disclosure proposal in the Outline -- which is not required by the plain language of the FDCPA -- will educate and empower consumers to stop unwanted collection calls. Further, as the case law demonstrates, calls received after an effective cease request would certainly be deemed to be made with an intent to annoy, abuse or harass.

The addition of the cease disclosure to the initial written communication, coupled with the thoughtful assessment of a debt collector's intent on a case-by-case basis by the Courts, will provide the tools for consumers to stop unwanted calls and further deter legitimate collection agencies from engaging in calling practices that may be deemed to violate the law.

Collector Communication Practices – Voicemail Messages and Electronic Communications

The CFPB's *Outline of Proposals Under Consideration and Alternatives Considered* ("the Outline") provides guidance on voicemail messages but does not provide significant guidance on the use of electronic communications as they relate to privacy controls. The following outlines the CRC position on both.

The CRC is delighted with the CFPB's proposal of a limited-content voicemail message, which also could be used in live conversations and text messages.[18] The CFPB's proposed message is a practical approach to message anyone and offers an opportunity for debt collectors to honor a consumer's preferences regarding how and when to communicate with the consumer.

A logical extension of the "limited-content" message would be to apply the same concept to communication technologies that consumers increasingly prefer, such as email or text.

An example of this might be to help avoid third party disclosure in either the "from" or "subject" lines of emails by ensuring that nothing in these fields reveals that the sender is a debt collector. The same could apply to a phone number/caller ID that might identify a communication as being from a debt collector, such as 1-800-PAYDEBT.[19]

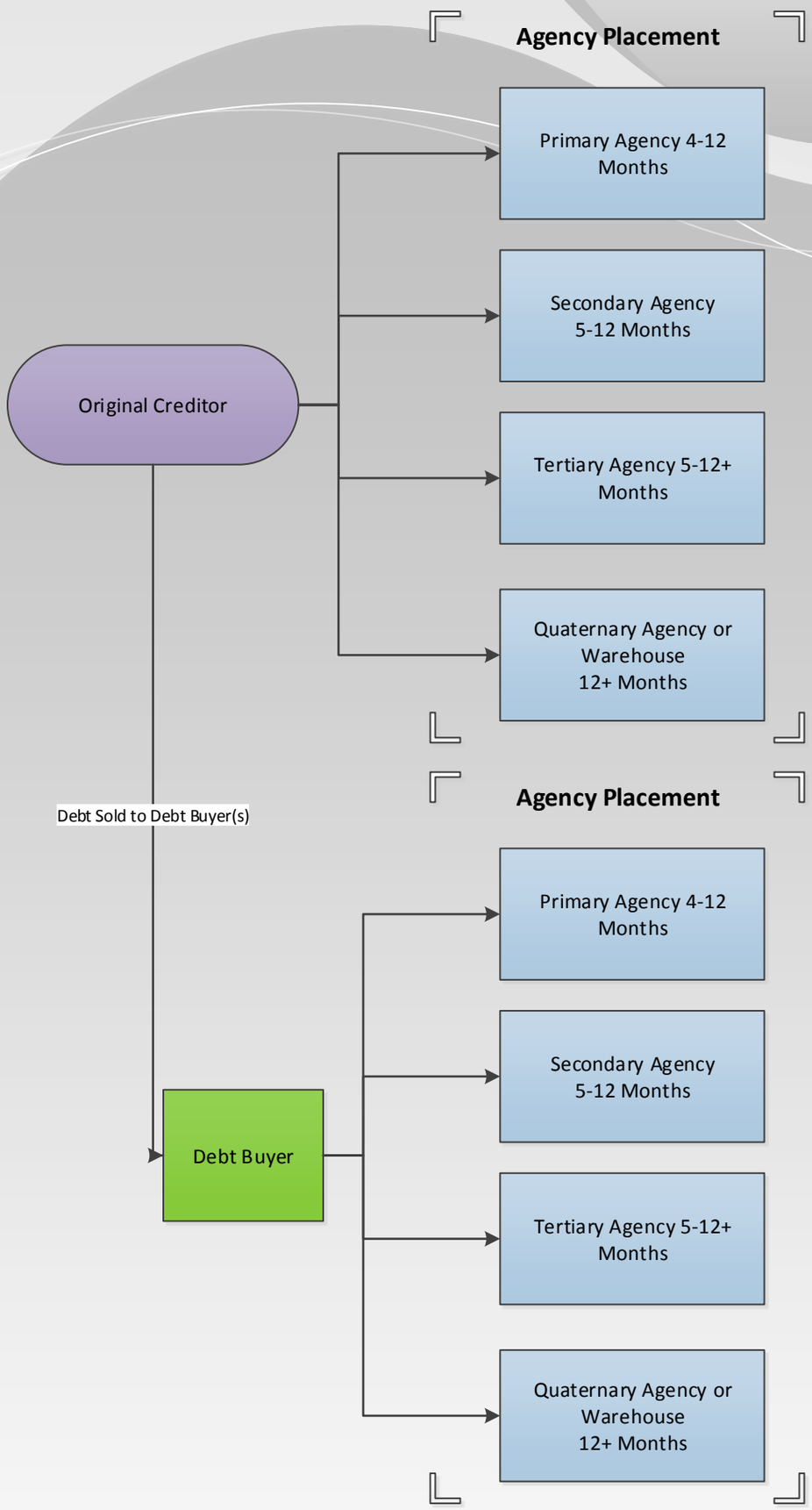
To the extent the CFPB desires to move forward with the existing proposal, the CRC supports rulemaking in this area, and would welcome the opportunity to assist in developing reasonable and practical guidelines.

Finally, the CRC strongly supports model message language benefiting the consumer. Such language would not only be embraced by debt collectors but could lend itself to a more standardized approach to collections that could set consumers' expectations and reduce uncertainty. We would love to see this approach applied to other current and future technologies.

[18] CFPB Outline of Proposals Under Consideration And Alternatives Considered, Section V(A)(2), page 24 (July 28, 2016).

[19] Id.

Collection Industry Account Data Flow Overview



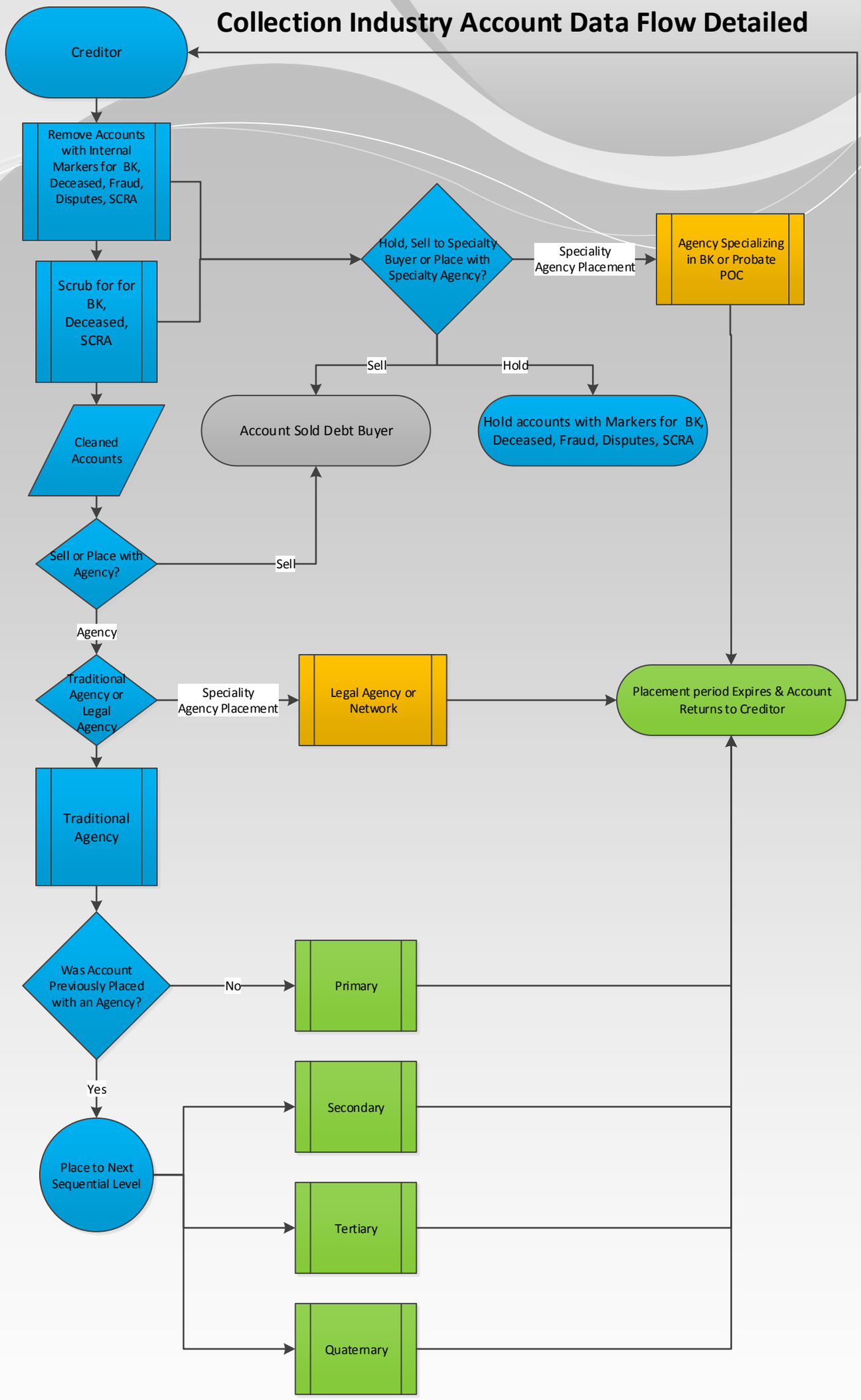
Data Related Notes:

1: When a creditor decides to place accounts with an outside collection agency, they may use one or more levels (or tiers) of collection agencies. Each of the tiers has a time frame in months and a name associated with that level.
2: The collection accounts that have been placed with the agency, normally stay with that agency for a range of time based on the agency's tier, the creditor's industry and the type of debt.
3. Updates to the account data flow back and forth between the creditor and the agency, usually in the form of maintenance files either automatically or manually.
4. After the accounts have reached the end of their time range at the agency, the accounts are closed from that agency tier (meaning no longer worked) and returned to the creditor for possible placement with an agency in a later tier.

Agency Related Notes:

1: Small collection agencies that are not licensed in certain states, may forward accounts in non-licensed states to another agency that is licensed in that state (contract allowing). Otherwise, agencies are not allowed to send or share account information with another agency.
2: Some creditors may use a Pre-Collection tier before the Primary tier as a last resort, that allows a customer a 90-day window before they actually go into collections.
3: Some creditors may use a 5th tier after Quaternary called Quintenary.
4: Not all creditors or debt buyers use collection agencies at each of these tier levels and not all debt is sold to a debt buyer.

Collection Industry Account Data Flow Detailed



KEY

Blue – Creditor Processing
Green – Normal Collection Agency Process
Orange – Specialized Agency Process
Grey – Debt Buyer

Notes:

a. See Page 3 for information references
b. Collection Accounts can be placed with:
Traditional, Specialized or Legal Agencies
c. Accounts can be scrubbed by Creditors and Agencies.

Collection Industry Data Flow Detailed
Reference Key

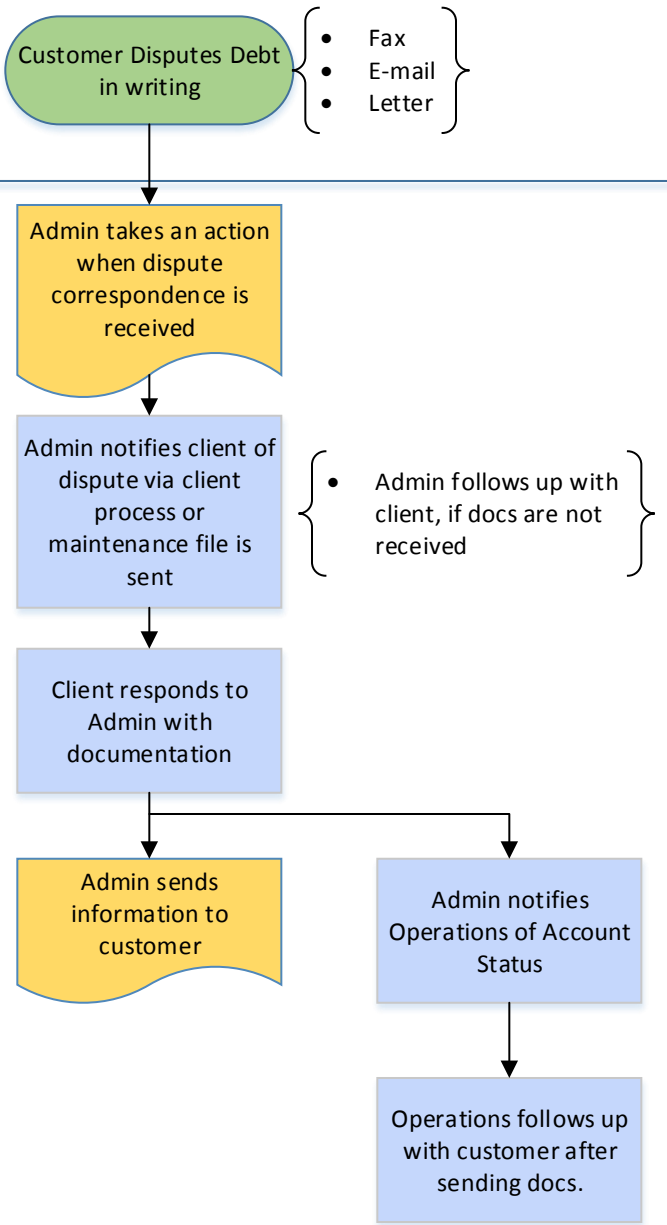
1. Accounts are charged off
2. Once the creditor has determined their sell vs hold strategy, they will typically internally scrub accounts to identify and segment those with internal markers indicating Bankruptcy, Deceased, Fraud, Disputes, SCRA, etc.
3. Creditors will often then run an additional external scrub to further identify accounts not already believed to be Bankrupt, Deceased or SCRA
4. Creditor determines if they will hold, sell or continue to work the accounts.
5. Decisions on whether to 'hold, sell or place accounts' may be made based on the type of account (credit card vs auto, etc.), age of the account, balance ranges, credit scores, special status and so on
6. Creditors then bucket the accounts into the appropriate "stream" (typically the streams are Sell, Legal Placement, Specialty Placement, Traditional Agency Placement or Hold (for internal work)
7. If an account is sold, the creditor has little if any additional involvement beyond providing post sale support for document provision or buying back accounts that are subsequently found to be Bankrupt or Deceased prior to the sale date.
8. If an account is placed in a Legal, Specialty or Traditional stream, the agency with which it is placed is typically given three to six months to effect payment or the account is closed back to the Creditor
9. Accounts that are closed back are re-examined for the next appropriate stream and usually undergo the same scrub processing as shown above before being put in the next stream

Note: Due to privacy and third party disclosure issues, data is only passed from agency to client, other than for very limited circumstances where there is a vendor/subcontractor relationship between agencies.

FDCPA - Written Dispute Handling

Customer

Agency Operations/Admin



Note: Due to privacy and third party disclosure issues, dispute data is only passed from agency to client, other than for very limited circumstances where there is a vendor/subcontractor relationship between agencies.

North South Group
P.O. Box 121212
Pasadena, CA 91111-2222
(800) 123-4567 from 8am to 8pm EST, Monday to Saturday
Pay Online: www.nsgrp.com

Account Information

Current Account Owner:	ABC Credit
Original Creditor:	Bank of Rockville
Regarding:	Main Street Store Credit Card
Original Account Number:	***-***-6789

North South Reference Number:
564-345

Total Amount Due:
$ 1,284.56

Ms. Mary Smith
2323 Park Street
Apartment 342
Arlington, VA 22201

USPS BARCODE SCAN

COMPANY INTERNAL BARCODE

Please detach and return top portion with payment. See reverse for other information you can provide us.

Dear Mary Smith:

December 12, 2015

North South Group is a debt collector. We are trying to collect a debt that you owe to ABC Credit. We will use any information you give us to help collect the debt. We want to work with you to resolve this account.

Please review the Account Information above and following information provided to us by ABC Credit:

As of January 2, 2013, amount owed:		$	1,234.56	
Between January 2, 2013 and today:				
This amount was charged in interest:	+	$	75.00	*Interest is being charged to this account.*
This amount was charged in fees:	+	$	25.00	*Fees are being added to this account.*
This amount was paid toward the debt:	–	$	50.00	*Includes payments made to ABC Credit.*
Total amount of the debt now owed:		**$**	**1,284.56**	*Because of interest and/or fees being charged to this account, the amount due may be greater after the date of this letter.*

How can you dispute the debt?

- **Write to us to dispute all or part of the debt.** If you write to us within 30 days after receiving this notice, we must stop collection on any amount you dispute until we send you information that shows you owe the debt. If you write to us after 30 days from receipt of this letter, we are not required to send that information to you, but we must stop collection until we confirm that our information is correct. Please send any information to the address provided above or visit our website at www.nsgrp.com – please have your account information available.
- **Call us to dispute. But if you do call, we are not required to send you information that shows you owe the debt.** We must stop collection on any amount you dispute until we confirm that our information is correct.

If we do not hear from you, we will assume that our information is correct.

What else can you do?

- **Ask us to send you the name and address of the original creditor.** Write to us within 30 days after receiving this notice and we will stop collection until we send you that information. For ease, you may use the form below or you may write to us without the form.
- **Learn more about your rights under federal law.** For more information, see the reverse of this letter or go to the Consumer Financial Protection Bureau's website at *www.consumerfinance.gov*.

Other information regarding this account

- **Certain states may require us to provide additional information about us or about your rights.** That important information is included on the reverse of this letter.
- **The law limits how long you can be sued on a debt**. Because of the age of your debt, ABC Credit will not sue you for it. Be aware that you can renew the debt and start the time period for the filing of a lawsuit against you if you take specific action such as 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. Also, please note that North South Group is a collection agency. We do not sue people and we cannot and will not sue you on any account placed with our office.
- **Para Espanol, call (XXX) XXX-XXXX**. If you would like this letter translated into Spanish, visit www.nsgrp.com/Spanish.
- **OTHER DISCLOSURES**

Convenient payment options are available

Pay Online or Chat with Us	Pay by Phone	Pay by Mail
www.nsgrp.com	Call us at (800) 123-4567, ext. 8900 We accept check by phone, Western Union and debit card.	Please make payment payable to *North South Group*, and include your reference number. Mail payment to P.O. Box 121212, Pasadena, CA 91111-2222

There may be an issue with this debt. Please contact me because I think:

o This is not my debt or I do not owe it.
o The amount is wrong.
o I already paid this debt in full or I settled it.
o You are not the right person to pay.
o Other: _____

Please send this to:
North South Group
P.O. Box 121212
Pasadena, CA 91111-2222

I would like to provide you with updated contact information:

Address (please print):
Street Address:_____
City, State: _____
Zip Code: _____
E-mail: _____

Telephone Number (please print):
Area Code and Home: _____
Area Code and Mobile: _____
Area Code and Other: _____

It's the law!

- If you write to us to request that we stop contacting you, we must stop. However, this does not make the debt go away.
- We cannot contact you before 8 am or after 9 pm except in limited circumstances.
- If you tell us that a certain time or place is inconvenient, such as while you are at work, we cannot contact you at that time or place.
- You can dispute your debt at any time.
- You may obtain a free copy of your credit report at www.annualcreditreport.com. If a debt appears on your credit report, you can dispute it if you believe the information is inaccurate.
- We cannot harass you or be abusive. For example, we cannot threaten you with violence, use obscene or profane language, claim that you have committed a crime by not paying a debt or call you excessively.
- We cannot deceive you or make any false or misleading statement to you.
- Your information is private. With certain exceptions, we cannot discuss your account with anyone other than you.

Need help?

The Consumer Financial Protection Bureau (CFPB) is a federal government agency that protects consumers. Visit their website at consumerfinance.gov/debtcollection or call 855-411-CFPB (2372) to learn more about your rights.

INSERT STATE DISCLOSURE LOGIC