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Kathleen Kraninger, Director
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552
RE: Debt Collection Practices (Regulation F)—Docket No. CFPB-2019-0022 or RIN 3170-AA41

Dear Director Kraninger:

The Consumer Relations Consortium (CRC) is an organization comprised of more than 60 national companies representing the diverse ecosystem of debt collection including creditors, data/technology providers and compliance-oriented debt collectors that are larger market participants. Established in 2013, CRC is evolving the debt collection paradigm by engaging stakeholders—including consumer advocates, Federal and State regulators, academic and industry thought leaders, creditors and debt collectors—and challenging them to move beyond talking points and focus on fashioning real world solutions that actually improve the consumer experience. CRC's collaborative and candid approach is unique in the market.

CRC members exert substantial positive impact in the consumer debt space, servicing the largest U.S. financial institutions and consumer lenders, major healthcare organizations, telecom providers, government entities, utilities and other creditors. CRC members engage in millions of compliant and consumer-centric interactions every month.[1] Our members subscribe to the following core principle:

"Collect the Right Debt, from the Right Person, in the Right Way."

We appreciate the opportunity to participate in this process that is so important to all debt collection stakeholders, and to comment on the Bureau's Notice of Proposed Rulemaking (NPRM) for the debt collection market.

Sincerely,

Stephanie Eidelman
Executive Director, Consumer Relations Consortium

[1] The roster of current CRC members is available at https://www.crconsortium.org/. These comments generally reflect the positions of the CRC collection agency members.

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Common Themes

The following are common themes that underlie CRC's comments and recommendations:

- **Establishing clear expectations and guardrails for the host of activities associated with debt collection benefits consumers and the collection industry alike.** CRC favors specificity regarding safe harbor disclosure language and safe harbor procedures, in addition to clearly defined deadlines and time frames.

- **Safe harbors foster consistency and predictability, reducing consumer uncertainty about the debt collection process.** Standardization creates opportunities for setting expectations and providing consumer education around predictable forms, disclosures, and practices. However, safe harbors should not be absolutes—they should function to protect a collector that chooses to use them, yet should not be the only means for complying with a standard or implementation specification. Many creditors, restricted by a panoply of statutory and regulatory standards, dictate strategies and approaches they expect their debt collection vendors to follow. These creditor-mandated strategies and approaches, while consumer-centric and fully compliant with the law, may vary from safe harbors and thus become fodder for endless class action lawsuits devoid of any consumer harm. CRC applauds safe harbors that provide language for forms and disclosures so long as it is clear that no inference may be drawn from a company's decision not to use a safe harbor.

- **The proposed rule's applicability to different types of debts.** The Bureau writes in its preamble:

  > Proposed rule provisions that rely on the Bureau's Dodd-Frank Act rulemaking authority generally would not, therefore, require FDCPA-covered debt collectors to comply if they are not collecting debt related to a consumer financial product or service. Such FDCPA-covered debt collectors, however, would not violate the FDCPA by complying with any such provisions adopted in a final rule.[2]

  Accordingly, the collection of debts for healthcare, utilities, cable, telephone, or taxes, fees, and fines ARE NOT governed by the portions of the NPRM that apply only to a consumer financial product or service. Please note that together, these "other" categories of indebtedness represent a majority of all consumer debts in collection.[3] It follows that

[2] NPRM, Preamble pp. 4-5.

[3] *The Impact of Third-Party Debt Collection on the US National and State Economies in 2016*; ACA International, November 2017, p.7

the Bureau's proposed rules arising from its Dodd Frank authority only govern a small minority of debt collection activity.

CRC is concerned consumers will experience one set of debt collection standards and procedures for "consumer financial product or service" debt and a different set of standards and procedures for other types of debt. Further, debt collection practices for the servicing of all other accounts will be left with the same uncertainty as currently exists.

The Bureau, by promulgating some rules that only impact collection of debts arising from a consumer product or service, is certainly seeking to impact how debt collectors service all other accounts. If this is the intent of the Bureau, then it should clearly say so. In fact, several sources suggest that the Bureau has jurisdiction to regulate debt collection activities for non-consumer financial products or services:

1. Pursuant to 12 U.S.C. § 5481(5), (6), (15)(A)(i) and (x), a debt collector, by virtue of its function, could arguably be performing activity related to a "consumer financial product or service." Accordingly, regulators have taken the position that it is the *function* provided by the company that dictates what rules apply.
2. The Bureau's enforcement action against Syndicated Office Systems, LLC[4] and its 2014 study, "CFPB Data Point: Medical Debt and Credit Scores" suggest that the Bureau may seek to assert authority regarding non-financial services transactions.
3. A report delivered at the 2017 World Privacy Forum hosted by the Federal Trade Commission (FTC) specifically recommended the Bureau "should monitor medical debt collection practices more closely and address abuses."[5]
4. The March 2019 Government Office of Accountability (GAO) report titled, "Data Breaches—Range of Consumer Risks Highlights Limitations of Identity Theft Services" clearly infers that the Bureau may have authority over healthcare collectors, recounting the educational resources offered by the Bureau for all types of consumer debts.[6]

While the Bureau's intent may be to reign in conduct that could be unfair, abusive or deceptive, the layering of Dodd-Frank rulemaking authority adds an interpretive complexity that creates difficulty for consumers and industry alike. CRC urges the Bureau to clarify if it intends all of the NPRM to apply to collection of all types of debt. Otherwise, as it is now structured, it will be up to individual debt collectors and the Courts to determine which sections of the Bureau's rulemaking apply to a consumer financial

[4] *In re Syndicated Office Systems, LLC, d/b/a Central Financial* Control, 2015-CFPB-0012 (June 18, 2015).
[5] https://www.worldprivacyforum.org/2017/12/new-report-the-geography-of-medical-identity-theft/
[6] https://www.gao.gov/assets/700/697985.pdf

product or service and which do not. Such uncertainly is exactly what the Bureau seeks to eliminate with the NPRM.

- **Consumers should have the ability to control how they communicate with debt collectors.** Without knowing and having the ability to use a consumer's preferred channel of communication, a debt collector may be perceived by a consumer to be making multiple, undesired communication attempts. Communicating with consumers through preferred channels reduces this perception, as it allows consumers to control how debt collectors contact them. Efforts to learn and follow consumers' communication preferences should be honored and encouraged, even if obtained by a creditor when entering into the initial credit transaction that ultimately resulted in debt collection. Likewise, a known, freely-expressed consumer preference should override general rules.

  Debt collectors must be able to convey information to the consumer about all available communication options and honor the consumer's preference. Consumers must be allowed to change those preferences when desired.

- **Rules should protect the least sophisticated and most vulnerable consumers without limiting those in the mainstream.** Tech neutrality is a laudable goal—choices today should not exclude the possibility of better or different options in the future. The NPRM reflects an acceptance of consumer-driven preferences for communication channels, which evolved since the Fair Debt Collection Practices Act's (FDCPA) enactment in 1977. It is important to recognize that some consumers may not have affordable or reliable access to these new communication choices, and the rules should require reasonable accommodation for them. However, it is just as important that the large and growing population of consumers who can and do wish to communicate through newer communication channels be allowed to do so without unreasonable impediments. For example, requiring debt collectors to use snail mail to obtain permission from a consumer to use email frustrates the consumer's preference for digital communication.

  There is a disconnect: the good players in the industry—such as CRC members—who comply with the law view rules that clarify the usability of new communication channels as guidance to more effectively reach consumers and resolve debts. In contrast, consumer advocates express concern about how these same rules will provide a "free pass" for bad actors who would take advantage of consumers. Policing the bad actors should be accomplished through means which are not overly burdensome on the good actors, such as enforcement and supervision activities.

- **Technology has evolved—and continues to evolve—in ways that are out of the debt collector's control.** This creates friction between consumers' demand for both privacy

and transparency. Rules that clarify third-party disclosure guidelines must be applied through today's lens rather than that of the late 1900s. As recently as 2004, more than 90% of U.S. households had landlines. In 2019, experts believe the landline to be an endangered species—like the 8-track tape player—with a presence in barely 40% of U.S. homes. More than 57% of U.S. households are "wireless only," having no telephone service, but for one or more family members having wireless phones.[7] Debt collectors have little or no control over the variety and nuance associated with communication technology.

As another example, certain text in electronic communications—such as phone numbers, addresses or websites—may automatically become a hyperlink without any action by the debt collector; and certain information—such as caller ID or call labels—may become "attached" to a communication in ways that are out of the debt collector's control.

The proliferation of illegal robocalls caused a crisis of distrust: Consumers no longer answer if they do not know who is calling and why. As a result, calls consumers may want are increasingly blocked or labeled as "possible spam" due to lack of up-front information. Privacy and third-party disclosure concerns prevent debt collectors from delivering the transparency that consumers expect—transparency that will become commonly-provided by other businesses with which the consumer interacts.

- **Information overload is not unique to a consumer's experience in debt collection.** Current state and federal law, as well as certain court decisions, require collectors to provide consumers with a litany of notices and disclosures. Individually, each notice or disclosure may have an important purpose. However, when taken in aggregate, the level of sophistication required to digest the entire communication increases significantly. To minimize consumer confusion, frustration, and potential harm, CRC urges the CFPB to balance the need for meaningful notice with the need for consumers to understand such notices.

- **Although consumers don't pick their collectors, in most cases they do pick their creditors.** Creditors select and oversee vendors for dozens of processes they choose to outsource, from sales to fulfillment to collections. While the Bureau frequently expresses concern that the consumer cannot choose their collector, CRC believes this concern is misplaced. There are substantial protections for consumers when dealing with debt collectors that may not exist elsewhere in the creditor-consumer relationship.

  More than any other vendor category, debt collectors are subject to stringent rules at the state and federal level and must invest extraordinary resources in compliance. While the

[7] https://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201906.pdf

theory of the past that creditors had more reason than collectors to treat consumers respectfully may have been true then, this is no longer the case. No creditor (or collector) wants to be the subject of bad press. Today, complaints are public, the news is immediate and long-lived, brand integrity is paramount, and competition among creditors for customers is fierce. No legitimate business can withstand the model of poor customer treatment.

- **Creditors and collectors are partners in the recovery process, and rules should reflect this.** For instance, requiring collectors to have information without also requiring creditors to provide it is a recipe for continued frustration among all parties, including consumers. While the CFPB considers its first-party debt collection rules, it is vital that those requirements take into account, and work hand-in-glove with, the final third-party debt collection rules.

Certain Legal Principles

Certain common legal principles are either applicable to several sections throughout this comment or do not fit into the mold of a specific section. Rather than repeating these comments throughout, CRC summarizes them at the forefront.

Fair and balanced standard disclosures promote safety and certainty for consumers

The FDCPA requires that debt collectors provide notices and disclosures to consumers about a range of topics, but does not prescribe the language of those notices and disclosures. As a result, attorneys and compliance officers created hundreds—if not thousands—of interpretations and variations of these notices nationwide. Further, consumer attorneys file lawsuits alleging confusion regarding—literally—the placement of commas and other hypertechnical grammatical or word choices.

Consumers and the collection industry both need clarity from the CFPB regarding simple, clear disclosures. Federal courts are often tasked with interpreting debt collection disclosures in connection with FDCPA cases. Despite seemingly clear guidance from the plain language of the FDCPA and the courts, FDCPA lawsuits are filed every day against debt collectors using seemingly crystal clear disclosures.[8] [9]

[8] *See* discussions on Second Circuit litigation regarding interest disclosures in the following section and Third Circuit litigation regarding the language of the validation notice, *infra*.

[9] There is not a scintilla of evidence or research to show that lawsuits over hypertechnical language serve to help consumers. To avoid the cost associated with these suits and minimal consumer protection benefit, CRC recommends consideration of a "right to cure" (discussed more fully below) and the publication of templated disclosures that, if used, would be afforded a safe harbor.

Mass filing of federal FDCPA lawsuits: a study in New York from April 2016 to April 2017

In March 2016, the Second Circuit Court of Appeals issued its ruling in the *Avila* case[10], adopting a standard for collection letters regarding the accrual of interest, writing:

> We hold that a debt collector will not be subject to liability under Section 1692e for failing to disclose that the consumer's balance may increase due to interest and fees if the collection notice either accurately informs the consumer that the amount of the debt stated in the letter will increase over time, or clearly states that the holder of the debt will accept payment of the amount set forth in full satisfaction of the debt if payment is made by a specified date.

Consumer Attorneys Filed *308 Cases in New York Federal Courts Alone* in the One Year *AFTER* the Second Circuit clarified the law.

It would seem logical to presume that lawsuits regarding this interest disclosure issue would end after the ruling in *Avila* because the law was clarified. Quite to the contrary, consumer attorneys filed hundreds of federal lawsuits against debt collectors after the Second Circuit ruling in *Avila* claiming that *Avila* somehow requires a debt collector to disclose when interest ***is not accruing***.

The attached study[11] of the dockets for the four Districts of the New York Federal Courts from April 2016 through April 2017[12] demonstrates that there was a ***rush to the Federal courthouses in New York by consumer attorneys with 308 FDCPA cases filed in the year after Avila.*** All of these 308 cases asserted that a debt collector was somehow required to disclose when interest ***was not*** accruing.

In the 2018 *Taylor*[13] decision, the Second Circuit Court of Appeals addressed and dismissed the "reverse-*Avila*" theory behind these hundreds of cases (siding with the Seventh Circuit Court of Appeals, which addressed the issue in 2004[14]):

> Contrary to Taylor and Klein's objection, our decision today reads Sections 1692e and 1692g in harmony. That is, if a collection notice correctly states a consumer's balance without mentioning interest or fees, and no such interest or fees are accruing, then the notice will neither be misleading within the meaning of Section 1692e, nor fail to state accurately the amount of the debt under Section 1692g.

[10] *Avila v. Riexinger & Assoc., LLC*, 817 F.3d 72 (2d Cir. 2016).

[11] See Exhibit A (Spreadsheet of New York federal litigation after *Avila's* decision regarding the same issues).

[12] The one year ***after*** the Second Circuit Court of Appeals ruling in *Avila***.**

[13] *Taylor v. Fin. Recovery Serv.*, 886 F.3d 212 (2d Cir. 2018).

[14] *See Chuway v. Nat'l Action Fin. Serv., Inc.*, 362 F.3d 944 (7th Cir. 2004).

> If instead the notice contains no mention of interest or fees, and they are accruing, then the notice will run afoul of the requirements of both Section 1692e and Section 1692g.

Unfortunately, it would be naïve to think that the *Taylor* decision would stem the tide of FDCPA interest disclosure lawsuits in New York[15] and these cases continue to inundate the Courts through the date of this document. One New York Court was required to author yet another decision on this same, well-settled issue of law *as recently as* two weeks prior to this comment's submission.[16]

These practices of endlessly relitigating the hyper-technical minutia of collection letters where there is no possible consumer harm causes substantial cost to consumers, debt collectors, the judiciary, and the American taxpayers. Clear and concise disclosures promulgated by the CFPB will serve to prevent some of this harm.

The issue, unfortunately, is not isolated to interest disclosures. There are countless additional examples of cases where "creative" FDCPA litigation regarding hyper-technical details of the collection process caused immense and needless cost to all parties where there was no possible hint of consumer harm:

1. Cases asserting that the validation language in a collection communication, drawn verbatim from the statute, is unclear;

2. Claims that the debt collection letters do not clearly identify the creditor when the name of the creditor is, for instance, American Express;

3. Claims that a disclosure is misleading where it states that a creditor "will not" sue on a time-barred debt because the disclosure does not say that the creditor "cannot" sue;

4. Claims that a disclosure is misleading for stating that the creditor will not report a debt to the credit reporting agencies is false because the creditor could report it; and,

5. Claims that there were too many required disclosures in a letter.

CRC applauds the Bureau for these proposed rules but also seeks maximum clarity to avoid endless litigation as discussed above.

[15] Due another round of lawsuits, the Second Circuit has had to address this issue *yet again* in *Derosa v. CAC Fin. Corp.*, No. 17-3189 (2d Cir. 2018).

[16] *Roman v. RGS Fin., Inc.*, No. 2:17-cv-04917 (E.D.N.Y. Sept. 6, 2019)("The fatal flaw in the Plaintiff's argument, however, is that the amount of her debt was not increasing.")

Rules that exceed the scope of the Bureau's authority will not be enforceable

The suggestions in this comment letter seek to ensure that the final rule does not violate existing law, contain arbitrary or capricious provisions, or fail to consider important aspects of the flaws in the FDCPA that the Bureau seeks to address. For example, a federal agency unlawfully interprets a statute if Congress already spoke to the exact question at issue.[17]

When Congress has not spoken, an agency's rulemaking must not be "arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law" or it will be set aside.[18] An agency's action is arbitrary or capricious when the agency "entirely fail[s] to consider an important aspect of the problem, offer[s] an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise."[19]

Several sections of this comment[20] address circumstance where the consumer-centric intentions of the Bureau result in proposed rules that exceed the scope of the FDCPA. While CRC shares the consumer-centric focus of the Bureau, concerns remain that the future enforceability of the proposed rules, if enacted, will be uncertain to the extent that the rules exceed the scope of the Bureau's authority. CRC is a strong proponent of fairness and certainty in all rules for debt collection. No such certainty will exist if the Bureau's debt collection rules are mired in years of litigation because they exceed the scope of authority.

Further, debt collectors should not be forced into the "Hobson's Choice" of either following the Bureau's enacted rules or awaiting some future court ruling on the enforceability of the rules due to their scope. Thus, CRC requests that the Bureau ensure that the rules do not exceed its authority.

Importance of providing debt collectors a right to cure

Debt collectors presently have no ability under the FDCPA to correct good faith errors—such as a harmless typographical error in collection communications—without the threat of class action litigation. As such, CRC proposes that the CFPB issues a rule providing a federal solution that mirrors California's statutory right to cure provision.

California law provides a reasonable "right to cure" provision that allows debt collectors to correct errors before being susceptible to civil liability. In California, a debt collector shall have no liability under the Rosenthal Fair Debt Collection Practices Act ("RFDCPA"), Title 1.6C of the

[17] *Chevron U.S.A. Inc. v. Natural Resources Defense Counsel, Inc.*, 467 U.S. 837, 842 (1984).
[18] 5 U.S.C. § 706(2)(A); *see also Chevron*, 467 U.S. at 844.
[19] *Wedgewood Village Pharmacy v. DEA*, 509 F.3d 541, 549 (D.C. Cir. 2007)(internal citations omitted).
[20] *See,e.g.,* discussion on call frequency limits § 1006.14 *infra.*

Civil Code, if, "within 15 days either after discovering a violation which is able to be cured, or after the receipt of a written notice of such violation, the debt collector notifies the debtor of the violation, and makes whatever adjustments or corrections are necessary to cure the violation with respect to the debtor."[21] West Virginia similarly has a right to cure provision.[22]

The penalty for self-identifying and correcting good faith, harmless errors are severe for debt collectors. Fear of class action liability dissuades debt collectors from correcting simple mistakes, such as typographical errors. A right to cure provision promotes correction of curable errors and allows the consumer to be "made whole" (*e.g.*, receiving a corrected letter).

CRC Proposes the addition of the following into the final rule:

> *A debt collector shall have no civil liability under this title if, within 30 days after discovering a violation, or after receipt of notice of an alleged violation and the factual basis for the violation, by certified mail, return receipt requested, the debt collector makes whatever adjustments or corrections are necessary to cure the violation with respect to the debtor.*

Safe harbor v. rebuttable presumption—"Don't make a federal case out of it."

The attorney fee-shifting provision in the FDCPA spawned a cottage industry of consumer attorneys seeking to generate personal income by filing thousands of lawsuits annually. These lawsuits allege hypertechnical violations of this "strict liability" statute where there is no consumer harm.[23] Unfortunately, marginalized consumers in our society ultimately bear the cost of these misguided lawsuits through decreased access to credit[24] and higher interest rates.

The NPRM provides two similar but distinct legal presumptions to prevent attorney-driven hypertechnical FDCPA lawsuits: safe harbors and rebuttable presumptions. A safe harbor is a provision in a statute that affords protection from liability. A rebuttable presumption is an inference drawn from certain facts that establishes a *prima facie* case, which may be overcome by the introduction of contrary evidence. If a debt collector complies with safe harbor

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[21] See California Civil Code § 1788.30(d).

[22] *See* WV Code §46A-5-108 (West Virginia law requires that a consumer provide notice of right to cure).

[23] *See Kraus v. Prof'l. Bureau of Collections of Md., Inc.*, 281 F.Supp.3d 312, 324 (E.D.N.Y. 2017)("But are those cases serving to root out genuine instances of debt-collection abuse? Or are they, instead, serving largely to facilitate debt evasion and to prop profits among the plaintiffs' bar? With the FDCPA, Congress intended to arm consumers with a shield against the overly zealous debt collector. The Court worries that, by carrying the least-sophisticated-consumer standard and strict liability to an illogical extreme, this circuit has fashioned that shield into a sword." (Internal citations and quotations omitted.).

[24] *Debt Collection Agencies and the Supply of Consumer Credit* Viktar Fedaseyeu, Federal Reserve Bank of Philadelphia (May 2013).

requirements, the debt collector cannot be found to have violated the law. Under a rebuttable presumption, if a debt collector does not comply with the statutory requirements, there is a presumption of a violation of the law that can be overcome with the introduction of contrary evidence or arguments.

The Seventh Circuit's *Lavallee* decision and the NPRM's provisions for text messaging, hyperlinks, and call frequency limits

During the comment period to this NPRM, the Seventh Circuit Court of Appeals reached its decision in the matter of *Lavallee v. Med-1 Solutions, LLC*.[25] CRC encourages the CFPB to address the Seventh Circuit's reasoning—at least concerning the use of hyperlinks to provide disclosures—as it is detrimental to consumers and contradicts the Bureau's related provisions in the proposed rules.

Summary of *Lavallee*

The *Lavallee* decision examined an email sent by a debt collector that contained a hyperlink to a secure portal. Once in the secure portal, information about the account and required disclosures were available. The email itself, however, did not contain account information or disclosures—likely in an attempt to prevent third-party disclosure.[26] The Seventh Circuit affirmed the district court's judgment in favor of the plaintiff, finding that the email itself was not a communication under the FDCPA since it did not convey information about the debt. The Court also found that the hyperlink did not make the email a communication because it required the consumer to take additional steps to reach the 1692g disclosures and, notably, the consumer never clicked on the hyperlink.

As discussed below, CRC believes that the decisive factor in *Lavallee* was not the debt collector's inclusion of a hyperlink in the email, but rather the debt collector's knowledge that the consumer did not open the email. According to the decision, Med-1 Solutions received reports from the emailing service of when email recipients opened the email and knew that this consumer did not do so.

The differentiator should be whether the consumer received the message

Instead of following the Seventh Circuit's approach, the CFPB should consider the debt collector's knowledge of whether the consumer received the email.

[25] 2019 WL 3720875 (7th Cir. Aug. 9, 2019).

[26] Although not prominent in the court's reasoning in Lavallee, the information about the debt in question was subject to further protections under state and federal medical privacy laws such as the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated thereunder ("HIPAA").

The CFPB should clarify that if the debt collector learns that the consumer did not receive the email, they can move to other forms of communication such as sending a letter to ensure the consumer receives the required information.

Safe harbor for reasonable processing time of consumer requests

The FDCPA and the NPRM impose action requirements for debt collectors upon receipt of certain communications from consumers. For example, upon receipt of a written request to cease phone calls, a debt collector must cease calling the consumer[27]; upon receipt of a written request to validate the debt, a debt collector must cease all collection efforts until it provides debt validation to the consumer[28]; or upon notice of attorney representation, a debt collector must cease contact with the consumer.[29] CRC recommends that the CFPB establish a safe harbor reasonable processing time for such requests that builds in a buffer for the debt collector to process such requests while still complying with the FDCPA and related provisions in the CFPB's final rules.

An instantaneous reaction by a debt collector to consumer cease requests is impossible, and it is unreasonable to impose such a requirement on a debt collector. There is always some delay between when a consumer request or notification is received and the time it takes to take action on that request or notification depending upon volume and resources to process such communications. For example:

- Communications need to be sorted, read, understood, matched to an account[30], and entered into the debt collector's systems for proper action.
- If a creditor receives documentation of a change or request on the account, some reasonable time for data exchange between the creditor and debt collector is necessary.
- Most mail vendors have a two-business-day turnaround performance standard, meaning a letter or email to the consumer could be in process when his or her cease communication request or notice of attorney representation is received.

The current lack of clarification on acceptable processing times causes uncertainty for consumers and the industry alike.

[27] *See* 15 U.S.C. § 1692c(c).
[28] *See* 15 U.S.C. § 1692g(b).
[29] *See* 15 U.S.C. § 1692c(a)(2).
[30] Debt collectors receive unidentifiable mail and checks daily. Time and care is required to assure that these communications and payments are matched to the correct consumer and account.

Lack of guidelines for a reasonable processing time leads to hypertechnical lawsuits

Gebhardt v. LJ Ross Associates, Inc.[31] presents an example of what happens when there is a lack of clear guidelines and safe harbors regarding the processing of cease requests. The consumer in *Gebhardt* sued, alleging an FDCPA violation arising from a single phone call made to the consumer exactly twelve minutes after the debt collector received the consumer's "snail mail" cease request.[32]

Reasonable processing time outlined in other federal and state statutes

Setting a safe harbor period to allow for processing time is consistent with other federal consumer protection statutes such as the CAN-SPAM Act of 2003. The NPRM refers to the CAN-SPAM Act as an example of "public policy in favor of providing consumers with a specific mechanism to opt-out of certain email messages."[33] Under that Act, the sender of commercial emails is allowed ten business days to process an opt-out request before being subject to liability.[34] In 2005, the FTC suggested shortening that period from ten business days to three business days[35], but later concluded in the 2008 final rules that there are legitimate business and operational reasons to maintain the current ten business day grace period:

> Having carefully considered the comments concerning the amount of time required to process and coordinate opt-out requests, along with the Commission's law enforcement experience, the Commission is persuaded that it should retain the ten business-day grace period for honoring opt-out requests. The Commission is persuaded that its proposal in the NPRM to shorten the period to three business days could impose a substantial burden on legitimate commercial email marketers. In particular, the Commission is concerned that reducing the opt-out period could pose a significant challenge for small entities.[36]

CRC agrees that debt collectors should be required to provide a mechanism for consumers to opt-out of receiving emails as is required under the CAN-SPAM Act, provided they also have a reasonable period of time to process those requests before being subject to liability.

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[31] 2017 WL 2562106 (D.N.J. 2017).
[32] *See also Rush v. Portfolio Recovery Assocs. LLC*, 977 F. Supp. 2d 414, 440 (D.N.J. 2013).
[33] NPRM Preamble, p. 115, fn. 257.
[34] *See* 15 U.S.C. § 7704 (a)(4)(A)(i).
[35] 70 FR 25425.
[36] 16 CFR 316, p. 29673-74.

West Virginia's statutes likewise provide for a reasonable processing time of consumer notices. For example, a debt collector has three business days to process notifications of attorney representation.[37]

Consumers and debt collectors alike would benefit from certainty regarding an acceptable time for a debt collector to react to consumer requests. Like the FTC found when considering changing from the ten business day to the three business day grace period under the CAN-SPAM Act, there are legitimate business and operational reasons for debt collectors to have a reasonable grace period to respond to consumer requests. CRC recommends that the rules carve out a safe harbor reasonable processing time of ten business days to process opt-out requests and five business days to process all other consumer requests and notifications called out in the FDCPA and final rules.

[37] W. Va. Code 46A-2-128(e).

Section-by-Section Comments

§ 1006.2(j): Limited-content messages

CRC members strive to communicate with the right consumer about the right debt in a manner, if known, that meets a consumer's communication expectations and preferences. Leaving voice messages, a method widely available to individuals and businesses, has not been a reasonably available form of communication for debt collectors. Over a decade of litigation—ranging from questions about whether a limited-content message is a communication and what script is permitted—caused debt collectors to limit, if not completely abandon, leaving messages for consumers.

CRC commends the CFPB's clarification of limited-content messages in the proposed rules as it will assist in putting to rest the long-standing legal uncertainty caused by endless litigation. However, CRC recommends certain amendments to the content and usability of these messages to make them a viable method of reaching the consumer.

A brief history of limited-content message litigation

As the CFPB noted in the NPRM, the practice of leaving voice messages is risky for debt collectors to implement for two reasons. First, there was legal uncertainty about whether or which of these messages were communications for FDCPA purposes. Second, debt collectors are uncertain about what content is appropriate for such messages to prevent third-party disclosure but, at the same time, provide enough information for a consumer to make a reasoned decision about returning the message.

The Southern District of New York issued a decision, *Foti v. NCO Financial Systems, Inc.*[38], that had a detrimental impact on the ability of debt collectors to leave messages.[39] Before *Foti*, collectors would leave simple, but effective, voicemail messages for consumers. 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.

[38] 424 F.Supp.2d 643 (S.D.N.Y. Mar. 25, 2006).

[39] While *Foti* was not the first court decision to reach this conclusion (*see Hosseinzadeh v. M.R.S. Associates, Inc.*, 387 F.Supp.2d 1104 (C.D. Cal. 2005)), it was the case that gained the most momentum and became the namesake of the subsequent line of filed litigation on the same issue.

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

The *Foti* court found that such a message:

> . . . while devoid of any specific information about any particular debt, clearly provided some information, even if indirectly, to the intended recipient of the message. Specifically, the message advised the debtor that the matter required immediate attention, and provided a specific number to call to discuss the matter.[40]

Since the court found that this message was a communication, it triggered specific disclosure requirements.[41]

In 2012, nearly six years after the *Foti* decision, a different federal district court considered a voicemail left for a consumer that attempted to solve for the issue at hand. In *Zortman v. J.C. Christensen & Assoc., Inc*.[42], the debt collector 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.[43]

The message seemingly discloses the existence of the debt, but it does not provide the name of the debtor. The debtor argued that the debt collector violated his rights by revealing the existence of his debt to a third-party in his household who overheard the message. The court disagreed, holding instead that without the consumer's name connected to the message, there were multiple plausible reasons why a debt collector would leave a message without revealing the fact that the consumer had an account in collection.[44]

The CFPB's solution fixes the limited-content message "communication" dilemma

By clearly identifying that a limited-content message is *not* a communication under the FDCPA, the CFPB took a critical first step in clearing the legal uncertainty on the issue, which will allow debt collectors to leave such messages without fear of litigation backlash. If a debt collector has the means to leave a voice message with call back information for the consumer, it increases the

[40] *Id.* at 655-56.
[41] *Id*. at 669.
[42] 870 F.Supp.2d 694 (D. Minn. May 2, 2012).
[43] *Id*. at 696.
[44] *Id*. at 705-06.

likelihood that the debt collector and consumer will connect. This means fewer phone calls placed by debt collectors.

Illegal robocalls add a modern twist to this decades-long issue

Many of today's phone carriers and phone manufacturers offer call blocking and call labeling applications to provide consumers control over the calls they receive, adding a modern twist to a decades-old problem for debt collectors regarding limited-content messages. Despite state and federal legislation, calls from legitimate businesses get mislabeled as spoofed and illegal robocalls. A study in 2019 found that an astounding 45% of outbound telephone calls by five legally compliant larger market participant debt collection companies were at risk of improper call labeling and call blocking.[45] This prevents consumers from differentiating between a legitimate call and a spam or fraud call, making consumers less likely to answer a call from an unrecognized number.

Unfortunately, the CFPB's proposed limited-content message script will not solve this issue because it lacks one essential data element that consumers request: the name of the creditor.

Including the original creditor's name in a limited-content message benefits consumers without adding a risk of third-party disclosure

CRC supports the § 1006.2(j) proposal but recommends permitting the use of the original creditor's name—either its legal name or commonly known name[46]—in the limited-content message. With this minor change, CRC believes that § 1006.2(j) will minimize uncertainty and reduce the number of call attempts made by debt collectors.

In addition to the required content listed in § 1006.2(j)(1), the proposed rule permits a debt collector to provide "[a] generic statement that the message relates to an account."[47] The limited-content message that includes only the required content reads as follows: "This is Robin Smith calling for Sam Jones. Sam, please contact me at 1-800-555-1212." Including all permitted content, the message reads: "Hi, this message is for Sam Jones. Sam, this is Robin Smith. I'm calling to discuss an account. It is 4:15 p.m. on Wednesday, September 1. You can reach me or, Jordan Johnson, at 1-800-555-1212 today until 6:00 p.m. eastern, or weekdays from 8:00 a.m. to 6:00 p.m. eastern."

[45] See Exhibit B: *The Perception of Collections Industry Phone Numbers Across the Call Blocking and Labeling Ecosystem*, Numeracle July 2019.

[46] For example, a merchant-branded credit card may be more easily recognized as a "Costco Visa" rather than Citibank. In the case of utilities, Eversource is a more commonly known name than N-Star or one of the other companies that may own the account.

[47] § 1006.2(j)(2)(iii).

The concern with these messages is that, while they are a step forward from not leaving messages at all, they are incredibly vague and more resemble messages left by illegal robocallers and scammers rather than legitimate business callers. The sole information linking the message to the consumer is his or her name, but that may not be enough to encourage a consumer to call back. This puts debt collectors back in the same position they were in before: needing to place more calls to reach the consumer. Without adequate information in the message, there is a greater likelihood that the consumer will perceive a legitimate debt collector as an unlawful "robocaller," blocking future calls. When consumers block a specific number, it results in that number being labeled as "possible spam" for other consumers, decreasing the likelihood that they will answer despite such calls counting toward the debt collector's limited number of permitted call attempts.

The proposed limited-content messages also do not level the field for consumers who choose to call back—consumers come to that call with no knowledge of what the call is about. Knowing the creditor's name benefits the consumer in multiple ways. For example, if the consumer knew which account the caller wanted to discuss, she could be prepared. For consumers with multiple debts in collections, knowing the creditor's name would allow the consumer to differentiate between calls and decide which calls to return. A generic statement about "an account" would force a consumer to herself map out which collector has which account.

To make the proposed limited-content message viable and consumer-friendly, debt collectors must be permitted to include the original creditor's name when referencing "an account." In other words, saying "I'm calling to discuss your ABC Bank account" or "I'm calling to discuss your Big Box Store account." This addition turns a vague, questionable message into one that means something to the consumer—but says nothing to third-parties that the consumer may have a debt in collection. The inclusion of the creditor's name acts as an anchor to the consumer—if the consumer had an account with this creditor, then she would understand and have some connection to this message, increasing the likelihood that she will return the call and resolve the account, even if resolution means closing the account without payment.

Inclusion of the creditor's name harmonizes with the handshake communication sought by both consumers and debt collectors

Consumer advocates and CRC favor a "handshake" communication where a creditor informs the consumer about the placement of the consumer's account with a debt collector before such placement occurs. The information shared with the consumer by the creditor in the handshake communication would include the name of the debt collector. Thus, if the consumer knew with which debt collector the creditor placed her account, the limited-content message from the debt collector that includes the creditor's name would complete the "handshake." The consumer would then have justified confidence in choosing to communicate with the debt collector

because the consumer received confirmation of the connection between the creditor and the debt collector from both parties independently.

Nearly 90% of consumers want the creditor's name included in a limited-content message

The CFPB's survey of "Consumer Experiences with Debt Collection" supports adding the creditor's name to the limited-content message. The survey found that an overwhelming majority of consumers—89% of the surveyed population—want the creditor's or debt collector's name included in a message.[48] The survey indicated that inclusion of the entity name is not a concern for consumers; the main concern is the disclosure of collection efforts. Adding the creditor's name to the message, without mentioning the call is for debt collection purposes, goes hand-in-hand with consumer preference reflected in the Bureau's research.

Adding the creditor's name to the limited-content message does not create a risk of third-party disclosure

Permitting debt collectors to use the creditor's name in a limited-content message does not create a risk of third-party disclosure. Calls about specific accounts could be for any number of servicing reasons that do not imply a debt, let alone that a debt is in collection. Creditors themselves include their names if leaving voice messages. If for whatever reason a third-party overheard the message, nothing in the message would suggest that a debt collector was involved.

In the context of purchased debt, the creditor name used in the limited-content message should be the original creditor—in other words, the one with which the consumer did business—and not a subsequent creditor.

CRC fully supports the limited-content message and its accurate characterization as being "an attempt to communicate" but not a "communication" for FDCPA purposes. With a small revision permitting a debt collector to identify the creditor's name in the message, CRC believes that the limited-content message will benefit consumers and, at the same time, honor the FDCPA's prohibition against third-party disclosure.

CRC recommends the following amendment to the language of § 1006.2(j)(1):

> *[A] generic statement that the message relates to an account and, optionally, the legal or commonly known name of the original creditor.*

[48] *Consumer Experiences with Debt Collection,* CFPB, January 2017, p. 39.

§ 1006.6: Definitions, disclosures, and FTC guidance concerning deceased accounts

CRC commends the CFPB for recognizing the nuances associated with collecting decedent accounts and for thoughtfully approaching this niche within the debt collection industry. Currently, debt collectors working on decedent accounts operate under the guidance of the Federal Trade Commission's (FTC) 2011 Statement of Policy on Decedent Debt (Policy Statement). This Policy Statement has resulted in few complaints from consumers and consumer advocates, so CRC recommends that the Bureau's final rules refrain from making significant modifications to those standards.

Informal probate proceedings under state laws benefit deceased consumer's representatives

As the NPRM recognizes, probate laws vary state by state, and sometimes even county by county. The CFPB's recognition and support of various state law "informal probate proceedings" is critical. Most U.S. citizens die without a formal estate. In these situations, the decedent's family members benefit from the informal procedures adopted by many states. These informal procedures are faster and less expensive than the formal probate procedures that were more common when Congress enacted the FDCPA more than 40 years ago. CRC believes that the CFPB's proposed changes will assist with the resolution of decedent debts in a more efficient and timely manner.

CRC requests clarification on the NPRM's relationship with the FTC Statement of Policy

CRC believes the Bureau needs to provide greater clarity on the interaction between the Policy Statement and the proposed rules to better serve the representatives of deceased consumers. While the Bureau's analysis and commentary refer to the Policy Statement, it is not clear whether the proposed rules would supersede or merely supplement the Policy Statement. This, in CRC's view, requires clarity.

To facilitate decedent debt collection, § 1006.6(a)(4) should include the term "personal representative"

CRC recommends that the CFPB include the term "personal representative" in § 1006.6(a)(4).

Section 1006.6(a) has five lines that expand and elaborate upon 15 U.S.C § 1692a (3) and 1692c (d). However, § 1006.6(a)(4) only references an "executor" or "administrator" of the consumer's estate for a debt where the consumer is deceased. These are terms primarily associated with formal probate proceedings but do not account for other, less formal methods of administering an estate.

This proposed rule does not align with the Bureau's commentary. The NPRM commentary states that "the proposed rule would interpret the requirement that a debt collector provide the

validation notice to a 'consumer' to require the notice be provided to the person acting on behalf of a deceased consumer's estate, *i.e.*, the executor, administrator, or personal representative of a deceased consumer's estate, who would have the right to dispute the debt."[49]

To align with the NPRM's commentary and assist in the informal probate procedures adopted by many states, CRC recommends that § 1006.6(a)(4) specifically include the term "Personal Representative."

Definition of "personal representative" in § 1006.6(a)(4)–1

CRC agrees with the Bureau that the change in the definition of "personal representative" in the NPRM is non-substantive.

Section 1006.2(e) of the proposed rules defines a consumer as any natural person, living or deceased, obligated or allegedly obligated to pay the debt. For § 1006.6 (communications in connection with debt collection) and § 1006.14(h) (prohibited communication media), the term "consumer" includes the persons described in § 1006.6(a) (see the section above).

Proposed comment 6(a)(4)–1 adapts the general description of the term personal representative from Regulation Z, 12 CFR 1026.11(c), comment 11(c)–1 (persons "authorized to act on behalf of the estate") rather than the general description found in the FTC's Policy Statement (persons with the "authority to pay the decedent's debts from the assets of the decedent's estate.") This change is non-substantive.

Acquisition of location information in the decedent debt context

As noted on page 75 of the NPRM, "the description of the term personal representative also reflects the language that a debt collector may use to acquire location information about the executor, administrator, or personal representative of the deceased consumer's estate, as explained in proposed comment 10(b)(2)–1." CRC suggests that the CFPB further clarify that requests for location information about the executor, administrator, or personal representative not be considered a "communication" in connection with debt collection within the meaning of the FDCPA.

The Bureau should adopt the Policy Statement's "not liable" disclosure

CRC believes that it is important to make sure that the executor, administrator, or personal representative know that they are not personally liable for the decedent debt. The CFPB should reaffirm elements of the Policy Statement on this issue. The purpose of the FTC's "not liable disclosure" (NLD) is to prevent further consumer confusion and deceptive practices in the context

[49] NPRM Preamble, pp 9, 53, 73-75, 216.

of decedent debt by providing upfront transparency to estate representatives who have no legal obligation to pay decedent debts. The NLD helps to reduce confusion and is evidence that debt collectors are not trying to be deceptive. To prevent confusion about liability for estate representatives, the NLD should be adopted.

§ 1006.6(b)(1): Communication with consumers—inconvenient time or place

For electronic messages, the "inconvenient time" analysis should be based on the time the debt collector sends the communication

CRC agrees with the CFPB's finding that the time relevant to whether an electronic communication—such as an email or a text message—is inconvenient should be the time when the debt collector sends the communication, not when the consumer receives or opens the message. CRC also commends the CFPB's recognition of the compliance burden (if not impossibility) that would be placed on debt collectors if this requirement rested on when the consumer receives or reads the communication. As the CFPB states, "[a] debt collector can control the time at which it chooses to send communications, whereas it often would be impossible for a debt collector to determine when a consumer receives or views an electronic communication."[50]

Auto-replies to consumer-initiated electronic messages should be exempt from the inconvenient time and place analysis

CRC recommends the adoption of an exemption for auto-reply messages to consumer-initiated electronic communications in the § 1006.6(b)(1) prohibition against communicating with a consumer at an unusual or inconvenient time.

Auto-replies provide a substantial consumer benefit. Consumers with debts in collection may not understand, or may feel intimidated by, the debt collection process. An auto-reply provides the consumer comfort through confirmation that the debt collector received and will address their message. This is much less daunting than waiting in silence for a substantive response.

While, arguably, an auto-reply to a consumer's message would be considered a convenient time since it would be in response to a message sent by the consumer at a time that is convenient to them, this does not take into account certain network limitations that might cause delays in timing. A consumer's message may be delayed by their network's systems or, for reasons outside of the debt collector's control (*e.g.*, firewalls or antivirus software scans), there may be a delay in the debt collector's system receiving the consumer's message. Consumer peace of mind overpowers the potential delays.

[50] NPRM Preamble, p. 83.

Additionally, generic auto-reply messages—which contain no information about the debt—do not fall under the definition of "communication" under the proposed rules. If needed, CRC recommends the Bureau adopt the following safe harbor language for such messages:

> *Thank you for contacting [debt collector name]. We will review your message.*

Auto-replies from executives and business professionals should be exempt altogether

Sometimes, consumers seek out the email addresses of executives and business professionals within a debt collection agency, such as the Chief Executive Officer, rather than sending messages to the email addresses provided by debt collectors on their letters and websites specifically for consumer communication. Executives and business professionals, who serve in a corporate or business capacity but do not themselves communicate with consumers, may include auto-replies that better fit their roles, such as a vacation away message. While such professionals will typically forward consumer messages to the appropriate incoming correspondence departments within their company, the CFPB should clarify that if a consumer goes beyond the scope of clearly available communications channels, such as emailing the CEO, that any auto-replies from such executives and business professionals be altogether exempt without a need for a specific script.

For these reasons, CRC recommends that the CFPB carve out an exception to the unusual or inconvenient time analysis for auto-replies, with a further exception for the situation outlined in the above paragraph.

§ 1006.6(b)(2): Prohibitions regarding communication with consumers represented by an attorney

CRC recommends the CFPB adopt a similar approach to West Virginia's codified law, where a notice of attorney representation must contain certain information to be effective. West Virginia law requires that a consumer's notice of attorney representation "must clearly state the attorney's name, address, and telephone number and be sent by certified mail, return receipt requested."[51] In order to allow debt collectors to process notices of attorney representation reasonably, CRC recommends that such notices include the information required by West Virginia and also list the account(s) for which the attorney is representing the consumer. The list of accounts will facilitate locating all relevant accounts and avoid issues of potential liability if an account is missed.

[51] W. Va. Code 46A-2-128(e).

§ 1006.6(b)(2)(i): Communicating with consumers when their attorney is not responsive

CRC recommends that the final rule define "reasonable period of time"

One area where the Bureau can provide further clarification is what constitutes a reasonable period of time § 1006.6(b)(2)(i). This section permits a debt collector to contact a consumer if, after an unspecified "reasonable period of time," her attorney has not responded to the debt collector's communication. CRC recommends that § 1006.6(b)(2)(i) clarify that twenty-one days qualifies as this reasonable period of time. Twenty-one days is sufficient to account for an attorney's professional schedule.

Defining a "reasonable period of time" also provides a benefit to consumers. For example, if the consumer's attorney is not responding to a debt collector's communications, it benefits the consumer to know this so she can protect herself. Another example is when a consumer is mistaken about the nature of the attorney's scope of representation. It benefits this consumer in both circumstances to have a clear timeframe within which she can expect to hear from a debt collector if there is an issue with her attorney.

To provide clarity to both consumers and debt collectors, CRC recommends that the CFPB define that a debt collector may contact the consumer if, after twenty-one days of sending a communication to the consumer's attorney, the attorney has not responded.

Proposed language for § 1006.6(b)(2)(i):

> *...unless the attorney:*
>
> *(i) Fails to respond within twenty-one days to a communication from the debt collector;...*

§ 1006.6(d)(3): Reasonable procedures for email and text messages to prevent third-party disclosure

CRC commends the Bureau on its vision demonstrated by the proposed rule addressing reasonable procedures for email and text messages to avoid third-party disclosures.[52] The proposed rule recognizes the overwhelming consumer preference for electronic communications by defining the steps and safeguards necessary for a debt collector to communicate via email, text, and other direct messaging technology.[53] The proposed rule correctly provides those debt collectors following the prescribed stringent communication requirements will be afforded

[52] § 1006.6(d)(3).

[53] CRC supports inclusion of direct messaging technology within the definition of email. *CNR* page 99.

protection under Section 813(c).[54] CRC supports fully honoring consumer preferences for communications and the *bona fide* error protections for compliant debt collectors.

If certain language in § 1006.6(d)(3) is not clarified, endless consumer litigation will prevent debt collectors from using electronic communications

CRC recommends several adjustments to the language in § 1006.6(d)(3); otherwise, the noble intent of this rule—seeking to provide a clear path for honoring consumer preference for electronic communications—will be lost amid a blizzard of litigation[55]. CRC's four recommendations follow.

1. The proposed rule must reasonably allow for communications via a consumer's work phone number or work email with clear and simple limitations and opt-out provisions.[56]
2. The phrase "email address or . . . telephone number that the consumer recently used" in § 1006.6(d)(3)(i)(A) and § 1006(d)(3)(i)(C) must be adequately defined and CRC supports "recently"[57] to mean "contact with the consumer within the past year." CRC proposes that the one-year time frame be considered a safe harbor. Debt collectors likely will have no way of knowing the last date on which a consumer had used the email address or telephone number and the creditors do not have any means of tracking that information in a way that can be easily communicated with debt collectors. Thus, in the context of third-party disclosure risk, agencies should be permitted to use any email address or phone number used by the consumer regardless of the timeframe but should be given safe harbor if used at least within the previous year.
3. Section 1006.6(d)(3)(i)(B)(1) is inconsistent with § 1006.42, which allows the use of email to send a validation notice. Section 6(d)(3)(i)(B)(1), which intends to prevent third-party disclosure, requires that the debt collector or creditor provide the opt-out notice "***no more than 30 days*** before the debtor collector's first such communication." (Emphasis added.) This presumably means that a debt collector cannot combine the opt-out notice with the validation notice since the debt collector ***would need to send the first electronic communication during the validation period***. If the debt collector combines the opt-out notice with the validation notice, it would require the consumer to opt-out before the expiration of the validation period. This cannot be what the Bureau intended. CRC

[54] *Id.*
[55] Fear of such lawsuits will have a chilling effect on debt collectors who might otherwise use these communication channels, similar to what occurred with the limited-content message. *See* discussion of § 1006.2(j), *supra*.
[56] *See* discussion of § 1006.22(f), *infra*.
[57] NPRM Preamble, p. 103.

recommends amending this section to provide a safe harbor from third-party disclosure if the debt collector sends the opt-out notice to the consumer no more than 180 days before the first electronic communication. But, more strongly, CRC recommends that the final rule permits a debt collector to communicate with the consumer through any medium that she provided to the creditor, regardless of the last communication.

4. Section 1006.6(d)(3)(i)(B)(1) also requires that the opt-out notice provide a "reasonable period" for the consumer to opt-out. CRC requests that the Bureau clarify a "reasonable period" for a consumer to opt-out of electronic communications under this section as ten days, similar to the CAN SPAM Act opt out.

The Bureau answered the demand of American consumers for freedom of choice regarding communications options. While § 1006.6(d)(3) makes great strides to facilitate electronic communication among consumers and debt collectors, without the clarifications and modifications discussed above, this section will become a "litigation trap" for debt collectors—ultimately preventing any meaningful electronic communication with consumers.

§ 1006.6(e): Opt-out notice for electronic communications

Opt-out provisions promote consumer communication preferences

CRC generally agrees with the CFPB's direction regarding an opt-out notice to electronic communications, but certain issues need to be clarified.

The proposed rule requires debt collectors who use electronic communication channels to include a "clear and conspicuous statement describing one or more ways the consumer can opt-out of further electronic communications or attempts to communicate by the debt collector to that [email] address or [in the context of text messages] telephone number."[58]

While CRC strongly encourages communication between consumers and debt collectors because it is beneficial for consumers, CRC also believes in honoring consumer communication preferences. Some consumers may prefer electronic forms of communication, but CRC understands that other consumers may prefer more traditional channels. An opt-out provision allows a consumer to provide his preference to the debt collector, who can then begin communicating with the consumer through his preferred channel.

CRC agrees with the CFPB that an opt-out (versus an opt-in) provision is the best avenue forward. It creates a simple, low-cost, and efficient method for consumers to stop any unwanted electronic

[58] § 1006.6(e).

messages, while also allowing debt collectors to initiate communications through electronic channels without significant hurdles. The New York Department of Financial Services' opt-in email consent standards[59], for example, present unrealistic requirements and insurmountable barriers for electronic communications and effectively prevent debt collection communication with a consumer via email even if email is the consumer's preferred method of communication.

CRC also commends the CFPB for being forward-thinking. While text messages and emails are the subjects of this conversation, electronic communications will continue to evolve. The Bureau's acknowledgment of this and making these requirements applicable to other yet-to-be-established communication methods will prevent future confusion.

There are, however, specific scenarios that require clarification by the CFPB in either the final rule or the commentary in Appendix C to the final rule regarding the practical impacts of § 1006.6(e). Each is described below in detail.

CRC recommends that the CFPB provide a safe harbor script and format for the opt-out disclosure

To prevent any ambiguity on what is and is not allowed in an opt-out disclosure, CRC recommends that the Bureau provides safe harbor language and format requirements for the opt-out disclosure—including, if necessary, a list of specific terms that imply the consumer wants to opt-out.

The CFPB provides a list of words, such as "stop," "unsubscribe," "end," "quit," and "cancel" as potential words to delineate the consumer's desire to opt-out of electronic communications through that specific channel.[60] CRC agrees with this list of terms and recommends the Bureau adopt them in its final rule or Appendix C. Clear guidance or examples from the CFPB assist in providing debt collectors clarity on compliance expectations.

CRC recommends that the Bureau's final rule includes safe harbor language and format for the opt-out message itself. Section 1006.6(e) requires that the opt-out disclosure be "clear and conspicuous." Specifying the content and format of this disclosure would prevent any questions that may arise in compliance with this section. Consumers would benefit from a uniform opt-out disclosure as it would be the same regardless of which debt collector contacted them, reducing the chances of confusion. Safe harbor language helps debt collectors focus on initiatives and compliance issues that benefit consumers, rather than hypertechnical claims that cause consumers more harm than good.

[59] *See* 23 NYCRR § 1.6.
[60] NPRM Preamble, p. 116.

While space is not an issue in an email, text messages have character limits. For this reason, CRC recommends a short safe harbor opt-out notice that states:

> *"To opt-out of [texts/emails/msgs], reply STOP."* [61]

Or, in the alternative, where the consumer can click a hyperlink to effectuate the opt-out:

> *"To opt-out of [texts/emails/msgs], click here."*[62]

Consumers with multiple accounts placed with one debt collector

Debt collectors commonly have more than one account for a particular consumer in their active inventory. The opt-out provision of § 1006.6(e)—in either the final rule or in the commentary in Appendix C—should clarify how a consumer's election to opt-out impacts other accounts in the debt collector's inventory.

CRC recommends that the election to opt-out of communications only apply to the account in question. CRC proposes the following at the end of § 1006.6(e):

> *"A debt collector who receives an opt-out from a consumer in response to a communication about a particular account may apply that opt-out only to that account."*

The CFPB should provide a safe harbor for a reasonable time period to process opt-out requests

Per the discussion regarding reasonable processing time, *supra*, and to mirror the ten business day processing time for unsubscribe requests in the CAN-SPAM Act, CRC recommends that the Bureau applies a similar ten-business-day processing time for § 1006.6(e).

The CFPB should clarify that an opt-out request is distinct from a cease and desist request

One concern noted by CRC is the potential for consumer confusion between an opt-out request, as addressed in § 1006.6(e), and a request for the debt collector to cease and desist collection efforts under § 1006.6(c). CRC recommends that the Bureau clarifies—in either the final rule or in the commentary in Appendix C—that the opt-out request is *not* a cease and desist request. In other words, even though the debt collector must comply with the opt-out request and not send any more messages through that specific medium,[63] this does not preclude the debt collector from contacting the consumer through other permitted communication channels.

[61] A debt collector may choose the appropriate selection from the bracketed text depending on the type of message sent.
[62] "Click here" being the hyperlink.
[63] Save for the limited exceptions delineated in § 1006.14(h)(2).

Replies to Opt-Out Requests

Upon receipt of an opt-out request, the CFPB should permit a debt collector to send a single reply message acknowledging receipt of the opt-out—as allowed in proposed § 1006.14(h)(1)—and advise the consumer that this applies to the specific communication channel only. This benefits consumers by ensuring they understand that collection activities may continue. CRC requests the adoption of the following as a safe harbor reply to an opt-out message to prevent confusion for the consumer about the impact of their opt-out request:

> *"We received your opt-out message. You will not receive any further [text/email/msgs] from us for this account. Other forms of communication may continue."*

Clarifying the CFPB's misconception about the cost of electronic communications

CRC is compelled to clear up a misconception repeated throughout the NPRM that electronic communications are "essentially costless" to debt collectors.[64] While it is true that electronic communications can cost less per communication than traditional methods of mailing letters to consumers via the post, the statement that such cost is "essentially costless" is not accurate and ignores the compliance burden of sending electronic communications.

The CFPB states that it currently costs roughly $0.50 to $0.80 to print and mail a letter. While emailing a letter takes away the cost of printing and postage, CRC members report that it costs between $0.05 to $0.12 for a debt collector to send an email to a consumer and $0.09 to $0.14 to send a text message. In the aggregate, this adds up to a significant number.

The simple transmission fee for the email or text message is not where the costs to debt collectors end. The compliance burden and technology costs to implement and monitor these newly-viable communication technologies—which were previously effectively unavailable due to legal uncertainty—are significant. It can take hundreds of hours in resources and substantial financial investments to develop a compliant and workable electronic communication strategy and platform. This is not as simple as opening the email platform on a desktop and sending a message.

CRC appreciates and agrees with the CFPB on the underlying intent of this section: that giving consumers a clear and conspicuous method to opt-out of electronic messages supports not imposing contact frequency limits on electronic messages. While there may be cost savings, the most significant advantage of alternative communication channels is the ability to honor the consumers' preferences.

[64] *See., e.g.,* NPRM Preamble, pp. 112-13, 18.

§ 1006.10: Acquisition of location information in the case of decedent debt

In the context of decedent debt, CRC recommends that debt collectors be permitted to continue using language outlined by the FTC's Policy Statement[65] when locating someone with authority to handle the decedent's affairs.

The commentary to the proposed rules questions the wording of the FTC's current guidance on acquiring location information regarding decedent debt.[66] The FTC's language permits debt collectors to ask for someone "with the authority to pay any outstanding bills of the decedent out of the decedent's estate." The commentary suggests simplifying this language, allowing debt collectors to ask for someone "who is authorized to act on behalf of the deceased consumer's estate." The preamble to Part 8 of the Uniform Probate Code proposed by the National Conference of Commissioners on Uniform State Laws and last amended in 2006, succinctly states the difficulties facing creditors in the collection of deceased accounts: "The need for uniformity of law regarding creditors' claims against estates is especially strong. Commercial and consumer credit depends upon efficient collection procedures." Less than half of the states have adopted any version of UPC, and there are multiple definitions of "personal representative" in the various state laws.

Collection of deceased accounts is a unique subset in the accounts receivable industry and requires specialization to provide the most professional and compassionate approach to consumers who have suffered the loss of a loved one. The Bureau performed a praiseworthy service in listening to consumers and collectors in addressing the collection of accounts where the consumer is deceased. However, simplifying the FTC language may raise more questions than first considered. While the FTC's language is convoluted and perhaps a bit awkward, it avoids consumers puzzlement over "what do you mean by 'act'?"

Consumers who have suffered the loss of a loved one appreciate the assistance a debt collector can provide in resolving the affairs of the deceased. The FTC's language makes clear that the executor, administrator, or person handling the outstanding affairs is not personally liable (payment is from the estate).[67] It also recognizes that there is an informal process of estate administration in many jurisdictions. In this regard, CRC also supports the proposed comment 6(a)(4) which clarifies the definition of "consumer" in 805(d) of the FDCPA to include the "personal representative of the deceased consumer's estate." This clarification benefits consumers because it allows families to timely and economically close estates of loved ones.

[65] *See* discussion on decedent debt in the discussion of § 1006.6, *infra*.
[66] NPRM Preamble, p. 122.
[67] See discussion on the FTC's NLD in discussion of § 1006.6, *infra*.

Most estates are handled informally through abbreviated or extrajudicial processes that do not involve the appointment of an "executor" or "administrator."

While the FTC's guidance and this section are similar in intent, the language used in this section may lead to consumer confusion despite its attempt at simplifying these concepts for the consumer. Since 2011, the FTC language has been successfully employed with few complaints by or dissatisfaction from consumers and their attorneys. "Outstanding bills" avoids reference to debt (especially since many of the deceased were current at the time of passing) and yet it lets the personal representative understand what the call is about. Coupled with the NLD, the personal representative has transparency about the purpose of the call and liability. This transparency benefits consumers.

The process of resolving the debts of deceased consumers presents a unique collection environment that the Bureau has thoughtfully addressed. We have proposed minor tweaks to those rules which will benefit Americans who take on the responsibility of finalizing the affairs of the deceased.

§ 1006.14(b)(1) and (2): Contact frequency limitations

On November 4, 2016, in response to the Outline of Proposals Under Consideration distributed in advance of the debt collection SBREFA panel, CRC advocated for a "bright line" rule of two call attempts per day. CRC's position on this issue evolved since then due to the substantial consumer resistance to the currently-proposed contact frequency limits and the impossibility in determining the appropriate number of contact attempts to take into consideration for all debt situations. CRC greatly appreciates the wisdom of Congress in creating the present law with its focus on intent and thus opposes any call frequency limitations.

The NPRM seeks to limit debt collection call attempts to seven per week with one contact allowed per week.[68] CRC opposes this "bright-line" limitation on the number of telephone attempts and contacts a debt collector may have with a consumer. Such call limitation is contrary to the clear language of 15 U.S.C. § 1692d(5), which requires a finding of an "***intent*** to annoy, abuse, or harass any person at the called number" to establish a violation of this section. Equating solely the ***number*** of contact attempts of the debt collector with the ***intent*** of the debt collector is arbitrary and imprecise.[69] The number of calls does not reflect the debt collectors' intent.[70] Further,

[68] § 1006.14.

[69] A debt collector could contact a consumer a single time with an intent to annoy, abuse or harass or a debt collector could seek to contact a consumer repeatedly with a benign (or even benevolent) intent.

[70] If the rule is set at a cap of 7 calls per week, nothing stops an unscrupulous debt collector from safely calling the consumer 7 times in one day – perhaps making all 7 calls in succession. Such debt collector would clearly be "intending" to harass the consumer into paying the underlying obligation, but under the rules set forth, would be free from liability.

neither §1031(c) of the Dodd-Frank Act nor the *Consumer Experiences with Debt Collection Survey* ("Consumer Survey") provide any legal bridge to span the gap between the plain statutory language of § 1692d(5) and the proposed limitation on telephone contacts in § 1006.14 of the NPRM.

The contact frequency limitations contradict 15 U.S.C. § 1692d(5)

When Congress created the FDCPA, it carefully crafted 15 U.S.C. § 1692d(5) to curb consumer harm arising from frequent and abusive debt collection calls. Congress wrote this section to focus on the ***intent*** of the caller, rather than focus on some randomly selected number of calls per day or week. Thus Congress intended that a trier of fact would critically examine a variety of factors on a case-by-case basis to determine whether the debt collector violated the law.[71]

The proposed rules seek to combine a loose interpretation of § 1031(c) of the Dodd-Frank Act[72] and a vague statement asserting collection calls have been a "widespread consumer protection problem" for "40 years"[73] to provide legal justification for the proposed contact frequency limitations proposed in § 1006.14. However, neither the Dodd-Frank Act nor vague generalizations of "40 years" of consumer harm authorize any entity other than Congress to change the plain language of the 15 U.S.C. § 1692d(5). Further, the Congressional grant of debt collection rulemaking authority did not constitute permission to promulgate contact frequency limitations.[74] Congress did not (and cannot) authorize any Agency to change the plain language of 15 U.S.C. § 1692d(5). Accordingly, the proposed contact frequency limitations of § 1006.14 must be rejected.

Congress carefully considered—and REJECTED—call frequency limits

The concept of call frequency limitations is not a new construct born of the internet era. On April 4, 1977, the United States House of Representatives considered an early version of the "Debt Collection Practice Act"[75] (H.R. 5294) which was introduced by Representative Frank Annunzio from Illinois, who stated: "While this legislation will protect consumers, it will not put any unnecessary burdens on reputable debt collectors."[76]

[71] *See* discussion *infra* of factors considered by recent Courts in assessing whether a debt collector violated § 1692d(5).
[72] NPRM Preamble, p. 130.
[73] *Id*. at p. 133.
[74] *Ibid.*
[75] Later in 1977, the name of the bill changed to the "Fair Debt Collection Practices Act".
[76] *Congressional Record–House*, April 4, 1977 (Page 10241).

Representative Annunzio specifically described the call frequency limitations in H.R. 5294, saying:

> Contact with the consumer generally is limited only to two actual contacts a week in which the consumer states his present intentions as to payment. In other words, a letter or a message left by phone would not count toward this limit.
>
> At work, contact may be made up to three times each month.[77]

In response, Representative Richard White from Texas stated:

> . . . I do not know how in this bill we are going to circumvent the freedom of speech article, the guarantee that a person can talk to whomever he wishes. In this bill the provisions prohibit a person under penalty from talking to someone. This is in violation of the Constitutional provisions contained in Article 1 of the Bill of Rights.[78]

Representative Steven Symms from Idaho and Representative Charles Wiggins from California shared this exchange about the call frequency limitations in H.R. 5294:

> Mr. Symms: . . . It may be now that the people that owe money may be able to set up an entrapment process to entrap people legitimately trying to collect. Would they make a big game out of it?
>
> Mr. Wiggins: It would be possible for an unscrupulous debtor to use the privileges of this act to fashion a Federal court remedy against the collector for contacting him four times a week, rather than three times a week, for example.[79]

After careful consideration, Congress rejected any contact frequency limitations in the final version of the FDCPA, instead opting for a law focused on the intent of the caller in Section 1692d(5). Further, Congress specifically identified Constitutional prohibitions regarding limitations on free speech and concerns about false claims during its debates on the contact frequency proposal. Since Congress carefully considered and rejected contact frequency restrictions when enacting the FDCPA, any such restrictions by the Bureau in the rule-making

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[77] *Id.* at 10242

[78] *Id.* at 10248. Representative White also stated presciently: "On page 16 the gentleman is creating an entire new liability under the law which would bring about a mass of new litigation that I think is going to further overburden the courts." *Id.* at 10248.

[79] *Id.* at 10253.

context would be subject to justified and problematic challenges to enforceability under *Chevron* and its progeny.

The consumer survey improperly conflates all consumer contacts as "debt collection telephone calls"

Between December 2014 and March 2015, the Bureau conducted a Consumer Survey regarding debt collection. The proposed rules seek to rely upon the Consumer Survey results to support the contact frequency limitations proposed in § 1006.14. The Consumer Survey sought limited responses about consumer feelings and opinions regarding collection efforts by creditors and debt collectors. This Consumer Survey is fundamentally flawed, however, because it improperly aggregates the consumer experience data regarding creditors, first-party collectors, and third-party debt collectors. The proclamation in the comments to the proposed rules that there have been "100,000 complaints about repeated debt collection telephone calls"[80] is qualified by a lengthy footnote stating that number actually "reflects complaints about all persons collecting debt, including creditors and other first-party collectors in addition to debt collectors covered by the FDCPA."[81] This footnote continues:

> For complaints submitted to the Bureau, complaint data reflects the number of complaints that consumers self-identified as being primarily about frequent or repeated debt collection communications (consumers must choose only one topic when filing their complaints). The Bureau has not attempted to identify the specific number of communications-related consumer complaints that it has received because many complaints that consumers self-identify as being primarily about a different issue also may include concerns about a debt collector's communication practices.

Here the comments acknowledge relying upon data regarding "all persons collecting debt, including creditors and first-party collectors" to promulgate rules regarding debt collectors only. Since creditors and first-party collectors are typically not subject to the FDCPA or the many jurisdictional-specific debt collection rules, the contact frequency complaints about creditors and first-party collectors have no relevance to practices of third-party debt collectors.[82] Further, the Bureau admits that it "has not attempted to identify the specific number of communications-related consumer complaints . . ."[83] The data has not been audited or verified to ascertain if the

[80] *Id*. at p. 132.
[81] *Id*. at p. 132, fn. 132.
[82] *NPRM Preamble, p. 113, fn 284.*
[83] *Id*. at fn. 132.

perceived complaints are legitimate. Due to the nature of debt collection calls, it is expected that those surveyed would complain about being contacted even if the debt collector in question acted reasonably and fully within the bounds of the law.

Proposed rules that rely upon data that is admittedly both overly-broad (because it includes data regarding creditors and first-party collectors) and incomplete (because no attempt was made to identify the specific number of communications-related consumer complaints) are certainly arbitrary and lacking sufficient factual basis.

The consumer survey is structurally flawed

The Consumer Survey contains other structural flaws:

1. Only roughly 20% of the consumers queried responded to the survey.[84]
2. The survey results were "weighted" to "account for both the differential sampling and the differential nonresponse."[85]
3. Contrary to standard and accepted consumer survey methodology, the Consumer Survey ". . . does not present standard errors or statements about the statistical significance of the differences."[86]
4. The consumer survey admittedly did not correctly define terms such as "dispute."[87]
5. Some consumers admittedly completely misunderstood some of the questions in the survey.[88]
6. The survey does not include actual data, but rather "estimates" regarding call frequency to consumers.[89]
7. The survey was conducted more than four years ago and is outdated, especially as consumers continue to adopt different contact methods, apps (including call blocking apps, discussed *infra*) and devices as preferred methods of communication.

[84] *Consumer Experiences with Debt Collection,* CFPB*,* p. 11.
[85] *Ibid*.
[86] *Id*. at 12.
[87] *Id*. at 24 ("The survey did not specifically define disputes and instead noted that '[p]eople may dispute a debt by telling the creditor or debt collector, for example, that the debt is not theirs, that the amount is wrong, or that something else about the debt is incorrect.' Given this, consumers' perspectives on whether they had disputed a debt may differ from the definition of dispute used by a given creditor or collector or what may constitute disputes pursuant to the FCRA and FDCPA.").
[88] *Id*. at 46, fn 34.
[89] *Id*. at 32, 34, 44-46.

These structural flaws with the Consumer Survey render it meaningless and irrelevant as a source of data to support the proposed contact frequency limits in § 1006.14.

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.[90]

Further, recent decisions by the Courts demonstrate that a "bright-line rule" regarding the number of contacts per day or week is not nearly nuanced enough to evidence even a presumption of intent.[91]

The proposed contact frequency limitations are impossible to implement

Proposed comment 14(b)(2)(i)–2 would clarify that telephone calls placed to the wrong number do not count towards the frequency limit in proposed § 1006.14(b)(2)(i).[92] This proposed comment further demonstrates why the contact frequency limitations are impossible to calculate. Debt collectors receive potential contact information for a consumer from a variety of sources, including the creditor. In some circumstances, creditor-provided information is outdated and information obtained from third-party resources is not authenticated, thus the debt collector has no way of knowing if a number is related to the consumer until contact occurs. A debt collector could make numerous calls to a wrong number before someone answers and advises the debt collector that it is a wrong number. Adding an exception for "wrong number" calls provides no benefit because it presumes that the debt collector will know which calls were placed to a wrong number—this is information the debt collector simply does not possess.

Multiple consumer phone numbers render the proposed rule unworkable

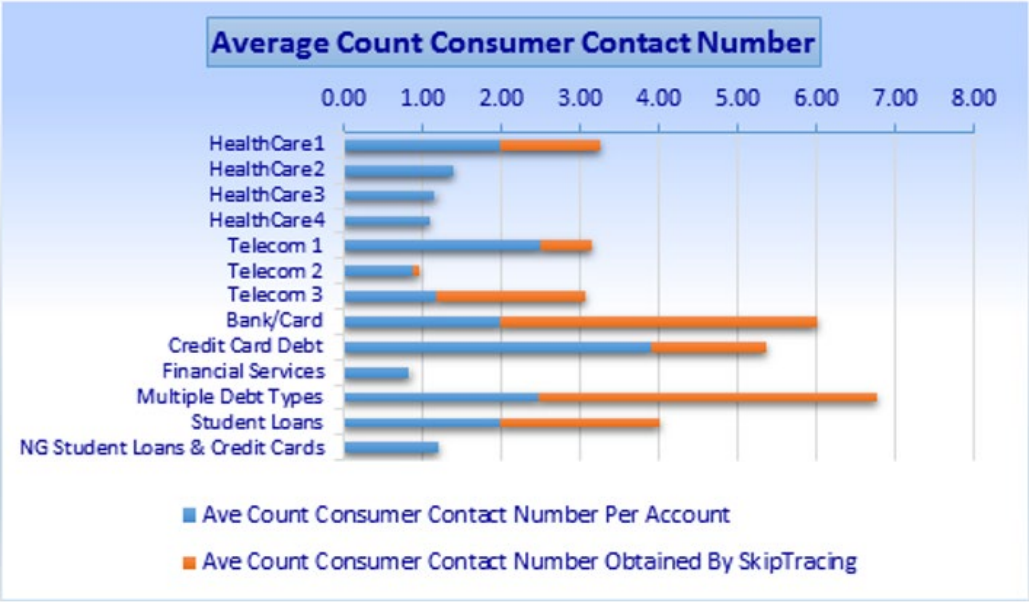
The proposed rule fails to fully account for the multiple phone numbers a debt collector may possess for each account placed. A study of CRC members from 2016 ("CRC study") found that accounts placed for collection for some debt categories contained on average **more than six**

[90] *See Bridge v. Ocwen Fed. Bank,* 681 F.3d 355 (6th Cir 2012).

[91] *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).

[92] NPRM Preamble, p. 141.

phone numbers, with seven debt types containing on average more than three phone numbers per account.



Nearly half of all debt collection calls are at risk of improper call-blocking

Debt collectors have no way of knowing which outbound communication attempts have been blocked—often without the knowledge of the consumer—and never received by anyone. A study in 2019 found that ***an astounding 45% of outbound telephone calls*** by five legally compliant larger market participant debt collection companies ***were at risk of improper call labeling and call blocking***.[93] It is impossible for a debt collector to "count" contact attempts as is suggested by the proposed rules in § 1006.14 when nearly half of the outbound phone attempts are at risk of being blocked without the knowledge of either the debt collector or the consumer.

Further, if a debt collector contacts a consumer who refuses to verify her identity, the debt collector will not know if they have reached the consumer. Must the debt collector wait another week before making another call attempt under § 1006.14?

With the call frequency limitations in § 1006.14, it could take weeks or months for a debt collector to determine the correct phone number for the consumer. This would be done through trial and error at multiple numbers, during which time negative credit reporting and commencement of legal action against a consumer who is willing to pay or otherwise resolve their account but is unreachable due to the weekly call limitations.

[93] *The Perception of Collections Industry Phone Numbers Across the Call Blocking and Labeling Ecosystem*, Numeracle July 2019.

A "one-size-fits-all" approach to contact limitations harms consumers

The CRC study shows that there is little uniformity among debt types regarding the quantity of possible consumer phone numbers for each account and the quantity of incorrect phone numbers for each account. Thus, a "one-size fits all" approach to mandating contact limits by debt collectors will result in uneven contact distribution among debt types and untold consumer harm.

For instance, the Department of Education allows Federal Education loan borrowers to rehabilitate defaulted loans by making affordable payments over ten months along with submission of financial documentation. Payments can be as small as $5 per month. A completed rehabilitation plan removes the loan from defaulted status and may also remove previous negative information from the consumer's credit bureau report. Also, federal programs provide for the discharge of student loan indebtedness based, for example, on disability or "false certification" of educational program qualifications by the college. Borrowers who may be eligible for these programs often are unaware of these options until the debt collector can reach them. Conversely, failure to resolve defaulted federal student loan debt has serious negative consequences, including triggering administrative wage garnishment, offset of federal income tax refunds, or litigation. This makes it imperative for consumers owing federal student loans to communicate with their debt collectors as soon as practical.

The CRC study demonstrates that student loan accounts contain on average four possible phone numbers. With only seven contact attempts allowed under § 1006.14, the proposed rule creates significant risk of depriving consumers of participation in beneficial government programs designed for student loan borrowers because the consumers were unaware of the program.

Conclusion

CRC opposes any bright-line contact frequency limitation as unsupported by the law. CRC further opposes such limitations due to the substantial consumer harm that will befall consumers if the Bureau implements § 1006.14.

§ 1006.18: False, deceptive, or misleading representations or means regarding decedent debt

Clarifications between "you" and "estate" in disclosures and forms

In circumstances where the Bureau proposes the use of the term "you" in any oral or written disclosures or forms, the Bureau should explicitly allow the use of the term "estate" when the communication or form is utilized in the collection of a debt of a deceased consumer. This will

avoid confusion between the terms "you" and "estate" when discussing a deceased account and the estate's rights.

Communications involving the collection of a decedent debt generally do not refer to the "bill *you* owe," "*your* bill," "*you* were charged," or "*you* paid" because in certain contexts decedent debt is not the estate representative's debt. Nor is the estate representative liable for the decedent debt. Using phrases such as "bill the *estate* owes," or "the *estate's* bill" draws a more apparent distinction between ownership and liability of decedent debt rather than using "you" as the pronoun. It further avoids misleading an estate representative into believing they are personally responsible for the payment of the debt when they are not.

While proposed § 1006.18 sufficiently protects individuals who communicate with debt collectors regarding decedent debt, CRC recommends the incorporation of the FTC's NLD

The general prohibition against false, deceptive, or misleading representations in proposed § 1006.18(e) is sufficient to protect individuals who communicate with debt collectors about deceased debts.

However, the CRC recommends requiring the NLD[94] as outlined in the Federal Trade Commission's Statement of Policy Regarding Communications in Connection With the Collection of Decedents' Debts or a variation of it. Most reputable debt collectors who collect decedent debt already include the following language or some variation thereof in both oral and written communications with estate representatives: (1) disclosing that payments are sought from the decedent's estate and (2) parties handling an estate are not personally liable for a decedent's debts. Requiring this type of disclosure would also put players in the industry on a level playing field and further protect estate representatives from being misled into thinking they are liable for decedent debt.

CRC requests the addition of the FTC's NLD for decedent accounts

Without a clear disclosure outlining liability in the decedent debt context, estate representatives can easily be confused about whether or not they are personally liable for the debt. There are certain situations—such as shared accounts—where the estate representative may also be personally liable for the debt, but in many situations she is not. Estates and probate are complicated processes, and most people are not expected to be experts. Providing debt collectors with tools to clarify the process for estate representatives benefits everyone involved. One such tool is the FTC's NLD.

[94] See previous discussion on the FTC's NLD in section 1006.6, *infra*.

Debt collectors and consumers alike want upfront transparency on who is liable for what debt. Through the NLD, debt collectors can educate estate representatives about liability. The disclosure may not eliminate all confusion regarding liability, but the inclusion of such language should be evidence debt collectors are not trying to be deceptive.

Further, if the CFPB requires an NLD in its final rules, that disclosure should be excluded from the following "communication" scenarios:

> (1) attorney representation in both probate and non-probate contexts—attorneys know they are not liable for debts of others,
>
> (2) acquiring location information (not a communication), and
>
> (3) subsequent communications after payment has been posted to the account and closed the account (*i.e.*, Satisfaction and Release of Claims, Withdrawal of Claims, SIF/PIF letter). Including any "not liable" language in these specific letters can cause confusion. If a remaining balance is left, the estate representatives may think the collector or creditor will seek the remaining balance.

§ 1006.22(f)(3): Restrictions on the use of work email addresses and social media

Consent to communicate through a consumer's work email address should pass from the creditor to the debt collector

CRC recommends that the final rule allow debt collectors to send communications to a consumer's work email address if the consumer previously provided and consented to the use of that work email address to the creditor.

The proposed rule prohibits debt collectors from using a work email address unless the debt collector itself received consent from the consumer to use that work email address.[95] The proposed rule makes no carve-outs for work email addresses provided to the creditor. Instead, the NPRM preamble suggests that a creditor's use of a work email address is somehow more acceptable than a debt collector's use of that same email address. CRC disagrees with this suggestion.

Consumer consent and communication preference is of paramount importance to a debt collector seeking to contact a consumer to resolve issues and keep the consumer notified of changes to their account. A consumer who consents to specific communication channels with the creditor ordinarily expects future communications to continue in the same manner. Disrupting

[95] § 1006.22(f)(3).

the consumer's communication expectations inconveniences the consumer and presents an opportunity for easily-avoidable harm.

A sudden change in communication method creates a sense of distrust and apprehension about the communication from the debt collector. The change increases the likelihood that the communication from the debt collector may not be received or recognized as an important communication, particularly where the non-descript envelopes debt collectors must use could be confused with junk mail. This decreases the likelihood of a consumer resolving their account before further adverse consequences occur, such as credit reporting, litigation, and garnishment.

It is common knowledge—and often addressed by employers when onboarding new employees—that employers may monitor work email. By providing her work email address to the creditor, the consumer already acknowledged and assessed the risk of possible disclosure to the employer and waived that risk. There is no reason to go against the consumer's preference and cause a sudden change in communication method simply because the account transitions from first-party to third-party collection.

An email from a third-party debt collector presents no greater risk than a delinquency message sent to the same work email address directly by the creditor. If the consumer no longer wishes to receive messages to that particular work email address, the ability to opt-out will be readily available. The rule should make clear that consent captured and maintained by creditors should transfer to debt collectors servicing the particular account, similar to the FCC's 2008 Opinion finding that consent to call a wireless number via an autodialer or pre-recorded message under the Telephone Consumer Protection Act transfers to debt collectors from the creditor. [96]

Work email should employ a "knows" rather than "should know" standard

Section 1006.22(f)(3) must be limited to only those instances where the debt collector has actual knowledge that an email address is a work address and that the employer prohibits such email. The proposed rule states that a debt collector must not communicate or attempt to communicate with a consumer "using an email address that the debt collector knows or should know is provided to the consumer by the consumer's employer, unless…"[97]

There is no practical way to for a debt collector to know whether an email address is for the consumer's place of employment. The "should know" standard currently proposed in the NPRM causes significant concern due to the unlimited variety of URLs that may or may not be for a place of employment. A consumer can easily establish her own unique URL, which may appear as a

[96] *See In the Matter of Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991*, 23 F.C.C. Rcd. 559 (2008).
[97] § 1006.22(f)(3).

work-related URL at first glance. Likewise, many businesses have adopted URLs that give no particular insight that they are for a business. There is no directory available against which a debt collector can scrub email addresses to remove those that are for a place of employment. Given the large number of and variability in email addresses, it is impossible for debt collectors to comply with a "should know" standard in this respect. To meet the proposed rule's "should know" standard, debt collectors would need to assign employees to sift through long lists of email addresses in an attempt to figure out if something seems like it ***might*** be a work email address. This would require cost-prohibitive compliance and operational burdens.

Additionally, this ambiguity could result in non-work email addresses being swept up with work email addresses due to the fear of non-compliance and endless litigation. In this situation, consumers who would otherwise expect to receive communications via email—since the address they provided was not work-related—would have their communication preferences needlessly rejected.

The Bureau should eliminate the words "or should know" from the section and instead state that the section applies once the debt collector "knows" the e-mail address is work-related.

The Bureau should clarify the definition of "social media" in § 1006.22(f)(4)

The Bureau needs to explain what is acceptable for social media and what constitutes a private message on a social media platform.

Section 1006.22(f)(4) prohibits debt collectors from communicating or attempting to communicate with a consumer in connection with the collection of a debt "by a social media platform that is viewable by a person other than the persons described in § 1006.6(d)(1)(i) through (vi)."

CRC agrees with the CFPB that debt collectors should not communicate with consumers through public-facing social media[98] and instead should be limited to non-public social media channels. However, more clarity is needed. Given the variability and consistent evolution of social media, it is hard to predict how a debt collector will know whether a type of communication is private or viewable by third-parties.

The industry does not widely use this type of technology currently, but it might look to explore this in the future. Recent consumer preference data shows that the vast majority of consumers have active social media accounts and desire to use them in more ways than just social interaction. For example, internationally, WeChat (China/Asia countries) and WhatsApp (multiple countries) are not only used for social interaction but also for paying merchants and transferring

money to friends or family. Facebook owns WhatsApp and has plans to utilize this type of new financial capability in the future within the United States. It is important that the Bureau establishes guardrails and clarifications to meet the demands and requests of consumers, and further, to ensure their privacy concerns are protected.

However, the proposed rule's prohibition on sending messages via a social media platform that is viewable by third-parties is overly vague. There is also no accepted definition of "social media," as that particular industry is constantly evolving. It is therefore unclear how a debt collector knows which modes of communications this particular section encompasses.

Further, the Bureau needs to define "social media." The industry needs to understand when and to which communications this particular section applies. The overarching concerns to be addressed should be consumer preference and avoiding unnecessary third-party disclosure. What is relevant is the commonly understood purpose of the communication method within the platform.

§ 1006.30(a): Communication prior to furnishing data

State statutes provide examples of clear notice requirements

CRC recognizes the CFPB's effort with this proposed section, which utilizes an approach similar to the requirements set forth by the State of Colorado.[99] Other states, such as California[100] and Utah[101], have also codified their stance on credit reporting collection accounts.

As currently written, proposed § 1006.30(a) is vague compared to the state statutes referenced above. The state statutes clearly provide for a timeframe of when the notice must be sent (prior to or within thirty days of furnishing data) and specific provisions for how the notice must be delivered (to the last-known address of the consumer). CRC recommends that the CFPB similarly clarify the notice requirements as stated in the following.

[99] *See* Colo. Rev Stat § 12-14-108 (2016), which prohibits debt collectors from furnishing data "earlier than thirty days after the initial communication to the consumer has been mailed, unless the consumer's last known-address is known to be invalid."

[100] *See* Cal. Civ. Code, §§ 1785.25-1785.26, requiring a creditor to provide notice in writing prior to or within thirty days of furnishing data to the credit bureaus. The safe harbor notice language provided by the State of California is as follows: "As required by law, you are hereby notified that a negative credit report reflecting on your credit record may be submitted to a credit reporting agency if you fail to fulfill the terms of your credit obligations."

[101] Utah Code § 70C-7-107, like the Cal. Civ. Code section above, requires a creditor to provide written notice prior to or within thirty days of furnishing data to the credit bureaus. The Utah safe harbor language for this notice is: "As required by Utah law, you are hereby notified that a negative credit report reflect on your credit record may be submitted to a credit reporting agency if you fail to fulfill the terms of your credit obligations."

§ 1006.30(b): Prohibitions on the sale, transfer or placement of certain accounts

Benefits of debt sales

Debt sales and transfers of accounts have clear benefits. Allowing such sales and transfers permits banks and credit issuers to effectively manage portfolios to the benefit of the American economy and its consumers.

Conversely, unduly restricting such activity would reduce a bank's or credit issuer's ability to provide much needed financial services to consumers. For example, if a bank is unable to transfer or sell a delinquent account portfolio, it either has to add the expense to build the resources for a workforce capable of collecting duly owed money, or it has to operate with increased credit losses. In either scenario, the bank will ultimately tighten lending, which will reduce access to credit for those who arguably have the greatest need.

By creating clear rules surrounding the sale and transfer of accounts, the Bureau will allow banks and credit issuers to effectively manage their business while also protecting consumers by setting acceptable guideposts for such practices.

The CFPB should establish a good faith sale exception

CRC recommends that the Bureau establish an exception to liability when a sale is made in good faith. Due to restrictions already in place, debt sellers cannot sell accounts without clear evidence of ownership. If an account is sold in good faith and later found to be missing clear ownership, this is generally remedied by a return or, as known in the industry, a "put back."

The Bureau should amend or clarify the "know or should know" standard of § 1006.30(b)

As discussed in the section of this comment on the use of work email, *infra*, the "know or should know" standard here presents a challenge and should either be amended to a "know" standard or should be clarified. CRC recommends that for the purposes of § 1006.30(b), a company is not deemed to violate this section unless it received:

- Written notice of bankruptcy discharge,
- A written, documented copy of an identity theft report,
- Received a written copy of an agreed-to settlement or other satisfaction of the account.

The term "transfer" needs clarification

Section 1006.30(b) requires a clear definition of the term "transfer" to include confirmation that "transfer" does not include the return of an assignment for work, a file of data being sent for analytics, a file sent for account scrubbing, and so forth. CRC believes that the intent of the term "transfer" is for the purpose of collections. However, there are non-collections related purposes

for which an account may transfer from a creditor or debt collector. Consumers and industry benefit if there is either an exception, or clarification, which provides that any prohibition on transfers only applies when the entity intends to cause collection activity for receiving payment from the debtor, and not for non-debt collection purposes including analysis, archival or other activities that do not attempt to collect money from the debtor.

CRC believes that all benefit from clarification regarding the definition of non-debt collection purposes (proposed to be defined as described above). If the sale or transfer is for servicing, releasing an assignment, getting the account back to the appropriate party, or for statistical analysis, there is no harm in allowing such transfer and the same should not be prohibited as no collection efforts would stem from such activity. On the other hand, the results of such activity or analysis may lead to consumer benefit through improved processes or improved servicing.

Answers to the Bureau's specific comment requests

Purchased debt and identity theft

For identity theft, CRC recommends that § 1006.30(b)(1)(C) should exclude from the general sale, transfer or placement prohibitions of § 1006.30(b) accounts where, after the consumer filed an identity theft claim, the seller conducted a reasonable investigation and the debt collector or creditor provided the consumer with evidence that the debt was not a result of identity theft.

A consumer filing an identity theft notice with a consumer reporting agency alone should not trigger the "know or should know" standard; instead, the consumer should be required to provide enough information and data to be considered a report and allow a robust investigation by the creditor.

Selling and transferring litigated accounts

Selling or transferring litigated accounts presents no harm to consumers. The right to enforcement is the same, even if there is a change in ownership. In the case of litigation, the owner of the debt (original or new owner) is seeking the enforcement of a loan agreement. Moreover, there could be cases where the new owner may choose not to continue seeking a remedy through litigation and may drop a lawsuit, possibly creating a benefit for the consumer.

§ 1006.34(b): Notice for validation of debt, in general

Introduction and overview

The Bureau's proposed § 1006.34 contains the foundational requirements for a validation notice. These requirements are essential to set the stage for providing critical information to consumers. CRC commends the Bureau for addressing issues that recur in many settings where institutions

must make complex legal, financial, and other technical information understandable to a broad audience. CRC strongly favors any regulatory clarity that assists in setting standards and expectations for debt collectors communicating fundamental debt information to consumers in a meaningful and digestible manner and method.

Government-mandated notices and disclosures are common features of financial interactions, and there is robust research and scholarly thought about the effectiveness of such mandatory "notices." CRC believes that the notices should present such disclosures in a manner that is understandable to consumers so they can make "knowing" decisions about their accounts.

Further, debt collection activities are not uniform. Different types of debts and types of creditors have different methods for substantiating debts. For example, creditors originate some debts through formal credit contracts, *e.g.,* credit cards. Other debts originate by a consumer obtaining goods or services without traditional credit documents, *e.g.*, healthcare bills, healthplan bills, and utility bills. Congress intended the FDCPA to encompass all consumer debt collection activities, regardless of how the consumer obtained the debt.

Creditors—even those from the same industry—differ in their debt substantiation practices, each using their own forms, components, and methods. Neither the FDCPA nor the NPRM govern creditors' recordkeeping or the manner in which they exchange data with their debt collectors. Since debt collectors typically service more than one creditor, they must navigate the waters and comply with the FDCPA's requirements regardless of what method each creditor uses. Similar challenges existed when the New York Department of Financial Services (NYDFS) implemented its debt collection rules.[102]

The Bureau should issue guidance to creditors to create uniformity

One challenge associated with seeking to standardize any aspect of debt collection is the wide range of types of creditors that retain debt collectors. Due to this, the details and specifics available to debt collectors when composing validation notices vary, especially for different types of debts. CRC encourages the Bureau to consider issuing guidance to creditors to provide uniformity. This guidance should clearly identify what information a creditor must provide to the debt collector.

Alternatively, CRC would welcome Bureau initiatives that streamline the debt validation process by incentivizing the development and use of technology—such as blockchain—that allows creditors to register or preserve debt information details in a way that assures its integrity, confidentiality, and availability for consumers throughout debt management, servicing and

[102] The NYDFS rules notably excluded some categories of consumer debt from their scope.

collection lifecycles.[103] CRC commends the CFPB's efforts in supporting technology in the financial sector through its Office of Innovation and sandbox programs.[104]

The goal of the validation notice should be the prevention of information overload

In 2001, the FTC hosted a public workshop titled "Get Noticed: Effective Financial Privacy Notices," which explored concerns about the clarity and effectiveness of notices to consumers under the Gramm-Leach-Bliley Act (GLBA). The FTC brought together a wide range of experts who participated via panels to discuss the form and content of GLBA privacy notices. The subject matter of this public workshop—hosted by the eight federal agencies, who at that time shared authority for enforcement of the GLBA—is pertinent and relevant here. Communications experts sat on "Panel 3" and their expert opinions are especially timely. The transcript remains available at:

https://www.ftc.gov/sites/default/files/documents/public_events/interagency-public-workshop-get-noticed-effective-financial-privacy-notices/glbtranscripts.pdf

Dr. Mark Hochhauser[105], a psychologist specializing in the readability of financial information, focused his research on disconnects among compliance, comprehension, and communication. Even in regard to GLBA privacy notices, which arguably avoid the complexity of emotions consumers experience when their account is in collections, Dr. Hochhauser cautioned about the

[103] See, Jul. 18, 2018 Press Release of CFPB encouraging progress "without being unduly restricted by red tape that belongs in the 20th century" in creating an environment where companies can advance new products and services that further consumer-friendly innovation" at: https://www.consumerfinance.gov/about-us/newsroom/bureau-consumer-financial-protection-announces-director-office-innovation/; see also CFPB press releases from September 10, 2019, announcing an initiative for innovation with state regulators https://www.consumerfinance.gov/about-us/newsroom/bureau-state-regulators-launch-american-consumer-financial-innovation-network/ and Director Kraninger's announcement, same day, regarding no action letters and other actions to incentivize innovation stating, "Innovation drives competition, which can lower prices and offer consumers more and better products and services. New products and services can expand financial options, especially to unbanked and underbanked households, giving more consumers access to the benefits of the financial system. The three policies we are announcing today are common-sense policies that will foster innovation that ultimately benefits consumers." https://www.consumerfinance.gov/about-us/newsroom/bureau-issues-policies-facilitate-compliance-promote-innovation/

[104] Yuka Hayashi, *CFPB Wants to Launch New Fintech Products*, Wall St. J. (Jul. 18, 2018, 6:39 PM).

[105] See:

(1) https://www.socra.org/conferences-and-education/clinical-research-courses-online/socra-youtube-videos/e-consent-usability-issues/

(2) http://healthliteracylab.com/healthliteracy/mark-hochhauser-can-the-informed-consent-process-be-improved/

(3) http://www.healthliteracyoutloud.com/2017/06/01/older-adults-brain-changes-and-health-understanding-hlol-163/

"information overload" people experience. He stated, "you get to a point where there is more information than your brain can comfortably handle." This causes consumers to feel "stressed out, helpless, confused … and cannot make a decision."

Dr. Hochhauser's solution: "Be clear and be brief."

§ 1006.34(b): Validation notice definitions

CRC recommends that the Bureau elaborate on "clear and conspicuous"

Rich history surrounds the terms "clear and conspicuous" in the FTC's advertising and marketing guidance and enforcement actions. In a brief publication titled "The Devil in the Details[106]," the FTC provides a clean approach to "clear and conspicuous," writing that it "means that the important terms of the deal can't be hidden in tiny type."

The publication offers a straightforward four-question test which could serve as a basis for the Bureau's use of this standard. These four questions include:

- Prominence: Is the fine print big enough for people to notice and read?
- Presentation: Is the wording and format easy for people to understand?
- Placement: Is the fine print where people will look?
- Proximity: Is the fine print near the [information] it qualifies?

CRC recommends that the Bureau specify in the final rules (or in Appendix C) what format disclosures must follow. Specifically, CRC requests that the Bureau articulates what font size is required for a disclosure to be deemed "clear and conspicuous." CRC also requests clarity on whether the disclosures must be in a specific location in a communication (*e.g.*, on the front of a letter or in the subject line of electronic communications). Multiple jurisdictions use this clear approach in mandating debt collection disclosure requirements.

The definition of "initial communication" should be left as is in practice today

The Bureau clarifies that, for purposes of the FDCPA, the phrase "initial communication" means "the first time that, in connection with the collection of a debt, a debt collector conveys information, directly or indirectly, regarding the debt to the consumer, other than a communication in the form of a formal pleading in a civil action, or a communication in any form or notice that does not relate to the collection of the debt and is expressly required by any of the

[106] https://www.consumer.ftc.gov/sites/default/files/games/off-site/youarehere/pages/pdf/FTC-Ad-Marketing_Devil-In-Details.pdf

laws referenced in FDCPA section 809(e)."[107] CRC appreciates this clarification and raises a concern that by naming some, but not all, of the exceptions, the Bureau inadvertently introduces confusion where none may exist today. CRC supports the existing definition of "initial communication" and suggests that the Bureau does not need to provide any further enumerations or descriptions.

The CFPB should add two additional dates should to the "itemization date" definition

CRC appreciates the Bureau's interpretation of the "amount of the debt" to reflect the amount that a debt collector in good faith believes is due as of a specific date. Countless factors contribute to fluctuations in the amount of a debt, even after a debt goes into default. These vary by industry and by creditor. Allowing a debt collector to select from the four options for an "itemization date" appears to be workable and in a consumer's best interest because it provides a debt collector with the opportunity to update the amount due if circumstances change. However, as noted above, creditors themselves are not and will not be governed by the FDCPA or this series of regulations, so while these four itemization date options allow debt collectors some flexibility, they may not be adequate for all industries and all creditors. CRC proposes two additional itemization dates: date of placement with the agency and the date of the letter. Both of these data points are static, meaningful, and ascertainable.

Definition of Validation Notice

CRC supports the Bureau's proposed definition and description of the validation as it assures that debt collectors collect the right amount from the right consumer and in a manner consistent with a consumer's communication preferences.

The validation period—clarity needed for electronically-transmitted validation notices

Although CRC believes that many collection agencies provide debt verification after the expiration of the validation window, we applaud the Bureau's clarification of the duration of the validation period. This clarification adopts a slight modification to a traditional "mailbox rule" approach. CRC feels this will allow debt collectors to note in letters a clear timeframe for the validation window and to develop communication approaches and controls built around respecting this now clearly delineated time frame.

CRC requests the Bureau to shorten the rule as appropriate if the debt collector sends the notice electronically or through other means where the communication will be received by the consumer instantly or within twenty-four hours from when the collector sends the notice. For

[107] § 1006.34(b)(2).

electronic communications, the validation window should be calculated from the date the communication is sent.

§ 1006.34(c)(2): Specific information about the debt, itemization

Itemization for consumer financial products or services

CRC supports providing the consumer with an itemization of their debt, as outlined in the Model Form B-3, that includes an accounting of any interest or fees that have accrued on the balance since one of the designated itemization dates selected by the debt collector. This additional information should assist consumers in recognizing the debt and help consumers better understand the debt's components.

The issue of whether and how a debt collector must disclose when interest or fees are accruing and whether and how a debt collector must disclose when interest and fees are *not* accruing has been the subject of substantial litigation. The Second and Seventh Circuit Courts of Appeal found that debt collectors have an obligation under § 1692g(a)(1) of the FDCPA when stating the "amount of the debt" to advise consumers when interest or fees are accruing on the debt. Both Circuits adopted safe harbor language for debt collectors to use when interest is accruing. Further, the Second Circuit in *Taylor v. Fin. Recovery Servs., Inc.*[108] found that no disclosure is needed under § 1692g(a)(1) to inform consumers that interest is *not* accruing on a debt.

CRC recommends that the final rule explicitly state that including the amount of interest or fees accrued since the selected itemization date suffices for purposes of stating the "amount of the debt" under § 1692g(a)(1). The rules should not require any further disclosures regarding the accrual of interest and fees.

If interest or fees are not accruing while the account is with a debt collector, CRC recommends that the final rule explicitly permit the debt collector to do one or more of the following:

- Omit interest or fees from the itemization,
- Insert either "$0.00" or "N/A" in the areas immediately next to "You were charged this amount in interest" and "You were charged this amount in fees" in the model form[109], or

[108] 886 F.3d 212, 214 (2d Cir. 2018).

[109] The approach of including "$0.00" or "N/A" is followed by New York, as specified in the FAQ for the NYDFS rules for debt collection (https://www.dfs.ny.gov/faqs/industry_faqs/debt). However, lawsuits alleging that the inclusion of $0.00 in the debt itemization is confusing or misleading continue. *See* Donaeva v. Client Servs., Inc., No. 18-cv-6595 (E.D.N.Y. July 11, 2019); *Lemke v. Escallate, LLC*, No. 17-cv-5234 (N.D. Ill. Mar. 11, 2019); *Cole v. Stephen Einstein & Associates, P.C.*, No. 6:18-cv-06230 (W.D.N.Y. Feb. 5, 2019); *Delgado v. Client Services, Inc.*, No. 17-CV-4364 (E.D.N.Y. Mar. 7, 2018).

- Include a safe harbor statement that, "Your account is not subject to [interest/fees or both as applicable]."

"Information" about a debt—additional information that may be helpful to consumers

The Bureau's commentary on § 1006.34(b), discussing the definition of "initial communication" to broadly mean conveying information about a debt, focuses on § 803(2) of the FDCPA. Conspicuously absent from this section is a definition of "information." Moreover, the ten items that comprise "information about the debt" in § 1006.34(c)(2), which suggest some key factual elements that would help a consumer identify a particular debt, seem to be absent in the definitions section.

The primary purpose of the validation notice is to apprise a consumer about a debt that is in collection and to provide information about the consumer's rights. The notice lays the groundwork for a consumer to recognize the debt.

Clear and consistent "information" about the debt would arm a consumer with sufficient data to recognize—or, in certain situations, not recognize—the debt and take appropriate next steps. These next steps might include alerting the debt collector that the consumer is a victim of identity theft, that he already paid the account in question, that the amount owed listed on the notice is incorrect, or that the debt collector reached the wrong person.

CRC believes that the validation notice should, in as concise a manner as possible, allow the consumer to identify when and with whom the debt was originated (*i.e.*, identifying the original parties to the transaction, the date or date range during which the consumer originated the account, and, if relevant, the location where the consumer incurred the debt.)[110]

In a host of settings, consumers must have "information" about:

1. The party that initially incurred the debt[111];
2. The "creditor," which may be the original creditor or, in the context of purchased debt, a subsequent creditor.
3. If known and available to the debt collector, the date on which the consumer incurred the debt.

While a consumer may not recognize the name of the current creditor and might be a guarantor or other responsible party for the debt, being able to pinpoint among "information about the

[110] *E.g.*, the specific healthcare facility, school, retail store, or financial institution relates to the account.
[111] In healthcare debt, for example, the party that incurred the debt (patient) may not always be the party responsible for the debt.

debt" more facts about the timing of the transaction may prove helpful. To illustrate: a consumer is offered financing for a trade school course which is co-signed or guaranteed by the consumer's parents. If the consumer later defaults on the account, consumers would benefit from knowing the information listed above to identify the account more efficiently.

§ 1006.34(c)(3): Information about consumer protections

CRC supports the language proposed by Consumers Union in its comment to this NPRM[112] for the information contained within this section, specifically for the language of what is commonly referred to as the validation notice.

§ 1006.34(c)(3)(iii): Dispute method in proposed validation notice language

CRC fully supports a rule requiring a collector to accept both oral and written disputes from consumers during the validation period. However, in light of recent case law (especially within the courts of the Third Circuit Court of Appeals' jurisdiction), the NPRM must clarify that a debt collector can advise a consumer that he can dispute the account orally or in writing.

The NPRM contains some discrepancies about dispute options. While Model Form B-3 provides the consumer with the option to "call or write" a debt collector to dispute the validity of the debt, the proposed rule says nothing about either option. Inconsistency between the proposed rule, the Model Form B-3, and the Section-by-Section Analysis does little to clarify whether, for a consumer's dispute to be effective, the consumer must provide such dispute orally or in writing.

CRC requests that the Bureau articulate that a dispute during the validation period may be made either orally or in writing. CRC also asks for guidance on what information the debt collector may request in conjunction with a dispute to efficiently resolve the consumer's concerns. *E.g.*, "Please briefly explain whether you are disputing all or a portion of the debt, offer documentation or a brief explanation of the reason for your dispute, or note what action you hope we would take in regard to your dispute."

CRC's recommended proposal will benefit both consumers and debt collectors. Consumers will experience quicker and more complete dispute resolution due to the early sharing of crucial data. Debt collectors will experience reduced cost because they will be able to quickly and easily identify and resolve issues, reducing the likelihood of litigation. More importantly, the recommendation will ensure that debt collectors are at all times providing appropriate and accurate information to consumers.

[112] https://www.regulations.gov/document?D=CFPB-2019-0022-8572

Recent litigation within the Third Circuit muddies the water

Debt collectors face legal uncertainty about the requirements of complying with 15 U.S.C. § 1692g(a)(3). This section of the FDCPA requires that a validation notice include:

> (3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;

There is currently a jurisdictional split among the Circuit Courts of Appeal regarding the method of dispute, with the Third Circuit's courts acting as outliers by insisting that any dispute under § 1692g must be in writing.[113] In *Graziano v. Harrison*, the Third Circuit Court of Appeals held that a letter stating that a writing is required to dispute under § 1692g(a)(3) *does not* violate the FDCPA. However, the court did not say that a letter that does not include a writing requirement runs afoul of § 1692g(a)(3). Despite this, debt collectors are currently facing countless lawsuits within the Third Circuit alleging that including a validation notice that tracks the statutory language of the FDCPA, as quoted above, violates the FDCPA because it does not adequately inform consumers about this written requirement for disputes.[114]

CRC agrees with the CFPB's interpretation of § 1692g as shown in Model Form B-3. While § 1692g(a)(4) (requesting validation of debt) and § 1692g(a)(5) (requesting information about the original creditor) explicitly state that consumers must make those particular requests in writing, this specific writing requirement is critically absent from § 1692g(a)(3). Requiring an extra-statutory "in writing" requirement under § 1692g(a)(3) would limit a consumer's knowledge that she may orally dispute the debt even though reputable debt collector—such as CRC members—honor such oral disputes.

There cannot be a negative consequence for following the statutory text. This issue is emblematic of how hypertechnical lawsuits have distorted the FDCPA. For these reasons, the Bureau must do its best to resolve these conflicts in interpretation and put forth clear rules which dictate that a consumer may dispute the debt both orally and in writing.

Recommended language for § 1006.34(c)(3)(iii):

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[113] *See Graziano v. Harrison*, 950 F.2d 107 (3d Cir. 1991); *but see Clark v. Absolute Collection Services*, 741 F.3d 487 (4th Cir. 2014); *Hooks v. Forman, Holt, Eliades & Ravin, LLC*, 717 F.3d 282 (2d Cir. 2013); *Camacho v. Bridgeport Fin. Inc.*, 430 F.3d 1078 (9th Cir. 2005).

[114] *Durnell v. Stoneleigh Recovery Associates, LLC*, No. 2:18-cv-02335 (E.D. Pa. Jan. 7, 2019).

(iii) A statement that specifies what date the debt collector will consider the end date of the validation period and states that, unless the consumer contacts the debt collector to dispute the validity of the debt, or any portion of the debt, either orally or in writing, before the end of the validation period, the debt collector will assume that the debt is valid.

§ 1006.34(c)(4): Content of tear-off, consumer prompts

The tear-off will delay the processing time of disputes and may interfere with the prompt processing of consumer payments

The Bureau provides an avenue for consumers to dispute the debt in its proposed model initial notice to consumers in the form of a "tear-off" section at the bottom of the letter. While CRC encourages consumers to notify them of legitimate disputes, CRC suggests that the body of the initial notice itself sufficiently instructs consumers about how to dispute the debt, making the dispute portion of the tear-off moot. Likewise, a tear-off utilized for both payments and disputes will increase the processing time of consumer disputes and add significant expense to debt collectors.

The model notice already adequately outlines dispute procedures

The body of the model notice sufficiently and conspicuously advises the consumer how to dispute the debt. This notice provides three avenues to dispute all or a portion of the debt: by writing to the debt collector (with or without the tear-off form), by calling the debt collector, or by submitting the dispute electronically on the debt collector's website.

The proposed tear-off will disrupt processing payments and disputes, leading to significant—and easily avoidable—expense for debt collectors

The Bureau's proposed rules do not take into consideration that the tear-off as used today is typically not sent to the debt collector. Many debt collectors utilize a "lockbox," whereby consumers mail their payments to a single address controlled by a bank for deposit. Some creditors require configuration of the tear-off so that payments are returned directly to them (presumably at their bank's lockbox) instead of to the debt collector or the debt collector's bank.

Intermingling payment stubs with disputes causes significant issues. To the extent correspondence gets mixed in with payments sent to a lockbox, debt collectors incur expense to have the correspondence filtered out from payments.

More importantly, there will be a delay in receipt and processing of disputes received from consumers that utilize the tear-offs. If a tear-off allows both disputes and payments, processing

time for consumer disputes—along with the cost of filtering out correspondence from payments—will increase significantly. During this delay, adverse consequences may affect the account, such as credit reporting and referral for litigation. Aside from the impact of the delay itself, introducing an additional "filtering" step into an existing industry-wide process creates new opportunities for processing errors. CRC believes that the body of the letter inviting the consumer to write, call, or submit the dispute on the debt collector's website provides sufficient avenues for consumers to notify debt collectors of disputes and recommends against the tear-off for the reasons stated above.

For example, the Department of Education requires sending all payments to their lock-box for processing. Debt collectors are not permitted to receive payments at their office location, and there is a concern that there may not exist technology to allow the Department of Education to timely forward the tear-off to the agency if a dispute is selected. Please note that the Department of Education does not presently load images of the payment coupons into their Debt Management System. By combining a payment coupon and an option to dispute in the tear-off, there is a risk of consumer harm in a situation like this because the dispute would not timely reach the debt collector.

The format of the proposed tear-off will be significantly difficult for mail vendors to implement

A mail vendor widely used by CRC members provided input on the tear-off requirements for letters. This vendor stated significant concerns for implementing the tear-off as proposed. The size of the tear-off presents a challenge. To fit into a standard reply envelope, the tear-off portion of the letter can be no more than 3-½ inches in height. If it takes more space, the tear-off itself must be folded to fit into a standard size reply envelope. Banks and other processors who receive reply mail of this type have automated equipment that will open the envelopes and then remove and process the content. Such equipment cannot handle a folded tear-off through such automation; it will require receiving banks (*e.g.*, if a creditor requires a lock-box for payments) to manually open and unfold the tear-off for processing. Manual processing substantially increases the opportunity for errors. Debt collectors would likely end up bearing the cost—through an increase in banking costs—of staffing needs required to scan these folded tear-offs, which would likely be significant.

The tear-off should encourage consumers to give more information about their dispute

If the final rules do include a tear-off to the model notice, CRC recommends certain modifications to the form. As proposed, consumers are invited to provide additional information about their dispute only if they choose the "Other" response category. Including an invitation to describe the consumer's dispute only for the "Other" dispute response option creates a negative implication that consumers should share as little details about their dispute as possible with the debt

collector. This deprives both consumers and debt collectors the benefit of adequate detail about a dispute, causing further delay in the process of finding a resolution. For accounts furnished to the credit reporting agencies, this delay is especially damaging.

For example, when consumers choose the dispute response, "This is not my debt" without providing additional information about their own identity or the basis on which they believe the debt is not theirs, the debt collector is left with no actionable information about the nature of the consumer's dispute and will not be able to investigate and respond adequately. Such disputes will serve to increase—rather than decrease—the number of contacts a debt collector makes to investigate the nature of the consumer's dispute.

The current proposal does nothing to inform the debt collector of the consumer's specific concerns, and thus the debt collector cannot investigate. Instead, the debt collector will provide nothing more than a formulaic, routine response with only basic verification information. The proposed generic dispute descriptions are no more useful than telling the debt collector "I dispute," which the Bureau has conceded has no value.

To alleviate this issue, CRC recommends that the tear-off includes a request that, for each dispute response option, consumers provide more detail about their dispute (*e.g.*, "Describe on the reverse side or attach additional information.").

If implemented, the tear-off should advise consumers of other ways they can submit a dispute

While the tear-off might seem convenient, it is the least efficient mechanism to dispute the debt. Submitting the dispute by phone or through a web portal is nearly instantaneous. Sending mail to the correspondence address listed is also faster. The tear-off is the slowest approach since it will likely first be sent to a bank lockbox where it will need to be separated and then forwarded to the debt collector. Upon receipt by the debt collector, the tear-off provides no useful information. Inviting the consumer to dispute the debt through a designated email or web portal will expedite processing and allow the debt collector to make reasonable inquiry of the consumer, which will enhance the value of the information returned. As it appears in the Model Form, the tear-off gives the impression that it is the best way to submit a dispute, which is not the case.

If implemented, the tear-off should advise consumers that they have the option of paying the undisputed amount while also submitting a dispute

The tear-off gives the impression that a consumer must pick an option—either pay or dispute. There may be instances where the consumer will elect both and make a partial payment while also disputing a portion of the debt. Consumers and debt collectors alike will benefit from payment of the undisputed portion of the debt and focus on a resolution of the remaining

balance. CRC recommends including an option to "Pay the undisputed amount and dispute the remaining balance."

If implemented, the tear-off should give consumers an opportunity to provide their communication method preference

The tear-off—and the model notice in general—is silent as to the consumer's communication preferences. There could be several reasons why a consumer decides to complete the tear-off, but it is not an indication of how the consumer prefers to communicate with a debt collector.

Model Form B-3 should offer the consumer the option to express communication preferences, while making clear that the exercise of that option does not, of itself, require the debt collector to treat all other means of communication as "inconvenient." If a debt collector were to include these communication option choices for the consumer, then that addition would deviate from the requirements of the Model Form and thus jeopardize the protections of a safe harbor.

§ 1006.34(d)(1): Form of the validation notice

Format issues with Model Form B-3

CRC appreciates Model Form B-3 as a safe harbor demonstrating a reasonable approach to drafting an initial validation notice. However, the restrictions of Model Form B-3 will make it difficult to implement. CRC recommends the rule be modified to allow greater flexibility on the formatting and alternative text blocks as stated herein and on the attached proposed alternative form.

CRC recommends the following changes to proposed § 1006.34(d)(1):

> *(d) Form of validation information. (1) In general. (i) The validation information described in paragraph (c) of this section must be clear and conspicuous.*
>
> *(ii) If provided in a written validation notice, the content, format, and placement of the validation information described in § 1006.34(c) and of the optional disclosures permitted by paragraph (d)(3) of this section may be substantially similar to Model Form B–3 in appendix B of this part.*
>
> *(iii) The Model Form B-3 validation notice may be used in its entirety. Alternatively, a debt collector may choose any one or more of the individually labelled sections shown. As well, these individual sections may be relocated or rearranged on the form as desired to*

suit printing and formatting needs, comply with state required disclosures or otherwise. In the event that any mandatory item is placed on the reverse side of the notice, there must be a clear and conspicuous notice on the front advising the consumer to review the information on the reverse side.

The Bureau must specify that the model form is a safe harbor but *not* a requirement

CRC requests that the Bureau address a conflict between the proposed rule and the comments. The proposed rule indicates that a debt collector *must* use the Model Form to serve written validation notices. ("If provided in a validation notice, the content, format, and placement of the validation information . . . must be substantially similar to Model Form B–3 in appendix B of this part." However, in the official comment, the Bureau states under 34(d)(2): Although the use of Model Form B-3 . . . *is not required*, a debt collector who uses the model form . . ." The Bureau must clarify in the actual rules that the model form is not required.

The format of the model form will result in implementation difficulties

Standardized forms and safe harbors are strongly desired and appreciated by the industry. However, the format and wording must be reasonable and workable—proposed Model Form B-3 is not. The format as proposed will make it difficult, if not impossible, for use by automated mailing equipment that is the hallmark of efficient business practices for debt collectors. For instance, window envelopes typically require that the consumer information is on the left—not the right—side of the page. To avoid third-party disclosure issues, there must be significant separation between the address block and other information. Additionally, the tear-off portion must be no more than 3-½ inches or it will not fit in reply envelopes without being folded.[115]

With the proposed model form's format, it will be impossible for an agency to include essential text elements such as state law disclosures and other important information about the account as required by state law or creditor clients.[116] For example, hospitals that are required to provide notice of available charity care contributions under IRS Rule 501(r) will have mandatory disclosures that collection notices must include. As another example, many debt collectors need to have multiple addresses on the letter if the specific address for account-related correspondence is different than their general mailing or payment addresses.

There are additional concerns with the proposed Model Form as it relates to the bulk mailing process. When sending bulk mail, some elements are necessary for mail vendors to include in

[115] A standard insert can be run through automated equipment that can slit the envelope, remove the contents and scan the document. If the insert is folded, substantial additional manual labor will be required to slit the envelope, remove the contents and prepare them for scanning.

order to process the mail properly. For example, the U.S. Postal Service requires a barcode be inserted below the addressee to facilitate and expedite mail handling. Mail houses require other barcodes or QR codes to enable quality control.[117]

The Bureau should make clear that these other elements, which may be necessary, will not impact the safe harbor protections of the correspondence.

CRC proposes an alternative approach to the model form that will address the issues referenced above

As an alternative to Model Form B-3, CRC proposes that the Bureau approaches the letter as a set of safe harbor blocks of text that can be rearranged to suit printing and formatting requirements.[118] CRC proposes alternative text copy that will accomplish the Bureau's goals and retain a proper balance of stakeholder interests by permitting debt collectors to perform their essential function without harming consumers.

Below are the block components of the proposed alternative approach.

Debt collector address block

Here, the agency can put any pertinent information for contact, including the debt collector's name, street address, mailing address, phone numbers, website, and email. This would not be the only location on the page that an agency could use to add contact information.

Consumer address block

This block will contain the consumer's name and address. This information typically must be located in a specific position on the letter to show through a window envelope.

Debt collector's reference number

This would be any appropriate number that the agency has assigned to the account. The agency may choose to include the creditor's account number. While this may seem straightforward, many times an agency has multiple accounts for a consumer, typically from the same creditor. Each of these will likely have a separate agency and creditor account number. The accounts may be "tied" together for convenience and to avoid having to make excessive numbers of communication attempts to the same consumer. When there are multiple tied accounts, different agencies will display the account information differently; some may list a single number,

[117] Barcode and QR codes utilized by the mail houses do not contain any PII that would alert third parties to the fact of debt collection or any information about the specific account unless that information is encrypted or scrambled.
[118] *See* Exhibit C: Model form with safe harbor text blocks.

while others may list out separately each of the applicable numbers. Consequently, the information to be displayed and the location of that information must remain flexible.

Mini-Miranda disclosure

As the Bureau aptly recognizes, there is no specific verbiage required within the FDCPA that a debt collector must use when stating either the validation notice language in § 1692(g) or the mini-Miranda warning outlined in § 1692e(11). Likewise, there is no requirement in the statute that the mini-Miranda notice be placed in any particular location so long as it is clear and conspicuous.

CRC appreciates the proposed language in Model Form B-3, but also asks that the Bureau considers slightly different verbiage that will shorten the warning. CRC suggests: "North South Group is a debt collector trying to collect a debt you owe to [creditor]. We will use any information you give us to help collect the debt." While this is only a couple of words reduced, when it comes to collection notices, real estate is precious. Also, as with the other text blocks, the location of this warning would be up to the individual debt collector. The only placement requirement should be that it is clear and conspicuous. The Bureau should also clarify if a collector places such disclosure on the back of the notice, there should be an appropriate indication on the front alerting consumers to review the back of the notice.

Itemization of the debt

This text block is self-contained and the contents are addressed previously in this comment.

Validation notice; original creditor rights and other rights

CRC proposes combining these two blocks with the following alternative language to that proposed in the Model Form:

Notice of Important Rights

> Call or write to us by November 12, 2019[119], to dispute all or part of the debt or to ask for the name and address of the original creditor. If you do not contact us by that date, we will assume that our information is correct. If you do contact us by that date, we must stop collection on any amount you dispute until we send you information that validates the debt or until we provide the creditor information if requested.

[119] Although for purposes of this discussion CRC retains the proposed rule's requirement that the end of the validation period be stated in the notice, the CRC does express concerns with this requirement, *infra*.

> We accept disputes and information requests electronically at [website], by email at [email address], by facsimile at [fax number], or you may write to us at [correspondence mailing address][120] Please include any supporting documents that you would like us to review in connection with your dispute as that will assist in providing a response.

CRC requests that the boldface title to this block be changed as shown. The title used by the Bureau, "How can you dispute the debt?" unreasonably assumes that this is the best path for the consumer, even though a consumer may prefer to know options to repay the debt.

The remaining text can save space on the letter by combining the validation request with the request for original creditor information[121] as the process for making the two requests is identical. The CRC has no objection to providing clear instruction and alternative communication channels for registering a dispute or making a request for information.

Other rights

Although not required by the FDCPA, CRC has no objection to providing a link on the initial validation notice to the CFPB web page for debt collections. We point out, however, that this requirement is most likely outside the scope of the Bureau's authority. We do express concern about the sentence: "For instance, you have the right to stop or limit how we contact you." This statement is misleading and incomplete. It is misleading because it may leave the impression with the least sophisticated consumer that making such a request will stop debt collection on the account and serve to absolve the consumer of the obligation. It is incomplete because there are other rights outlined in the law which are not enumerated here.

Payment options

Language directing the consumer to contact the agency to review payment options without offering the consumer an immediate way to make payment or evaluate repayment choices may inadvertently create a barrier to doing so. As recognized by the Bureau, consumers are often reluctant to call debt collectors and prefer instead to use email, text, facsimile or the US mail. Many debt collectors will list out specific payment channels on their notices or include a hyperlink to such disclosures to facilitate the consumers' preferences, and this should be permitted here.[122]

[120] Here there are several alternative channels to communicate. These may not be applicable for all agencies and may be modified accordingly.
[121] CRC elsewhere, *infra*, proposes that a debt collector that is collecting for the original creditor need not include or respond to such requests.
[122] Please see discussion of 1006.34(d)(3(iii) below for further information.

State law requirements

The Bureau assumes that debt collectors may include all state-required disclosures on the reverse of the notice, but certain states require some disclosures on the front. Even if permitted on the reverse side, not all debt collectors have the ability or are willing to incur the costs associated with two-sided printing of notices. Those that utilize two-sided printing may require the space on the reverse to provide other account-related information, such as a listing of any tied accounts.

Support for Spanish-speaking consumers

There is no requirement in the FDCPA that a debt collector provide Spanish language support to consumers. It is not clear if the Bureau intends to require such an option even for agencies that do not offer it. Some agencies are required by their creditor clients to translate the notice into Spanish, in which case this language would be superfluous. In California, the agency can be required to communicate in any language preferred by the consumer.[123]

§ 1006.34(d)(3)(iii): Payment disclosures

In the proposed rule, the Bureau suggests that a debt collector "may, at its option, include ... the following information ... (A) The statement, 'Contact us about your payment options,'" provided that this disclosure is "no more prominent than any of the validation information" as required by the FDCPA.[124] Some consumers may desire to pay all or a portion of an outstanding debt without communicating with a debt collector in any way. As a result, CRC suggests that the safe harbor should extend to simple language informing a consumer of the method or methods by which he or she can pay without needing to communicate with the consumer—provided the information on how to do so is "no more prominent than any of the [required] validation information." CRC believes that this is a consumer-centric alternative for allowing the consumer to self-service his or her account in a preferred manner.

§ 1006.38 - Disputes and requests for original creditor information

The Bureau requested comment on whether to clarify that a debt collector who ceases collection of a debt in response to a consumer's written dispute may communicate with the consumer one additional time to inform the consumer that the debt collector is ceasing collection of the debt. While CRC does not believe that such communication should be a mandatory requirement, CRC encourages the Bureau to create a rule clarifying that such a communication is allowed. This is

[123] *See* Cal. Civ. Code § 1812.700-1812.702(c) ("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.")
[124] § 1006.34(d)(3)(iii).

consistent with § 805(c)(1 of the FDCPA), which allows a collector upon receipt of a consumer's request to cease communication to advise that it terminated collection efforts.

§ 1006.42: Providing required disclosures

The E-Sign Act does not apply to the validation notice or other debt collection disclosures

CRC is confident that the E-Sign Act does not apply to the validation notice or other debt collection disclosures.

The E-Sign Act provides, in relevant part, as follows:

> CONSUMER DISCLOSURES.—
>
> (1) CONSENT TO ELECTRONIC RECORDS.—Notwithstanding subsection (a), if a statute, regulation, or other rule of law ***requires*** that information relating to a transaction or transactions in or affecting interstate or foreign commerce **b*e provided or made available to a consumer in writing*** . . .[125]

While the E-Sign Act pertains to consumer consent regarding information that a statute "requires" "be provided or made available to a consumer in writing," the FDCPA does not require that the validation notice be provided in writing.

E-Sign consent should transfer to the debt collector from the creditor or a prior debt collector

Assuming that E-sign consent was required (a position the CRC disputes), CRC concurs with the CFPB's conclusion that it would be impractical to require debt collectors to obtain E-Sign consent directly from the consumer before sending the required disclosures in the initial validation notice. This is due to the content and length of the required E-sign disclosures and how debt collectors typically seek to communicate with consumers. Additionally, there is difficulty and uncertainty in obtaining the reasonable demonstration of access within the requisite five-day period between the time of initial contact and the time when a debt collector must send a § 1692(g) validation notice.

If a creditor or prior debt collector obtained E-Sign consent from the consumer, that consent can and should be transferable to the current debt collector. At a minimum, the Bureau should clarify that E-Sign consent need not be given directly to the debt collector (e.g., where the consumer gave consent to the creditor or prior agency).

Any denigration of the debt collector's ability to rely on existing consent harms consumers who provided such consent, expressed a preference for electronic communications, and anticipated

[125] 15 USC 7001, section 101 (emphasis added).

a similar delivery of any further communications related to the particular account(s). If a consumer—expecting electronic communications on an account —receives required disclosures via snail mail in a nondescript envelope[126] that can easily be overlooked as unimportant or junk mail, it increases the risk that the consumer does not receive these disclosures—nor becomes aware that he or she has an account in collections so that he or she can take appropriate action.

For these reasons, CRC proposes the following changes to § 1006.42(b)(1):

> *(b) Requirements for certain disclosures provided electronically. To comply with paragraph (a) of this section, a debt collector who provides the validation notice described in § 1006.34(a)(1)(i)(B), or the disclosures described in § 1006.38(c) or (d)(2), electronically must:*
>
> *(1) Except as provided in paragraph (c) of this section, provide the disclosure in accordance with section 101(c) of the Electronic Signatures in Global and National Commerce Act (E-SIGN Act) (15 U.S.C. 7001(c)) after the consumer provides affirmative consent directly to the debt collector or the consumer previously provided affirmative consent directly to the original creditor or prior debt collector...*

Readability on most commonly-used devices and screen readers suffices

As written, proposed § 1006.42(b)(4) indicates that a validation notice must be readable on any *and all* devices that are commercially available and that *all* screen reader software must be able to read the message. Such a requirement is overbroad and unfeasible.

With emerging technology and the vast number of different devices and software programs available, proposed § 1006.42(b)(4) leaves debt collectors open to a flood of litigation from consumer attorneys who can find a brand new or esoteric piece of hardware or software that renders the form unusable. The resulting fear would discourage agencies from adopting the use of modern communication technology despite the Bureau's desire to encourage such use. Thus, CRC proposes a rule that achieves the Bureau's objective without opening up the litigation floodgates.

The Bureau clearly recognizes the vast changes that have occurred in the world of communications during the past five decades. It has admirably attempted to overcome the concerns of industry to enable the use of modern technology, which is overwhelmingly preferred

[126] *See* 15 U.S.C. § 1692f(8), prohibiting debt collectors from using "any language or symbol, other than the debt collector's address, on any envelope when communicating with a consumer by use of the mails."

by consumers. In making that attempt, the Bureau worked hard to balance the need for privacy and accessibility for all consumers.

CRC shares these views. Our members are not interested in using technology that makes it impossible for a consumer to read and understand the message conveyed. However, CRC worries about the harm potential of an overbroad requirement, such as proposed § 1006.42(b)(4).

As written, proposed § 1006.42(b)(4) could be interpreted to require a debt collector to ensure that its communications are readable ***any and all*** devices and screen readers. This interpretation would create a standard that cannot be met, or at least where there can be no assurance of such. Technology is ever-evolving at a rapid pace. Software updates, new operating systems, and devices are a daily occurrence. Software developers are faced with the need to make frequent updates to their equipment and programs just to keep pace.

Further complicating the issue, there are currently no generally accepted standards to which developers and programmers must adhere. Attempts at standards have been made, but thus far without success. That is because there are too many variables in the equipment, software, and operating systems.

In addition to the challenges of keeping up with the latest software and most used hardware, manufacturers are continually working to find new and clever ways to incorporate internet accessibility. For instance, there are watches and eyeglasses that contain internet connectivity and allow their screens to be used as browsers and email readers. But these are not as commonly or typically used to read important messages, and thus an agency should not be burdened with ensuring that its communications can be read even on these devices.

That said, the overwhelming majority of consumers are using just a handful of operating systems on either their handheld or desktop devices. Messages that are designed and optimized for all but the most recent[127] releases of iOs, Android or Windows Mobile systems for phones and tablets or Windows, MacOS or Linux on desktops, will likely be available to the vast majority of consumers.

Thus, CRC urges a balancing approach to accommodate the preferences of consumers by enabling agencies to communicate using modern technology without overly burdening agencies to the point that they refuse to adopt what consumers overwhelmingly desire.

CRC proposes the following changes to § 1006.42(b)(4):

[127] While operating systems are usually pre-released to enable programmers to update their products, there is typically some time needed to catch up to the latest releases.

(4) When providing the validation notice described in § 1006.34(a)(1)(i)(B), provide the disclosure in a responsive format that is reasonably expected to be accessible on a screen of the most commonly used and ~~any~~ commercially available size PC, tablet or smartphone and via ~~commercially~~ commonly available screen readers.

Proposed § 1006.42(c)(1) is ambiguous and confusing

CRC lauds the effort of the Bureau to create an exemption to the E-Sign Act insofar as it will facilitate communication with consumers through channels they previously consented to. However, the phrase "could have used to provide electronic disclosures related to that debt per section 101(c) of the E-SIGN Act" in § 1006.42(c)(1) creates ambiguity and confusion. The Bureau has already created a reasonable procedure for the use of emails in § 1006.6(d)(3) (subject to the recommendations mentioned earlier in this comment), so adding the requirements here creates confusion. Additionally, the term "could have used" is very broad and vague.

CRC requests that the CFPB amend proposed § 1006.42(c)(1) as follows:

(c) Alternative procedures for providing certain disclosures electronically. A debt collector who provides the validation notice described in § 1006.34(a)(1)(i)(B), or the disclosures described in § 1006.38(c) or (d)(2), electronically need not comply with paragraph (b)(1) of this section if the debt collector:

(1) Provides the disclosure by sending an electronic communication to an email address or, in the case of a text message, a telephone number, that the creditor or a prior debt collector could have used to provide electronic disclosures related to that debt in accordance with section 101(c) of the E-SIGN Act; or alternatively complies with the requirements set forth in section 1006.6(d)(3);...

Answers to the Bureau's specific questions

The Bureau requests comment on proposed § 1006.42(b)(3), including on how a debt collector who attempts to deliver a required disclosure electronically becomes aware that such disclosures were not delivered to the consumer.

When an email is not deliverable, the debt collector will receive a message to that effect. Upon receipt of such a message, the debt collector will treat the message in the same manner as a piece of returned snail mail. In the case of the initial validation notice, the agency would be on

notice that the required disclosures have not been delivered and would mark the account accordingly. The debt collector can then either attempt delivery at a different email address, mail the initial notice using through the U.S. Postal Service, or utilize another method to deliver the communication effectively.

The Bureau requests comment on whether creditors or debt collectors currently provide required disclosures bearing transaction-specific information in the body of emails and, if not, the reasons why not.

Many debt collectors confirm a receipt of payment, confirmation of paid in full, confirmation of settled in full, acknowledgment of dispute, notice of failed payment and other correspondence through email. Some may include this material in the body of an email while others may prefer to use a secure and password protected attachment.

Allowing transaction-specific information to be included in emails is a benefit to consumers. The information is easy to access, easy to save, easy to read, including on a smartphone, tablet or PC, and easy to forward. Most importantly, the information presented in the body of an email supports the consumer's privacy. It is easy for a consumer to protect against third-party access to their emails through the use of passwords. To read an email, a two-step authentication is required. First one must use a password to open their phone or their computer and second one must use a password to open their emails.

The Bureau requests comment on whether to clarify further what it means for a disclosure to remain available on a website for a reasonable time and, if so, the length of time that should qualify as reasonable.

In general, the Bureau should establish the length of time for each of these references in the proposed rules: *reasonable time, recently and prior*. CRC proposes that the length of time a disclosure should remain on a hyperlinked website and available for the consumer to access should be at least thirty days.

§ 1006.42(d): Hyperlinks

Hyperlinks are an important tool used to reduce the size and complexity of email and text messages while allowing the reader to access important information (*e.g.,* required disclosures). The concerns raised by the Bureau are reasonable and justified; however, the procedures required by the proposed rule are too cumbersome to be utilized effectively. As a result, debt collectors will more likely forego the use of beneficial hyperlinks, resulting in less effective emails and potentially not using text messages altogether due to character limits.

Today's consumers widely use hyperlinks

Hyperlinks are ubiquitous, valuable and universally accepted. They are commonly used to enable the sender of a message to reduce its size and complexity while retaining the ability to access relevant information. Without hyperlinks, this added content would otherwise enlarge and clutter the message, distracting from its content or exceed message size limitations (*e.g.*, character limit in text messages). Hyperlinks allow consumers to bookmark, print, or save a screenshot of important information.

We live in a paperless society. Consumers are accustomed to electronic communications and the use of hyperlinks to transact business and exchange important information. The IRS's preference for E-filings and TurboTax's widespread popularity are great examples.

The Bureau presents certain reasonable concerns about the use of hyperlinks. Among these are a consumer's reluctance to click on hyperlinks for fear that they may contain malicious content or direct the user to an unwanted site; a concern that certain devices may not be able to properly open and display the linked material; and a concern that the consumer be able to access the material for a reasonable period of time and be able to retain the linked material.

While these concerns are reasonable, the proposed solution of requiring an entirely separate stream of communication to establish consent to do so creates unreasonable burdens on agencies and consumers alike, making it difficult or impossible to use hyperlinks. CRC proposes a much-simplified rule that will address these concerns in a manner that does not impede the use of hyperlinks.

A notice describing a hyperlink might confuse consumers

The Bureau's proposal requires that before providing a consumer a hyperlink to disclosures, a debt collector or creditor must send an entirely separate message to the consumer for the sole purpose of advising the consumer that the agency may utilize hyperlinks (and, of course, giving the consumer an opportunity to opt-out of using hyperlinks.) Ironically, one purpose of proposed Regulation F is reducing intrusion and potential harassment by limiting the number of contacts and communications required to resolve a debt. The requirement of an additional communication strictly to advise a consumer that hyperlinks may be used defeats that important purpose; it requires that an additional and unneeded communication take place that would be more likely to annoy a consumer rather than serve the purpose intended.

Further, this communication could create confusion for consumers— and the so-called least sophisticated consumer who, while accustomed to using hyperlinks, might not necessarily know what they are called or understand why the debt collector or creditor is sending them a separate notice that informs them of their future use. Such separate notice of future use of hyperlinks is

something that they likely have never encountered before about a topic that they likely would not understand in a written explanation. It is easy to imagine that such a notice trying to explain a hyperlink would be very confusing and may engender unnecessary concerns and worry.

If implemented, the Bureau should provide safe harbor language for the hyperlink notice

For debt collectors, the hyperlinked notice must contain basic information about the collection account, and thus would be considered a debt collection communication pursuant to the FDCPA. Due to this, the proposed rule forces debt collectors to devise language describing hyperlinks that would not be unfair, deceptive, or misleading to the least sophisticated consumer. It is highly doubtful that a debt collector could craft a notice that explains the intricacies of hyperlinks and advises of the opt-out rights without encountering class action litigation on the word choice.

Expecting creditors to send such notices is impractical

Additionally, the requirement that creditors send such notice no more than thirty days prior to a debt collector's use of hyperlinks is impractical. Creditors are not in the business of sending out such notices. When creditors place accounts with a debt collector, the expectation is that the debt collector bears all costs and administrative burdens imposed for collecting the account.

Even if this was a practical solution, the thirty-day requirement is unmanageable. First, the debt collector and creditor would need to coordinate and keep track of this tight time window to ensure that the debt collector sent first hyperlinked notice no later than 30 days after the creditor's notice that the agency may communicate using a hyperlink. By this time, many creditors already ceased attempts to reach the consumer. Creditors are often not aware of which agency will be assigned a particular account until they make the assignment, making it less likely that a creditor will send such notice before it placed the account with a debt collector. CRC recommends that the Bureau allows creditors a more reasonable alternative of 180 days to send such notice. But as stated above, this does not alleviate the other concerns that make this approach impractical.

Sending the hyperlink notice to a separate email address is not helpful and unnecessarily complicates the process

The Bureau requests comment on page 328 as to whether it would improve the effectiveness of this proposed notice by sending the notice to an altogether different email address. Most consumers have and use just one personal email address. Even for those that might have more than one address, the creditor likely received only one email address from the consumer, and that would be the only address available to the debt collector.

As unusual as it may be to receive an advance alert that an agency may be using hyperlinks, it would be even more unusual to receive that notice at one email address that mentions that the debt collector will send hyperlinks to an altogether different address. For many, that would be extremely suspicious.

Without hyperlinks, text messages are unusable by debt collectors

Text messages, which can be an effective tool for communication, require the ability to include hyperlinks due to character limits.[128] With hyperlinks, text messages can provide more detail that is understandable by the consumer. However, without hyperlinks, text messages are unusable since required disclosures—including the mini-Miranda and an opt-out disclosure—would use most, if not all, of the characters allowed in a text message. See further discussion on this issue in the *Lavallee* section, *supra*.

Debt collectors should not be liable for hyperlinks that are automatically created by a consumer's device

Modern smartphones and tablets automatically turn certain information into hyperlinks, which is entirely out of the message sender's control. For example, a telephone number will automatically create a hyperlink to dial that number or an address will create an automatic hyperlink that opens the phone's navigation app. CRC requests that the Bureau specify that such hyperlinks—created by the message recipient's device—do not create liability for a debt collector if a debt collector did not send the § 1006.42(d) notice prior to sending the electronic communication.

CRC proposes a simplified solution

CRC proposes a simpler and more practical solution. If a debt collector wants to use hyperlinks for its disclosures, they can notify the consumer of this within the body of the first communication that includes any hyperlinks. Within that communication there must be a notice to the consumer of their right to opt-out of receiving hyperlinked documents with appropriate instructions for doing so. The debt collector must also notify the consumer on how she might obtain the hyperlinked information through some other mechanism, such as snail mail, a web address, email or some other reasonable means that is accessible to the consumer.

The CRC proposes replacing the entirety of § 1006.42(d) with the following:

> *(d) Notice and opportunity to opt-out of hyperlinked delivery. For a consumer to receive notice and an opportunity to opt-out of*

[128] In fact, the Bureau uses the ability to send text messages as support for imposing call frequency limits. *See* NPRM Preamble, pp. 139-40.

hyperlinked delivery as required by paragraph (c)(2)(ii)(B) of this section, the debt collector must:

(1) Communication by the debt collector. Inform the consumer, in the first communication with the consumer in which the debt collector includes hyperlinks, of:

(i) The consumer's ability to opt-out of hyperlinked delivery of disclosures to such email address or telephone number;

(ii) Instructions for opting out, including a reasonable period within which to opt-out; and

(iii) Instructions for obtaining the information contained in the hyperlinked material through other means.

(2) Upon delivery of such communication, the debt collector may continue to use hyperlinks in its communications unless and until the consumer exercises his rights to opt-out of hyperlink delivery.

(3) Any information to which a hyperlink is directed shall include instructions to save, print or forward the information so that it can be preserved and accessed by the consumer at a later time.

(4) Notwithstanding the foregoing, a debt collector shall be exempt from the requirements of this section to the extent that hyperlinks are added automatically by a party other than the debt collector or its agents.

§ 1006.100: Record retention

Proposed § 1006.100 fails to take into consideration the different storage systems used by debt collectors to retain information pertinent to an account. The rule as drafted will impose substantial costs on debt collectors for storage or upgrades to existing systems without providing any additional consumer benefit. Further, it will discourage agencies from adopting call recording technology that is beneficial for all stakeholders. CRC proposes that the Bureau modify the measuring date for record retention to the date of the specific transaction or event—rather than tying the measuring date to the lifecycle of an account—which will avoid those problems and not cause detriment to consumers. In addition, it will not interfere with the Bureau's ability to conduct thorough audits using a three-year look back.

Benefits of record retention requirements

Record retention requirements are beneficial to consumers, regulators, and debt collection agencies alike. Retention periods allow consumers ease of mind knowing that a record of their activity and interactions with debt collectors is maintained in case there is an issue. Retention periods enable regulators to review the activities of a covered entity to ensure compliance with regulations and that debt collectors treat consumers fairly.

With the high volume of litigation filed against debt collectors, retention periods allow debt collectors to monitor their company's activities for compliance and to preserve evidence to serve as a defense that the debt collector acted properly and that there was no wrongdoing or violation.

Call recording storage systems make § 1006.100's measuring period date overly burdensome and cost-prohibitive

However, the Bureau's structure of proposed § 1006.100 will impose substantial and costly burdens on debt collectors that do not enhance any of these benefits. It would require a massive (if not impossible) overhaul of debt collectors' storage systems. Additionally, having to store call recordings pooled by account (versus by date) could lead to cost-prohibitive and overly-burdensome storage and maintenance requirements.

Debt collectors typically have collection software that stores account notes and activity by account, but different software manages call recordings and copies of correspondence sent and received. Call recordings are typically pooled by date, not by account, for retention and storage purposes. In other words, all of the call recordings created on a particular date are all stored together in large batch files. A specific account's call recordings are not stored with the remainder of the account's information; the calls are stored in the large call recording batch files for whatever day the call occurred. It would be impractical and require significant cost to separate out each individual recording or piece of correspondence from those files.

If call recordings are to be stored per the proposed rule, then they must be maintained for the retention period of the account's lifecycle, rather than for the retention period of that particular recording. To understand the scope of the problem, some creditor clients may place accounts with an agency for a short period of several months to a year, while others may place their accounts for many years. On any particular day, the agency will receive calls for both types of accounts and at various points in the accounts' life cycle. These call recordings are all maintained in the same large batch file for the day. As a result, under the CFPB proposed rule, three years after the shorter life-cycle accounts have finished, there will still be longer life-cycle accounts that have not yet been closed.

Under the CFPB proposed rule, the call recordings for those longer life-cycle accounts cannot be purged and must be maintained. Since those recordings are part of the same batched data set with the shorter life-cycle account recordings, all of the recordings for that particular day must be maintained until three years after the account with the longest life-cycle has been closed even though many of the recordings could have been purged much earlier. That will force an agency to hold all recordings for many years longer than under the current procedures and thus impose a substantial additional cost for long-term storage of the recordings. This added cost is unnecessary as it provides no additional protection to consumers or benefit to the Bureau. Debt collectors who have not yet adopted call recording will be discouraged from doing so by the substantial added cost of long term storage.

The attached diagram illustrates the Bureau's proposed rule as well as CRC's suggestion for solving such issues.[129]

Ambiguity in § 1006.100—it is an exact time-frame or a minimum?

Proposed § 1006.100 is ambiguous as to whether the 3-year retention period is a minimum or meant to serve as an exact time-frame. In other words, as written, it is possible to interpret the rule such that retaining records for 3 years and one day would be a violation. This issue is solved by amending the rule's language to reflect that the retention period is "at least" or "no less than" three years.

Industry differences in record retention

The rule as written poses a challenge for healthcare debt collection. In the healthcare space, accounts are packaged differently than for other consumer financial products. Healthcare accounts are usually packaged per patient/consumer—rather than per account—by hospitals, physicians and other healthcare providers. These packaged accounts are then sent to debt collectors, who collected on the entire package as a whole. Healthcare debt collectors would find it extremely difficult to comply with a retention period that runs on an account's lifecycle. Does the retention period refer to the aggregated package of accounts? Is it the individual accounts within the package? If the latter, it would be difficult to differentiate what activity occurred for what account since everything is sent to the debt collector and stored within the collection software as a group. This challenge would be mostly, if not completely, averted if the retention measuring period was calculated by individual collection activities rather than the lifecycle of an account.

[129] See Exhibit D.

For these reasons, CRC recommends that the Bureau substitute the entirety current proposed § 1006.100 with the following:

> *(a) For purposes of this section, a "Collection Event" shall mean any unique or discrete event that transpires in connection with the collection of a particular debt, such as the date a letter or other communication is attempted, initiated or received, a payment or credit is made, an account is reported to or updated with a credit bureau, etc.*
>
> *(b) A debt collector must retain records of all Collection Events for no less than three years from the date of the Collection Event.*

Exhibits

Exhibit A - Spreadsheet of New York federal litigation after Avila's decision regarding the same issue.

Exhibit B - The Perception of Collections Industry Phone Numbers Across the Call Blocking and Labeling Ecosystem, Numeracle July 2019.

Exhibit C - Proposed B-3 Model Form With Safe Harbor Blocks

Exhibit D - Record Retention Diagram

Exhibit A

File Date	Case No.	State	Jurisdiction	Type	Type
6/30/2016	1:16-cv-05201-SM	NY	Southern	Individual	Avila
7/14/2016	6:16-cv-06487-CJS	NY	Western	Class	Avila
4/4/2016	1:16-cv-01630-RRM-SMG	NY	Eastern	Class	Reverse Avila
4/20/2016	1:16-cv-01951-ENV-PK	NY	Eastern	Class	Reverse Avila
5/10/2016	1:16-cv-02359-WFK-JO	NY	Eastern	Class	Reverse Avila
5/23/2016	1:16-cv-02604-AMD-VMS	NY	Eastern	Class	Reverse Avila
5/26/2016	1:16-cv-02686-AMD-SMG	NY	Eastern	Class	Reverse Avila
6/1/2016	1:16-cv-02787-RRM-CLP	NY	Eastern	Class	Reverse Avila
6/15/2016	1:16-cv-03133	NY	Eastern	Class	Reverse Avila
6/20/2016	2:16-cv-03305-ADS-AYS	NY	Eastern	Individual	Reverse Avila
6/20/2016	2:16-cv-03303-DRH-AYS	NY	Eastern	Individual	Reverse Avila
6/21/2016	2:16-cv-03344-JMA-AKT	NY	Eastern	Individual	Reverse Avila
6/21/2016	2:16-cv-03334-JMA-AKT	NY	Eastern	Individual	Reverse Avila
6/21/2016	2:16-cv-03338-ADS-AYS	NY	Eastern	Individual	Reverse Avila
6/21/2016	2:16-cv-03336-JMA-ARL	NY	Eastern	Individual	Reverse Avila
6/22/2016	1:16-cv-03400	NY	Eastern	Class	Reverse Avila
6/24/2016	1:16-cv-03475-ERK-RLM	NY	Eastern	Class	Reverse Avila
6/27/2016	2:16-cv-03535-ADS-SIL	NY	Eastern	Individual	Reverse Avila
6/27/2016	2:16-cv-03534-ADS-ARL	NY	Eastern	Individual	Reverse Avila
6/29/2016	2:16-cv-03611	NY	Eastern	Class	Reverse Avila
6/30/2016	2:16-cv-03651-SJF-SIL	NY	Eastern	Individual	Reverse Avila
6/30/2016	2:16-cv-03649-DRH-AKT	NY	Eastern	Individual	Reverse Avila
7/6/2016	2:16-cv-03740-JFB-AKT	NY	Eastern	Class	Reverse Avila
7/8/2016	2:16-cv-03824-JMA-SIL	NY	Eastern	Individual	Reverse Avila
7/8/2016	2:16-cv-03822-ADS-AYS	NY	Eastern	Individual	Reverse Avila
7/13/2016	2:16-cv-03876-ADS-AYS	NY	Eastern	Class	Reverse Avila
7/13/2016	2:16-cv-03878-ADS-ARL	NY	Eastern	Class	Reverse Avila
7/20/2016	2:16-cv-04026-ADS-AYS	NY	Eastern	Class	Reverse Avila
7/20/2016	2:16-cv-04032-LDW-SIL	NY	Eastern	Individual	Reverse Avila
7/29/2016	2:16-cv-04227	NY	Eastern	Class	Reverse Avila
7/29/2016	2:16-cv-04228-SJF-AKT	NY	Eastern	Individual	Reverse Avila
8/1/2016	2:16-cv-04275-LDW-AYS	NY	Eastern	Individual	Reverse Avila
8/1/2016	2:16-cv-04273-SJF-ARL	NY	Eastern	Individual	Reverse Avila
8/2/2016	2:16-cv-04296-ADS-AYS	NY	Eastern	Individual	Reverse Avila
8/3/2016	2:16-cv-04337-JMA-SIL	NY	Eastern	Individual	Reverse Avila
8/3/2016	1:16-cv-043242-SJ-CLP	NY	Eastern	Class	Reverse Avila
8/9/2016	2:16-cv-04431-ADS-AKT	NY	Eastern	Individual	Reverse Avila
8/9/2016	2:16-cv-04425-LDW-AKT	NY	Eastern	Individual	Reverse Avila
8/9/2016	2:16-cv-04430-SJF-GRB	NY	Eastern	Individual	Reverse Avila
8/11/2016	2:16-cv-04496-SJF-AYS	NY	Eastern	Individual	Reverse Avila
8/12/2016	2:16-cv-04534-SJF-AYS	NY	Eastern	Individual	Reverse Avila
8/16/2016	2:16-cv-04576-LDW-AKT	NY	Eastern	Individual	Reverse Avila
8/16/2016	1:16-cv-04565-AMD-JO	NY	Eastern	Class	Reverse Avila
8/24/2016	2:16-cv-04722-LDW-AYS	NY	Eastern	Individual	Reverse Avila
8/30/2016	1:16-cv-04859-MKB-RLM	NY	Eastern	Class	Reverse Avila
8/31/2016	1:16-cv-04877-ERK-ST	NY	Eastern	Class	Reverse Avila
9/1/2016	2:16-cv-04901-JFB-GRB	NY	Eastern	Individual	Reverse Avila
9/1/2016	2:16-cv-04900-JFB-AKT	NY	Eastern	Individual	Reverse Avila

File Date	Case No.	State	Jurisdiction	Type	Type
9/8/2016	2:16-cv-04998-DRH-GRB	NY	Eastern	Individual	Reverse Avila
9/8/2016	1:16-cv-04997-WFK-JO	NY	Eastern	Class	Reverse Avila
9/12/2016	2:16-cv-05043-JFB-AYS	NY	Eastern	Individual	Reverse Avila
9/12/2016	2:16-cv-05044-DRH-AYS	NY	Eastern	Individual	Reverse Avila
9/13/2016	1:16-cv-05079-CBA-RML	NY	Eastern	Class	Reverse Avila
9/14/2016	1:16-cv-05106	NY	Eastern	Class	Reverse Avila
9/15/2016	1:16-cv-05146-LDH-SMG	NY	Eastern	Class	Reverse Avila
9/15/2016	1:16-cv-05148-LDH-JO	NY	Eastern	Class	Reverse Avila
9/15/2016	1:16-cv-05142-SJ-VMS	NY	Eastern	Class	Reverse Avila
9/15/2016	1:16-cv-05147-RRM-PK	NY	Eastern	Class	Reverse Avila
9/15/2016	1:16-cv-05143-ENV-SMG	NY	Eastern	Class	Reverse Avila
9/15/2016	1:16-cv-05145-CBA-VMS	NY	Eastern	Class	Reverse Avila
9/16/2016	1:16-cv-05192-MKB-SMG	NY	Eastern	Class	Reverse Avila
9/19/2016	1:16-cv-05223	NY	Eastern	Class	Reverse Avila
9/20/2016	2:16-cv-05238-ADS-AKT	NY	Eastern	Individual	Reverse Avila
9/20/2016	2:16-CV-05240-ADS-SIL	NY	Eastern	Individual	Reverse Avila
9/21/2016	2:16-cv-05256-JFB-AYS	NY	Eastern	Individual	Reverse Avila
9/21/2016	1:16-cv-05248-KAM-PK	NY	Eastern	Class	Reverse Avila
9/21/2016	2:16-cv-05257-JMA-SIL	NY	Eastern	Individual	Reverse Avila
9/22/2016	2:16-cv-05287-LDW-AYS	NY	Eastern	Individual	Reverse Avila
9/26/2016	1:16-cv-05345-PKC-ST	NY	Eastern	Class	Reverse Avila
9/26/2016	1:16-cv-05350-LDH-RLM	NY	Eastern	Class	Reverse Avila
9/26/2016	1:16-cv-05344-CBA-VMS	NY	Eastern	Class	Reverse Avila
9/27/2016	1:16-cv-05372-WFK-LB	NY	Eastern	Class	Reverse Avila
9/29/2016	1:16-cv-05440-RRM-ST	NY	Eastern	Class	Reverse Avila
9/29/2016	1:16-cv-05427-LDH-ST	NY	Eastern	Class	Reverse Avila
10/4/2016	2:16-cv-05531-ADS-SIL	NY	Eastern	Individual	Reverse Avila
10/4/2016	2:16-cv-05517-JMA-GRB	NY	Eastern	Individual	Reverse Avila
10/4/2016	2:16-cv-05532-JMA-AYS	NY	Eastern	Individual	Reverse Avila
10/4/2016	2:16-cv-05533-SJF-GRB	NY	Eastern	Individual	Reverse Avila
10/4/2016	2:16-cv-05525-JFB-AKT	NY	Eastern	Individual	Reverse Avila
10/5/2016	2:16-cv-05541-SJF-ARL	NY	Eastern	Individual	Reverse Avila
10/5/2016	2:16-cv-05540-ADS-AKT	NY	Eastern	Individual	Reverse Avila
10/5/2016	2:16-cv-05545-JMA-ARL	NY	Eastern	Individual	Reverse Avila
10/5/2016	2:16-cv-05548-ADS-SIL	NY	Eastern	Individual	Reverse Avila
10/6/2016	2:16-cv-05560-LDW-SIL	NY	Eastern	Individual	Reverse Avila
10/6/2016	2:16-cv-05559-JFB-ARL	NY	Eastern	Individual	Reverse Avila
10/6/2016	2:16-cv-05563-LDW-ARL	NY	Eastern	Individual	Reverse Avila
10/6/2016	2:16-cv-05558-ADS-SIL	NY	Eastern	Individual	Reverse Avila
10/6/2016	2:16-cv-05565-SJF-AYS	NY	Eastern	Individual	Reverse Avila
10/6/2016	2:16-cv-05562-LDW-AYS	NY	Eastern	Individual	Reverse Avila
10/6/2016	2:16-cv-05573-LDW-SIL	NY	Eastern	Individual	Reverse Avila
10/6/2016	2:16-cv-05566-LDW-AKT	NY	Eastern	Individual	Reverse Avila
10/6/2016	2:16-cv-05561-SJF-AYS	NY	Eastern	Individual	Reverse Avila
10/6/2016	2:16-cv-05571-SJF-AKT	NY	Eastern	Individual	Reverse Avila
10/6/2016	1:16-cv-05572	NY	Eastern	Class	Reverse Avila
10/6/2016	1:16-cv-05582-ARR-SMG	NY	Eastern	Class	Reverse Avila
10/7/2016	2:16-cv-05624	NY	Eastern	Individual	Reverse Avila

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10/7/2016	2:16-cv-05626	NY	Eastern	Individual	Reverse Avila
10/7/2016	2:16-cv-05622	NY	Eastern	Individual	Reverse Avila
10/7/2016	2:16-cv-05623	NY	Eastern	Individual	Reverse Avila
10/7/2016	1:16-cv-05607-ARR-RER	NY	Eastern	Class	Reverse Avila
10/10/2016	1:16-cv-05646-FB-SMG	NY	Eastern	Class	Reverse Avila
10/13/2016	1:16-cv-05726-RRM-SMG	NY	Eastern	Class	Reverse Avila
10/13/2016	1:16-cv-05725	NY	Eastern	Class	Reverse Avila
10/13/2016	1:16-cv-05714	NY	Eastern	Class	Reverse Avila
10/18/2016	2:16-cv-05808-LDW-AYS	NY	Eastern	Individual	Reverse Avila
10/18/2016	2:16-cv-05803-SJF-AKT	NY	Eastern	Individual	Reverse Avila
10/18/2016	2:16-cv-05806-DRH-ARL	NY	Eastern	Individual	Reverse Avila
10/18/2016	2:16-cv-05802-LDW-AKT	NY	Eastern	Individual	Reverse Avila
10/18/2016	2:16-cv-05809-SJF-AYS	NY	Eastern	Class	Reverse Avila
10/20/2016	1:16-cv-05860	NY	Eastern	Class	Reverse Avila
10/21/2016	1:16-cv-05873-MKB-PK	NY	Eastern	Class	Reverse Avila
10/30/2016	1:16-cv-06022-DLI-JO	NY	Eastern	Class	Reverse Avila
11/1/2016	2:16-cv-06050-LDW-AKT	NY	Eastern	Individual	Reverse Avila
11/1/2016	2:16-cv-06051-SJF-GRB	NY	Eastern	Individual	Reverse Avila
11/2/2016	2:16-cv-06067-LDW-AKT	NY	Eastern	Individual	Reverse Avila
11/2/2016	2:16-cv-06078-ADS-ARL	NY	Eastern	Individual	Reverse Avila
11/2/2016	2:16-cv-06069-DRH-ARL	NY	Eastern	Individual	Reverse Avila
11/4/2016	1:16-cv-06137-ILG-SMG	NY	Eastern	Class	Reverse Avila
11/4/2016	1:16-cv-06143-DLI-VMS	NY	Eastern	Class	Reverse Avila
11/4/2016	1:16-cv-06136	NY	Eastern	Class	Reverse Avila
11/4/2016	1:16-cv-06140	NY	Eastern	Class	Reverse Avila
11/4/2016	1:16-cv-06138	NY	Eastern	Class	Reverse Avila
11/4/2016	1:16-cv-06141-FB-RLM	NY	Eastern	Class	Reverse Avila
11/4/2016	1:16-cv-06144	NY	Eastern	Class	Reverse Avila
11/17/2016	2:16-cv-06388-ADS-AYS	NY	Eastern	Individual	Reverse Avila
11/22/2016	2:16-cv-06515-LDW-ARL	NY	Eastern	Individual	Reverse Avila
11/22/2016	1:16-cv-06514	NY	Eastern	Class	Reverse Avila
12/1/2016	2:16-cv-06670-ADS-ARL	NY	Eastern	Individual	Reverse Avila
12/2/2016	2:16-cv-06695-ADS-AYS	NY	Eastern	Individual	Reverse Avila
12/2/2016	2:16-cv-06697-LDW-ARL	NY	Eastern	Individual	Reverse Avila
12/10/2016	2:16-cv-06819-ADS-Arl	NY	Eastern	Individual	Reverse Avila
12/12/2016	2:16-cv-06841-JMA-AYS	NY	Eastern	Individual	Reverse Avila
12/13/2016	2:16-cv-06895-SJF-GRB	NY	Eastern	Individual	Reverse Avila
12/13/2016	1:16-cv-06897-WFK-RML	NY	Eastern	Class	Reverse Avila
12/14/2016	1:16-cv-06914	NY	Eastern	Class	Reverse Avila
12/15/2016	2:16-cv-06917-LDW-AKT	NY	Eastern	Individual	Reverse Avila
12/15/2016	2:16-cv-06918-LDW-AKT	NY	Eastern	Individual	Reverse Avila
12/16/2016	2:16-cv-06952-DRH-GRB	NY	Eastern	Individual	Reverse Avila
12/21/2016	2:16-cv-07033-SJF-ARL	NY	Eastern	Individual	Reverse Avila
12/21/2016	2:16-cv-07035	NY	Eastern	Individual	Reverse Avila
12/21/2016	2:16-cv-07032	NY	Eastern	Individual	Reverse Avila
12/22/2016	1:16-cv-07056	NY	Eastern	Class	Reverse Avila
12/22/2016	1:16-cv-07055-FB-JO	NY	Eastern	Class	Reverse Avila
12/29/2016	2:16-cv-07167-JS-SIL	NY	Eastern	Individual	Reverse Avila

File Date	Case No.	State	Jurisdiction	Type	Type
1/5/2017	1:17-cv-00065	NY	Eastern	Class	Reverse Avila
1/9/2017	1:17-cv-00111-WFK-CLP	NY	Eastern	Class	Reverse Avila
1/10/2017	1:17-cv-00136	NY	Eastern	Class	Reverse Avila
1/14/2017	1:17-cv-00222	NY	Eastern	Class	Reverse Avila
1/14/2017	1:17-cv-00224	NY	Eastern	Class	Reverse Avila
1/18/2017	2:17-cv-00287-LDW-AKT	NY	Eastern	Class	Reverse Avila
1/18/2017	2:17-cv-00288-SJF-AYS	NY	Eastern	Class	Reverse Avila
1/18/2017	2:17-cv-00282-JS-AKT	NY	Eastern	Individual	Reverse Avila
1/18/2017	2:17-cv-00285-LDW-SIL	NY	Eastern	Individual	Reverse Avila
1/18/2017	2:17-cv-00284-JFB-ARL	NY	Eastern	Individual	Reverse Avila
1/18/2017	2:17-cv-00286-JFB-SIL	NY	Eastern	Class	Reverse Avila
1/20/2017	2:17-cv-00340-JFB-ARL	NY	Eastern	Class	Reverse Avila
1/20/2017	2:17-cv-00342-DRH-SIL	NY	Eastern	Individual	Reverse Avila
1/20/2017	1:17-cv-00349-FB-ST	NY	Eastern	Class	Reverse Avila
1/22/2017	1:17-cv-00352	NY	Eastern	Class	Reverse Avila
1/23/2017	1:17-cv-00361-PKC-SMG	NY	Eastern	Class	Reverse Avila
1/25/2017	2:17-cv-00412-LDW-SIL	NY	Eastern	Individual	Reverse Avila
1/25/2017	2:17-cv-00413-LDW-AKT	NY	Eastern	Individual	Reverse Avila
1/26/2017	2:17-cv-00446-ADS-AKT	NY	Eastern	Individual	Reverse Avila
1/30/2017	1:17-cv-00535-ENV-PK	NY	Eastern	Class	Reverse Avila
1/30/2017	1:17-cv-00533-BMC	NY	Eastern	Class	Reverse Avila
1/30/2017	1:17-cv-00511-ARR-RER	NY	Eastern	Class	Reverse Avila
1/31/2017	2:17-cv-00542-DRH-AKT	NY	Eastern	Individual	Reverse Avila
1/31/2017	2:17-cv-00541-LDW-AKT	NY	Eastern	Class	Reverse Avila
1/31/2017	2:17-cv-00562-SJF-AYS	NY	Eastern	Individual	Reverse Avila
2/1/2017	2:17-cv-00587-LDW-AYS	NY	Eastern	Individual	Reverse Avila
2/1/2017	2:17-cv-00588-LDW-ARL	NY	Eastern	Individual	Reverse Avila
2/1/2017	1:17-cv-00589-KAM-RML	NY	Eastern	Class	Reverse Avila
2/1/2017	1:17-cv-00584-ARR-RER	NY	Eastern	Class	Reverse Avila
2/1/2017	1:17-cv-00581-ARR-CLP	NY	Eastern	Class	Reverse Avila
2/1/2017	1:17-cv-00572-AMD-RML	NY	Eastern	Class	Reverse Avila
2/2/2017	1:17-cv-00612-DLI-VMS	NY	Eastern	Class	Reverse Avila
2/3/2017	2:17-cv-00649-SJF-SIL	NY	Eastern	Individual	Reverse Avila
2/3/2017	2:17-cv-00647-LDW-SIL	NY	Eastern	Individual	Reverse Avila
2/3/2017	2:17-cv-00650-JMA-ARL	NY	Eastern	Individual	Reverse Avila
2/3/2017	1:17-cv-00654-PKC-RLM	NY	Eastern	Class	Reverse Avila
2/6/2017	1:17-cv-00679-PKC-SMG	NY	Eastern	Class	Reverse Avila
2/7/2017	1:17-cv-00712-BMV	NY	Eastern	Class	Reverse Avila
2/8/2017	2:17-cv-00732-LDW-SIL	NY	Eastern	Individual	Reverse Avila
2/8/2017	2:17-cv-00736-DRH-AYS	NY	Eastern	Individual	Reverse Avila
2/8/2017	1:17-cv-00743-MKB-SMG	NY	Eastern	Class	Reverse Avila
2/10/2017	2:17-cv-00756-ADS-AKT	NY	Eastern	Individual	Reverse Avila
2/10/2017	1:17-cv-00783-ILG-CLP	NY	Eastern	Class	Reverse Avila
2/14/2017	2:17-cv-00819-SJF-AYS	NY	Eastern	Individual	Reverse Avila
2/14/2017	2:17-cv-00821-ADS-AKT	NY	Eastern	Individual	Reverse Avila
2/14/2017	1:17-cv-00815-FB-VMS	NY	Eastern	Class	Reverse Avila
2/16/2017	2:16-cv-00870-LDW-GRB	NY	Eastern	Individual	Reverse Avila
2/16/2017	2:17-cv-00868-JS-AKT	NY	Eastern	Individual	Reverse Avila

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2/17/2017	2:17-cv-00927-SJF-SIL	NY	Eastern	Individual	Reverse Avila
2/17/2017	1:17-cv-00909-LDH-VMS	NY	Eastern	Class	Reverse Avila
2/19/2017	2:17-cv-00945-ADS-ARL	NY	Eastern	Individual	Reverse Avila
2/20/2017	1:17-cv-00953-DLI-RLM	NY	Eastern	Class	Reverse Avila
2/21/2017	2:17-cv-00977-ADS-SIL	NY	Eastern	Individual	Reverse Avila
2/21/2017	1:17-cv-00981-ARR-RML	NY	Eastern	Class	Reverse Avila
2/22/2017	2:17-cv-00990-LDW-ARL	NY	Eastern	Individual	Reverse Avila
2/22/2017	2:17-cv-00993-ADS-ARL	NY	Eastern	Class	Reverse Avila
2/22/2017	1:17-cv-01010-ILG-CLP	NY	Eastern	Class	Reverse Avila
2/22/2017	1:17-cv-01007-SJ-JO	NY	Eastern	Class	Reverse Avila
2/22/2017	1:17-cv-01006-ARR-CLP	NY	Eastern	Class	Reverse Avila
2/23/2017	1:17-cv-01017-MKB-JO	NY	Eastern	Class	Reverse Avila
2/23/2017	1:17-cv-01014-ARR-CLP	NY	Eastern	Class	Reverse Avila
2/24/2017	2:17-cv-01041-LDW-AYS	NY	Eastern	Individual	Reverse Avila
2/24/2017	1:17-cv-01065-BMC	NY	Eastern	Class	Reverse Avila
2/24/2017	1:17-cv-01051-BMC	NY	Eastern	Class	Reverse Avila
2/25/2017	1:17-cv-01085-WFK-JO	NY	Eastern	Class	Reverse Avila
2/26/2017	1:17-cv-01087-BMC	NY	Eastern	Class	Reverse Avila
2/28/2017	1:17-cv-01116-PKC-PK	NY	Eastern	Class	Reverse Avila
2/28/2017	1:17-cv-01115-AMD-ST	NY	Eastern	Class	Reverse Avila
2/28/2017	1:17-cv-01131-ERK-SMG	NY	Eastern	Class	Reverse Avila
3/1/2017	2:17-cv-01175-JFB-GRB	NY	Eastern	Individual	Reverse Avila
3/1/2017	2:17-cv-01178-SJF-ARL	NY	Eastern	Individual	Reverse Avila
3/1/2017	2:17-cv-01174-DRH-AYS	NY	Eastern	Individual	Reverse Avila
3/1/2017	2:17-cv-01177-JFB-GRB	NY	Eastern	Individual	Reverse Avila
3/1/2017	1:17-cv-01154-FB-VMS	NY	Eastern	Class	Reverse Avila
3/2/2017	2:17-cv-01210-SJF-GRB	NY	Eastern	Individual	Reverse Avila
3/2/2017	2:17-cv-01206-SJF-AKT	NY	Eastern	Individual	Reverse Avila
3/2/2017	2:17-cv-01208-JFB-AKT	NY	Eastern	Individual	Reverse Avila
3/2/2017	1:17-cv-01204-KAM-RML	NY	Eastern	Class	Reverse Avila
3/6/2017	2:17-cv-01249-JMA-GRB	NY	Eastern	Individual	Reverse Avila
3/7/2017	2:17-cv-01301-SJF-GRB	NY	Eastern	Individual	Reverse Avila
3/7/2017	1:17-cv-01289-MKB-PK	NY	Eastern	Class	Reverse Avila
3/9/2017	2:17-cv-01346-JS-ARL	NY	Eastern	Individual	Reverse Avila
3/9/2017	2:17-cv-01345-ADS-ARL	NY	Eastern	Individual	Reverse Avila
3/10/2017	1:17-cv-01365-BMV	NY	Eastern	Class	Reverse Avila
3/10/2017	1:17-cv-01354-DLI-RML	NY	Eastern	Class	Reverse Avila
3/10/2017	1:17-cv-01356-ILG-ST	NY	Eastern	Class	Reverse Avila
3/11/2017	1:17-cv-01370-ARR-PK	NY	Eastern	Class	Reverse Avila
3/13/2017	2:17-cv-01399-SJF-AYS	NY	Eastern	Individual	Reverse Avila
3/13/2017	2:17-cv-01404-LDW-AKT	NY	Eastern	Individual	Reverse Avila
3/13/2017	2:17-cv-01385-ADS-SIL	NY	Eastern	Class	Reverse Avila
3/14/2017	1:17-cv-01429-RRM-JO	NY	Eastern	Class	Reverse Avila
3/14/2017	1:17-cv-01427-ENV-RLM	NY	Eastern	Class	Reverse Avila
3/15/2017	1:17-cv-01444-ERK-RML	NY	Eastern	Class	Reverse Avila
3/15/2017	1:17-cv-01458-ILG-SMG	NY	Eastern	Class	Reverse Avila
3/15/2017	1:17-cv-01459-RRM-RLM	NY	Eastern	Class	Reverse Avila
3/16/2017	1:17-cv-01494-ARR-VMS	NY	Eastern	Class	Reverse Avila

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3/17/2017	1:17-cv-01498-PKC-CLP	NY	Eastern	Class	Reverse Avila
3/19/2017	1:17-cv-01534-RJD-VMS	NY	Eastern	Class	Reverse Avila
3/19/2017	1:17-cv-01535-PKC-PK	NY	Eastern	Class	Reverse Avila
3/20/2017	2:17-cv-01564-JS-SIL	NY	Eastern	Class	Reverse Avila
3/21/2017	1:17-cv-01595-ENV-RLM	NY	Eastern	Class	Reverse Avila
3/21/2017	1:17-cv-01594-KAM-RLM	NY	Eastern	Class	Reverse Avila
3/27/2017	1:17-cv-01703-ARR-LB	NY	Eastern	Class	Reverse Avila
3/28/2017	1:17-cv-01736-ARR-CLP	NY	Eastern	Class	Reverse Avila
3/28/2017	1:17-cv-01737-FM-JO	NY	Eastern	Class	Reverse Avila
3/28/2017	1:17-cv-01721-PKC-ST	NY	Eastern	Class	Reverse Avila
3/29/2017	1:17-cv-01759-AMD-VMS	NY	Eastern	Class	Reverse Avila
3/30/2017	1:17-cv-01795-MKB-PK	NY	Eastern	Individual	Reverse Avila
3/30/2017	1:17-cv-01799-FB-JO	NY	Eastern	Class	Reverse Avila
3/30/2017	1:17-cv-01800-AMD-CLP	NY	Eastern	Class	Reverse Avila
3/31/2017	2:17-cv-01842-LDW-GRB	NY	Eastern	Individual	Reverse Avila
3/31/2017	2:17-cv-01838-LDW-AKT	NY	Eastern	Individual	Reverse Avila
3/31/2017	2:17-cv-01840-JFB-AKT	NY	Eastern	Individual	Reverse Avila
3/31/2017	2:17-cv-01841-SJF-ARL	NY	Eastern	Individual	Reverse Avila
3/31/2017	1:17-cv-01822-BMC	NY	Eastern	Class	Reverse Avila
4/1/2017	1:17-cv-01849-RRM-RER	NY	Eastern	Class	Reverse Avila
4/3/2017	2:17-cv-01887-LDW-ARL	NY	Eastern	Class	Reverse Avila
4/3/2017	2:17-cv-01889-ADS-SIL	NY	Eastern	Individual	Reverse Avila
4/3/2017	2:17-cv-01888-ADS-AKT	NY	Eastern	Class	Reverse Avila
4/4/2017	2:17-cv-01913-JFB-AYS	NY	Eastern	Class	Reverse Avila
4/4/2017	2:17-cv-01916-LDW-SIL	NY	Eastern	Class	Reverse Avila
4/4/2017	1:17-cv-01933-RRM-RLM	NY	Eastern	Class	Reverse Avila
4/4/2017	1:17-cv-01935-PKC-ST	NY	Eastern	Class	Reverse Avila
4/4/2017	1:17-cv-01930-ARR-PK	NY	Eastern	Class	Reverse Avila
4/4/2017	1:17-cv-01928-KAM-RML	NY	Eastern	Class	Reverse Avila
4/4/2017	1:17-cv-01931-RRM-CLP	NY	Eastern	Class	Reverse Avila
4/5/2017	2:17-cv-01977-LDW-GRB	NY	Eastern	Class	Reverse Avila
4/5/2017	2:17-cv-01976-SJF-ARL	NY	Eastern	Individual	Reverse Avila
4/5/2017	1:17-cv-01965-DLI-RML	NY	Eastern	Class	Reverse Avila
4/5/2017	1:17-cv-01984-LDH-CLP	NY	Eastern	Class	Reverse Avila
4/5/2017	1:17-cv-01954-RRM-JO	NY	Eastern	Class	Reverse Avila
4/5/2017	1:17-cv-01959-RJD-VMS	NY	Eastern	Class	Reverse Avila
4/5/2017	1:17-cv-01964-WFK-VMS	NY	Eastern	Class	Reverse Avila
4/6/2017	2:17-cv-02021-LDW-AKT	NY	Eastern	Class	Reverse Avila
4/6/2017	2:17-cv-02019-LDW-AKT	NY	Eastern	Class	Reverse Avila
4/6/2017	2:17-cv-02025-JFB-SIL	NY	Eastern	Class	Reverse Avila
4/6/2017	2:17-cv-02029-JMA-AYS	NY	Eastern	Individual	Reverse Avila
4/6/2017	2:17-cv-02028-SJF-SIL	NY	Eastern	Class	Reverse Avila
4/7/2017	2:17-cv-02136-DRH-SIL	NY	Eastern	Individual	Reverse Avila
4/7/2017	2:17-cv-02138-JFB-AYS	NY	Eastern	Class	Reverse Avila
4/7/2017	2:17-cv-02139-SJF-AKT	NY	Eastern	Individual	Reverse Avila
10/6/2016	1:16-cv-01213-TJM-TWD	NY	Northern	Individual	Reverse Avila
6/20/2016	1:16-cv-04685-LGS	NY	Southern	Individual	Reverse Avila
9/30/2016	1:16-cv-07676-RWS	NY	Southern	Class	Reverse Avila

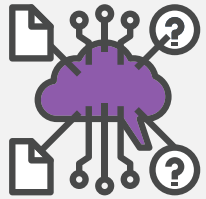
File Date	Case No.	State	Jurisdiction	Type	Type
10/6/2016	7:16-cv-07813-KMK	NY	Southern	Individual	Reverse Avila
10/18/2016	1:16-cv-08126-RA	NY	Southern	Individual	Reverse Avila
10/27/2016	1:16-cv-08363-AHK	NY	Southern	Class	Reverse Avila
12/2/2016	7:16-09332	NY	Southern	Individual	Reverse Avila
1/3/2017	1:17-cv-00024	NY	Southern	Class	Reverse Avila
1/17/2017	7:17-cv-00330-NSR	NY	Southern	Class	Reverse Avila
2/8/2017	1:17-cv-00927-GHW	NY	Southern	Class	Reverse Avila
3/7/2017	1:17-cv-01698-RJS	NY	Southern	Class	Reverse Avila
3/8/2017	1:17-cv-01723-GBD	NY	Southern	Class	Reverse Avila
3/8/2017	1:17-cv-01731-PGG	NY	Southern	Class	Reverse Avila
3/8/2017	1:17-cv-01749-RA	NY	Southern	Class	Reverse Avila
3/13/2017	1:17-cv-01833-LGS	NY	Southern	Class	Reverse Avila
3/13/2017	1:17-cv-01834-VEC	NY	Southern	Class	Reverse Avila
3/23/2017	1:17-cv-02132-JMF	NY	Southern	Class	Reverse Avila
3/28/2017	7:17-cv-02253-CS	NY	Southern	Individual	Reverse Avila
3/28/2017	7:17-cv-02235-KMK	NY	Southern	Class	Reverse Avila
3/29/2017	1:17-cv-02296-JPO	NY	Southern	Class	Reverse Avila
4/9/2016	6:16-cv-06240	NY	Western	Class	Reverse Avila
10/5/2016	1:16-cv-00798-LJV	NY	Western	Individual	Reverse Avila
10/7/2016	6:16-cv-06664	NY	Western	Class	Reverse Avila
2/10/2017	1:17-cv-00127-WMS	NY	Western	Individual	Reverse Avila
4/4/2017	1:17-cv-00291-LJV	NY	Western	Individual	Reverse Avila

Exhibit B

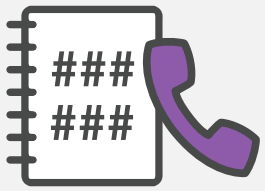
On a mission to establish trust in customer communications.

CRC Benchmark Study Overview

5 volunteer companies



multiple analytics sources reviewed



10 phone numbers each

risk assessment & recommendations

Understanding Risk Ratings

Severe

- Scam
- Scam Likely
- Fraud

High

- Nuisance
- Suspected Spam
- Spam Likely

Medium

- Telemarketer
- Debt Collector

Company #1

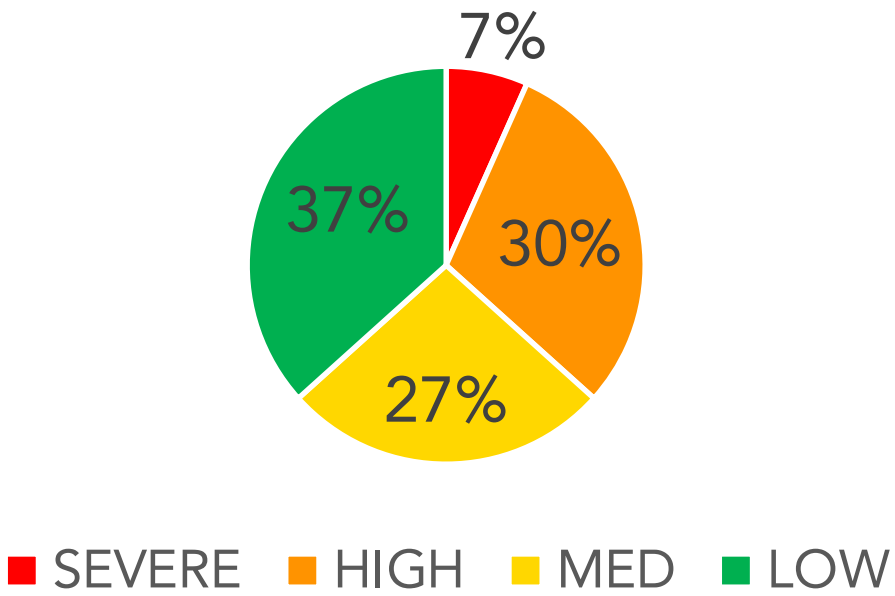
Call Intent:
3rd Party Collections

Focus Industries:
Various

Size of Organization:
Small

Local DIDs or TFNs:
Mixed; mostly TFNs

Number Risk Rating



**risk rating averaged across multiple sources*

Company #2

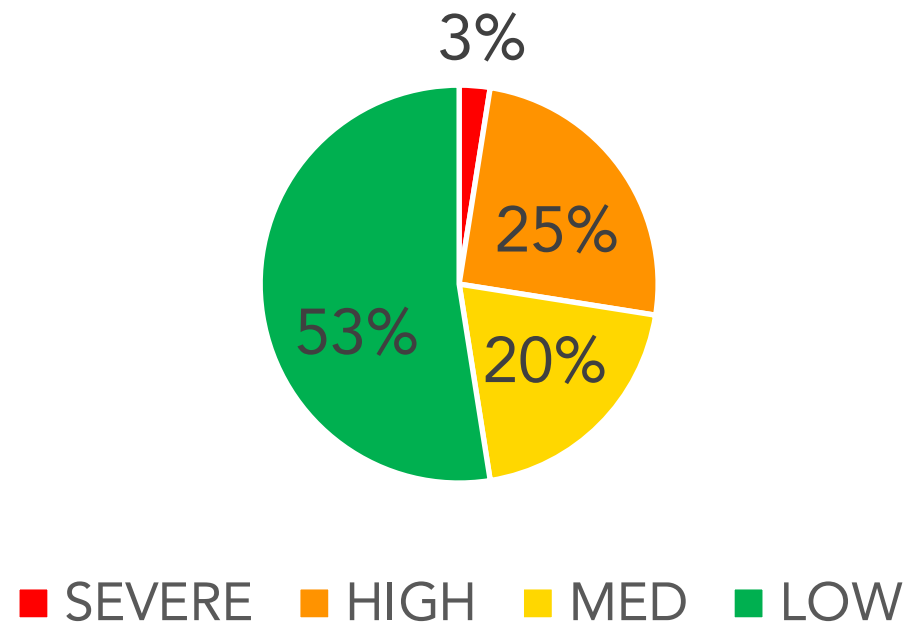
Call Intent:
1st & 3rd Party Collections

Focus Industries:
Healthcare, Government, Commercial

Size of Organization:
Large

Local DIDs or TFNs:
Mixed

Number Risk Rating



**risk rating averaged across multiple sources*

Company #3

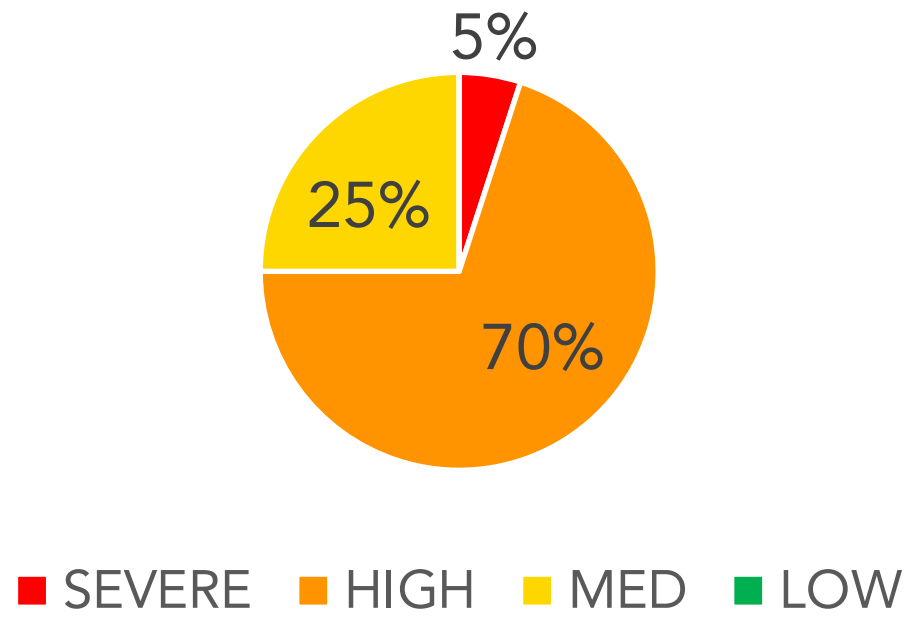
Call Intent:
3rd Party Collections

Focus Industries:
Various

Size of Organization:
Large

Local DIDs or TFNs:
Local Numbers

Number Risk Rating



**risk rating averaged across multiple sources*

Company #4

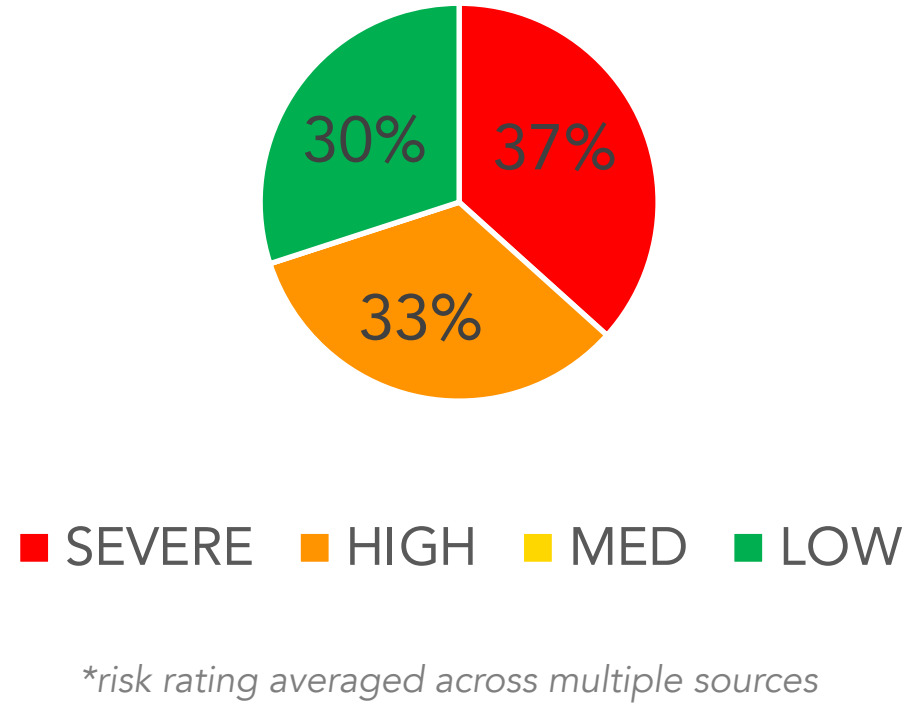
Call Intent:
1st and 3rd Party Collections

Focus Industries:
Healthcare

Size of Organization:
Medium

Local DIDs or TFNs:
Local Numbers

Number Risk Rating



**risk rating averaged across multiple sources*

Company #5

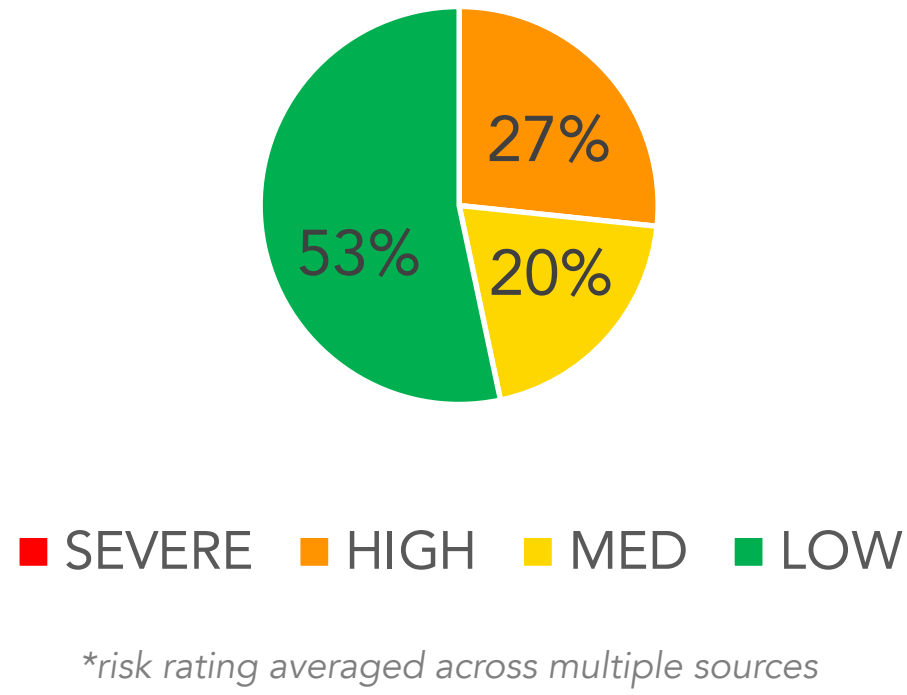
Call Intent:
3rd Party Collections

Focus Industries:
Commercial

Size of Organization:
Small

Local DIDs or TFNs:
Mixed; Mostly Local

Number Risk Rating

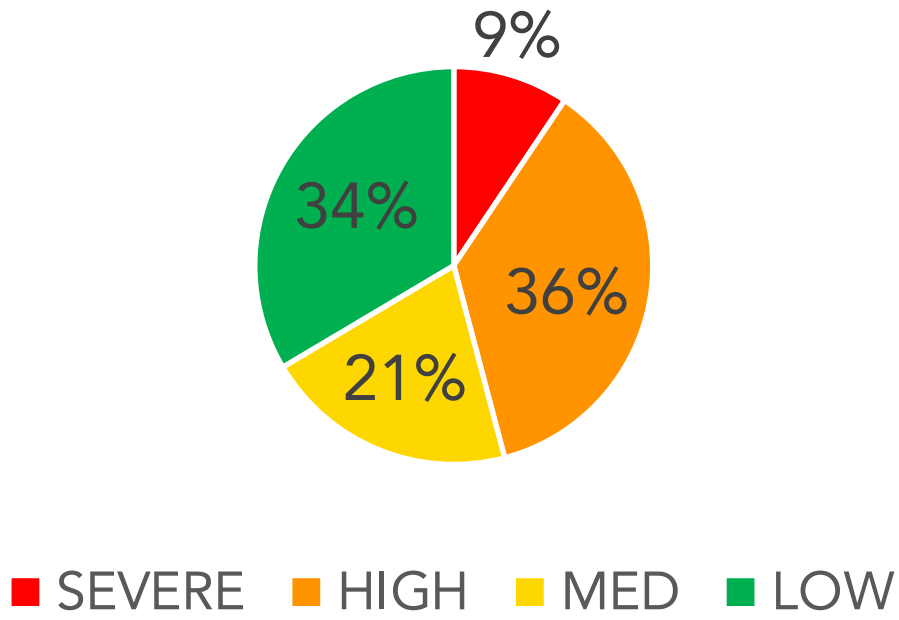


**risk rating averaged across multiple sources*

Benchmark Study Conclusions

- Understanding call volume is an important factor in determining impact of risk ratings
- Numbers used consistently over a long lifespan have lower associated risk
- Reducing multi-intent number usage can improve risk ratings
- Frequently changing numbers and calling patterns can lead to misrepresentative call labeling

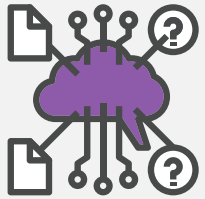
Participant Risk Summary



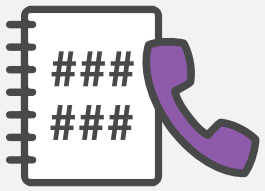
**risk rating averaged across multiple sources*

Benchmark Study Recommendations

continue the conversation



stay current with ecosystem news



build internal knowledge

develop your call labeling strategy

Thank you!

www.numeracle.com

Exhibit C

B–3 MODEL FORM FOR VALIDATION NOTICE § 1006.34

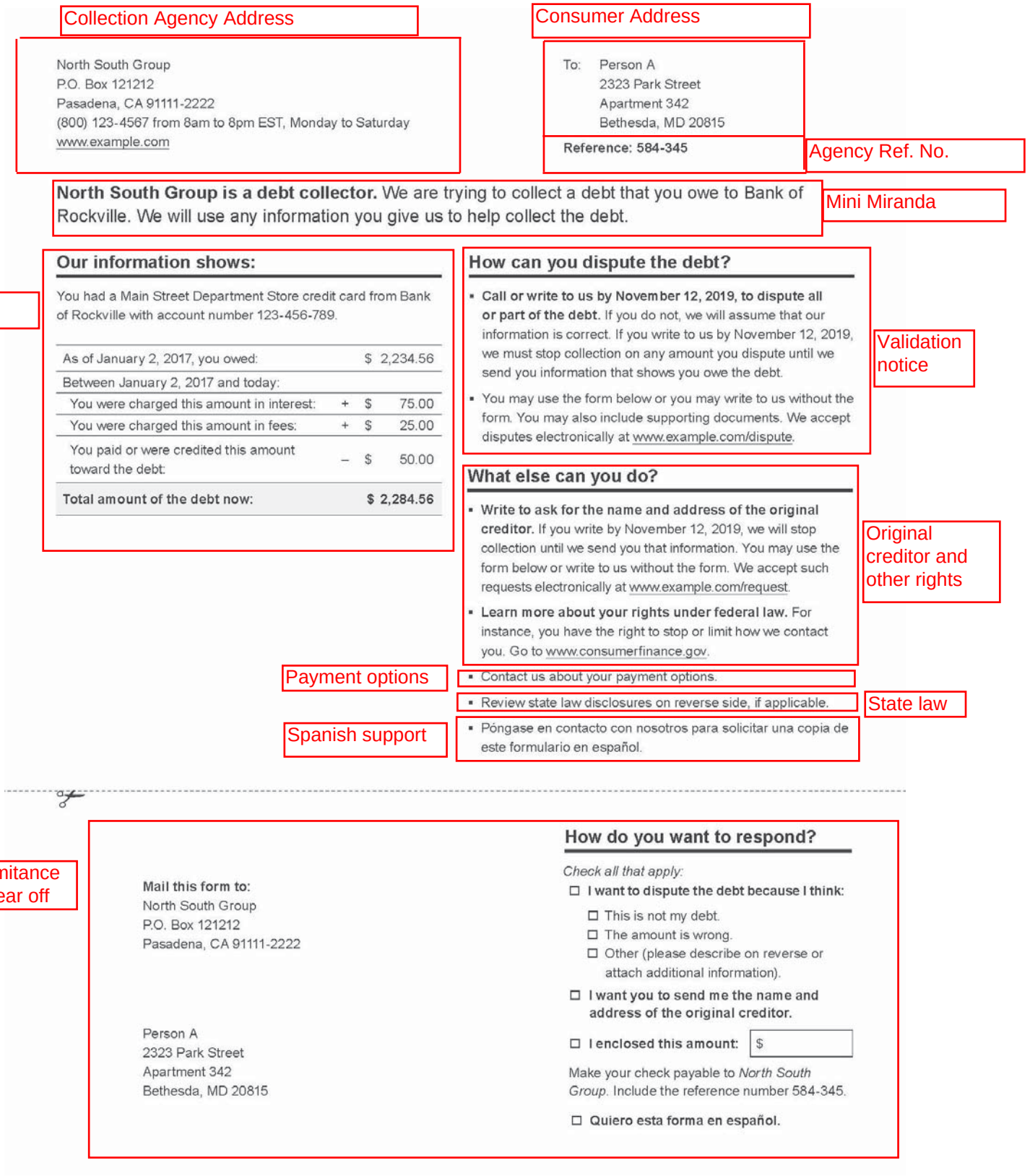
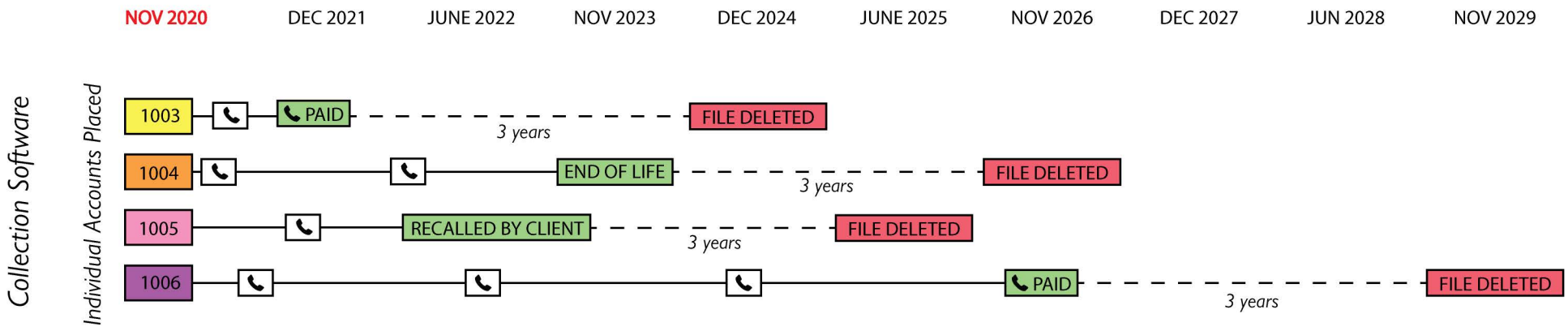


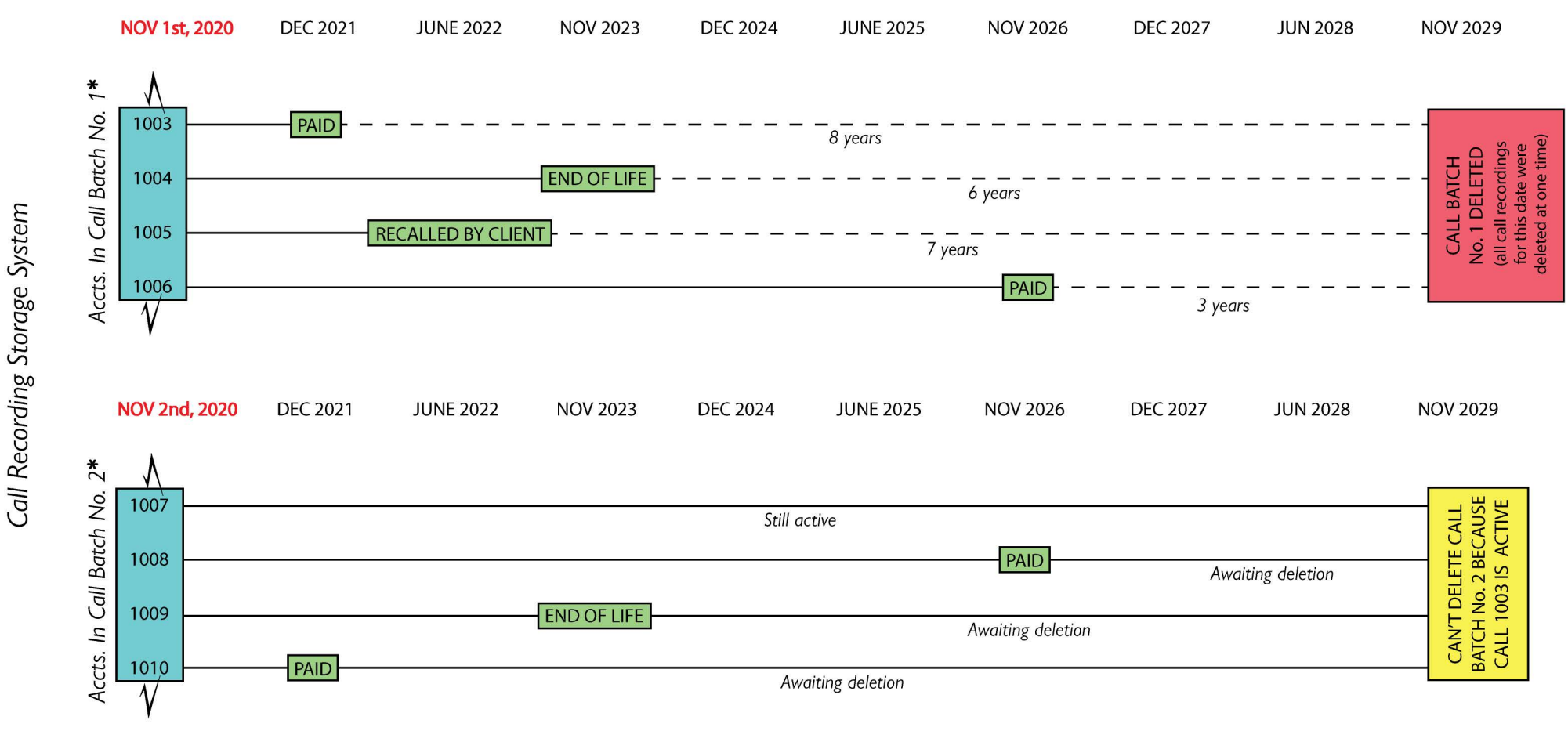
Exhibit D

The CFPB's Vision



*Notes and billing records are kept separate. They do not include call recordings or correspondence.

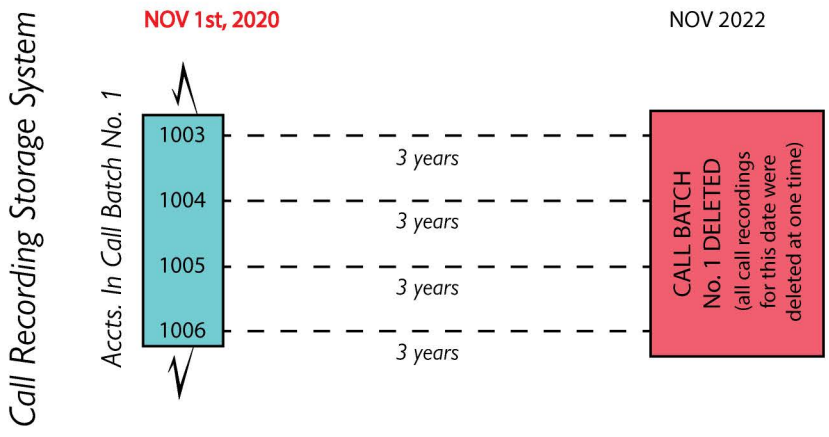
A Collection Agency's Reality



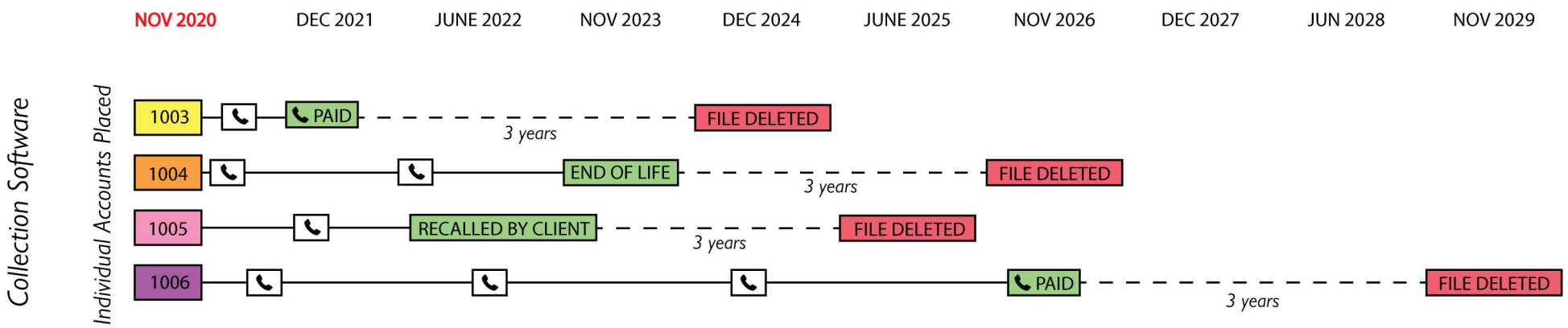
*All calls for all accounts in a single day are grouped together in call batches.
*A single call cannot be isolated and deleted; The only way is to delete to entire file

---

Proposal



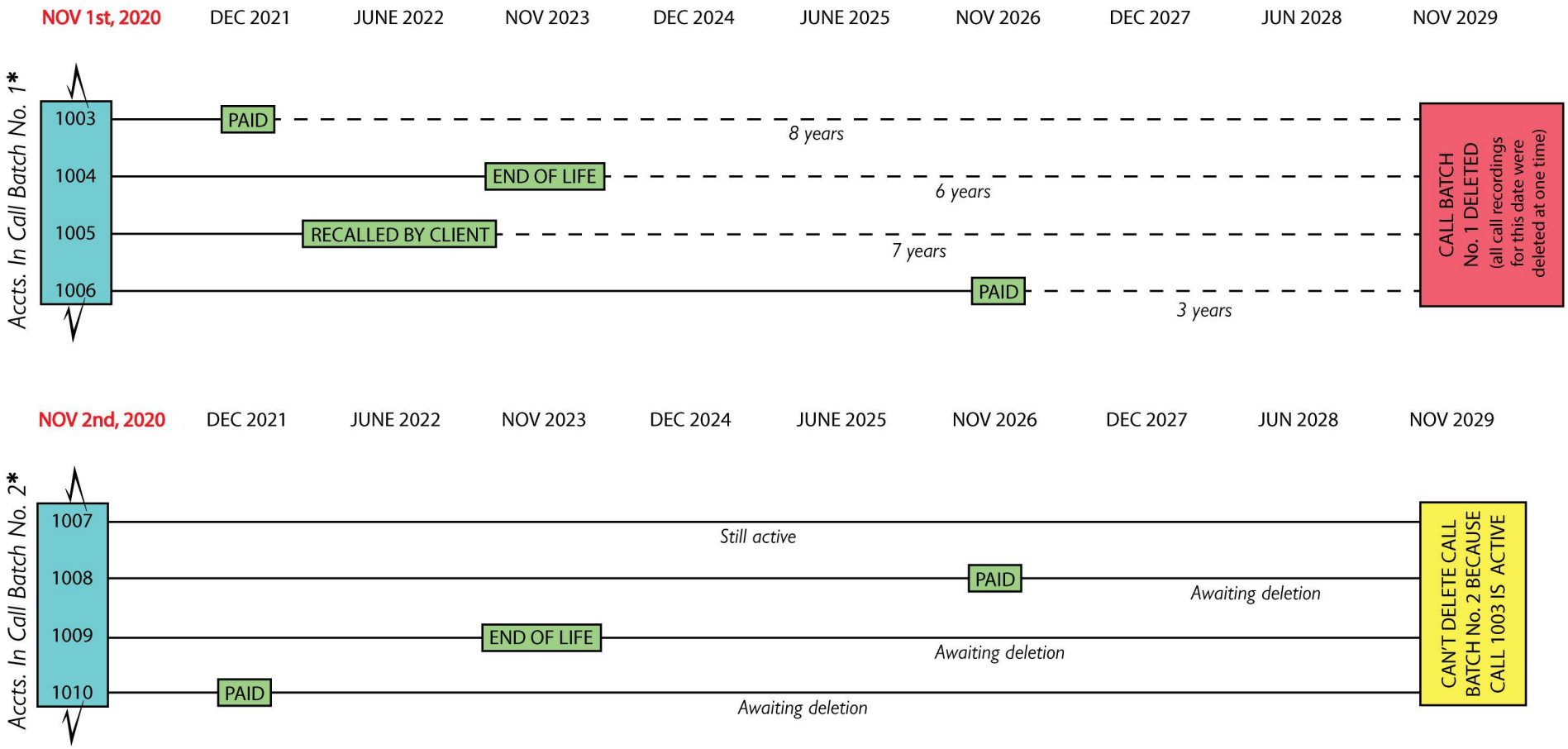
The CFPB's Vision



*Notes and billing records are kept separate. They do not include call recordings or correspondence.

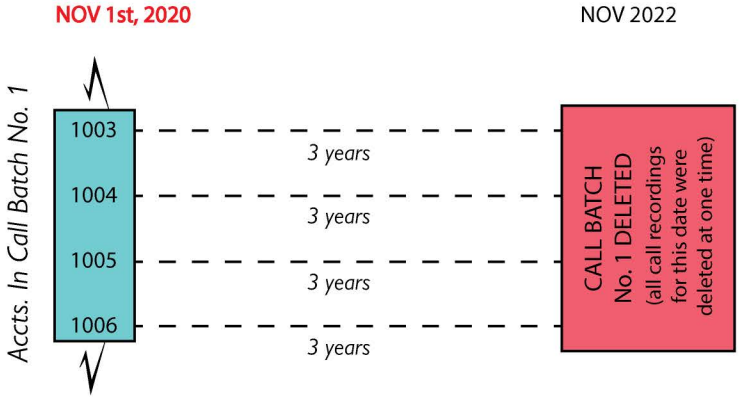
A Collection Agency's Reality

Call Recording Storage System



*All calls for all accounts in a single day are grouped together in call batches.
*A single call cannot be isolated and deleted; The only way is to delete to entire file

Proposal


NOV 1st, 2020
NOV 2022
Accts. In Call Batch No. 1
1003
1004
1005
1006
3 years
3 years
3 years
3 years
CALL BATCH
No. 1 DELETED
(all call recordings
for this date were
deleted at one time)