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The Coalition of Higher Education Assistance Organizations (COHEAO) appreciates the opportunity to respond to the Advance Notice of Proposed Rulemaking issued by the Bureau on November 5, 2013, related to debt collection practices.

Since 1981, COHEAO has served as a partnership of colleges, universities and other organizations dedicated to promoting student-friendly and efficiently operated campus-based loan and tuition payment programs. These institutions, along with their third-party service providers, advocate for the sound regulation of student financial services and the management of campus accounts receivables.

COHEAO is very supportive of the mission set forth by the CFPB, namely in educating our consumers to ensure they are equipped with the necessary information required to make sound financial decisions based on clearly outlined terms and fully disclosed consequences. We have been honored as an organization to have participated as a resource to the Bureau in its earliest stages to provide a better understanding of the higher education marketplace and specifically the administration of the federal student aid programs, including the awarding, disbursement and collection of student aid debt and institutional accounts receivable. We offer this preamble as an opportunity to share the framework and perspective of our responses to this ANPR.

Institutions of higher education are committed to working with both current and former students to ensure a successful financial future. Through a variety of existing Federal regulations associated with the campus-based and institutional loan programs, including the Truth in Lending Act (TILA), Family Educational Rights and Privacy Act (FERPA), Gramm Leach-Bliley Act (GLBA) and the Federal Due Diligence Regulations, in combination with new financial literacy and student outreach programs, institutions are safeguarding the rights of their students and providing them with extensive information regarding the importance of making educated financial decisions and maintaining financial accountability for their loans and for credit extended by the institution. Still, many students do not acknowledge or fully comprehend the reality of their educational debt levels until after college when they may find themselves lacking the financial resources or understanding to properly manage the financial obligations they have accumulated. In these cases, institutional personnel, along with their third party partners in loan servicing and debt collection, work together to find viable options and solutions for students in resolving their delinquent accounts receivable and/or campus-based loans.

Collection of campus-based loans and other obligations at institutions of higher education operates in a vastly, fundamentally different way than other types of debt collection. Colleges and universities use loan servicers and collection agencies that specialize in higher education, and colleges dictate strict operating protocols through their third-party contracts. Many federal and state laws, backed by annual audits, govern institutions, which diligently monitor loan servicers and collection agencies to ensure they are complying with these important regulations and are operating as seamless extensions of the institutions they serve, while treating the student fairly and with dignity.

The members of COHEAO also recognize the importance of financial literacy and are dedicated to addressing its challenges. We invite the Bureau to review our extensive and ongoing work in this area. The COHEAO Financial Literacy Task Force has issued two white papers on the topic of financial awareness models in higher education. These papers share best practices and resources to help higher education administrators and policy makers promote and enhance their financial literacy efforts and to assist institutions seeking to start new programs on their campuses.

COHEAO requests that the Bureau consider the existing environment of strong regulatory oversight within which institutions of higher education and their third party partners currently operate. The solid foundation of providing student-friendly practices and efficiently operated campus-based loan and tuition payment programs in higher education can be used as a model in other areas of debt collection. To further regulate this area bears the risk of adding unnecessarily to the workload of campus administrators, and it will have a direct impact on the cost of higher education. We urge the Bureau to recognize the differences in the way higher education debt collection takes place from other types of collection activities and to refrain from adding duplicative and wasteful regulations that will serve only to drive up college costs. Instead, we urge the Bureau to continue its valued collaboration with us and with our members through existing regulatory frameworks in order to achieve mutually shared objectives for consumers.

Thank you again for the opportunity to share our perspectives, existing best practices and the framework of our responses to this ANPR. For questions about this document, please contact Maria Livolsi, COHEAO President; Harrison Wadsworth, Executive Director, or David Stocker, CFPB Task Force Chair, at the above address or by emailing coheao@wpllc.net.

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

Account Number(s);
Consumer's Name, Addresses, Phone Numbers,
Current Balance
Last Payment Date
Last Payment Amount
Date of Origination
Date of Charge off
Charge-Off Balance
Date of First Delinquency
Original Creditor Name
Social Security Number
Interest Rate
General Breakdown of Debts-Itemization of charges
Entire Account Transaction Statement/ History of Account
Payment transaction history
Documentation or agreement between Creditor and Consumer
Reference Information
General Data
TIN
Delinquency Date/Date of last service/Date of last payment
Origination date
For schools, added documentation is likely to drive added cost to the educational experience

What about resale of accounts? What right does the purchaser have to access information? What is the impact of the OCC statement of best practices regarding banks monitoring sellers?

We are unaware of COHEAO members buying or selling educational debt; therefore we have no knowledge of this industry to respond to this question from a debt buying or selling perspective.

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

COHEAO members do not buy or sell debt, and we have insufficient knowledge to answer this question.

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

COHEAO members do not buy or sell debt, and we have insufficient information to respond to this question.

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

COHEAO members do not buy or sell debt, and we have insufficient information to respond to this question.

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

When a school places a debt for collection, typically the charges are reviewed for accuracy, and any known disputes have been investigated and validated. Most schools keep a communication log of when there has been contact and communication attempts (i.e. phone calls, letters). It is not typical that a school receives a cease request from a consumer. If the cease request happens when the account is placed with a collection agency, under most circumstances, the collection agency will close and return the account to the school and provide a copy of the request. If an attorney represents the consumer they will work either directly with the school and may work directly with the collection agency to resolve the debt. The Higher Education Collection Agencies send out an initial 30 day notice with contact information including a toll free number and website information for students to access their account information 24 hours a day.

The following information is available to collectors and may expand if a consumer's attorney is involved or litigation is initiated:

General Breakdown of Debts-Itemization of charges
Entire Account-Transaction Statement-History of Account,
Payment transaction history
Documentation or agreement between Creditor and Consumer
Reference Information
General Data
SSN/TIN
Delinquency Date/Date of last service/Date of last payment

When a creditor transfers an account to a collector, additional information that would prevent unwanted or unnecessary consumer contact would be knowledge of prior disputes, arbitration or litigation, collection costs, SOL issues, special terms or conditions for enforcement, settlements or account adjustments and any activity which occurred prior to the placement, especially if it occurred at another collection agency—all such information should be included in the placement.

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

The benefits of original or subsequent third party collectors who work accounts obtaining this information are that it increases the likelihood that a consumer will receive consistent treatment in accordance with the account status after the account is outsourced. For example, the third party collector will only contact the consumer's attorney to collect the debt if the creditor provides this information to them.

There is a concern that a transfer of information of this kind to a subsequent collector may act to limit or completely eliminate communication with the consumer and the potential of resolving the matter short of forcing the consumer into litigation. The FDCPA has no dispute resolution mechanism contained in the statutory text. If a consumer continues to dispute a debt after a third party debt collector attempts to communicate with the consumer and obtain a voluntary resolution or compromise, the only method for resolving the dispute is to engage in litigation and resolve the dispute in court.

The cost to provide this information from the creditor to third party collectors would depend on the size and level of technology of the institution/creditor. It is important to note that many smaller institutions/ creditors may not have the technical resources to provide information electronically and may incur the cost of manually obtaining/providing information which would ultimately increase the cost for the consumer.

To the extent there is a reference to Debt Buyers in this question, we are unaware of COHEAO members buying or selling debt; therefore we have insufficient knowledge of this industry to respond to this question from a debt buying or selling perspective.

Q6: To what extent do debt owners transfer or make available to debt buyers or third-party collectors information relating to: the consumer's understanding of other languages (if the consumer has limited English proficiency); the consumer's status as a servicemember; the

consumer's income source; or the fact that a consumer is deceased? What would be the benefits and costs of debt buyers and third-party collectors obtaining or obtaining access to this information upon sale or placement of the debt? To what extent do third-party debt collectors provide this information to debt owners? What would be the costs and benefits of third-party collectors providing this information to debt owners?

While schools do track English Learning Students (ELS) as well as military students, it typically is not information that the financial side of the school has access to when placing an account for collections. Schools normally do not check students' credit prior to granting aid and therefore would not be aware of income sources unless it was disclosed by the consumer during a conversation. Repayment of student debt is the sole responsibility of the student. Schools do not require co-signers.

If a student is deceased, all collection activity stops on the account, and the school would follow federal regulations and their internal policies of how to pursue or write off any outstanding debt on the student's account. The FDCPA requires all documents sent to a consumer to be at a certain level of understanding for the least educated/sophisticated consumer. Collection Agencies and schools do not always have the resources or systems to determine the consumer's military status. Sometimes, it is possible to determine status if the university processes their benefits, depending on what chapter of the law covers the consumer, or possibly through certain skip tracing websites. Students may be asked when they register for classes to disclose their military status. Agencies frequently provide a bilingual website and representatives for non-English speaking consumers.

Thus, some types of additional information discussed in this section are not conveyed by schools, and our experience is that most credit grantors and collection agencies do not track this data either.

The benefit of transmitting this information is consistent, informed communication. However, the cost to provide it is unknown as few if any are currently tracking such data. Intuitively, adding this additional layer of record keeping, system development and transfer could be significant because much of the information is unavailable, variable and likely to be unreliable. It could cause consumers more harm than good to transmit such data.

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

This information is not customarily transferred to third party debt collectors and if it were, tracking it would require a sophisticated computer system that to our knowledge has not been developed.

Currently, some large debt collector agencies provide Spanish collection letters and access to Spanish speaking collectors and speakers of some other languages upon request. However, there are problems with monitoring non-English communications because of difficulties in literal translations of required disclosures and variations in dialects. (For example, there were years of litigation over the 30 validation notice language including whether it should say "a" judgment or "the" judgment.) In addition, there are very few insurance company-approved letter examiners who will do non-English letters, and they are very expensive.

The consumer's status as a servicemember.

We cannot comment in the area of typical commercial credit. As noted above, schools may or may not track this information, but even if they do it is not always provided to the third-party collector. As in all of the areas of monitoring and tracking accounts, a student's status may change, and learning of and transferring that new data is a logistical/systemic problem.

The period of active duty military service deployment since 2001 for servicemembers has varied from as little as 3 months, to more than 24 months for some, and it has often involved periods of redeployment. See http://projects.militarytimes.com/polls/2012/results/duty-status-deployments/. The value of this information would be minimal because of its capacity to change so often, rendering it unreliable. Any process or procedure built upon reliance on the timeliness or accuracy of this type information would not be effective.

The consumer's income source.

Most creditors, especially schools who are COHEAO members, do not have information about a consumer's income source. Even if they might have initial information from a credit application, it is a variable that changes over time.

Our experience is that few creditors provide information to third party collectors regarding place of employment or income source. The FDCPA requires verification that information is up to date before acting on it. The value of this information would be limited because of its capacity to change so often, rendering it unreliable. Any process or procedure built upon reliance on the timeliness or accuracy of this type information would not be effective.

The fact that a consumer is deceased.

The fact that a consumer is deceased may be included in information accompanying a transfer of an educational account for purposes of processing a cancelation, but for commercial debt, accounts should not be outsourced for collection if the consumer is deceased.

If a collector learns of the death of a consumer after they are working an account, the information on a consumer's death would go from the collector to the creditor and the account would be closed.

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

The value of information depends on it being up to date and accurate. Outdated information would serve no purpose and can potentially do harm by creating wrong processing or miscommunication and unnecessarily increasing the costs of collecting the account. If such a requirement were imposed, third party collectors should be allowed to rely on the information without resorting to further investigative steps to verify the accuracy of the information.

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

Third party debt collectors may provide information to their creditor client regarding a consumer's limited English proficiency, status as a servicemember, income source (or lack thereof), deceased status, depending on the requirements of the contract with the creditor. In our experience, most collection contracts do not currently require such information transfer to the client.

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

The benefit of requiring a collector to share these types of information when sending an account back to their client/creditor would be to prevent the subsequent collector from opening up accounts that should not be processed (death) for example.

Information regarding a consumer's limited English proficiency and income source (or lack thereof), would not typically impact the consumer's obligation to repay a debt. Information regarding a consumer's deceased status may or may not trigger a response directed to the estate of the consumer, depending on the policies and practices of the creditor. Information concerning the consumer's status as a servicemember may affect the interest rate applicable to the debt, and it may affect the course of state court judicial proceedings to reduce the debt to judgment, but again, such information ordinarily does not affect the consumer's obligation to repay a debt. At present, there is only one method for determining whether a consumer is on active duty military status, and that resource is available to creditors as well as third party debt collectors. https://www.dmdc.osd.mil/appj/scra/scraHome.do.

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

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

Possible additional information could include whether the debt is subject to arbitration, choice of law, provides for collection costs or attorney's fees in the event of a default, subject to a specific statute of limitations, whether the statute of limitations is tolled, reset, or has run, what the governing interest rate is, whether interest is simple or compounded, itemized balance due

showing pre-charge off principal, pre-charge off interest, and pre-charge off fees; total payments; and payment application hierarchy.

The value of the information depends on its accuracy. Outdated information would serve no purpose and can potentially cause harm to consumers. If such a requirement were imposed, third party collectors should be allowed to rely on the information without resorting to further investigative steps to verify the accuracy of the information.

We support a policy that would encourage creditors to share information obtained from previous debt collectors with subsequent debt collectors.

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

The collection agency should have access to all original documents such as account statement, terms and conditions, registration information, applications, deferments, cancelations, legal actions and payment history. Agencies will contact the school and request documentation as needed to verify the debt for the consumer.

In turn, debt collectors seeking documentation must work through the links in the chain of title to secure documentation from the debt originator. The documentation available varies from creditor to creditor and portfolio to portfolio and debt type.

We support reasonable requirements imposed upon the original creditor to provide full information and media on all accounts they outsource and a rule that this information should not incur a charge to the collector.

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

Collection agencies collecting educational debt may request the information listed in this question on an as needed basis. The school will provide the last break down of charges or a statement if needed. We believe it is the responsibility of the school or other creditor to ensure that the debt is valid and be able to provide documentation.

The latest contact information for the consumer would be useful and will likely reduce failed communication efforts and begin the resolution of the account faster, while eliminating inadvertent third party disclosures or contacts.

As noted elsewhere, the following are examples of documents or records that would be beneficial to avoid confusion about the debt and make sure all parties are informed about events that have occurred prior to placement with a third-party collector.

Loan or credit agreements
Payment history
Other records of indebtedness
Written disputes
Litigation
Bankruptcy
Military records
Death certificate

COHEAO members are not actively involved in buying or selling debt and have no ability to comment on those issues.

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

COHEAO members do not participate in buying or selling debt and have no comment. To the extent that the question is related to collection of debts, see our response to Queston1.

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

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

Creditors and third party collectors may secure copies of a consumer's credit report, and incorporate some of that information in their recordkeeping systems. The Fair Credit Reporting Act (FCRA) prohibits any person from using or obtaining a consumer report for anything other than permissible purposes.

The FCRA also requires entities to secure nonpublic information to reduce the risk of identity theft and to dispose of information contained in or derived from credit reports in accordance with the Interagency Guidelines Establishing Information Security Standards.

The FDCPA currently addresses this in 15 U.S.C. § 1692c, "[e]except as provided in section 1692b of this title, without the prior consent of the consumer given directly to the debt collector, or the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a post judgment judicial remedy, a debt collector may not communicate, in connection with the collection of any debt, with any person other than the consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector", 15 U.S.C. § 1692c (b).

Various state laws restrict a debt collector's ability to share information gathered in the course of collection by third parties. Ariz. Admin. Code R20-4-1512(B); Ark. Code Ann. 17–24–504(b); Cal. Civ. Code § 1788.12(c), (e); Col. Rev. Stat. Ann. § 12-14-105; Conn. Agencies Reg. § 36a-647-4(b) are some of numerous examples.

Therefore, we do not believe addditional rules are necessary to protect conssumers in this area.

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

We do not believe such repositories are a reasonable, practical solution. Schools encrypt information that is shared between the school and the collection agency. Websites are password protected, and employees do not share logins and passwords. Collection agencies COHEAO member schools work with comply with all state and federal laws and regulations that govern school accounts (FERPA, GLBA, Red Flag Rules, FCRA, PCI, etc.) to protect the student's information.

With a centralized repository there would be many security concerns, and it would create the potential of third party disclosure issues as well, depending on who would have access to that information. Recent large repository breeches at NSA, Target and several banks raise concern about creating another mass data storage site. Additional issues involve the potential huge cost of creating and maintaining such a site.

Sharing certain up to date and accurate documentation and information about debts in a central repository may be beneficial to the consumer if one were established.

If such repositories are established the consumer should have access to such a site. However, we must again voice our belief that such a new, huge, expensive data gathering site would be expensive and hard to protect. It creates questions about who would maintain and pay the expenses of such a site. Further, in many respects it duplicates the existing credit bureau systems.

Before any rulemaking is considered in this area, more study needs to be done on the costs involved in transferring data about a debt into a central repository, how those costs would be accessed, and the type of debt that should be tracked. It is important to keep in mind that, ultimately, the costs of collection get passed onto the consumer and affect consumer access to affordable credit.

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

Current industry practice is that third party collectors do not send a separate notification to consumers upon placement of a debt for collection other than the statutorily prescribed validation notice or as required by state law. Such notices typically require a disclosure of hours or license status or whether a credit bureau report will be made.

The agencies that collect federal student loans already send out initial notices once an account has been placed with them for collection. The letter has contact information including a toll free number and website for students to access their account information.

We are unaware of COHEAO members buying or selling educational or other types of debt; therefore we have insufficient information to respond to this question from a debt buying or selling perspective.

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

As noted above, when an account is placed for collection, the consumer is required to be given a notice (the 30 day validation letter). This letter also includes key data elements as required by the FDCPA for collection outsourcing purposes; we believe no other information is necessary for this function.

We are unaware of COHEAO members buying or selling educational or other types of debt; therefore we have insufficient information to respond to this question from a debt buying or selling perspective.

Q15: What would be the respective costs and benefits of requiring a debt buyer or a debt owner to provide notice that a debt has been sold? What would be the respective costs and

benefits of requiring that a third-party collector or a debt owner provide notice that a debt has been placed with a third party for collection?

We are unaware of COHEAO members buying or selling educational or other types of debt; therefore we have insufficient information to respond to this question from a debt buying or selling perspective.

Q16: The Bureau specifically solicits comments on the alternatives discussed below for itemizing the total amount of debt. The Bureau also solicits comments on whether there are other alternatives it should consider. For each alternative, the Bureau solicits comment on the benefits and costs of providing each itemization, including the costs for creditors and debt collectors in tracking or collecting data and in providing this itemization on the validation notice. The Bureau also solicits comment on: (1) the types of debts for which or situation in which each alternative would be most useful to consumers and (2) how relevant terms for each alternative should be defined.

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

Providing this information would not be too costly because most schools and creditors of other debt types already maintain a breakdown of principal, interest and fees. It is beneficial for consumers to have this information in order to understand the basis for a total amount due that a consumer may not fully understand otherwise.

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

The purpose of the validation notice is to present the information about the account that is being collected. The inclusion of new types of information, which we believe is unnecessary, would diminish the clarity and importance of the validation notice. Additionally, the inclusion of additional and potentially irrelevant information would likely lead to confusion by the consumer as to what amount, or even what account is owed.

The validation notice also usually presents the first communication from the debt collector to the consumer. Therefore, validation notices include introductory language to explain to the consumer that the debt is now being administered by a collector. The language and tone of this initial correspondence is important. This language is typically carefully crafted to comply with existing consumer law and to establish the necessary connection with the consumer to initiate a successful collection on the account. In addition the goal is to provide information about the debt and consumer rights.

Requiring the suggested information in this alternative may not be relevant in all circumstances. For those circumstances where the amount at the date of charge off or default are irrelevant, the inclusion of such information would lead to confusion by the consumer, and potentially mislead the consumer as to the amount of debt owed.

Requiring information that occurred post charge off or post default would require information about the amount of debt, interest and fees accrued prior to default or charge off.

To convey full information necessary to prevent confusion or misleading the consumer, it would necessary to include information leading up to the charge off or default. When all that information is now included, it has become an itemization statement. This is significantly different from the original federal mandate of the validation notice. Such a document requires considerable additional information which may not be available readily. Further, it increases the potential for more, rather than few're questions.

If the CFPB issues a rule adding requirements for additional information to be included in the current validation notice, we suggest that some study be conducted to determine the best information and guidance on how it is to be presented so as to help the consumer use it and protect the agency supplying such data.

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

The validation notice is not intended as an itemized statement

It is uncertain what is meant by "any additional outstanding balance that became due after the closing date of such periodic statement." If it refers to interest accrued, that would be included on the next statement. If the language refers to updates for additional credit extensions, they would also be reflected in the next scheduled statement.

Q 17: Are there other approaches to itemization of the total amount of debt on validation notices that the Bureau should consider, and if so, for what type of debts should this itemization apply? For example, the Bureau recognizes that the three alternatives described above might work best for credit-based debt. Are there other approaches that might work better for other types of debts? Are there advantages to consistency in itemization across different types of debt or would it be more helpful, for consumers and collectors alike, to require different itemizations standards depending on the type of debt? Or could a standard set of information be required, with certain augmentation for specific types of debt?

The current validation model provides a good option to convey this information. The purpose of the validation notice is to advise the consumer of rights that the consumer has in disputing the debt or any portion thereof, and to impose obligations upon the collector if, and when, those rights are exercised. In dealing with the "least sophisticated standard" that generally applies to the Fair Debt Collections Practices Act, a concise and simplified approach to conveying debt information in the validation notice is the best process.

A simplified approach to the validation notice is also consistent with the original purpose of the validation notice. The purpose of the validation notice is to inform the consumer that a debt collector will be pursuing collections on a certain debt of a certain amount. This provides the core information the consumer needs from the debt collector and the amount due in order to dispute the validity of the debt. Additional information may cause confusion. Therefore, the simplified approach of including core information to support the existence and validity of the debt is the best approach to the validation notice under the current law and information flow.

Q 18: What additional information should be included in the validation notice to help consumers recognize whether the debts being collected are owed by them or respond to collection activity?

For example, which of the following pieces of information would be most useful to consumers?

- **The name and address of the alleged debtor to whom the notice is sent**
- **The names and addresses of joint borrowers**
- **A partial Social Security number of the alleged debtor**
- **The account number used by the original creditor or a truncated version of the account number**
- **Other identifying information**
- **The name of the original creditor (if different from current owner)**
- **The name of the brand associated with the debt, where different from the original creditor (*e.g.*, the name of a retail partner on a private label or co-branded credit card, or the name of the person providing the periodic statement for closed-end mortgages)**
- **The name of the doctor, medical group, or hospital for medical bills ancillary to their provision of services (*e.g.*, a testing laboratory)**
- **Type of debt (*e.g.*, student loan, auto loan, etc.)**
- **Date and amount of last payment by the consumer on the debt**
- **Copy of last periodic statement**

We believe that depending on the type of account, not everyone will have all of this suggested information associated with that debt type. Each of these data elements could assist the consumer in identifying their accounts, assuming it is available and can be presented in a manner that is not confusing to consumers or create additional risk for collectors.

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

Typically, the debt collector would not have any of the information above, as all their information comes from the creditor and in the current industry practice in this area, driven by the existing FDCPA laws; it is not presented to the collector at time of placement.

The risk to collectors is significant, especially in the area of third party disclosure to spouses in states where spouses are not legally able to see information about their spouse's debt without prior permission or co-debtors who may also see the information.

The validation notice is usually the first communication from the debt collector to the consumer. Therefore, validation notices include introductory language to explain to the consumer that the debt is now being administered by a collector and provide the necessary information to the consumer in an effort to begin a successful collection on the account.

The name and address of the consumer is included in the validation notice because the notice is mailed to the consumer. Therefore, it is required for successful mailing.

Including the names and addresses of joint borrowers in the validation notice would be improper. First, the purpose of the validation notice is to advise a single consumer about rights, duties and obligations that relate to the validation period under the Fair Debt Collection Practices Act.

Including joint borrowers would confuse the consumer to whom the validation notice is directed, and is not the purpose of the validation notice. Second, it is more confusing to co-debtors when they receive validation notices because frequently co-debtors do not realize at the time of signing the promissory documents that they are incurring an obligation equal to the borrower on a loan.

Inclusion of the social security number would not be advisable due to security and privacy concerns. It would be advisable to include a portion of the social security number (i.e. the last four digits) because identification of the borrower is often achieved in verbal communications by conveying a portion of the social security number.

The account number of the original creditor would not be of any benefit to the consumer. This would likely only lead to confusion to the consumer because the account number of the debt collector is often not the same number as the original creditor. The validation notice provides notice to the borrower that the debt collector has been placed to collect on a certain debt. It is the debt collector's account number that is relevant to the transactions between the consumer and the collector.

Under FDCPA section 809(a), debt collectors must disclose in the validation notice two statements regarding the consumer's right to dispute the debt. Specifically, the validation notice must include a statement that if the consumer notifies the debt collector in writing within the 30- day period that the debt, or any portion of it, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and will mail a copy of such verification or judgment to the consumer. The validation notice must also include a statement that unless the consumer disputes the validity of the debt or any portion of it within 30 days after receipt of the notice, the debt collector will consider the debt valid. We believe this notice is a good balance of the needed information and understandability.

Q 19: Are the statements currently provided to consumers regarding these FDCPA rights understandable to consumers? If consumers do not understand the statements that collectors currently include on validation notices as to their FDCPA rights, please provide suggested language for how these statements should be changed to make them easier to understand.

While no empirical data exist to determine whether consumers understand the mandatory language of validation notices, collectors do receive a substantial number of statutory disputes of debt and requests for verification of the debt. It is reasonable to conclude that at least a substantial portion of the population of consumers understand this language well enough to seek verification of debts.

Section 809 of the FDCPA is written in plain language. Typically, validation notices quote these portions of the notice because this language is mandatory for the validation notice. To alter this language would cause potential conflicts with the expressed requirements of the FDCPA and increase risk for collectors.

The FDCPA does not require debt collectors to notify consumers that disputing a debt will suspend collection until it is verified, or that issuing a cease and desist will result in the account not being contacted, often leading to an AWG or litigation. The CFPB may wish to amend the required language to inform the consumer of the potential negative consequences of a cease and desist notice or refusals to communicate about the account.

Q 20: Should consumers be informed in the validation notice that, if they send a timely written dispute or request for verification, the debt collector must suspend collection efforts until it has provided the verification in writing? Would any other information be useful to consumers in understanding this right? Should consumers be informed in the validation notice of their right to request that debt collectors cease communication with them?

The requirement to cease collections pending verification of a debt under Section 809 of the FDCPA is used to stop collection by the agency and typically forces them to AWG or file civil suit as the only alternative left. Currently any consumer may request at any time, that collectors cease communications. That request may be made within the validation period or after the validation period has terminated (see FDCPA Section 805(c)).

Adding the specific notice of the right to request the cease and desist in the initial communication, would add length and complexity with little additional benefit. In addition, it may encourage consumers to avoid all communication about their accost which would lead to many fewer resolutions of debt and much more AWG or civil litigation to enforce the debt, as well as increase the amount of accounts being reported to the credit bureaus.

As a practical matter, adding lists of rights from the consumer law is in effect acting as a legal advisor to the consumer, and would add much risk to the collector as to whether it was done

correctly. However, the most damaging impact of placing all the obstacles to collections in the initial communication would certainly reduce the important goal of contact informing the consumer about their account problems and prevent the communication that most agree consumers want in order to resolve their account problems effectively.

Q 21: Are there any other rights provided in the FDCPA that should be described in the validation notices? For example, would it be helpful to consumers for the validation notice to state that the consumer has the right to refer the debt collector to the consumer's attorney, to inform a debt collector about inconvenient times to be contacted, or to advise the collector that the consumer's employer prohibits the consumer from receiving communications at work? If so, please identify the costs and benefits of including each right that should be included in the validation notices.

Please see response to Question 20.

It is not recommended to include additional information in the validation notice. The validation notice serves a very specific purpose: that is to convey certain rights the consumer has with respect to verification of the debt. Including other rights, duties and obligations from the FDCPA or other legislation would only serve to cloud the true purpose of the validation notice.

To include all of the examples of information would be costly to collectors. What is intended by this additional information is the dissemination of what amounts to the entire FDCPA so that consumers have the legislation, or at least a communication summarizing the legislation. This cannot be accomplished in a single page, and would likely require a booklet of information to be sent along with the validation notice.

It is the experience of those in the debt collection industry that consumers rarely read documents that contain extensive language; in fact they often do not read mail. It is therefore the goal of those in the industry to simplify written communications with consumers. In this way, debt collectors are able to effectively convey information to a consumer that a consumer is likely to understand.

Much of the information sought to be included by this question is readily available to consumers. The Internet has made extensive information available through a simple web search.

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

As discussed above, it would be very costly and minimally beneficial to provide the full disclosure of FDCPA rights within a "summary of rights" document or within the validation notice. The cost to include the summary of rights under the FDCPA would be most logically by including the form in the validation notice itself or in a separate document.

However, few consumers would likely actually read and comprehend such expanded disclosures. It is likely that such an imposing legal document would only create more questions and confusion.

Unfortunately, a very likely result will be more consumers refusing to contact the agency trying to assist in resolving their account problems.

In the experience of industry professionals, consumers typically do not read terms and conditions even in loan documents. Many of our school members share examples of typical behaviors of students who routinely do not read or follow critical information about their financial aid or school attendance. Then years later when they are informed of their responsibilities, they indicate they did not read the documents sent to them to make such disclosures. Personal contact by phone, where there is an exchange of questions and answers is the best way to communicate regarding the consumer's account.

The current validation notice, which exists in its most basic form at present time, is often not read or followed as is apparent from questions or comments from consumers during the conversations later with the collector. The most cost efficient method to deliver more information is likely a web site that has the summarized FDCPA or other consumer rights and could include a QA function.

FDCPA section 809(a) does not impose formatting requirements for validation notices, such as form, sequence, location, grouping, segregation, or type-size requirements for the information in the notice. In addition, FDCPA section 809(a) does not expressly prohibit debt collectors from adding language to the written validation notice with the mandatory disclosures. Nevertheless, FDCPA section 809(b) expressly states that "[a]ny collection activities and communication during the 30-day period [to dispute the debt] may not overshadow or be inconsistent with the disclosure of the consumer's right to dispute the debt or request the name and address of the original creditor" and this can be an obstacle in adding any language to the current validation notice.

Debt collectors typically add language to the written validation notice along with the mandatory disclosures, such as a demand for payment. There are currently several websites that provide such information and if more is needed, then a better solution could be for the various federal agencies to either in concert or independently, maintain an informational site.

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

First, debt collectors typically do not include a demand for payment in the validation notice. Such a demand for payment would result in overshadowing the consumer's rights to seek verification of the debt during the validation period.

Second, typically, the validation notice is a very basic document that provides information about the debt (i.e. amount, itemization, etc.), identity of creditor, identity of debt collector, the mandatory language prescribed by the FDCPA and contact information such as toll free numbers, hours of operation, new account number, mailing address for payments or responses via mail so that the consumer may voluntarily engage in a repayment plan to resolve the defaulted obligation.

Third, state law disclosures are <u>required</u> for validation notices; as they are required on all written communications. Typically, all written documents include all of the state disclosures on the reverse side of the letter with a notice that only the disclosure for their residence applies. Each state disclosure is identified prominently by state with the required disclosure included. By including all state disclosures in a single disclosure document, there is less opportunity to be in non-compliance with state requirements and most systems cannot effectively match consumers with the appropriate disclosure. This is the system that is nearly universal as it is less likely to result in an error if the agency's system fails to correctly match disclosures with states.

Q24: According to the U.S. Census, approximately 34 million Americans speak Spanish at home. Of those, approximately 10 million speak English less than "well," making it the largest linguistic population with limited English proficiency (LEP) in the United States. Many other LEP consumers speak languages at home other than Spanish, but no other individual language is nearly as prevalent. Recognizing that only providing forms and notices in English may impede these populations' ability to understand written material, some financial service providers, including debt collectors, apparently provide forms and notices in languages other than English. For example, some providers will convey disclosures to a consumer in Spanish if the consumer initiated the credit application in Spanish. Other providers may allow consumers to choose the language they would like to use in communicating with collectors.

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

It is not common to communicate with a consumer in a language other than English. For effective non-English communication to occur, the consumer and the collector must be fluent in that common language. Translation from one language to another is not an exact overlay. In an industry where the language of the 30 day validation notice has been litigated for years, it is extremely risky to translate communications in written form—even more so in live conversations. It addition, many languages have different dialects making precise translation more difficult.

Another problem is the availability of certified insurance counsel to approve letters for insurance coverage. There are few, and they are very expensive.

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

Please see response to Question 24.

Our experience is that the vast majority of collection organizations establish the business relationship through documents written in English. In those circumstances, all following communications should be based in English.

Imposing triggers that mandate foreign language written communications is an unreasonable act. Many debt collectors vet their written correspondence thoroughly, including review by attorneys as mandated by liability insurance policies. In order to satisfy the attorneys' review, that validation notice must include the specifically mandated language of the FDCPA, which is written in English.

The letter will not be approved by the collection notice review attorney if it is not an exact match of the FDCPA. If the letter is not approved by the collection notice review attorney, the debt collector will not have insurance for the dissemination of that letter.
Currently, there are few translators and reviewers of translated letters who meet the requirements of any of the insurance carriers. It is a challenge to write letters in English that comply with the law and insurance company requirements. Efforts to translate the extremely technical and microscopically examined language of the FDCPA and other laws present an obviously greater challenge.

Requiring debt collectors to have multiple versions of their letters in a variety of different languages will impose a huge cost and will likely lead to errors in communication and resulting confusion by consumers.

As already noted, unique terminology in English does not translate precisely to other languages. Finding the correct translation can be very difficult and speculative. Multiple translations by the original creditor, servicers or other parties who touch the account will almost certainly create more confusion for all parties and likely impede the process, potentially increasing costs of credit to consumers.

If the CFPB makes a rule that requires use of non-English letters, they should provide safe harbors for such translations in recognition of the problems presented in making a precise translation of required language.

California's Rosenthal Act provides a model that has worked. If the agency has the ability to communicate with the consumer in a non-English language, and the agency initiates the non-English language communication, it should continue in that language. Imposing a multi-language requirement on the industry across the board will create huge cost to the collection industry, potentially convey wrong or confusing information to consumers and impede the resolution of debts.

In the school debt space, the consumers do speak English as our association members address debt that involves students who attend English speaking schools and have the ability to speak English.

Q 26: Do collectors currently provide validation notices to consumers electronically, in what circumstances and method?

Collectors currently do not provide validation or typically any communication electronically as the risk is too great and there is little regulatory guidance. There are many problems in complying with all the federal and state consumer laws. It is a security risk, potentially violates various privacy laws and presents serious danger of third party disclosure. Most in the industry would use electronic communication as it is faster and more cost efficient if it could be done safely and without violating the consumer protection laws; currently that is not possible. We encourage the issuance of guidance and rules that would permit wide use of this method of communication which consumers prefer and collectors would welcome.

Q 27: Does the consent regime under the E-Sign Act work well for electronic delivery of validation notices? If a consumer consents to electronic disclosures pursuant to the E-Sign Act prior to the account being moved to collection, are debt collectors currently requiring E-Sign consent again when the account moves into collection? When the account is sold or placed with a new collector, is the new collector currently requiring a new E-Sign consent? If a consumer consents to electronic correspondence, what process do debt collectors currently require to revoke this consent?

See response to 26.

Q 28: Do debt collectors currently treat emails, text messages, or other forms of electronic communications as satisfying the "in writing" requirement to exercise the three rights described above? If so, what would be the costs and benefits of treating them as satisfying the "in writing" requirement?

Debt collectors across the industry equate emails to a written communication.

Regulations should be introduced to address concerns over use of this media type that is widely used in other arenas for communication, but essentially unavailable in our collection industry. The industry would suggest that communication received by a collector via email should constitute consent to a response via email. Often we receive email from consumers that request or limit our communication with them to email. This is often a convenience or cost issue if they must make a long distance call to communicate. In those situations it is frequently the only valid contact information the agency may have for the consumer once the email is received.

Unfortunately, most collectors do not feel they can respond as the risk is so high and the rules so uncertain. Is it a "letter" so the same rules apply on state disclosures or other requirements? Is it a communication covered by the time limits or other rules for phone calls and if it is received outside the permissible call window, it is a violation?

These are only some of the many confusing issues that cause the industry not to use email or texting or other modern forms of communication. Clear guidance is needed, and we would encourage study on these issues prior to making any rules. We offer to assist in any such research.

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

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

We are unaware of any collectors who have developed or use any such forms listed in this question as there is little to guide them. Creation of any written material is fraught with high risk, even in areas where there is guidance or language interpreted by the courts.

We have shared our concerns about this type of forced disclosure in responses above. If the CFPB does impose rules requiring such model disclosures, we strongly recommend more study and if rules are eventually passed, we would welcome guidance or safe harbor language on state notice disclosures, the validation notice and any summary of rights form which may be required by these rules.

Q 30: Is there consumer testing or other research concerning consumer understanding or disclosures relating validation notice that the Bureau should consider?
We are not aware of any testing on these topics, but shared experiences from school and commercial member personnel indicate that students and consumers tend to hurry through or ignore disclosures or notices of rights. We encourage such study and testing as noted above. COHEAO and its members, as they have done in the past on other issues, offer our assistance in gathering data and would be interested in collaboration on such a project.

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

Debt collectors typically treat both verbal and written disputes as "disputes" under the FDCPA. If the debt collector is also a furnisher under the FCRA, a credit bureau dispute may trigger a dispute under the FDCPA.

Debt collectors distinguish disputes from other types of consumer communication based on the specificity of the dispute provided by the consumer. Note that compliant are not disputes and are managed differently than disputes by collectors, but still not the same as other forms of communication.

If a written or verbal objection from the consumer has specific information to identify their dispute or provides other a specific request that allows the debt collector to respond with a specific answer, the debt collector will review their records or request that the creditor review and respond to the debt collector with the information needed to resolve the dispute. If the communication is not clearly a dispute or complaint, it is typically treated as a request for validation under the FDCPA.

There is no central repository of data that tracks the percentage of debts that are disputed and how disputes are resolved by a debt collector. We are not aware of any data that exist regarding this question, but would be interested in working with the CFPB to gather or assist in analyzing any such data they assemble.

Q 32: Are certain types of debts (e.g., credit card vs. student) disputed at higher rates than others? Do dispute rates differ between debts being collected by debt buyers versus those being collected by third-party collectors?

Yes, our members' experience is that certain types of debts are disputed at higher rates than others.

Telecommunication and credit card debts for instance are disputed at significantly higher rates than student loans or education related debt. Debts where the creditors experience mergers and name changes have a higher dispute rate regardless of industry.

Q 33: What data or other information is available regarding how disputed debts are resolved? What percentages of disputed debts are verified? What percentage of debt disputes is never investigated? Where disputes are investigated, what percentage of the investigation reveals that there was an error?

Disputes and resolutions by debt collectors are not compiled, reported or aggregated into a database. There is no information available regarding how disputed debts are resolved. In talking to individual members, both school and commercial, of our association, many do not track such data as listed herein.

This is another of the topics that clearly need study before any rule is made. COHEAO is happy to offer our assistance in gathering such information in cooperation with the CFPB.

Q 34: Should the Bureau define or set standards for what communications must be treated as "disputes" under the FDCPA and, if so, how? What are the advantages and disadvantages of the definition recommended?

Yes, such definitions or standards will provide guidelines for consumers to understand what constitutes a dispute and also provide guidance for debt collectors to respond to disputes. One of the primary drawbacks to previous data gathered by the FTC regarding debt collection is that every communication from a consumer regarding a collection agency was deemed a dispute. Since

some of the communications were not truly disputes, this resulted in skewed data gathered and reported regarding the industry.

Such a standard should serve to reduce the "false" dispute figure the FTC tracks.

Dispute Requirements

Part V sets standards for the consumer's direct dispute notice under the FCRA. This notice must include: 1) sufficient information to identify the account or other relationship that is in dispute; (2) the specific information that the consumer is disputing and an explanation of the basis for the dispute; and (3) all supporting documentation or other information reasonably required by the furnisher to substantiate the basis of the dispute. See 12 CFR 1022.43(d)

Consistent dispute standards for FCRA and FDCPA would be helpful to the consumer and the debt collector. However, there needs to be careful study on how to define a dispute and relate that to the different disputes that are covered by both FDCPA and FCRA.

The advantage to the consumer of such a system as the Part V example would be that the debt collector would have sufficient detail and supporting documentation to make a reasonable investigation of the dispute. This would assist in the resolution of valid disputes. The advantage to the debt collector would be that vague, unspecified disputes would not require a response until the needed detail was provided by the consumer.

Q 35: Should consumers be required to provide particular information or documentation as part of their disputes to debt collectors to trigger an investigation requirement under the FDCPA? What would be the costs and benefits of requiring that consumers provide the same or similar information as required under FCRA when making disputes directly to debt collectors? Should a consumer's obligation to provide this information about the basis for their disputes be contingent on having received a validation notice with requisite information? Why or why not?

Yes, consumers should be required to provide particular information or documentation as part of their disputes to debt collectors.

Such information detailing the dispute would trigger an investigation to meet requirements under the FDCPA or FCRA. The cost to the consumer to provide this information should be minimal as they are the party who has the issue and knows their concern. Providing such information will ensure that their concerns are understood and increase the speed and accuracy of the response.

If their dispute focuses on lost or incomplete information for example, requiring them to explain the areas of concern will speed up the assembly of the necessary documentation and would lessen the time to research and obtain responsive, supporting documentation.

Cost of mailing incurred by the consumer if electronic submission could not be done securely would be minimal. The benefit to the consumer is that the debt collector would have specific

support for the basis of the dispute to investigate and provide a specific response. The consumer's obligation to provide this information about the basis for their dispute should not be contingent upon having received a validation notice with the requisite information. The specific information about the dispute is needed for the debt collector to provide any assistance to the consumer regardless of the information contained in the validation notice.

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

Our members typically see a significant number of disputes that fail to specify the nature of the dispute. Often, these disputes are boilerplate documents that appear to be downloaded from the internet by consumers. They typically come without any real explanation of why they are disputing the debt or how the debt collector can assist in resolving the dispute.

These disputes vary from vague statements of "I dispute this debt", to the form letters from the internet, to multiple page illogical cites from the Uniform Commercial Code.

There is a high volume of written disputes mass produced by "Credit Repair " companies that all present general claims that the debt is not owed or is an incorrect balance and that universally have no detail about the individual's issues or concerns. Many have no specific information and offer little to help identify the underlying issue.

Specific disputes with supporting documentation are a small percentage of overall disputes received.

The types of objections that debt collectors treat as disputes often vary by the type of debt that is collected. Some examples:

Student Loan – deferment or forbearance paperwork not properly processed, payment application or missing payments, school closed, never attended/withdrew, never signed, balance issues or collection costs, never got a bill, SSN incorrect, disabled, mistakes made by creditor, already paid are some.

Banking/Retail - Fraudulent use of credit card, unauthorized charges, divorce responsibility issues, bankruptcy, never bough item or used services, statute of limitations, missing payments, never received merchandise or services.

Timing.

Although a consumer can dispute a debt at any time, only a written dispute sent within 30 days of receipt of the validation notice triggers a debt collector's requirement to stop collection activities

and provide verification of the debt. The FDCPA does not impose a time limit for a debt collector to respond to a dispute; it only requires that the collector must cease collection until it provides verification of the debt. At the recent FTC-CFPB Roundtable, some industry participants stated that debt collectors typically honor disputes that are received after the 30 day time period by stopping collection on the account, this is a practice that is becoming routine within the industry.

We note that our members typically indicated that they follow this policy as a best practice and state that it is unlikely the consumer will discuss payment until the dispute or validation issue is resolved.

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

Debt collectors typically cease collection activity when they receive a dispute after the 30 day period. The dispute is typically honored whether verbal or in writing to cover the potential that it might be an FCRA dispute which requires the collector to honor a verbal notice. The cost to the debt collector is the same and the benefit is that the consumer's dispute is addressed which may lead to resolution in favor of the consumer but may also lead to consumer understanding the reasons why their dispute has no basis and result in negotiated repayment resolving the account.

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

We have informally surveyed our members and others in the collection industry and all agree, they are not aware of any study or data that reflect any tracking of the dispute process. It is not a data element that is included in collector software, and the need for such data has not been manifest in the past.

Collectors are motivated to resolve the dispute as rapidly as possible, because as noted elsewhere in our response, it is common industry practiced to accept disputes, verbally or written, and stop collections actions until the dispute is resolved. Consumers typically are not interested in discussing the debt, even if it would be permissible to do so, until their questions are answered.

Thus, to impose a tracking requirement would require a change in internal processing and computer systems and change the relationship between collector and client. This new time pressure would require additions to existing contracts and, with system changes, training and

processing of contracts, add create great cost to the collector with little additional benefit to the consumer. Disputes are currently being processed as rapidly as the issue can be determined and data obtained.

Under section 809(b) of the FDCPA, after receiving a consumer dispute, a debt collector may either cease collection efforts without investigation or may investigate the dispute with the intent of providing verification to the consumer. The FDCPA does not detail how a collector must investigate a dispute. Setting a specific time for response by a third party collector can become a problem as different clients respond in different modes. The size of the client and sophistication of their systems can cause longer or shorter response times.

Creating a set time limit to respond in light of the fact the third-party collector cannot control the timing or availability of the needed information, which is almost universally only available from the creditor/client would be unfair and unreasonable. It would only benefit attorneys who specialize in litigating such "violations."

The FTC has recommended that debt collectors be required to conduct "reasonable" investigations under the FDCPA, noting that such a standard would be consistent with the FCRA. We believe there are sufficient motivators in the consumer law for collectors to respond timely and a vague "reasonableness" test only has the potential for more confusion, complaints and frivolous litigation. The consumer is already protected by the cease and desist requirement.

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

The steps that debt collectors take to investigate a dispute under the FDCPA depends upon the nature of the dispute, the information supplied by the consumer, the information immediately available to the collector contained in creditor records and training documents provided at placement, and the information available to them subsequent to placement. Debt collectors typically will provide as much information as immediately available to them in an attempt to resolve the dispute. This approach is motivated by the fact resolved disputes typically lead to a resolution of the account. If the information is not immediately available to the debt collector, the collector will typically go back to the client if the consumer has provided specific grounds for the dispute and request that the client investigate and provide a response to the consumer's specific issue. In nearly every situation, the only (and typically the most reliable) information about the debt is in control of the client creditor. We believe these steps are adequate to address disputes.

Our experience in the education space and other areas within which our members participate, indicates that debt collectors working on behalf of a client are taking adequate steps to resolve disputes because they have access to the client to assist in resolution; and the client and collector want to resolve the problems as rapidly as possible.

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

It is difficult to state a broad guideline of steps that a debt collector should be required to take to investigate a dispute because the range of dispute types, business lines and documentation needed from the consumer to support the dispute is so broad and will vary from business to business type.

Typically, collectors go beyond a review of their records and seek information from their client as each client provides a different level of detail in their placements. However, it is our experience that the great majority of collectors have dispute resolution teams who review any information available and, if the consumer provides clear information on their questions, specific data to respond is obtained and reviewed.

Setting a "reasonableness standard" would likely create, rather than reduce, confusion as the issue of what is reasonable becomes an ongoing struggle to define. The industry needs more clarity, not more vagueness.

For example, if the consumer provided clear information, like a statement that a particular payment date and amount was not applied, and includes verification of that payment application; this would put the collector on notice what verification is sufficient for the dispute.

Upon receiving a consumer's dispute, a debt collector reviews account specific documents. Many disputes received are common for that debt type, and debt collectors are trained to review certain pieces of information to make an initial analysis of the dispute. Additional information is typically requested from the client as needed to assist the debt collector in overcoming common disputes. The account specific information may not be "documents" but may be data points contained in the placement file provided by the client.

Debt collectors should not be required to consider the accuracy and completeness of information with a portfolio of accounts, including whether the information is inaccurate or incomplete. The collector typically has no reliable or available ability to make any determination of the accuracy of the information they receive. Their source of information about the account is the placing client.

The creditor typically attests to the accuracy of the information as part of the contractual agreement for debt collection and must take the responsibility for the validity of the debts in the role of the original creditor.

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

Typically, debt collectors will go beyond the basic review of the dispute and their own records and request client documents or information to address the compliant or dispute as they can determine it from the consumer's comments. Collectors will then review the additional information and attempt to respond to the specific consumer issues as they can understand them. A focus is to confirm the balance of the account and information contained in the validation notice and that the charges or other conditions conform to the contract involved. Collectors are not qualified to and should not make legal decisions as to the merits of the account or dispute claims. To do so is unfair to the consumer and creates huge risk for the collector who has no relationship with the consumer.

In addition to their obligations under the FDCPA, debt collectors who furnish information to credit reporting agencies (CRAs) are subject to obligations to investigate disputes submitted directly to them by consumers ("direct disputes") and submitted to them through CRAs. The FCRA contains an exception from the investigation requirement for certain disputes that are deemed "frivolous and irrelevant" if the consumer does not provide sufficient information to investigate the dispute, the dispute is substantially the same as a previously submitted dispute that has already been investigated or it falls within one of several other exceptions, including an exception for disputes the furnisher reasonably believes are submitted or prepared by a credit repair organization. If the direct dispute is treated as frivolous and irrelevant, the FCRA and Regulation V require the collector to provide the consumer with a notice of that determination.

We suggest similar guidance would be appropriate in the FDCPA arena as many disputes are simply "stalls" to avoid paying or communicating about their account.

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

It is unknown what percentage of debt collectors are "furnishers" under the FCRA. That information may be best gathered directly from the Credit Bureaus as some debt collectors report and others do not. An informal poll of our members and others in the industry, indicate that many collectors do report on behalf of their clients, but it is not universal.

It is unknown what percentage of FDCPA disputes debt collectors treat as direct disputes under FCRA, although it is a debt collection best practice that if the debt is reported to the credit bureau by the debt collector, it is also considered to be an FDCPA dispute and conversely, FCRA matters are treated as FDCPA issues. Consumers are typically less than concise in their dispute/complaint language; rarely using any specific words of art, such as this is a dispute of my credit information or a dispute of my rights under the FDCPA. Thus, it is very difficult to determine if it is an FDCPA or FCRA dispute or both, and most err on the side of caution.

If a dispute occurs and an investigation is not possible due to lack of specificity or media is unavailable or untimely, typically the collection activity ceases as does credit reporting activity and a deletion of the record is made at the bureau. In these situations, the account is returned to the client.

It is unknown to what extent debt collectors close debts disputed pursuant to the FDCPA and FCRA without investigation, but those situations are typically a result of not being able to obtain needed information. Collectors would prefer not to lose business.

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

It is unknown what percentage of disputes are repeat disputes that were subject to a reasonable investigation at this same agency or that may have raised the same issue at prior agencies as that information does not typically pass to the next collector involved from most clients. Debt collectors will investigate a dispute and review client media to determine if the dispute has already been investigated.

Our experience is that few collectors use the "frivolous" letter in these repeat matters; rather they make another response. One COHEAO member reported that nearly 50% of all disputes processed in his firm's dispute unit are repeat, frivolous disputes. Often a series of consumer disputes will come in from the same mailing site, but allege issues for named consumers in several different states. It is unclear how the sender is getting these names or the relationship, if any they have with the consumer.

In the case of debts owed to the US Department of Education, there is often a written copy of the response directly from ED to the consumer that can be used to refresh the consumer's memory as to the outcome of the dispute. Because the statutes of limitation are not applicable to Federal student loans, and those accounts get placed and replaced with a high number of debt collectors, there is a higher volume of repeat disputes on this type of debt than others.

*This prior history of disputes is, however, universally **not** available in other education debts or commercial, medical, retail or any other business type.*

Debt collectors frequently receive a high volume of form letter disputes; whether they are "credit repair" groups is unclear but often these disputes are filed repeatedly on behalf of the consumer. There has also been a huge increase in the volume of disputes that come directly from consumers who download forms from the internet and frequently do not understand the impact of their dispute on continued communication.

There is no data available as to the number of repeat disputes or disputes from credit repair organizations that debt collectors receive, in part because it is not always clear where or from whom the dispute comes.

Q44: Should the Bureau consider including in proposed rules for debt collection an exception for "frivolous and irrelevant" disputes, similar to the one found in the FCRA? Are the incentives of those collecting on debts different from the incentives of other furnishers and CRAs with respect to information included on consumer reports? What would be the costs and benefits of allowing collectors not to investigate "frivolous and irrelevant" disputes?

It is recommended that the Bureau consider making the treatment of disputes consistent for debt collectors regardless of whether FDCPA or FCRA. This would include an exception for "frivolous and irrelevant" disputes. The incentives of those collecting on debts are not different from the incentives of other information furnishers and CRAs with respect to information included on consumer reports. The benefit to both the consumer and the debt collector will be that the debt collector will be able to focus on resolving more quickly the substantive and relevant disputes received.

Frivolous disputes do not advance the interest of either group and increase the costs of the process, which ultimately get passed to the consumer. Multiple, frivolous disputes also increase the likelihood of involuntary collection because they have the effect of stopping communication that could enable a resolution.

We see no cost issues for the consumer or the collector to allow frivolous disputes to be processed via a letter to the consumer, similar to the FCRA, stating no response will be made. The benefits to the consumer are they continue to receive information and have the opportunity to voluntarily resolve their account. The benefit to the collector is they avoid delay and the expense of repeated responses or placing the account into litigation.

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

Depending upon the specificity received in the dispute and the business type involved, collectors currently provide the best available information to verify a disputed debt.
In the case of student loans, this often is the promissory note signed by the borrower. In the case of student tuition, it will be the semester date of attendance and charges due if it is a disputed

amount. Other debt types provide documents that are responsive to the dispute as understood from the information provided.

We believe it is in the debt collector's best interest to provide information to the consumer so that the dispute is resolved either in the consumer's favor or by assisting the consumer to understand that the debt is valid and owed.

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

Please see response to Question 45 above.

If a consumer requests verification of a debt, debt collectors should be required to provide documentation to verify that debt provided it excludes frivolous, repeated or irrelevant disputes. This may be media from the creditor or general data provided by the creditor such as the name, dates of service or similar data. Basically the data points that would be provided in a statement to the consumer related to the amount. This is reflective of what most collectors are doing now.

The last periodic or billing statement or the originating credit agreement would be sufficient in most situations to verify most disputed debts. The documentation will vary depending on the nature of the dispute. Thus, a rule requiring "documentation" will be hard to define or impose reasonable duties. We note that in some types of debts, there may be better or worse data available depending upon the basis or type of debt and dispute.

We believe no such rule is needed or is practical in light of comments above. However, if the CFPB makes such a rule, we have the following thoughts. We suggest that a requirement to provide consumers with documentation to verify a debt must take into account the fact such information may not be available. If such a rule contemplates whether additional data is reasonably available to the debt collector and provided, duplicative, frivolous and irrelevant disputes are excluded and that debt collectors may cease attempts to collect on the debt without providing such documentation, we believe the rule would be more reasonable and fair to all parties

Providing the last periodic billing statement would be sufficient to verify most disputes revolving credit card debt. It would not be sufficient to verify a dispute on other debt types where a statement may not be issued and where the consumer disputes responsibility for or existence of the debt. The cost to a collector of obtaining the last periodic statement or billing statement for an account is an issue with each client. Most commercial clients or schools do not charge the collector for access to records, so the cost would be minimal.

The benefit of having the last periodic statement or billing statement or credit originating agreement depends on whether the information contained therein is disputed by the consumer.

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

We believe it would be beneficial for consumers to provide the following types of information to verify the debt:

- *A copy of the agreement or application signed by the consumer.*
- *A copy of the terms and conditions governing the account.*
- *A copy of the last statement showing the balance.*
- *A copy of the financial transaction history including payments, finance charges and any other financial transactions post delinquency or charge off.*

We believe that any rule changes, whether related to this question or any posed throughout the entire document, must consider the need for time to adjust to the changes and a grace period set for enforcement of new requirements; most will require significant operational and system changes.

The costs of requiring particular forms of information to verify a debt would be mailing and or data storage/retrieval costs of the creditor and debt collector, human capital in research and processing time are examples. The benefit for both the consumer and the debt collector would be a higher likelihood of resolving the dispute, resulting in the debt being eliminated or paid.

Detailed verification of every transaction from inception to the last bill would be especially costly for the collector and original creditor to provide and not likely to be beneficial to most consumers. However, there are some types of information that would be helpful: application for credit, terms of the credit, school admissions protocol, last billing statement or payment history as examples.

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

Debt collectors currently provide verifications only be postal mail or by allowing the consumer to review documents and information within either the debt collector or client system. There may be some debt collectors providing verifications in other formats such as email or text message and we assume they would attempt to provide this securely/encrypted with consent and verification standards.

However, as we have shared in other responses, the great majority of debt collectors are wary of communications by text or email due to the uncharted and unregulated nature of providing verifications in these electronic formats. There are questions of law as to the ability to meet strict FDCPA and state requirements in an electronic format and there is no legally accepted standard similar to the "mailbox rule" for email or text.

It is not even clear if letter rules apply or phone limits control these communications.

Q49: If consumers disagrees with the verification of disputed debt provided by debt collectors, or if they do not receive verification of the disputed debts, should consumers be afforded the opportunity to file statements with collectors that explain the nature of their disputes with the debt collector, and should the debt collector then be required to provide that statement to the owner of the debt or subsequent collectors? What would be the costs and benefits of requiring debt collectors to accept and communicate consumers' statements of dispute?

Currently, it the consumer disagrees with the verification of the disputed debt provided by the debt collector or if they do not receive verification of the disputed debt, they have the ability to, and do file complaints with the collector. Since typically the creditor is the only one, or at least the best source of information, consumer responses or disagreements with validations they receive are already currently going to the creditor in most situations.

Thus, a rule that would impose this requirement is not needed. Such a rule would create problems where the account has been closed as a result of the collector not timely receiving needed documents. It would be unreasonable to require an act that cannot be done. Typically, the files so returned by the collector are closed by most creditors as they have no proof of debt.

This validation failure might be an issue in the debt buying industry, and we urge the CFPB to differentiate that industry's issues or processes from the traditional collection function.

There would be some burden on the creditor/owner of the debt as they would presumably bear some responsibility once the debt is returned from collection to maintain the record and provide it at subsequent placements to debt collectors in the future. Many creditors use multiple debt collectors, and they would need a standard format and programming in place to handle the data. Some creditor systems would have difficulty with this.

We believe it is helpful for all parties for this retention and transfer to occur and that creditors are in the best position to maintain and transfer this data. Having information about prior disputes and their resolution helps prevent repetition of the issue with a new collector.

A related question is what impacts a prior cease and desist order will have on the new collector. If all subsequent collection is deemed to be stopped because the C&D passes to the next agency, it limits the resolution to involuntary collections, not in the best interest of the consumer.

We believe all subsequent collectors, should start with at least the initial opportunity to communicate with the consumer.

Q50: To what extent do debt collectors attempt to verify a debt that is disputed? What do debt collectors currently do when they are unable to verify a disputed debt? What do debt

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

Debt Collectors attempt to verify a debt that is disputed using the available means to respond to the basis for the dispute. Upon receipt of the dispute, collection activity ceases. In some cases the dispute response merits data that is on file and placed by the creditor that exists in the record in addition to that which is contained in the validation notice. In other cases, the debt collector must inquire for additional documentation to the creditor.

If the information needed is unavailable or not received in a timely manner collection activity continues to be suspended until the debt is able to be validated. If it becomes apparent that the debt is unable to be verified, then all collection activity ceases and the debt collector will close and return that debt to the creditor. Either approach protects the consumer.

Debt collectors do not typically return the account to the creditor when it is disputed without attempting to verify it. Creditors expect that the debt collector they hired will act as the liaison between the consumer and the collector in resolving the debt and will generally assist by providing documents requested by the debt collector.

We believe the current combination of FCRA and FDCPA laws that govern dispute processing are doing a good job to protect the consumer. Our experience is that large numbers of disputes of FCRA and FDCPA matters occur daily.

We believe the best solution for accounts where the collector is unable to return the account to the creditor with information about why the account is being closed. We believe a requirement that the collector so inform the consumer is reasonable and helpful.

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

If a debt collector's investigation reveals errors or misrepresentations with respect to the debt, a debt collector will generally close and return the debt to the original creditor and refer the consumer to the original creditor to resolve. Attempting to analyze and correct the creditor's records or documents involves too much risk of liability for the collector. Further, it would require knowledge of the creditor's processes, rules, governing laws or other limitations, examples of why the collector cannot do more than report the alleged error to the creditor client and allow them to resolve it.

Q52: Do owners of debts sell disputed but unverified debts to debt buyers or place them with new third-party collectors? Are these debts reported to CRAs? What limitations should be placed on the sale or re-placement of unverified disputed debts? For example,

should the owner of the debt or the collector be required to inform debt buyers and new collectors that it is an unverified disputed debt when it is sold or re-placed? Should the new debt buyer or collector be required to verify the debt before making collection efforts? What would be the potential costs and benefits of such restrictions or conditions?

Our members do not work in this field and we have insufficient information to respond.

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

Current debt collector best practices do not report until after the 30 day validation period has passed if the debt collector is currently furnishing data to the CRA. Because most debt collector furnishers are already prescribing to this practice, there would be minimal cost to the debt collector if a rule were put in place limiting the report of a debt to a CRA during the 30 day window. The benefit to the debt collector is to avoid overshadowing claims under the FDCPA, and the benefit to the consumer is to allow notification and response without harming a consumer's credit. We support such a rule.

Q54: In addition to telephone and mail, what technologies, if any, do debt collectors currently use on a regular basis to communicate or transact business with consumers?

The vast majority of current communication between consumers and consumers remains the traditional phone (cell phones when permission can be obtained) and postal services. The following types of communication are available technology, but are seldom used as there is very high risk in their use because there is very little guidance. Rules that would help collectors in implementing these technologies and safe harbors for their use are greatly needed in our industry.

Mobile Phones:

- *The FDCPA rules governing types of acceptable communications was written thirty seven (37) years ago in a world without smart phones, internet, and other electronic communication devices. It is a disservice to the consumer when regulations prohibit contact using communication technologies that have become the expected methods by these same consumers. According to the Pew Research Center's Internet & American Life Project, approximately 91% of adults in the United States currently use a cell phone. The Pew Project further pointed out that 97% of United States Citizens between the ages of 18-34 own cell phones followed by 96% between the ages of 35-44. The percentage of cell phone ownership is 87% for those citizens who fall in the 55-64 age categories.*

- *Websites*
  - *Consumers use websites to complete business transactions for purchases, banking, shopping, and have the same expectations to access account information, communicate, and repay outstanding bills.*

- *Email Communication*

- *Consumers desire and expect written information to be delivered immediately rather than wait three to five days for the postal service. Email communication is one of those preferred vehicles that consumers authorize as a way to transmit important information. Current technology has advanced sufficiently to enable encryption of personal data for security purposes.*

- *Interactive Voice Response (IVR)*
  - *IVR is a technology that enables consumers to communicate in about an account via telephone key pads, or voice recognition. The technology provides a host of options that can be executed by the consumer. Examples include repayment of a debt, establishing payment arrangements, negotiations, requesting detailed information, and an opportunity to redirect the communication to appropriate personnel.*

- *Text Messaging*
  - *Although there are moves towards "instant messaging", texting continues to be a method of communication desired by many consumers. The communication is directed to the consumer's phone number and is a convenient method to provide informative notifications and information as well as engage with an ongoing communication between the consumer and the debt collector.*

- *Instant Messaging*
  - *Although little used currently by debt collectors, this electronic method of communication is the fastest growing format used by younger consumers. Recognizing that debt collectors must be able to communicate with consumers utilizing the most convenient and comfortable method desired by the consumer, the communication of the future may require using applications such as Snapchat and WhatsApp.*

- *On Line Live-Chat*
  - *On Line Live-Chat provides a platform that consumers are able to take advantage of to communicate with a debt collector or servicer in regards to their debt. The live chat provides real time interaction*

- *Mobile Phone Applications (apps)*
  - *Consumers are utilizing the power of their smart phones in ways that no one thought was possible just a few years ago. Functions that were PC based are now accessible via smart phones applications. Examples include financial institutions who have created online banking using apps to submit deposits, pay mortgages and other consumer loans, the airline industry that enable the purchase of travel tickets, as well as retail establishments. Mobile applications provide convenience for the consumer.*

- *Virtual Collector Systems*

- *Similar to an Interactive Voice Response technology, the Virtual Collector is a web based product that provides consumers with an interface that enables them to select repayment options, share new information, and make payments.*

For which technologies would it be useful for the bureau to clarify the application of the FDCPA or laws regarding unfair, deceptive, or abusive acts or practices?

Consumer portals are normally separated from a debt collector's marketing website. Consumer's rights that include the identification that this is a communication from a debt collector followed by the Mini-Miranda provide proper notification that is acceptable for a collection effort. There is no need for additional regulation for this popular communication tool. As noted above, all the listed modern technologies listed herein are in need of clarification to enable their safe, efficient use. It is generally accepted that most consumers want to be informed of problems with their account that might cause credit problems or litigation to enforce the debt.

- ***Email Communication***

The CFPB should provide clarification in the FDCPA that communication via email is an acceptable form of communication and identify what disclosures are required, is it a letter or a phone call type communication?

- ***Mobile Phones***

The current interpretation of Telephone Consumer Protection Act (TCPA) limits the ability of debt collectors to contact consumers in an efficient manner. As noted, the Pew Project indicated that 91% of adults in the United States currently use a mobile phone. The TCPA was passed prior to the rise of mobile phones being used by the majority of the public as their primary communication means. Written to protect consumers from telephone marketing calls that were being generated randomly from a predictive dialer, the old regulations are out of date. Collectors and school personnel seek to use predictive dialers to effectively relay information that the consumer often wants and in the school situation, needs.

Debt collectors and other industries seek the ability to communicate through modern technology with the use of predictive dialers. The dialer systems currently in use by debt collectors as well as many other industries are designed to call the numbers associated with the consumer. The existing FDCPA laws currently protect consumers and define proper communication by telephone. These same laws if applied for automated dialing of mobile phone numbers will provide the same protections as those designed for land lines.

- ***Websites***

A communication by a debt collector to a consumer that includes providing the Mini-Miranda language, as is universally done, provides sufficient notification to comply with the FDCPA. There is no need for additional clarification by the CFPB except to note that this is an acceptable means of communication.

- ***Text Messaging***

Consumers are currently requesting debt collectors to communicate with them via text messaging rather than phone calls or traditional email communications. Providing clarification language on

how this process can be done safely and what law, phone or letter or a new, "texting" rule is needed. Consumers could have the ability to provide opt in authorization to a debt collector if they do not wish to receive such messages.

- ***Instant Messaging***

Instant Messaging is one of the fastest growing communication technologies. As with other forms of electronic communications, there should be an opt in opportunity for consumers who desire to receive pertinent account information through instant messaging. The FDCPA should be modernized to enable debt collectors to communicate with consumers who have opted in, while respecting the right of those to refuse such service.

- ***On-Line Live Chat***

This is a communication format that is initiated by a consumer to a debt collector. The Mini-Miranda language should be provided, but there is guidance needed to help safely implement this process.

- ***Mobile Phone Applications:***

Interaction between a consumer and a debt collection agency via a mobile phone application is initiated by the consumer who downloads the application. Similar to websites, the mobile phone applications should provide consumer's rights that include the identification that this is a communication from a debt collector through the Mini-Miranda. This communication information provides proper notification that is acceptable for a collection effort.

What are the potential efficiencies or cost savings to collectors of using certain technologies, such as email or text messaging?

The efficiencies can be isolated into two categories:

- *Cost*

The current cost of sending written communication has just increased an addition $.03 per letter, a continuation of an ongoing increase. In addition, there are costs for the printing, paper stock and human involvement among other costs that make this old and slow process very costly. In addition, industry experience indicates that many people do not open or read business mail. Permitting communication between a consumer and a debt collector through electronic means would reduce expenses associated with traditional postal service, be faster and likely increase the rate of successful contacts that resolve debts.

- *Time*

Communicating using technologies such as email or text messaging is "real time" communication. These technologies eliminate the "wait" period of days that it currently takes to communicate when using the postal service. Consumers can take advantage of current information and exchange ideas to resolve their account problems. Information delivered through electronic communication may include documentation that validates the debt, payment agreements that have been reached between the parties, as well as notification of scheduled payments. Consumers and collectors save time and increase communications. Electronic communication provides consumers with the

ability to communicate at a time that is convenient to them and may be outside of the normal operating hours of a debt collector.
Time and efficiency is especially important when attempting to communicate via mobile phones.

What potential privacy, security, or other risks of harm to consumers may arise from those technologies and how significant are those harms?

- ***Mobile Phone Communication***

Consumers strongly encourage debt collectors to communicate with them on their mobile phones. Current FDCPA regulations provide provisions that protect consumer's rights to cease future communications, and inform of inconvenient times. Mobile phone number portability does create challenges for consumers who may have moved to a different time zone than that area code associated with the number. The risk of attempting a contact during a time outside of what is permitted by the FDCPA can be greatly reduced by applying logic by determining the most conservative time approach, either the zip code or area code of the consumer. There is likely less risk of privacy or third party issues when calling a cell phone than the land line of the consumer.

- ***Websites***

Consumers utilize debt collector websites to obtain current amounts due on an account(s), communicate with the debt collector, review financial literacy information, propose repayment arrangements, and enter payment information. There is little risk as the sites are protected by consumers using a password or account number to access their account. These sites permit the consumer to access their account and gain information or make payments when they wish anytime 24/7. In additions, they are typically compliant with state or federal consumer laws that exist currently and no new rules are needed. Web-sites now in use typically provide data security protection for the consumer that includes PCI standards if payments are being processed.

- ***Email Communication.***
  - *Consumers should have the ability to authorize communication via email either orally or written. Acceptable forms of authorization would include all electronic forms of communication. There is some risk of privacy or third party issues when the email is shared or is through work or other, not personal source. Consumers should be required to assure the collector the site is unique to them and private before any information is sent to that address.*
  - *Providing guidance on what is acceptable in the reference field of an email communication would help prevent third party disclosures.*
  - *Practicing normal data security encryption to protect a consumer's financial information from disclosure is suggested as a good practice.*
  - *The email should include all pertinent communication disclosures that are currently required for written correspondence. It needs to be clarified if state restrictive language based on the state the consumer resides in would be required. These notices would greatly add to the sizzle and content of the email, and present issues if received via phone.*
  - *Communicating by email is a non-intrusive form of communication and should not be controlled by current definitions of acceptable contact hours. As a practical matter, it would be impossible to control or monitor this issue and the CFPB should provide a safe harbor as part of any rule on email communication. Consumers have the option to review an email any*

time that is considered reasonable and convenient. Consumers would control when they read email and thus, still have the right to define what time is convenient

- ***Interactive Voice Response***

Interactive Voice response is a service that provides consumers the option of communicating using either their phones or web interface. The interactive voice response provides menus of options available and includes such choices as making payment proposals and offering settlements. Any storage of that data should have sufficient security to protect all consumer financial information.

- ***Text Messaging:***

Consumer privacy and security can be protected by permitting the consumer to choose to use or cancel such options. They control who sees their text, and it is more private that a call on a phone which can be overheard. Acceptable consent would be either written or oral if the debt collector maintains a voice recording of the consent.

- ***Instant Messaging***

Privacy would be the most significant concern associated with instant messaging. Restricting communication through instant messaging services that have limited access would address privacy concerns. Consumers would be required to provide written authorization to communicate using instant messaging. Any regulatory language written to implement instant messaging should be sufficiently fluid to address any technological advances that would protect the consumer's privacy.

- ***On Line Live Chat***

On line live chat is a communication device that the consumer has to initiate. The system must be able to store all historical events that have been initiated by an on line live chat. In addition, traditional communication information should be provided to the consumer as part of the process. This includes proper identification, and Mini-Miranda.

- ***Mobile Phone Applications***

Mobile Phone Applications require consumers to download the app onto their smart phones. These applications can provide important account information to consumers as well as enable them to communicate with the debt collector, make payments as well as proposals for repayment. Since these are essentially communications initiated by the consumer, the only concern is that they use, similar to the website, an account or password to ensure they access only their information. These applications should provide data security through the app itself.

- ***Virtual Collector Systems***

Virtual Collector Systems are traditionally web based and often include animation characters to heighten the experience. The Virtual Collector System requires the consumer to initiate a session. As with other communication platforms, a tracking of historical events, along with proper communication disclosures would protect the consumer. The same type of consumer disclosures and access issues via a password or account number as with a web site would be needed to access their personal data.

Could regulations prevent or mitigate those harms?

The FDCPA as currently written establishes consumer protection and provides acceptable guidelines that must be adhered to by debt collectors when attempting to collect a debt. Updating the FDCPA regulations to include acceptable electronic forms of communication would prevent or mitigate any potential harm to consumers that may include privacy concerns, data security, or unreasonable behavior. Any regulatory language written should include clear definitions, proper practices to follow, and precise guidance for debt collectors. Any modernization of FDCPA should also consider reasonable and best business practices for debt collectors that enable the company to operate efficiency.

Should consumers also be able to communicate with and respond to collectors through such technologies, including to exercise their rights under the FDCPA and particularly when a collector uses the same technology for outgoing communication to the consumer?
*Yes, if guidance is forth coming on the areas discussed above to help operate safely and not violate the consumer laws, **c**onsumers should have the ability to communicate with and respond to collectors through any technology of convenience provided that the debt collector company has the ability to receive such requests in that format. These technological communications include the consumer's ability to exercise their rights under the FDCPA.*

What would be the potential costs and benefits of such regulations?
The benefits of updating FDCPA regulations provide both the consumer and debt collector options that are now considered standard ways to communicate in the electronic age. Consumers want information instantly and at a time that is convenient to them. Electronic communication provides consumers with this flexibility. In addition, electronic forms of communication provide consumers with the ability to manage their account without human interaction if so desired. Simply stated, commerce has shifted to and adapted to the electronic age. Consumers and debt collectors should be enabled with the same opportunities for debt collections.

Use of most of the new technological communication methods would not create significant cost for either the consumer or collector; indeed it would likely be an overall cost reduction for both sides.

Question 55: Are there communication technologies, or communication technologies that are likely to arise in the future, whose use in connection with debt collection might materially benefit or harm debt collector or consumers?

Visual communications such as Skype

This form of communication is currently available but not exercised in the debt collector industry. Contacting consumers (even with authorization) using a visual devise has the appearance of being invasive.

Voice and tone recognition

Voice analytics is currently being used by debt collectors for auditing and training purposes. This technology has become valuable to assure regulatory compliance. Examples include measuring a person's emotional state as well as validation of the consumer's identity.

The latter example has little risk to the consumer. However, there are many questions about use of interactive visual technologies as they allow persons to view the consumer's home or family and may be too invasive.

What additional challenges do those communication technologies present in applying the FDCPA or the Dodd-Frank Act's prohibition against unfair, deceptive, and abusive acts and practices to debt collections?

The principles that support both FDCPA and the Dodd-Frank Act provide a framework to protect consumers against unfair, deceptive, and abusive acts. The challenges currently faced are that the laws as written are specific to the communication devices used at the time they were passed. The revisions to these laws should provide flexibility to include any new technological developments as acceptable means to communicate between consumers and debt collectors provided that there is no erosion of those protective rights. To illustrate, the laws should be modernized to provide for email communication. The modernization of the law should maintain protection against third party disclosure, exposure of personal financial data, and the ability of the consumer to request that any future communications cease. The framework and intentions of consumer protection remain preserved while enabling both debt collectors and consumers to communicate electronically.

Question 56: What complications or compliance issues do social media present for consumer or collectors in the debt collection process?

Much of social media communication takes place between persons who have been invited into a relationship. If there is information available only through being a "friend" it is not appropriate to use that for skip tracing or other purposes. If the information is posted on a public site, then it is appropriate for the collector to access.

Information that is shared in the public domain should be accessible by debt collectors as they attempt to locate consumers. In the past, demographic and personal information could be obtained using public directories, phone books, and libraries.

Social media companies do provide areas of security that are viewable or accessible only by individuals designated by the consumer. Current practices and controls by collectors, consumers and social media companies provide adequate security for the consumer.

Consumers should be protected from public disclosure of debt and any communication regarding the collection of a debt. Therefore, the recommendation for communicating via social media sites would only be extended upon authorization and request from a consumer for information to be sent to a secure site as noted above. The consumer may designate the platform as well as the sector of the social media site that is acceptable for communication.

Consumer privacy and disclosure of the debt are the greatest compliance issues presented by social media. If a communication from a collector can be delivered privately (or if privacy requirements are waived by the consumer), and if the proper disclosures can be provided, then communication via social media should be treated the same as other written communication. Our members and the industry generally recognize that a debt collector cannot use false means to gain access to a consumer through social media. But if access is allowed or available, then communication should be allowed subject to privacy protections.

What privacy concerns are raised by various social media platforms?
Many social media platforms provide a forum for general public viewing thus, exposing consumers to third party disclosure, potential public humiliation, and sharing of personal financial data. Social media platforms would be defined as Facebook, Twitter, etc. Without expressed written authorization from a consumer, communications in these types of public social platforms should be prohibited.

Accessing social media platforms for purposes of viewing location information that is readily available would be acceptable.

Q57: FDCPA section 807(11) declares it to be a false, deceptive, or misleading representation for collectors to fail to disclose that a communication is from a debt collector. This section also requires in the collector's initial communication what is often called a "mini-Miranda" warning in which the collectors state that they are attempting to collect a debt and any information obtained will be used for that purpose. Standard industry practice is for third-party debt collectors to provide the mini-Miranda warning during every collection call. What are the cost and benefits of such collectors including the mini-Miranda disclosure when they send communications via social media?
It is reasonable to expect that the same standard that is in place for other written communications would be applied to communication via social media, including the disclosure requirements and protections against publicly disclosing information about the debt. There would be little cost to provide such notices and the benefit is that the consumer is protected in conformity with other communications. Each side has less confusion in this pierces.
Provided that the media format being used protects potential third party disclosure then there would not be an expectation for consumers to initiate the contact. Media formats that would fall under this type of contact category would have the technology in place that required the consumer to respond to a general communication with a positive affirmation that he/she is the right party in question

For other types of media communication, the consumer would provide opt in authorization to communicate in the desired electronic format that is exercised by the consumer.

Consumers have the ability to establish restrictions on the frequency that email or text communications are downloaded or received. Default options on mobile phones also provide different formats.

Consumers maintain the ability to require a debt collector to cease communication or define a more restrictive period to receive contact from a consumer

Other electronic formats for communications are non-intrusive therefor the unusual times for communication would not be applicable.

Consumers would still maintain the rights to demand communications cease or be received at more restrictive times.

The demographics of consumers have changed since the FDCPA was written to guide debt collectors. As currently written, it is difficult to provide the best service possible to consumers. Service includes notifications, education, and recovery of debts. When collectors cannot communicate with consumers in the media format that they desire, it limits the ability to provide quality service and timely information.

With respect to actual costs, the inability to reach out to consumers via the electronic format they desire prevents creditors from providing counsel and preventative default alternatives. This results in higher direct cost for lending practices for the creditor, and creates higher potential costs to the consumer. In the education space, it often limits or prevents the consumer from learning of important benefits or deadlines in their education funding process.

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

Typically, the only time collectors initiate communication with third parties is for assistance in establishing the correct contact information for a debtor or to verify information about their employment. In the education space this verification is required by the federal regulations covering the AWG (administrative wage garnishment) process as part of the process. No matter how you communicate, it becomes very difficult with today's technology, to do so without information showing up on caller ID's or other communication devices, that identify who we are, which may lead to that third party knowing it is regarding a debt.

Collectors are sometimes contacted by third parties who are looking for information on the debt for various reasons, such as the debtor has applied for a job that requires a background check. Any of these conversations may be regarding the mailing address, telephone numbers and place of employment for the debtor. The risk for consumers in not being located is that they may go into default or lose benefits, especially in the school space, that could be prevented if found. Cancellation, deferment or other benefits are other reason schools or their agencies might get third party calls. Third parties initiating contact with the collector in the education space may be looking for information on the debtor's enrollment records and history. Family members may initiate contact as well, looking for information on the debtor's outstanding bill. They may ask us how the debt was incurred, what the details or breakdown of the debt, how it can be paid or why financial aid was not given to the debtor to cover the charges. They also may call to plead the case of the debtor. There

is always the risk of the third party learning that the debtor has a debt. The risk to the third parties is minimal.

There should be clearer direction for collectors, debtors and third parties as to what is and is not a violation. Regulations and laws need to be updated to recognize that in today's world, most people no longer have land lines, but have cell phones with area codes that may not be consistent with their actual location. They communicate more by text messages and many types of social media than phone conversations. Because of technology today, it is almost impossible to effectively communicate about a debt without unintended disclosure.

Caller ID and text messages may show company names and emails generally have an indicator of the company written into them. There are risks in communicating through social media as there are few clear rules to guide the collector. However, without these mediums of contact being allowed, it is difficult for a creditor to efficiently communicate with consumers. Often the consumer would welcome contact to address debts prior to them becoming problems.

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

It is unlikely a cost benefit analysis can be done. However, it is clear that establishing a line of communication is beneficial to all involved. The FTC attempted to create a standard. However, there is much undecided in their language that leaves all parties open for misinterpretations and disagreements as to the guidance. These costs will affect all parties. Setting a standard to control an area where much of the communication and issues are subjective is very difficult so should be approached carefully.

This section of the FDCPA appears contradictory and in need of revision. Collectors do not typically make repeat calls to third parties and COHEAO does not support that practice.

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

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

The FTC has addressed this issue and set rules for the individual collector's use of an alias. As such, we believe additional rules are unnecessary. The FTC guidance fairly balances the employees privacy and personal rights with the need for the consumer or collection agency to accurately identify the true identity of the collector. Further rulemaking is not needed to address this issue and raises the potential of conflicting standards.

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

If the name of the company reveals that the caller is from a collection agency, it can lead to the inference that it is a collection call. Third parties receiving location calls are covered by the consumer law. It is likely they would ask the name of the business calling. Therefore, it is in the best interests of these third party consumers, the agency and the debtor to establish reasonable standards. COHEAO suggests that the CFPB adopt a rule that in such circumstances, if asked for the name of the business, the agency representative respond truthfully with the legal name and that such disclosure shall not be considered a violation of the FDCPA for disclosure of the existence of a debt. Alternatively, the CFPB could adopt a rule that, where possible, the agency shorten its name or provide an accepted nickname for purposes of such a response that would not reveal that the caller is a collection agency.

Q62: FDCPA section 804(5) bars a debt collector from using any language or symbol on an envelope or elsewhere in a written communication seeking location information if the name indicates that the collector is in the debt collection business or that the communication relates to the collection of the debt. How should such a restriction apply to technologies like email, text message, or fax?

It is reasonable to apply the same rules to technology if it is being used to obtain location information from a third party who is not the debtor. Texts and email are special areas and have had little guidance, but because they have a blend of letter and telephony, present difficult issues. Texts that do not display the caller id and email that do not disclose the debt or collector's identity would minimize the consumer's exposure to third party disclosure, but there may be conflicts with the FDCPA. A rule that permits the disclosure of the company's true identity without it being a violation would eliminate confusion and give best information to the consumer. This could be done in a manner of permitting a company to use an acronym.

Q63: Does sufficiently reliable technology exist to allow collectors to screen to determine whether a given phone number is a landline versus a mobile phone? If so, should collectors conduct such screening before relying on an area code to determine a consumer's time zone? What would be the costs and benefits of requiring such screening? Should collectors be allowed to rely on information provided by consumers at the time they applied for credit, such as when a consumer provides a phone number identified as a "home" number or a "mobile" phone number on an initial credit application without screening the area code?

First party collectors do not have the ability to determine reliably if a number is a cell or land line because the technology is not sufficiently advanced to do so. An added complication is that land

lines can be transferred to the person's cell and this change can take long periods of time to get updated on the screening services. We believe collectors should be required to do scrubs of their numbers to detect cell phones and many agencies do. However, some provision should be included in the rule to acknowledge the reality that these services are not reliable and that updates to them are typically slow. We believe that area codes are reasonably reliable indicators and collectors should be permitted to rely upon them for time zone determination.

We believe that collectors should be permitted to rely upon the number that a consumer provides at the time they apply for credit and this is a reasonable safe harbor that protects the consumer and provides an opportunity to contact them to provide information and attempt resolution of their account. Collectors must be allowed to use information provided to them by the consumer. If the consumer lists a cell phone for their home number, it would appear they intend for the collector to contact them at that number.

It would be unreasonable, under the uncertainty that such services provide to require such scrubs unless it can be verified that cell phone scrubs are reliable and accurate. The benefits of a successful scrub are that the consumer is not contacted unless they have given consent for the call. Further, if the number of improper calls is reduced, complaints and law suits can be reduced as well.

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

We believe the beat indicator that any collector has for the proper time zone for a consumer is the mailing address provided to the creditor by the consumer. This is the easiest, least confusing standard. Trying to track multiple location time standards would obviously add to the errors committed.

With the ability of people to take their telephone numbers with them when they move, we will continue to see a dramatic increase of mailing addresses and area codes on phone numbers that conflict. But if the mailing address is not an indicator of the time zone, it means the consumer has either moved or given an incorrect address. The only remaining indicator the collector has of the time zone is the area code on the phone number given, which is unreliable. It should be the duty of the consumer to keep the collector informed of the time zone where they receive calls.

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

COHEAO believes that a collector should only be responsible for the time an electronic communication is sent and not the received or delivered time as this is not within their control. Any electronic communication should be sent during permitted hours.

The FDCPA was designed to regulate the commonly used forms of communications by collectors -- phone calls and letters. These are typically used because, while there is some value in letters, if read we note various industry commenters indicated that a high percentage of letters are ignored. There is more success in resolving an account in a phone call.

The use of text and email presents a high risk situation because the content input by the collector is difficult to control by the agency and there has been almost no guidance on appropriate use of these tools. Therefore, use of email or text messages may subject the collector to more FDCPA exposure than regular mail. Finally, the Telephone Consumer Protection Act already regulates harassing text messages sent without consent.

Q66: Should a limitation on usual times for communications apply to those sent via email, text message, or other new media? Should it matter whether the consumer initiates contact with the collector via that media? Is there a means of reliably determining when an electronic message is received by the consumer? Are there data on how frequently consumers receive audio alerts when either emails or text messages are delivered? Are there data showing how many consumers disable audio alerts on their devices when they wish not to be disturbed?

As noted earlier, COHEAO supports the proposition that a collector should be responsible for the timing of electronic communication sent and not the received or delivered time. Electronic communication should be sent during allowed hours. However, If the consumer initiates contact, that should be considered as waiving any time limits.

However, merely initiating contact by text or email should not indicate permission to return communication in that manner. Until there is better guidance on those forms of communication, the collector should obtain written permission to communicate by text or email if their company uses these tools.

There is confusion about whether emails are letters or are to be controlled by the rules of other electronic communications. We suggest clarification on which rules apply and clarification on what consumer notices or restrictions apply so the collectors can use this method of communication. In the current lack of guidance environment, few agencies use this method to reach consumers.

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

We are not aware of any study or findings on how newer technologies are used and impact consumers today. Thus, any standards issued may be excessive and negatively impact both the consumer and the creditor. It would appear that trying to set rules by the very subjective test of "how disruptive" a communication might be is not in the best interest of either consumers or collectors. Using this method, it could well be that all communications are disruptive to the particular rule maker or consumer and have the effect of too much limitation on the important goal of informing consumers in an effective way about their accounts and efforts to assist in a solution. Such a subjective test will very likely add more confusion and uncertainty to the process.

We suggest that more research is needed to learn if or to what extent this is an issue. COHEAO members are willing to assist in this effort.

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

- **Hospitals, emergency rooms, hospices, or other places of treatment of serious medical conditions**
- **Churches, synagogues, mosques, temples, or other places of worship**
- **Funeral homes, cemeteries, military cemeteries, or other places of burial or grieving**
- **Courts, prisons, jails,**
- **detention centers, or other facilities used by the criminal justice system**
- **Military combat zones or qualified hazardous duty postings**
- **Daycare centers**

COHEAO believes that communication to any of these locations should be approached with care and only in situations where it appears the communication is appropriate or to ask an employee to return a call, for example. If informed that the communication is not appropriate, communication should stop. Unfortunately, the only way a collector learns of the sensitive nature of the location or reason for the consumer being there is from the consumer. It would be unlikely that a collector would know if a consumer were a visitor or a patient or an employee or any other of the various reasons why someone would be at such a location or in what status.

Obviously, the limits on contact would vary depending on where the call went and why the consumer was there. Typically the only way for a collector to know that a consumer is at one of these unusual or inconvenient locations and why is if they are told by the consumer. However, that information is usually learned only by calling the person at that location.

The purpose and intent of Section 805 of the Fair Debt Collection Practices Act does not specifically define "inconvenient times and places" other than creating a presumption that calls before 8:00 a.m. or after 9:00 p.m. are inconvenient. Congress had an opportunity to set other limits and did not. This is likely because what is inconvenient is different for each person.

This difficult, subjective issue is complicated by the fact cell phones can be used anywhere and create issues with inconvenient places or times; for example if in a different time zone than their zip code's. There is no legal way for private companies to track the location of individuals through their cell phone number. It is clear however, that the use of mobile phones and the portability of phone numbers complicate a debt collector's compliance with Section 805.

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

See response to Question 68

COHEAO does not recommend trying to identify specific places that are automatically inconvenient for consumers. Each person's situation is different, and it is more logical to place some responsibility on the consumer to communicate to callers the times and places they would prefer not receiving calls. In addition, the problem with such lists is that they are always subject to personal, cultural and other subjective factors, and inevitably leave out a choice someone else would have added.

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

As noted in the response to Q 68, collectors have no means of determining a consumer's location at any given time without the consumer providing that information. There is no technology available that allows private companies to track a person's whereabouts through their mobile phone. Consumers benefit from receiving communications from creditors and debt collectors to alert them of past due bills that may negatively impact the consumer's financial status if not addressed in a timely manner.

We are not aware of reliable evidence that consumers are being damaged under the current rules related to calls at their place of employment. These rules permit the consumer to stop calls if the calls are not acceptable or a problem to them. In addition there are several states that also restrict the calls to an employer. We believe this combination of rules is sufficient and no new rule is needed. If the consumer or their employer indicates that such calls are not allowed or are not preferred, the FDPCA requires that debt collectors cease such calls and provides adequate remedies in cases where such directives are not honored.

Our experience is that collectors are aware of the risk of improper calls to employers and that they can result in lawsuits. This knowledge is an effective deterrent.

There are obviously some work sites that are more likely to be a problem for calls than others. We are unaware of any study or information to indicate the cost/benefit for calls to the POE. However, our members indicate that it is often the only contact potential they have. This area is covered by current laws which provide the consumer with methods to stop such calls and enforce their rights.

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

We can only speculate about the policies an employer might have. Those policies would likely vary based upon specific business type. Persons who work in check-out at a retail store for example, on production lines or in service positions where they cannot leave the station or have no phone available, would set their policies depending upon availability of the employee. These policies may not be companywide and have some variations based on specific functions for the areas of the company and job type.

Q72: Collectors may have many accounts with consumers employed by the same large employer, such as a national chain store, and this may enable collectors to become familiar with the employers' policies regarding receipt of personal or collection communications in the workplace. Can collectors reliably determine consumers' employers and their policies with regard to receiving communications at work? If so, what would be the costs and benefits of requiring that collectors cease communications at work for all consumers working for a certain employer if collectors are informed by one (or more) consumer(s) that the employer does not permit personal communications for any of its employees overall, or at a particular location or job type (*e.g.,* retail premises employers)? What would be the costs and benefits of requiring that collectors cease communication at work if they learn of the employer's policy through other means, such as the policy being posted on the employer's Web site?

As discussed above, one employer may have different policies for different workers. A collector cannot reasonably determine the employer's policy without the employer/employee expressly providing it. Further, the process of trying to track the policy of an employer from one consumer to another, especially when accounts are often worked by different teams would be a very difficult task. Even collectors in the same company or team, do not share and track such information. If captured, a method to share it timely would require a sophisticated system that does not exist now. In addition, such information might vary from consumer to consumer within the same employer even if it could be reliably captured for one employee. This would require a huge data management system, and would be complicated by the fact that accounts are often recycled from one agency to another with little data following the account.

If possible, what would be the costs and benefits of requiring that collectors cease communications at work for all consumers working for a certain employer if collectors are informed by one (or more) consumer(s) that the employer does not permit personal communications for any of its employees

overall, or at a particular location or job type (e.g., retail premises employers)? What would be the costs and benefits of requiring that collectors cease communication at work if they learn of the employer's policy through other means, such as the policy being posted on the employer's website?

Employers' rules and policies can vary by position, location, and over time. For example a company with locations throughout the United States may have different policies for different functions they perform. Policies may be subject to change by management at any time, and as needs of the company change. It would be impossible and unwise for an agency to assume that because one debtor at a particular company has indicated that he/she is subject to a particular policy that the same policy would apply to all other employees at that company. Also, employees may change locations or positions that carry different restrictions.

It is not typical for a debt collector to possess detailed information regarding a consumer's job. The collector may have the consumer's work telephone number, but rarely will the debt collector know what the employer's line of business is, the consumer's job title, hours, or other information, and such detail is not typically shared willingly by the consumer. It is unreasonable to expect a debt collector to know an employer's policy regarding collection communications without having expressly been informed by the particular consumer at issue.

Q73: The FDCPA's restriction on contacting consumers represented by attorneys does not apply if "the attorney fails to respond within a reasonable period of time."161 How do collectors typically calculate a "reasonable period of time" for this purpose, and does the answer vary depending on particular circumstances?

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

Generally, a collector will attempt to confirm attorney representation of a consumer or otherwise communicate with the attorney via letter or telephone calls. If by telephone, the collector will typically make more than one attempt to reach the attorney or the attorney's support staff. Collectors will typically wait a minimum of 14-20 days from the time contact is attempted with the attorney before resuming direct contact with the consumer.

When resuming contact with the consumer, the agency will typically advise the consumer that it has attempted unsuccessfully to elicit a response from the attorney. This is a high risk situation because there will probably have been no court or regulatory guidance on an acceptable amount of time to wait prior to resuming consumer contact.

We feel this is a situation where the CFPB should issue a rule to bring uniformity and reduce risk by setting a process and required number of days to wait before resuming contact with the consumer. If the CFPB were to issue a "reasonable period of time" standard before resuming direct contact with the consumer, we recommend it be a minimum of fourteen (14) days from the time the collector attempts communication with the attorney.

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

A small percentage of consumers are represented by an attorney. Consumers that have attorney representation in general are going through bankruptcy. They have one attorney that represents them on all debts that they have included in the bankruptcy process. Consumers that are working with an attorney or law firm generally keep the same attorney or firm during the process. In a small number of bankruptcy cases, the consumer does not complete the bankruptcy filing and uses a different attorney to start the proceedings over at a later date.

There are a number of reasons a debtor could be represented by an attorney, such as a personal injury attorney representing the consumer on a medical bill relating to the underlying incident, a consumer attorney seeking to negotiate debt settlement, or an attorney operating at a credit repair organization are some examples of attorney involvement, but even in total, the number is relatively small..

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

When a message is left for the consumer concerning a debt it should be done the same whether as a recorded message or as a result of a live phone call. As long as the regulations are being followed for the time and frequency of calls this should not be an issue.

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

A message should accomplish two goals; minimize the risk of third party disclosure and limit the risk of confusion for the consumer regarding the communication.

Congress passed the FDCPA in response to "abundant evidence of the use of abusive, deceptive, and unfair debt collection practices." The FDCPA includes competing requirements that a debt collector disclose their identity and that a collector refrain from communicating a consumer's debt to a third party.

Congress could not anticipate the challenges that would be created by the wording of the FDCPA with respect to modern voicemail usage.

Current case law and interpretations of the FDCPA materially impact consumers. If a telephone message is considered a "communication" under 15 USC 1692a (2), then the agency is required to

leave the mini Miranda which will disclose that they are debt collectors. But if overheard by a third party, those same disclosures can embarrass the debtor.

Before the 2006 Foti v NCO Financial Systems decision, collectors would leave simple, but effective voicemail messages for debtors. These messages would typically follow a script similar to the following, never revealing the identity of the caller.

"Hello, this is John Smith calling from ABC Financial. I am calling about an important business matter. Please call back 1–800–123–4567. Please refer to file number 1234."

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

However, this message was overturned by the Foti court which held:

Defendant's voicemail 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.

Prior to Foti, agencies would leave messages as a matter of normal business practice. Now because of the great risk of third party disclosure, this practice is greatly hindered; preventing consumers from receiving needed information. This creates a situation where a consumer may want or need the information, but it is often not available. Thus, the consumer debtor is potentially unaware of the existence of a debt and unable to resolve it in a timely manner. This has the effect of driving many more calls to the consumer in an attempt to reach a consumer debtor in direct contact without leaving a message.

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

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

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

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

This has a high amount of risk for the consumer and the agency. If the consumer is identified in the message the collectors name and the mini-Miranda message must also be included along with identifying that the call is from a debt collector This additional information, *when overheard by a third party, presents risk both to the consumer that their debt/personal account information is known to a third party and it presents risk to the agency who has now violated the FDCPA restrictions on their party disclosure, the catch 22 situation the industry faces.*

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

Please see response to Question 82.

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

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

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

Please see response to Question 82.

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

Please see response to Question 82. Other than a rule from the CFPB that would shelter agencies from leaving the mini-Miranda where it may be overheard by third parties, it is difficult to propose safeguards that would be acceptable to debt collectors who are currently reluctant to leave messages due to frequent lawsuits. Please see the response to Question 82. If the message is not considered a communication, then a more flexible rule about leaving messages can be created as it would clarify that a communication does not include leaving a message for a consumer where the agency is not engaged directly with that consumer.

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

Please see response to Question 82. If the consumer is not identified by name, it likely would create confusion by the party receiving the call, especially if more than one person uses that phone.

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

This suggestion seems unworkable. This would require that the agency have the opportunity to speak with the consumer debtor, which may not otherwise occur unless the agency can leave a message. This is the classic chicken and egg problem. Next, it requires having a dialog with the consumer debtor that must adequately explain the debtor's rights to receive the mini-Miranda disclosure and then obtain a clear and provable opt out. Since such explanation must occur within the confines of the least sophisticated consumer standard applicable to communications with consumer debtors, it would be a challenge and likely result in more complaints and litigation.

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

This is a high risk to the consumer and the agency. If the consumer is identified in the message the collectors name and the mini-Miranda message must also be included along with identifying that the call is from a debt collector Please see responses to C. above and Question 82.

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

There is high a risk to the consumer and the agency. If the consumer is identified in the message the collectors name and the mini-Miranda message must also be included along with identifying that the call is from a debt collector. The greater concern is that with only that limited information, the consumer is not informed of the nature of the call and is very unlikely to return such a vague message.

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

This is a lower risk to the consumer and the agency. This type of message would follow the FOTI criteria. However, the critics of Foti, including some courts which have overturned it,

note that the message often piques the interest of any third party who hears it and they listen anyway. Another problem with the Foti message is its length. In today's world, many are not willing to listen to such a long, convoluted message.

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

There is a risk to the consumer and the agency because it can result in a third party disclosure. In addition, it is not an effective call as it creates confusion as to who the call is for if it serves more than one person, and can create concern for all, when the call is for a specific person.

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

It is unclear how this consent would be gained. Obviously it contemplates a prior communication, which may be difficult to accomplish. Thus, the reason for leaving a message in the first place would no longer exist if there had already been communication.

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

Caller ID can only provide limited information to be transmitted. Thus, providing more comprehensive information, such as name and number, is not generally possible and raises additional privacy issues. All have the same problems and risk; disclosing the debt collector's name creates potential of liability for third party disclosure. Unless safe harbor provisions are established permitting the display of the company name or an alias that does not reveal the debt collection nature of the call, we would support displaying the telephone number only.

Q86 Should debt collectors be prohibited from blocking or altering the telephone number or identification information transmitted when making a telephone call, for example by blocking the name of the company or the caller's phone number or by changing the phone number to a local area code? What technological issues might complicate or ease compliance with regulation regarding caller-ID technologies?

We would support providing "full" caller ID information to consumers if safe harbor provisions are established to allow the transmitting of the company name without liability for third party disclosure. Without that, the collector should be allowed to display its phone number only.

A collector should be able to broadcast any number that it owns provided that if the consumer calls that number, it is answered in the name of the company placing the call. The number should not be required to match up with the individual piece of equipment or circuit from which the call actually originates. Further, a technical limitation exists in that some carriers cannot provide the service to the dialed party, or limit the information that can be displayed. Further, not all consumers' phones allow the information to be displayed. Collectors should not be liable for such limitations.

Section 4: Newer Technologies

Q87: Some new methods of communication appear to present greater privacy risks than do telephone or postal communications. Email, for example, is a service consumers often access through a provider, such as an employer or outside company (*e.g.*, Google, Microsoft, Yahoo). These providers, including employers, may retain rights to access the emails of their users. If employers or other email providers retain the ability to access an email account, the likelihood increases that debt collection emails sent to those accounts may be read by third parties. Joint users of email accounts also may be able to read each other's email messages, including any that debt collectors send.

Emails may also pose risks of third-party disclosure because they may be publicly viewable by anyone near the display screen. Even when consumers check their email using a smartphone, nearby onlookers may have the opportunity to see communications from debt collectors, especially when consumers have their smartphones configured to conspicuously display the subject and sender of the message upon receipt. A similar concern exists for text messages, which are often displayed on the public-facing screens of mobile phones.

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

The responsibility of knowing whether an email provider has access to incoming emails is that of the consumer. It is unreasonable to ask a collection firm to account for access rights on an email address as there is no way for them to check the ownership of email through a directory or other source. Requiring a collector to account for third-party email access issues will preclude email from ever becoming an effective avenue of communications between collectors and customers. The universal and convenient communication form that is email and its availability when the consumer

wants to use it may prove to be the most effective communication method between consumes and creditors/collectors.

The consumer should be responsible for making the determination of their email address most appropriate for communicating with creditors and collectors. Any email that a consumer provides to a creditor or the collector as a contact address should be assumed to be approved by the consumer for use by the collector. The consumer should have the ability to remove an email address at any time.

The collector should never be able to skip trace and use an independently located email address without the consumer's consent. Currently, no database or technology exists to confirm in a reliable way whether an email address belongs to an employer. Even if we can identify a consumer's employer, we may not be able to confirm that the email domain belongs to the employer. Many people have multiple email addresses and have them forwarded to a single address for ease of access. We would have no way to identify these actions of the consumer.

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

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

Prohibiting such disclosures when using text or email, IF accompanied by protection from liability for not making such disclosure, is a positive and useful idea. The critical piece is to be able to make informed technology choices to allow communication but do not create risk for the collector or confusion for the consumer.

If the CFPB adopts rules that require agencies to disclose their true identities, agencies making such disclosures should be sheltered from liability. Alternatively, the CFPB should adopt a rule that for purposes of such a communication permits the agency to use a trade name, acronym, or shortened form of its name that does not reveal that the company is a collection agency.

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

The confusion about the Foti rule and the FDCPA's mini-Miranda requirements prevents useful, efficient communication using modern technology and creates huge risk for collectors. Communication efforts are hampered and contacts with consumers greatly lessened. Concerns over how regulators and the courts will view this problem prevent or limit most collectors from exploring these new communications technologies or even using current ones as simple as leaving messages for consumers. Even consumer advocates agree that the majority of consumers want to avoid default or negative credit issues or litigation to enforce debts.

Yet this communication is effectively prevented in a high volume of situations because of the risk to collectors and consumers are not benefited. An example of this is within the federal student loan market. There are numerous repayment options tied to a borrower's ability to repay, but default rates continue to rise, due in large part to the inability of federal loan servicers and collectors to contact these young borrowers who prefer and use newer technologies.

There are ways to address some of the disclosure issues in text or email. When using email, to protect a consumer's privacy and prevent disclosure, information regarding the debt should be disclosed only in an attachment. As with a paper envelope and letter, the content of such an email communication would be protected except for the deliberate and unauthorized intrusion of third parties.

When using text messaging, the name that displays on the consumer's phone is the name that the consumer establishes in their phone directory, so the collector should not be held responsible for the display name. If no name is set up in the consumer's phone directory, only the collector's telephone number will appear.

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

The FDCPA already provides consumers with a right to force collectors to cease communicating with them through certain types of media or at certain times or places. If the Bureau believes there is any confusion about that process, a clarification could be made with little impact on creditors or debt collectors as the majority of such entities already have a practice of honoring such requests.

It would be a huge undertaking to attempt to track consumer preferences for contact timing. Systems being used in most agencies today would not have the ability to monitor and make that information known in any manageable way to the staff that processes hundreds of accounts a week. Such a rule would result in a huge number of complaints and confusion as human errors would be unpreventable. Current systems are not able to recognize and block improper time zone calls now 100 percent of the time, as clear cut as those rules are. To undertake the massive task of tracking individual consumer time preference is probably impossible. We already have discussed elsewhere in this response problems with correctly monitoring FDCPA required time windows for mobile phone calls.

Serious impediments to such a preferred contact method are the operating systems used by debt collectors as they do not currently have such sophistication. Even if such technology were available, it would add huge cost to the management of the account to input and update this information.

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

Collectors do not typically provide additional notices except in the education space where AWG, or rehabilitation or other federally or state required notices should still be sent. To the extent these notices do not ask for money, a safe harbor should be granted to allow them to be sent as they often benefit the consumer. A final communication to inform consumers of the next action would be useful.

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

We believe neither a general requirement to disclose contact information nor a law requiring a natural person to answer calls within a certain time would increase cost to create tracking systems to control and monitor when a return call is needed. It is not always possible to get all calls answered or returned within set time lines. Collectors manage thousands of accounts daily. Most agencies do not limit communication on an account to one staff person for those reasons. If a consumer calls back when the named person who has worked the account is out of the office or on another call, all collection agencies route incoming calls to a member of that team to take the call whenever possible.

However, it is not always possible to manage the level of detail that the question raises. There are many reasons for not being able to manage a set call back time that relate to volume, system

tracking, and ability to present the call to a set collector on a set time window. To our knowledge, current systems in use do not have such abilities. Efforts to create such tracking and call presentment would involve significant cost. Currently, the calls are returned by the originating collector during their daily portfolio review. The motivation for a call to be returned by a collector is great as they are trying to resolve the account and earn their fee.

The disclosure of contact information is not burdensome to a debt collector. Collectors uniformly now provide such information as it is the way to keep communication moving. Debt collectors now typically disclose their contact information voluntarily. Therefore, there is no need to impose a statutory requirement on debt collectors to provide their contact information.

The benefit of the proposed rule is low since debt collectors already disclose their contact information and the failure to disclose does not cause significant damage to consumer. The cost is high as noted above because providing a call within set time frames will require great investment in systems and likely add to confusion and complaints by consumers.

A rule requiring such conduct is unnecessary since collectors are motivated by the desire to communicate with the consumer to resolve the debt, reduce the number of calls they make and earn a fee.

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

We believe it is not necessary to incorporate all of the examples listed in FDCPA section 806 as this would be duplicative. It should not be necessary to incorporate rules that are already clearly defined in the FDCPA, for examples numbers (1) through (4). It would be helpful, however if the CFPB should propose rules that clarify current areas of confusion in section 806, such as examples (5) and (6).

There is currently much confusion between the language of the FDCPA, differing court opinions and conflicting official commentary from the FTC. We are in situation where we as an industry cannot make good decisions because we have no clear guidance. There has been much litigation and discussion over the terms "repeatedly or continuously" in example (5) and has resulted in a much litigation over call volume.

Official commentary of the FTC defined continuously as "making a series of telephone calls one right after the other," and repeatedly as "calling with excessive frequency under the circumstances." Court decisions vary across the country and have included mathematical equations for call volume per day, week, or month, considerations whether a message was left,

whether calls are to different numbers for the consumer rather than the same number, and several other factors have been considered in an effort to bring clarity to this section. The CFPB should attempt to draft language that applies to all entities to clarify the definition of "repeatedly or continuously" in example (5) of section 806.

The CFPB should include in any proposed rule an outline of factors that must be considered to determine "intent to annoy, abuse, or harass." Factors that could be considered in the outline include: frequency of total calls to consumer, frequency of calls to a particular number, time between when the calls are made, whether the result of the calls should impact future attempts, whether calls were made during permissible hours, whether calls were made after speaking with the consumer the same day, whether a message was left, whether the consumer responded to the calls or messages, whether the consumer disputed the debt, or whether the consumer requested calls to cease or limit the volume or timeframe of the calls.

Obviously, any rule(s) to address issues in this section must the effect doing so would have on contact rates with consumers. It is our experience that limiting the frequency of permissible attempts to contact the consumer would result in lower contact rates, which would not be in the best interest of the consumer.

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

The CFPB should also consider including conduct related to non-traditional forms of communication in any rule proposing to limit the volume or frequency of contact attempts. Examples of such non-traditional forms of communication include email, text messages, private internet messaging, and other communications not a telephone call or letter.

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

Congress expressly provided an exemption from the FDCPA for first party collections because first party efforts are different from third party efforts because there is thought to be less likelihood for abusive practices between first party creditors and their client. The legislative history discussed the likelihood that first parties would be likely to treat delinquent consumer customers in a manner that would increase the potential for them to continue to be customers.

This concept causes creditors to be more conscious of future business potential and efforts to collect are impacted by this view.

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

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

In our experience, social media is not a form of communication used by collectors as it creates high risk because there is almost no guidance on how or if this medium can be used. In addition, the various social media companies impose rules that limit such use for collectors. We have no knowledge that any collector has published a list of any type of their accounts on any social medial site as this would be in violation of numerous rules that already exist.

If a consumer prefers to communicate through social media and debt collectors respond to this preference by communicating with consumers through such means, the existing laws relating to third party disclosure of debts will govern those communications. Such communications could be permissible only if they are private in nature, such as a Facebook private message. However, most collectors do not permit their employees to access such internet sites as the potential for improper disclosure or employees making personal, unrelated to their job communications, is too great.

Q95: FDCPA section 806(5) bars debt collectors from "causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number." Should the Bureau clarify or supplement this prohibition in proposed rules? If so, how?

See response to question 97.

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

See response to question 97.

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

The Bureau proposes a rule similar to that in Massachusetts, which not only limits telephone attempts to a set maximum, but also applies to all other forms of communication. The answer is that adopting such a rule would work to the detriment of consumers. The Massachusetts rule cuts off attempted communications to consumers at a level far below that which is needed to achieve contact with them. It prevents telephone calls that are reasonably likely to result in consumer communication. This communication is obviously necessary to resolve accounts.

Adopting this standard nationally will cause more consumers to have unresolved debts, leading to more negative credit reporting and more collection lawsuits. The lower rate of resolution of debts that would be caused by too strict communications limits is also likely to be reflected in greater losses to creditors. This can cause the cost of credit to rise, or its availability to decrease.

The very nature of email, social media and text communications indicates that sending a large volume to a single consumer is unlikely to be effective, and it is unlikely any efficient collector would send repetitive messages using these methods.

Many consumers, especially younger ones, prefer to communicate through media other than telephone or mail. Most of them prefer email, social media messaging, text messaging, or through web sites. A rule that unduly restricts contact through a consumers' preferred communication channels would frustrate those consumers' and likely reduce successful contacts. A reduction in contacts through any medium reduces the resolution of their debts and increases the likelihood of negative impact on their credit.

These questions address an issue that is critical for consumers, debt collectors and creditors. The CFPB must balance the competing interests involved in this area by considering the experience of the industry that shows restricting communications be a detriment to consumers.

With all the uncertainly involved in this area, more study is needed to reach a good result. COHEAO and its members in the school and commercial areas volunteer their resources to participate in such discussions with the CFPB, consumer groups, and other industry participants.

The questions relating to call frequency as noted are complex and any solution must balance the need for consumers to be contacted and their wish for privacy

Our members' experience is that there is a direct relationship between a debt collector's contact with a consumer who owes a debt and the successful resolution of that debt. These resolutions are not merely payments in full, but also compromises such as payment plans, settlements in full, or in the case of student loans successful forbearances, deferments or administrative resolutions that may relieve the consumer of the obligation to pay the debt.

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

We support the following suggested ideas.

- *For debt collectors who have the technological capability to track their experience in successfully contacting consumers, the CFPB's rule should allow call frequency on a daily basis up to the point at which the debt collector's data shows that right party contacts drop significantly.*

- *For debt collectors who do not wish to maintain such data, or cannot do so, the CFPB should provide a safe harbor with respect to a permissible number of contact attempts per day by telephone. We recommend that up to 5 attempts per account, per day, be permitted to establish contact with a consumer. Busy and SIP tones will not count toward this total. Further, there would be allowed 1 message or contact per day.*

- *We recommend and support a cooling off or waiting period between calls to the same number. Therefore, we support a rule that imposes a minimum time between calls to a particular phone number, and believe 2-3 hours is sufficient.*

- *We believe it is reasonable that a successful contact with the consumer should cause all further telephone communication efforts to stop for the day unless the consumer requests or consents to another telephone call.*

- *We support a rule that allows that no more than one message may be left at a single telephone number in a day.*

- *We support a rule that requires collectors to wait a day between telephone attempts, unless the consumer requests or consents to a telephone call the following day.*

Q98: What are the costs and benefits to consumers and collectors of using predictive dialers? How commonly are they used by the collection industry and what are the different

ways in which they are used? How often do consumers receive debt collection calls resulting in hangups, dead air, or other similar treatment?

See response to Question 99 below

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

Predictive dialers are essential to the efficient contact efforts of collectors to reach consumers. In their attempts to reach the huge numbers of consumers who owe debt and to effectively use their high cost human resources, this technology is critical. Any rulemaking the Bureau contemplates in this area should encourage the responsible use of this technology.

Because there are limits on the other methods of communication that consumers prefer, such as text, email or instant messaging, collectors must focus on the substantial number of consumers who use telephones as a primary method of communication relating to their debt.

Predictive dialers should be available for appropriate use by collectors to make the process of such telephone communication more efficient, allowing more contacts to be made with fewer personnel. This reduces the cost of debt collection and increases the communication with consumers to resolve more accounts favorably without AWG or civil litigation.

The benefits of predictive dialing systems also allow collectors to exercise a number of compliance related controls for the benefit of consumers that are impossible to manage using manual dialing with hard line phones. Those controls include the following examples:

- *Control the number of attempts or calls made each day or other time period*
- *Control the timing of phone calls to a number to comply with time of day limits and logging of call activity to track collector conduct as part of a compliance program*

Any rulemaking that the Bureau undertakes that relates to the use of predictive dialers should take these consumer benefits into account and should not discourage the use of automated dialers in the collection industry.

The question above asks about the incidence of dead air or hang-ups on calls placed through predictive dialers. In the experience of our members such events are not common. It is not in the best financial or business practice to program a dialer in a manner that results in such problems. The goal always is to make contact with consumers in the most efficient, quickest way. Dead air or hang-ups are not consistent with this objective. The feedback we have gotten from those who use a dialer, and not all are willing to take the considerable risk, is that a great deal of effort is made within collection firms to program dialers in a way that will avoid these problems.

For this reason we believe any rule making should be limited to making clear the circumstances where uses of such modern technology is permitted. We believe the CFPB already has the authority to address any unreasonable or improper conduct.

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

We believe that Section 807(5) can be clarified to include a safe harbor for agencies that pursue the filing of legal action in pursuit of the accounts receivables they collect. In Section 807(11), we believe that the collection industry and consumers would benefit from safe harbor language for voicemail and answering machine messages transmitted for the purpose of reaching the consumer who is the account owner as this would reduce the uncertainty in these communication options and provide protection against potential third party disclosure.

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

We are not aware of any of our members or others in the industry that do not follow the SCRA rules. Our school members are especially vigilant on this topic.

We do not believe that responsible collectors provide any false statements to consumers, especially regarding the SCRA. Our members believe the creditor should have the responsibility for any disclosure about this important issue as they have the best information about the necessary changes and are the ones who have authority to make adjustments to the account balance or other terms such as interest.

Therefore, the SCRA communication should be between the original creditor and the consumer to avoid inconsistency or confusion. We feel that third party collectors' duty should be limited to referring the servicemember or their family member or representative to the original creditor for account adjustments. This method has been working to protect Servicemembers' rights.

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

We do not believe that these threats are prevalent and if made, they would certainly result in discipline or termination for the offending person. We believe it is inappropriate to disclose any

information to third parties, even a superior officer, and is contrary to the consumer protection principles that our members are required to follow.

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

We do not support the practice of stating or implying that non-debtor spouses have an obligation to pay debts for which they are not liable and do not communicate these statements. We are concerned that a requirement that collectors convey that spouses do not have an obligation to pay the debts because we are not likely to know other factors that might impose such a requirement, such as the degree of financial responsibility that may be placed on spouses who could be executors, administrators or beneficiaries of probated estates. We are opposed to any requirement to offer advice on these type of issues as collectors are not likely to be well enough informed to make such recommendations or comments, which could incur liability for them or their company.

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

We do not support the practice of asking a non-accountholder to pay a debt for which he or she does not owe. We also caution against a requirement that collectors convey that these users do not have an obligation to pay the debts as they are not generally qualified to do so and because of possible future liability that may attach from divorce, separation, estrangement or other legal issues.

Q105: What technological limitations might prevent mini-Miranda warnings from being sent via text message? Should consumers be able to opt in to collector communications via text message that do not include a mini-Miranda warning? If so, what type of consent should be required and how and when should it be obtained? Could the mini-Miranda warning be more succinctly stated so that it fits within the character constraints of a text message?

The technological limitation which prevents mini-Miranda warnings from being sent via text message is the limited character space to include both the required consumer protection language and crucial information about the debt.

An alternative could be to text a web link that contains the information to meet the regulatory requirements. Consumers should be able to opt-in or opt-out of these communications electronically, verbally, or as part of the original credit agreement.

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

We do not believe that the link or attachment would raise privacy risks. Any risk would be lower than using mail, voicemail messages that might be accessed by others, or other non-secure forms of communication. The link could be protected by security measures to ensure that the consumer is the only one authorized to receive the information.

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

The challenges generally involve the risk of third party disclosure. Collectors could develop methods to send secure links or use other methods to provide information that only the consumer can access.

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

Consumers use multiple methods. Some examples include.

- *ACH*
- *ACH to Check Conversion*
- *Credit Cards*
- *Western Union*
- *Cash*
- *Money Order*
- *Personal Check*
- *Cashier's Check*

The most common payment is either credit card or ACH. Few use checks or money orders as all parties wish to process payments quickly and using a recurring ACH makes the process of remembering to make the payment easier.

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

Many collectors charge the consumer the cost that the collector incurs to process electronic payments. These fees typically are a flat rate processing amount. If the CFPB considers rules to cover processing fees, they should permit agencies to add the actual cost of processing the payment to the amount of the transaction. We also believe the consumer should be told that other, no charge methods of payment are available. We do support rulemaking that would provide clarity and uniformity to the addition of payment processing fees.

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

We are not aware of such conduct by our members though it may exist in the industry on a small scale. COHEAO encourages compliance with all applicable rules and regulations including prohibiting false or misleading claims concerning the availability or cost of payment methods. We support rulemaking that would encourage fair disclosures concerning the availability and cost of individual payment methods.

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

We are not aware of any data that discusses the knowledge of consumers regarding payment methods or usage. We would support rulemaking that requires fair disclosures concerning the costs and speed of varying payment methods when the fee being charged for the method used is paid to the agency itself. We do not believe agencies should be required to disclose the costs for a consumer to use a particular third party product or service as the collector is not likely to have that information. Our concern about providing information on reversing payments might have the consequence of increasing this action and result in confusion and lost opportunities for consumers to rehabilitate student loans or accept settlement offers.

Q112: Should the Bureau incorporate the examples from FDCPA section 808 into proposed rules prohibiting unfair or unconscionable means to collect or attempt to collect any debt by third-party debt collectors?

Yes, it would be important for any CFPB rules to be in line with FDCPA Section 808. Yes, for the sake of clarity, the examples should be incorporated and to the extent possible, clarified.

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

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

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

For Reference Purposes, Section 808 has been copied below.

§ 808. Unfair practices [15 USC 1692f]
A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:
(1) The collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.
(2) The acceptance by a debt collector from any person of a check or other payment instrument postdated by more than five days unless such person is notified in writing of the debt collector's intent to deposit such check or instrument not more than ten nor less than three business days prior to such deposit.
(3*) The solicitation by a debt collector of any postdated check or other postdated payment instrument for the purpose of threatening or instituting criminal prosecution.*
(4) Depositing or threatening to deposit any postdated check or other postdated payment instrument prior to the date on such check or instrument.
(5) Causing charges to be made to any person for communications by concealment of the true purpose of the communication. Such charges include, but are not limited to, collect telephone calls and telegram fees.
(6) Taking or threatening to take any nonjudicial action to effect dispossession or disablement of property if --

(A) There is no present right to possession of the property claimed as collateral through an enforceable security interest;
(B) There is no present intention to take possession of the property; or
(C) The property is exempt by law from such dispossession or disablement.
(7) Communicating with a consumer regarding a debt by post card.
(8) 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 or by telegram, except that a debt collector may use his business name if such name does not indicate that he is in the debt collection business.

Should any of the specific examples addressed in section 808 be clarified or supplemented and, if so, how?

Re: 808 (2) Clarification is needed to make it clear that a debt collector CAN accept a series of post-dated checks or payment instruments as long as notification requirements are met.

Should any other conduct by third-party debt collectors be incorporated into proposed rules prohibiting unfair or unconscionable means of collection? If so, what are those practices; what information or data support or do not support the conclusion that they are unfair or unconscionable; and how prevalent are they?

No

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

Yes, the rules should apply to the collection of debts regardless of whether first party or third party. Consumers should have the same expectations of conduct regardless of whether the contact with them regarding their debt is from a first party creditor or from a third party debt collector. With one exception:

(8) 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 or by telegram, except that a debt collector may use his business name if such name does not indicate that he is in the debt collection business.
A First Party should be able to continue to use their name and logo when communicating with a consumer as long as the envelope does not indicate that it is regarding debt collection.

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

Some agencies add fees depending on the method of payment used. However, adding fees according to the type of payment method used is not a wide spread practice. These may be vendor fees for service or processing and may range from a flat rate processing amount to a percentage of the payment being processed. Should the CFPB consider rules regarding processing fees, we suggest that consideration be given to allow for agencies to add the actual cost of processing the payment to the amount of the transaction. In any case, we support rulemaking that would provide clarity and uniformity to the addition of payment processing (convenience) fees.

It is noted that collection fees are allowed to be included on some types of debts, such as some education accounts. However, case law on this section of the FDCPA has made it unclear for creditors how to recoup collection costs. See Gathuru v. Credit Control Services 623 F.Supp.2d 113 (2009); Kojetin v. C.U. Recovery 212 F.3d 1318 (8th Cir. 2000). We support efforts to provide clarity in this area which is controlled by the laws of each of the 50 states and the concept of adding costs of collection is very confused and unclear outside of the federal student loan model. We suggest guidance be provided by the CFPB on how creditors may draft contracts to allow for collection fees and how such fees should be collected.

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

Please see response to question 114.

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

There is currently no reliable data that we are aware of that addresses these questions, but we strongly recommend that studies be conducted prior to rules being instituted. While calls to cell phones incur some cost to the consumer, it is our experience that these are not significant amounts as most phone plans now are unlimited or have very reduced costs.

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

Consumers now benefit from the very competitive marketplace and have a wide range of plans with ever decreasing costs. Cell phone providers offer numerous plans, many of which feature unlimited calls, unlimited text messaging, unlimited data, or a combination of the three. The rapidly changing mobile communications market, and competition between the various providers, is likely to continue to change the marketplace and how consumers use and pay for mobile communications. A rule promulgated by the CFPB that makes assumptions about consumers' use of these communication tools, and the costs they pay, is extremely likely to become an obsolete in short order, because the pace of technological and market change will be faster than the pace of the CFPB's ability to amend a rule to take new developments into account.

The CFPB should adopt a solution that will not become obsolete soon after implementation. We support a flexible rule that would require collection firms to obtain consumer consent before communicating by email, text message or social media, and that would also allow consumers to withdraw that consent (and "opt out") from any of those communication methods at any time. With respect to cellular telephones, we support a rule allowing consumers to stop calls to their mobile phones at any time (which they already can do, under existing law). This ability to choose – both at the beginning of a relationship and at any time thereafter – allows individual consumers to control any costs they might incur in communicating about their debts, because they will always have the superior knowledge about those costs and their willingness to incur them.

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

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

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

A rule that required consent before contacting a consumer by mobile telephone would create an enormous barrier to successful communication between collectors and consumers. As a practical matter, a huge percentage of initial communication with consumers is through a phone call.

Requiring prior consent is a "chicken and egg" situation where a collector cannot get permission until they reach the consumer and cannot reach them until without calling them. In addition, any process to get specific prior consent will limit greatly the contact with consumers, add cost, create error potential and cause delays because using such a system will require tracking and constant updating.

Since such a huge percentage of communication is through phone calls, any reduction in that process will have the effect of reducing the number of consumers whose account is resolved through communication and will likely increase the AWG or civil garnishment process numbers. This would increase the cost of credit because creditors would experience greater losses.

Few collectors use texting to communicate as there is significant risk and little guidance on the process. Thus, while consumers actually prefer the method, creditors have not begun to rely heavily on text messaging. For this reason, a requirement that collectors have consent to send text messages would not be nearly as disruptive as one that applied to mobile telephone calls.

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

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

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

Consumers should also be able to withdraw their consent to receiving either mobile telephone calls or text messages. As with providing consent, consumers should have the flexibility to withdraw consent in a variety of ways, similar to the manner in which they can provide consent. For example a rule that required collectors to honor requests from consumers to withdraw consent verbally, in writing, via the internet, or through a "stop" text message.

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

Q119: Should proposed rules impose other limits beyond consent on communications via media that result in charges to the consumer and if so, what limits? For example, would it be feasible to require in proposed rules that consumers have the right to opt out of communications via certain media to avoid the possibility of being charged? If so, should initial communications 226 *2009 FTC Modernization Report* at 41.227 *Id.* at 42.93 via such media be required under proposed rules to include a disclosure of the consumer's right to opt out? Should proposed rules include limits on the frequency with which collectors use such media?

We acknowledge that this topic is one of uncertainty and there are a wide range of practices. With that in mind and against the backdrop of rapidly changing technology and mobile consumers, the Bureau must carefully weigh consumer concern regarding call frequency against the fact that too strict limitations on communications will inevitably reduce the positive outcomes of consumers paying their debts. A rule that limits communications between debt collectors and consumers too much would have the consequence of reducing consumer payments of legitimate debts, leading to negative consequences for *consumers: more collection lawsuits filed against them, and more negative credit reporting. We agree that there is need for a rule to give debt collectors much needed clarity on how to structure their operations. However, the rule must balance those limits on telephone or other communications with the potential that too strict limitations will work to the detriment of consumers.*

Anecdotal information from our members indicates that there is a direct relationship between a debt collector's contact with a consumer who owes a debt and the successful resolution of that debt. These resolutions are not always payments in full, but also compromises such as payment plans, settlements in full, or in the case of student loans, successful forbearances, deferments or administrative resolutions that completely relieve the consumer of the obligation to pay the debt.

The payment or settlement of a debt is typically reflected on a consumer's credit report by the credit grantor. This is another reason most consumers actually want to receive information about problem or delinquent accounts. Imposing unworkable consent requirements will limit favorable outcomes and resolutions.

If a debt collector is unable to reach a consumer and resolve the debt, the creditor is left with no choice but to file a lawsuit, or in the case of federal student loans, recommend administrative wage garnishment or tax refund offset against the consumer.

There are other benefits to establishing contact with consumers as well. Once there is communication between a debt collector and a consumer, the consumer has the opportunity to dispute the debt, tell the collector that it has been paid, or provide other information that can

resolve the situation in the consumer's favor. A rule that prevents communication, and therefore reduces the number of right party contact, will also prevent these successful outcomes.

We suggest that a universal rule for all calls is not appropriate here, because consumers with different types of debts, or in different stages of delinquency, may require more or less effort for a successful contact to be made. An arbitrary limit on call frequency would work to the detriment of consumers who are successfully contacted by efforts appropriate to their debt type and stage of delinquency.

We would support a rule with the following parameters:

- *For debt collectors who have the technological capability to track their experience in successfully contacting consumers, the CFPB's rule should allow call frequency on a daily basis up to the point at which the debt collector's data shows that right party contacts drop significantly. The rule could require collectors who utilize this option to have the data maintained in a way that would make it easy for the CFPB to evaluate whether the collector utilizes a calling strategy that goes beyond what is reasonably calculated to achieve right party contacts, and in that situation, it would be presumed that the collector is engaging in harassment of consumers through excessive calling.*

- *For debt collectors who do not wish to maintain such data, or cannot do so, we recommend that the CFPB provide a safe harbor with respect to a permissible number of contact attempts per day by telephone. We recommend that 5 attempts per day be permitted. Busy and SIP tones will not count toward this total. Further, there would be allowed 1 message or contact per day.*

- *We believe it would be sensible for the CFPB to establish waiting periods between calls to the same telephone number. Repeated calls to the same number within a short period of time are unlikely, to result in a right party contact, and are much more likely to be effective in achieving contact if they are spaced out at different times of the day. Therefore, a rule that imposed a minimum time between calls to a particular phone number appears to be a good solution.*

- *We support a rule that a successful contact with the consumer should cause all further telephone communication efforts to stop on a particular day, unless the consumer requests or consents to another telephone call*

- *We would support a rule that provides that no more than one message may be left at a single telephone number in a day. We believe it is appropriate for debt collectors to space attempted calls to consumers out, so that consumers do not receive phone calls or messages every day. We would also support a rule that required collectors to wait a day between telephone attempts, unless the consumer requests or consents to a telephone call the following day.*

The Bureau's question 97 above asks if the Bureau should adopt a rule similar to that in Massachusetts, which not only limits telephone attempts to an arbitrary maximum, but also applies

to all other forms of communication as well. The answer is that adopting such a rule would work to the detriment of consumers. The Massachusetts rule cuts off attempted communications to consumers at a level far below that which is useful for achieving contact with them, and as such, prohibits telephone calls that are reasonably likely to result in right party contacts and, in turn, successful resolutions of debts. The lower rate of resolution of debts that would be caused by too strict communications limits is also likely to be reflected in greater losses to creditors, and likely to either cause the cost of credit to rise, or its availability to decrease.

The very nature of email, social media and text communications dictates that sending large numbers of them to a single consumer is unlikely to be effective, and it is unlikely any legitimate collector would send repetitive messages using these methods.

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

These questions address an issue that is critical for consumers, debt collectors and creditors. The CFPB must balance the competing interests involved in this area by reference to the data that shows that restricting communications too strictly will work to the detriment of consumers.

With all the uncertainly involved in this area, more study is needed to reach a good result. COHEAO and its members in the school and commercial areas volunteer their resources to participate in such discussions with the CFPB, consumer groups, and other industry organizations.

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

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

Sometimes it is not in the best interest of the consumer to have their highest interest rate loan paid first, for example, a loan with a higher rate might have other benefits for deferment or cancelation.

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

Please see the answer above. We support rulemaking that would provide uniform standards that would clarify how payments should be applied in absence of specific instructions from the consumer. Such a rule may incorporate a combination of considering uniform factors outlined by the CFPB, as well as require agencies to have a clear policy that notifies consumers how payments will be applied should instruction not be given. However, we do not think it necessary to inform a consumer how the payment will be applied for each payment as that would be overly burdensome and potentially create consumer confusion and increased errors. An agencies polices could be available upon consumer's request and on their web site.

A rule establishing the timing of payment applications by the collector would be appropriate and create little problem as most collectors have requirements from their clients currently to quickly process payments in a set time frame.

Q122: Many consumers complain that debt collectors seek to recover on debts that consumers have already paid and therefore no longer owe. Other consumers assert that debt collectors promise that they will treat partial payments on debts as payment in full, but then collectors subsequently seek to recover the remaining balance on these debts. To what extent do debt collectors currently provide consumers with a receipt or other documentation showing the amount they have paid and whether it is or is not payment in full? Should such documentation be required under proposed rules? Are there any State or local laws that are useful models to consider?

A mandatory receipt requirement for each payment detailing whether the account was settled in full would unduly burden the collection industry, result in confusion to the consumer, would not prevent abusive practices, and is unnecessary considering current financial institution requirements and modern technology used to process payments.

We do not think additional costly, burdensome rules regarding payment receipts are necessary. But should the CFPB determine rulemaking is necessary in regards to payment receipts, we suggest that considering the massive volume of payments processed the rules should allow for the consumer to opt in to receiving payment receipts at their request.

Currently, the FDCPA and other statutes or regulations require that a multitude of letters be sent on every account, whether or not a payment is made. For example, in addition to the required dunning letter, agencies must send reminder letters and confirmation letters when depositing post-dated checks, letters outlining settlement agreements, and validation letters. Requiring a receipt for each payment made by the consumer will result in a substantial addition to the already voluminous amount of mail being received by the consumer.

Our members' experience suggests that consumers do not open many of these commercial letters. Adding more mail has the potential to conflict with the already required letters and create confusion for the consumer should different letters be received on the same day or out of the order they were sent.

Our experience suggests that many large bank creditors currently require either a settlement or payoff confirmation letter to be sent to the consumer when an account is closed. Similarly, the City of New York requires a settlement confirmation letter. The CFPB could address this issue by creating a rule similar to these practices requiring that a letter be sent to the consumer when the account is actually settled or paid in full and the account is closed, rather than after each payment.

Finally, rules requiring mandatory receipts are unnecessary in today's environment considering the current requirements and practices of financial institutions, as well as the current technology associated with payment processing. Several state jurisdictions only require a receipt for any method of payment that does not already produce evidence of the transaction. The vast majority of payment methods provide information detailing the transaction either immediately when the transaction takes place or subsequently on a financial statement.

After a check is deposited, the check will eventually be returned to the consumer or posted as an image online, in addition to having the bank list the transaction on the account statement. It is unnecessary for the CFPB to draft a rule mandating a receipt for each transaction because the consumer will automatically have evidence of the transaction from their financial institution and likely other evidence as well.

Debt collectors are governed under the settlement guidelines that are provided by the creditor. In higher education, the majority of settlement opportunities extended to consumers are approved individually by the creditor case by case. The debt collector normally provides the details and reasoning surrounding the specific settlement proposal as it relates to an individual account, and the creditor determines whether that amount is reasonable.

If a creditor provides the debt collector with what is often referred to as a "blanket" settlement for all consumers associated with the creditor, they may:

- *Send a settlement proposal notification to all consumers;*
- *Instruct the debt collector to send out an approved settlement proposal notification to the consumers and/or;*
- *Instruct the debt collector to develop a telephone campaign strategy to notify the consumer of the creditor's intent to offer a settlement of the debt owed.*

Consumers traditionally use their payment transaction as a receipt of record. However, consumers are provided with an acknowledgement of payment received or other documentation upon request.

In addition, the majority of information desired by a consumer can now be accessed through an electronic format via web access. Many debt collection industry leaders provide a secured pathway that enables the consumer to view through their website all of the payment activity on the account since being placed with a third party debt collector. That service provides immediacy to the consumer as they access documentation to support the settlement.

In most instances creditors provide the "official settlement documentation" once the collected settlement payment has been posted to the account as they are the holder of the debt and the amount owed by the consumer is to the creditor, not the debt collector. Documentation information may include a satisfied promissory note, a 1099 form to report the difference between amount owed and settled as income, receipt, and/or a formalized letter acknowledging the agreed upon settlement.

The contractual relationship between a creditor and debt collector normally defines the responsible party should the debt collector wrongfully provide an incorrect amount as a settlement. The majority of contracts would make the debt collector responsible for accepting an incorrect amount if the debt collector quoted the settlement amount erroneously without authority from the creditor. Conversely, if the creditor agreed to an incorrect settlement amount, the consumer and debt collector would be held harmless.

Should such documentation be required under the proposed rules?

It is not unreasonable to require either debt collectors or the creditor to provide documentation that describes the proposed settlement agreement provided there remains reasonable assurance that the document and language contained therein does not expose the debt collector to Fair Debt Collection Practice Act violations as well as the creditor to potential violation of consumer laws. To illustrate:

- *Accepting a settlement after the date of the proposed deadline to pay expires creates potential liability exposure for the debt collector. There should be a reasonable grace period granted to the debt collector and/or creditor to accept the settlement amount as it would continue to be in the best interest of the consumer.*

The debt collector and/or the creditor should be able to transmit the documentation in a format that is acceptable to the consumer. For example, if desired that information should be acceptable to provide by letter or email.

Are there any State or local laws that are useful models to consider?

We are unaware of any specific State or local laws other than the New York City law included in the CFPB reference that address the settlement questions as described in Q122.

Q123: Should the Bureau's proposed rules impose standards for the substantiation of common claims related to debt collection?

Section 807 of the Fair Debt Collection Practices Act articulates reasonable standards to guide the behavior and activity of the debt collector in order to protect consumers from deceptive activity. The difficulty in always reasonably applying these guidelines is that standards do not sufficiently provide the opportunity to define the "intent" of any given activity as to whether the activity was purposely intended to create harm to the consumer or is legitimately a bona fide error that occurred due to a system error, an employee failing to abide by existing policies and procedures, or is incorrect information being provided by the creditor to the debt collector.

What would be the costs and benefits to consumers, collectors, and others of requiring different levels of substantiations?

A monitoring process that applies different rules or standards on activities creates added costs for labor, computer upgrades, potential for human error, confusion for the consumer and added disputes. All of this adds costs and delay.

Also see response to Q126

Q124-Should the information or documentation substantiating a claim depend upon the type of debt to which the claim relates (e.g., mortgage, credit card, auto, medical)?

The focus of this response is directly related to Higher Education debt. The contractual relationship between the consumer (student) and the institution of higher education may result in a multitude of debt types while enrolled. These debts may include federal student loans, institutional loans, student receivables, room/board, parking infractions, library fines etc. The documentation substantiating these different types of claims within the higher education arena are different, therefore the expectation that one size fits all with respect to substantiating a claim does not appear applicable. The student loan may be supported by a promissory note while library fines may be substantiated with evidence that the book was checked out and not returned in a timely fashion. A student receivable may be the result of outstanding tuition and fees that may appear similar to a revolving account where payment is applied and additional charges are added during the period of enrollment. The documentation supporting these claims may be proof of enrollment or general account ledger entries itemizing the debt types.

> *The same argument would hold true for mortgages, credit cards, auto loans, and medical debt. The instruments used that constitute and document an agreement for the claim are different for each type of debt.*

Is it more costly or beneficial to substantiate claims regarding certain types of debts than others?

To require third party debt collectors to maintain documentation for all debts placed for collection would be extremely expensive to both the creditor and the debt collector. The majority of debts placed for collection do not require documentation as the consumer has prior knowledge of the debt and an understanding of the obligation. Business efficiencies through technology enable the creditor to electronically submit accounts with data that includes demographics, and pertinent debt related information. Mandating that all debts placed for collection be supported by documentation at the time of placement would not only cripple the efficiencies of data file transfer technology, it would create tremendous data storage issues as creditors maintain account documentation in PDF's, paper, Word documents, electronic signature records and many other formats. This requirement would be cumbersome to both the creditor and debt collector while not providing additional protection to the consumer.

The Fair Debt Collection Practices Act protects consumer rights with the provision that provides the right to dispute the debt. Upon notification of a dispute, the debt collector is obligated to cease communication until documentation is provided to the consumer. Expanding the consumer right to

dispute the debt in writing and/or orally would make it less burdensome to the consumer and add the protection desired by the CFPB.

Also see response to Q126

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

The right of the consumer to require documentation to substantiate a claim should continue at any stage during the course of the collection process whether that is the initial communication, subsequent communications, and/or litigation. The collection industry and higher education institutions traditionally honor a consumer's right to dispute at any time during the collection sequence. This is an inherent consumer right to request evidence of the debt, and that right should be preserved. However, once the creditor or debt collector has provided reasonable documentation to substantiate the debt, then the creditor or debt collector should have the ability to pursue collection efforts.

Also see response to Q126.

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

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

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

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

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

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

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

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

These enforcement actions do not relate to the "substantiation of debts" in a typical situation but to specific types of improper conduct where the FTC found specific companies to be engaged in conduct that violated existing law. We do not believe they support the conclusion that it is necessary to have the CFPB issue rules covering substantiation of debts.

The CFPB could establish more certainty in this area by defining the responsibilities of creditors and collectors when providing information about a debt. We offer the following suggestions.

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

This allocation of responsibility for the accuracy of debt information reflects the creditor's superior knowledge and information. Further, they are better able to detect problems.

Typically, when the collection firm receives the debt for the first time, they have no prior contact with the consumer or the account. Thus, are not reasonably able to vouch for the accuracy of the creditor's information. For this reason, we believe that creditors, not collectors, should be responsible for the accuracy and validity of debt information at the time of placement with a collection agency. We believe the CFPB should issue a rule that provides for any placement of debt with a collector to carry the implied representation that the debts are valid and that the information provided by the creditor is accurate

If a debt is disputed by the consumer, a collection agency is required to respond to that dispute. Typically the collector will request this information from the creditor who usually will have the information necessary to respond to the dispute. Therefore, validating a debt should require the creditor to provide to the collector, and the collector to the consumer, a copy of the agreement governing the debt (promissory note; credit card terms & conditions) and a payment history or account statements showing the amount due.

Collectors typically seek these documents from creditors and place accounts on hold (with no collection activity) while the documents are being recovered. Once those documents are received,

they are provided to the consumer, and collection efforts resume. If the creditor is unable to provide such documents, the common practice is for the collection agency to close the account to the creditor.

While many disputes are submitted in good faith by consumers who genuinely dispute their debts, our experience reveals that the majority of disputes received by collection agencies are form letters downloaded from the internet by consumers or sent by "credit repair" entities who charge a fee for this service. The goal of each is to use this process to avoid paying a debt

If a rule(s) is passed that require more effort and expense to respond to disputes, it would reward this improper use of the dispute process because collectors and creditors may decide that responding to disputes is too expensive. This is a concern when collecting small balance debts. The use of debt settlement companies by consumers will likely increase if the dispute rules provide an environment which makes the use of a dispute to erase debt easier. We urge the CFPB to recognize this potential when addressing this issue.

Debt collectors are dependent upon accurate information provided by the consumer to support claims of indebtedness. The relationship that created the debt is between the consumer and the creditor. The consumer owes the debt to the creditor. The debt collector is providing a professional service for the creditor to recover the amount of debt owed.

Upon notification that a consumer is disputing the debt, the debt collector ceases further communication with the consumer until they receive needed documentation from the creditor.

Typically, the creditor will submit an electronic data file that contains pertinent consumer information to the debt collector. That documentation supporting the debt is received from the creditor. The documentation for higher education debt may be in the form of a promissory note, electronic signature, account ledger reflecting the charges, a record of attendance to substantiate enrollment, and/or copies of the transaction. The relationship establishing the debt remains with the creditor. However the debt collector often performs as the mediator and forwards the creditor's documentation to the consumer.

Information included typically includes last known address and contact information, type of debt, financial data of amount borrowed/owed, and date of default. The information provided is sufficient to provide a validation notice to the consumer to notify that the account has been placed with a debt collector. The validation notice advises the consumer who the creditor is, the amount of the debt, their rights of dispute as afforded by the Fair Debt Collection Act, and the fact that this is an attempt to collect a debt and the company is a debt collection agency. Requiring additional documentation prior to sending a validation notice does not provide any additional protection to the consumer.

In response to the CFPB's Bulletin in July 2013 regarding the issue, most industry members responded by eliminating any references to credit scores or creditworthiness from their consumer communications. We note that in conversation with our members, COHEAO members did not have the practice to include such language in their correspondence.

Therefore, we believe there is no need for a rule on this topic.

We support guidance or a rule that would provide a safe way for collectors to respond to consumers when they have questions about credit reporting.

After a consumer has disputed a debt;

The debt collector and/or the creditor are required to provide support documentation to substantiate the claim. The information is provided to the consumer using the communication method desired by the consumer. To expedite the process, consumers may request the information to be mailed, emailed, pushed to the web so the consumer can download the document etc. Once the consumer has received the support documentation, the debt collector does a follow up communication to confirm that the information was received and discuss any questions that may be asked. The debt collector is dependent upon the fact that the information provided by the creditor accuracy supports the claim.

After the consumer has disputed the debt and it has been verified; and

Once the debt collector and/or the creditor has provided documentation to substantiate the claim, the debt collector should be available to answer any additional questions and if requested provide any other reasonable available information asked by the consumer, however, the debt collector has responded to the consumer's request for documentation and should have the ability to pursue additional collection efforts if the consumer has no further information or documentation that would be contrary to the claim. The consumer retains the right to notify the debt collector to cease and desist any further contact.

Prior to commencing a lawsuit to enforce a debt;
The consumer retains the right to require documentation to support the claim. As noted earlier in the comments, it is our position that the consumer should have the right to request the documentation at any time during the collection process. However, once that information is provided to the consumer, the creditor should retain the right to commence a lawsuit to enforce a debt. The consumer may present claims to the court that may be contrary to the position held by the creditor. The judge or jury is in a position to determine the validity of any such claim.

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

The Consumer's credit score will improve if the consumer pays the debt:

While there is no any single formula that determines the credit score of a consumer, there are some categories that have relative importance and are considered when establishing a score. Some of these categories include:

- *Consistency in making timely payments*
- *The ratio of what is owed compared to available credit*
- *Length of credit history*
- *Types of credit in use*
- *Number of accounts recently opened*

- *Number of inquiries from potential creditors*

Payment of the debt will result in the collection trade line being removed from a consumer's credit report;

If an account is reported to the credit bureau by the debt collector on behalf of the creditor, it is reported as a collection item rather than a trade line. Normally a trade line is reported by the creditor. Insinuating that an item will be removed whether that is a creditor trade line or a debt collector reporting the account as a collection item without that statement be factual would be deceptive and inaccurate.

Higher Education (Federal Loans) provides consumer's an opportunity to rehabilitate their loans. Upon meeting the regulatory requirements of rehabilitation, all negative credit associated with that account is removed as a benefit to the consumer for fulfilling the requirement. The statement that the negative trade reporting will be removed is factual in this situation.

The consumer's creditworthiness will improve if the consumer pays the debt; and the collector will furnish information about a consumer's debt to a CRA?

It is not unusual for a debt collector to report the activity of an account on behalf of a creditor. This authorization and expectation for credit reporting is normally spelled out in the contractual relationship between the creditor and the debt collector. The debt collector reports the account as a collection item and updates the CRA'S of any new activity that may include payments, adjustments to balances etc. Stating that any payment activity will be reported to the CRAs is a factual statement if the debt collector or creditor does such. Making a statement that the consumer's creditworthiness will improve if the consumer pays the debt cannot be confirmed factually therefore despite the logic that paying an outstanding debt is a step in improving a credit report, the statement may be considered deceptive.

Creditors and debt collectors want to assist consumers in financial literacy and help them understand the value of excellent credit. Negative credit does impact the lending accessibility for consumers. We encourage the CFPB to provide guidelines for acceptable statements that can be shared with consumers to help them understand the value of good credit and the benefits to repay their debt. Financial literacy is an important role for both creditors and debt collectors.

Q128: What services are provided to debt collectors in connection with the collection of debts and who provides them?

- ***Letter Servicers:***

The majority of debt collectors outsource the printing and mailing of all collection letters

- ***Collection Software:***

There are major software developers who provide platforms for debt collectors to manage the placement of accounts from creditors. The systems track all collection efforts

- ***Credit Reporting Servicers***

All of the national credit reporting agencies provide services to debt collectors that include:

- *Reporting accounts to the credit bureau*
- *Providing credit scores*
- *Providing demographic and other attributes as a tool for locating consumers*
- *Skip-Tracing Companies*
- *On-line and batch processing of accounts to obtain address demographics of consumers to aid in the effort to locate.*

- ***Dialer Companies***

Provide the hardware to interface with collection software to enable predictive dialing of consumers

- ***Attorneys***

Initiate litigation on behalf of the creditor to recover the debt

- ***Military Scrub Companies***

Provide a service to identify any consumers who may currently be serving in the military.

- ***Mobile Phone Scrub Companies***

In reaction to current Telephone Communication Protection Act (TCPA) restrictions, these servicers attempt to identify consumer contact numbers that are mobile phones.

- ***Bankruptcy Scrub Companies***

Provide a service to identity consumers who may have in the past been or may currently be in bankruptcy

Higher Education Student Loans are for the most part exempt from bankruptcy dischargeability; however collection efforts must cease during the process of an active bankruptcy.

- ***Deceased Consumer Scrubs***

Identify consumers who are deceased.

- ***Court Record Scrubs***

Identify consumers who are habitual, serial law suit filers against the debt collection industry. There is a strong and expanding segment of consumers who file law suits against debt collectors regardless of whether there is any legitimacy to the claim in hopes of reaching an out of court settlement.

What information or data support or do not support the conclusion that such services provided are material to the collection of debts

The services noted above are very important to the effective, legal communication with consumers. While we are unaware of any studies that have been done or any available data, feedback from our members indicates these tools are necessary to conduct business in a legal, efficient manner, to improve contacts with consumers to reach resolution in their accounts, and limit the risk for the collector.

Communication with consumers through the tools listed herein impacts the communication experience as noted below:

- *Provides business efficiencies in determining repayment ability of consumers;*
- *Analyzes the probability of debt repayment compared to invested cost of making contact efforts;*
- *Provides information to reduce potential legal liability;*

Services such bankruptcy, mobile phone, deceased, court record, and military service scrubs enable the debt collector to flag accounts that fall into these categories. The accounts are then reviewed to determine the appropriate step as determined by the situation.

All of these services are necessary to respond to the current litigious environment that debt collectors and creditors experience.

Q129: Are there specific acts or practices by service providers that should be specified in proposed rules as constituting unfair, deceptive, or abusive acts or practices in the collection of debts?

The current litigious environment requires debt collectors to seek all services that better identify consumer situations. Creditors and collectors need as much information regarding the debt and consumer as possible. Debt collection servicers must use available technological tools to better manage the probability of consumer repayment on an account by account basis. There are no lawsuits or findings we know of that have found specific acts or practices by service providers as constituting unfair, deceptive or abusive acts or practices in the collection of debts.

How prevalent are such acts or practices?

The servicers described in (Q128) have become instrumental, necessary, and critical in the daily operation of debt collectors and creditors. They have become the norm for operating procedures in the industry. These servicers can be compared to the tools used by the lending industry to better determine the repayment probability of their customers so that the amount lent does not exceed the ability of the consumer to repay the debt based on his/her current situation.

The services listed are reasonable products that supply specific information.

Q130: Who provides substantial assistance to debt collectors?

As noted above:

- ***Letter Servicers:***

The majority of debt collectors outsource the printing and mailing of all collection letters

- ***Collection Software:***

There are major software developers who provide platforms for debt collectors to manage the placement of accounts from creditors. The systems track all collection efforts

- ***Credit Reporting Servicers***

All of the national credit reporting agencies provide services to debt collectors that include:

  - *Reporting accounts to the credit bureau*
  - *Providing credit scores*
  - *Providing demographic and other attributes as a tool for locating consumers*
  - *Skip-Tracing Companies*
  - *Their services provide on-line and batch processing of accounts to obtain address demographics of consumers to aid in the effort to locate.*

- ***Dialer Companies***

Provide the hardware to interface with collection software to enable predictive dialing of consumers.

- ***Attorneys***

Initiate litigation on behalf of the creditor to recover the debt.

- ***Military Scrub Companies***

Provide a service to identify any consumers who may currently be serving in the military.

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Higher Education Student Loans are for the most part exempt from bankruptcy dischargeability; however collection efforts must cease during the process of an active bankruptcy.

- ***Deceased Consumer Scrubs***

Identify consumers who are deceased.

- ***Court Record Scrubs***

Identify consumers who are habitual, serial law suit filers against the debt collection industry. There is a strong and expanding segment of consumers who file law suits against debt collectors regardless of whether there is any legitimacy to the claim in hopes of reaching an out of court settlement.

Is the assistance provided to first party collectors the same as the assistance provided to third party collectors?

The products and services as described are sold either on a subscription basis, batch cost, or a monthly fee. These products and services are available to both first and third party collectors.

What measure should be used to assess whether such services provided are material to the collection of debts?

We are unable to suggest any manner or method to chart the effectiveness in an empirical format. However, in the collection industry, these practices are universal, and it is difficult to imagine how any agency could operate without the use of these tools.

Servicers who provide demographic information maintain a database of consumers' current and historic phone numbers and addresses. This is public information that is centralized concisely into a database that is resold to first and third party debt collectors. It is not unreasonable to have access to this public information as a service to help locate consumers and assist them in repayment of debt.

The services listed in the first part of Q130 are vital to help first and third party debt collectors identify consumers who may fall into one or more of these categories.

- *An example: Scrubbing new placements for bankruptcy provides the debt collector with sufficient information to cease communication and debt collection efforts should a consumer be in current bankruptcy proceedings or to check whether the debt placed for collection was in fact discharged.*

All of the services described are material to the collection of debts.

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

We are unaware of any service provider of the types listed above who are reckless in their actions. As noted above, we are not aware of any lawsuits against such service providers for such "reckless" action.

In context to section 1031 of the Dodd-Frank Act, the act describes improper activity that may be defined as abusive or deceptive for UDAAP. The criteria are very similar to the Fair Debt Collection Practice Act's description of unfair or deceptive acts. We encourage the CFPB to provide clarity of what is and isn't acceptable practices to assure full compliance of the Act. The importance of clarity cannot be overstated as it is important not to have confusing or ambiguous guidelines. To illustrate this point, a challenging situation currently experienced by third party debt collectors is related to the Foti case:

- *To summarize with an example, the Foti case requires debt collectors to disclose the fact that they are debt collectors making an attempt to collect a debt when leaving messages on an answering device, as the court in the Foti case defined a voice mail as a contact attempt. But this has the potential to disclose the nature of the call to a*

third party, contrary to the intent of the Fair Debt Collection Practice Act to protect consumers from disclosure of their debt to third parties. Providing clarity within the FDCPA would address this issue and resolve the problem of potential liability if a debt collector abides by the Foti ruling and/or does not abide to protect disclosure of the debt to a third party.