

CFPB

Consumer Financial Protection Bureau

Debt Collection Rule
Effective October 2021

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Debt Collection Rule

Small Entity Compliance Guide



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1. Introduction

In 1977, Congress passed the Fair Debt Collection Practices Act (FDCPA) to eliminate debt collectors' abusive debt collection practices, to ensure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent action to protect consumers against debt collection abuses.

In 2010, the Dodd-Frank Act made the Consumer Financial Protection Bureau (Bureau) the first federal agency with authority under the FDCPA to prescribe substantive rules with respect to debt collectors' collection of debts. In December 2011, the Bureau re-issued the Federal Trade Commission's procedures implementing the FDPCA's provision that permits a state to apply for an exemption from certain FDCPA requirements.¹ These procedures were codified in Regulation F. In 2019, the Bureau issued a notice of proposed rulemaking to amend Regulation F and implement the FDCPA's substantive requirements and prohibitions regarding debt collection. In 2020, the Bureau issued a supplemental notice of proposed rulemaking addressing time-barred debt disclosures.

On October 30, 2020, the Bureau issued a final rule (October 2020 Final Rule) amending Regulation F to implement most of the FDCPA's substantive provisions.² The October 2020 Final Rule addresses, among other things, communications in connection with debt collection, prohibitions on harassment or abuse, false or misleading representations, and unfair practices in debt collection. The October 2020 Final Rule is effective November 30, 2021.

On December 18, 2020, the Bureau issued a final rule (December 2020 Final Rule) addressing and clarifying consumer disclosure requirements, required actions prior to furnishing, and prohibitions regarding the collection of time-barred debt. Unless specifically noted otherwise, this guide does not discuss the December 2020 Final Rule. The Bureau will update this guide to include the provisions of the December 2020 Final Rule.

Currently, this guide uses the term "Debt Collection Rule" to mean the October 2020 Final Rule without regard to the amendments made by the December 2020 Final Rule.

This guide meets the requirements of section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 with regard to the Debt Collection Rule and is a Compliance Aid issued by the Consumer Financial Protection Bureau. The Bureau published a Policy Statement on

¹ 76 Fed. Reg. 78121 (Dec. 16, 2011).

² 85 Fed. Reg. 76734 (Nov. 30, 2020).

Compliance Aids, available at www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/policy-statement-compliance-aids/, that explains the Bureau's approach to Compliance Aids.

1.1 Scope of this guide

This guide focuses on the October 2020 Final Rule. Except when specifically needed to explain the October 2020 Final Rule, this guide does not discuss other laws, regulations, or regulatory guidance that may apply. The content of this guide does not include any rules, bulletins, guidance, or other interpretations issued or released after the date on the guide's cover page. Unless otherwise specifically noted, this guide does not discuss the December 2020 Final Rule.

- The Debt Collection Rule implements federal law and does not interpret state law. Similarly, this guide does not discuss state laws that may apply to debt collectors.
- The Debt Collection Rule does not affect a person's responsibility to comply with state laws that are consistent with or provide greater protection to consumers than the FDCPA or the Rule. *See* 12 CFR 1006.104.

The guide includes a detailed summary of the October 2020 Final Rule's substantive prohibitions and requirements, including those that generally restate the FDCPA's prohibitions and requirements. Section 2 provides a summary that highlights the October 2020 Final Rule's key interpretations and clarifications of the FDCPA.

Users of this guide should review the October 2020 Final Rule and the December 2020 Final Rule as well as this guide. These final rules are available on the Bureau's website at www.consumerfinance.gov/rules-policy/final-rules/debt-collection-practices-regulation-f-compilation/.

1.2 Use of examples in the guide

This guide has examples to illustrate some portions of the Debt Collection Rule. The examples do not include all possible factual situations that could illustrate a particular provision, trigger a particular obligation, or satisfy a particular requirement.

1.3 Additional resources

1.3.1 Website resources, email notifications, and regulatory inquiries

Additional resources to help industry understand and comply with the Debt Collection Rule are available on the Bureau's website at www.consumerfinance.gov/policy-compliance/guidance/other-applicable-requirements/debt-collection/. You may also sign up on this website for an email distribution list that the Bureau will use to announce additional resources as they become available.

If you have a specific regulatory interpretation question about the Debt Collection Rule after reviewing these resources, you can submit the question to the Bureau on its website at reginquiries.consumerfinance.gov. You may also leave your question in a voicemail at 202-435-7700. Bureau staff provides only informal responses to regulatory inquiries, and the responses do not constitute official interpretations or legal advice. Bureau staff is not able to respond to specific inquiries within a particular requested timeframe. Actual response times will vary based on the number of questions Bureau staff is handling and the amount of research needed to respond to a specific question.

1.3.2 Advisory opinions

A request for an advisory opinion regarding the Debt Collection Rule may be submitted in accordance with the Bureau's Advisory Opinions Policy. The Bureau will review requests for advisory opinions in accordance with the Advisory Opinions Policy, and any resulting advisory opinions will be published in the Federal Register and will be posted on the Bureau's website. Additional information about the Advisory Opinions Policy is available at www.consumerfinance.gov/policy-compliance/guidance/advisory-opinion-program.

2. Overview of clarifications and interpretations

The Debt Collection Rule restates the FDCPA's substantive provisions and, in many cases, further interprets or clarifies how those provisions apply, especially to newer communication technologies. This section provides an overview of the Rule's interpretations and clarifications. The remainder of this guide provides a detailed discussion of the Rule's substantive provisions, including those that generally restate the FDCPA's corresponding provisions.

2.1 Effective date

The Debt Collection Rule is effective November 30, 2021. The Rule applies to attempts to communicate, communications, and other conduct by debt collectors occurring on or after that date, regardless of when the underlying debt was incurred.

Nothing in the Debt Collection Rule prevents a debt collector from complying with the Rule's requirements and prohibitions before the effective date. However, to the extent the Rule establishes a bona fide error defense, safe harbor, or a presumption that certain conduct complies with or violates the Rule, those defenses, safe harbors, and presumptions are not effective until November 30, 2021.

2.2 Coverage

The Debt Collection Rule covers debt collectors and debts, as those terms are defined in the FDCPA. Thus, the Rule does not alter which debt collectors and debts are covered under the FDCPA. For example, the Rule does not expand coverage to first-party debt collectors that are not debt collectors under the FDCPA.

Additionally, many of the FDCPA's requirements and prohibitions apply to "communications." The Debt Collection Rule clarifies that communications and attempts to communicate can occur through newer technologies, such as calls and texts to mobile telephones, email messages, and messages conveyed through social media. The Rule also clarifies that "attempts to communicate" are subject to certain requirements and prohibitions as set forth in the Rule.

II. Prohibited Conduct

a. Acquisition of location information [15 USC 1692b]

- i. It is lawful to communicate with third-parties in order to attempt to locate information about the debtor.
- ii. However, you cannot mention that the debtor owes a debt or anything about the debt.
- iii. As a general rule, you cannot communicate with a non-debtor more than once.
- iv. You cannot communicate via post card or have any indication on an envelope that the letter is in regards to the collection of a debt.
 1. *Douglass v. Convergent Outsourcing* 3d 299, (3rd Cir. 2014): Recent 3rd Circuit case found that account number visible through plastic part of envelope to be a violation of this section.
 2. *Compare Strand v. Diversified Collection Service, Inc.*, (8th cir. 2004): Eighth Circuit found benign language and symbols on an envelope was not a violation of this section. Words included: "personal and confidential".

b. Communication in connection with debt collection [15 USC 1692c]

- i. Unless consumer gives consent, a debt collector cannot communicate with a debtor:
 1. Times known to be inconvenient. General rule: between 8:00 a.m. and 9:00 p.m. is acceptable.
 2. If know that the Debtor is represented by an attorney.
 3. At place of employment, if know that debtor cannot take calls at work
- ii. Cannot communicate with third parties, except as previously mentioned to obtain location information, or an attorney, or a credit reporting agency.
- iii. If debtor request in writing that debt collector cease communication with debtor, the debt collector must not communicate with the debtor.
 1. See e.g., *Erickson v. Messerli & Kramer P.A.* 2011 WL 1869044 (D.Minn. 2011) (stating verbal request to cease communicating insufficient for a FDCPA violation).

c. Harassment or abuse [15 USC 1692c]

- i. The use of threat;
- ii. The use of obscene or profane language;
- iii. Publishing a list of delinquent debtors;
- iv. Advertisement for sale of any debt to coerce payment;
- v. Causing a telephone to ring or engaging a person in conversation with the intent to annoy, abuse, or harass;
 1. Unanswered calls made to a consumer may be considered communications. See *Cerrato v. Solomon & Solomon*, 909 F.Supp.2d 139 (2012). In *Cerrato*, Defendants found liable for

eight unanswered calls after a cease and desist. Key factor was the telephone number appeared on the screen. The same telephone number used on previous collection calls.

- vi. Calling a person without meaningful disclosure of the caller's identity;
 - 1. The number of calls made to a debtor found to be in violation of the FDCPA vary widely.
 - a. *Tucker v. CBE Grp., Inc.*, 710 F.Supp.2d 1301, (M.D.Fla.2010) (finding defendant's conduct of calling plaintiff fifty-seven (57) times over a 20-day period was not a violation of § 1692d(5)).
 - b. *Compare United States v. Central Adjustment Bureau, Inc.*, 667 F.Supp. 370, 376 (N.D.Tex.1986), *aff'd*, 823 F.2d 880 (5th Cir.1987) (finding harassment where debt collector made as many as four or five telephone calls to the same debtor in one day).

d. False or misleading representations [15 USC 1692e]

- i. The false representation or implication that the debt collector is vouched for, bonded by, or affiliated with the United States or any State, including the use of any badge, uniform, or facsimile thereof.
- ii. The false representation of
 - 1. The character, amount, or legal status of any debt; or
 - 2. Any services rendered or compensation which may be lawfully received by any debt collector for the collection of debt.
- iii. The false representation or implication that any individual is an attorney or that any communication is from an attorney.
- iv. The representation or implication that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages of any person unless such action is lawful and the debt collector or creditor intends to take such action.
- v. The threat to take any action that cannot legally be taken or that is not intended to be taken.
- vi. The false representation or implication that a sale, referral, or other transfer of any interest in a debt shall cause a consumer to
 - 1. Lose any claim or defense to payment of the debt; or
 - 2. Become subject to any practice prohibited by this title.
- vii. The false representation or implication that the consumer committed any crime or other conduct in order to disgrace the consumer.
- viii. Communicating or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed.
- ix. The use or distribution of any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by any court, official, or agency of the United States or any State, or

which creates a false impression as to its source, authorization, or approval.

- x. The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.
 - 1. *Duffy v. Landberg*, 215 F.3d 871 (8th Cir. 2000) (holding that letter was false and misleading where letter demanded full amount of possible statutory penalty, i.e., up to \$100.00, in order to satisfy the debt).
 - 2. *Gonzales v. Arrow Financial Services, LLC*, 660 F.3d 1055 (9th Cir. 2011) (holding that letter was false and misleading when letter implied that debt collector could report to credit bureaus the account when debt collector did not in fact report to bureaus).
- xi. The failure to disclose in the initial written communication with the consumer and, in addition, if the initial communication with the consumer is oral, in that initial oral communication, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose, and the failure to disclose in subsequent communications that the communication is from a debt collector, except that this paragraph shall not apply to a formal pleading made in connection with a legal action.
- xii. The false representation or implication that accounts have been turned over to innocent purchasers for value.
- xiii. The false representation or implication that documents are legal process.
- xiv. The use of any business, company, or organization name other than the true name of the debt collector's business, company, or organization.
- xv. The false representation or implication that documents are not legal process forms or do not require action by the consumer.
- xvi. false representation or implication that a debt collector operates or is employed by a consumer reporting agency as defined by section 603(f) of this Act.

e. Unfair practices [15 USC 1692f]

- i. Attempting to collect an amount not authorized by the agreement;
- ii. Accepting post-dated checks of more than 5 days, unless the debt collector notifies the debtor within 3-10 days of depositing the check;
- iii. Soliciting post-dated checks in order to threaten or institute criminal prosecution;
- iv. Depositing or threatening to deposit post-dated checks prior to the date on the check;
- v. Causing charges to be made for the communications by concealing the true purpose of the communication (e.g. collect calls or telegram fees)
- vi. Taking or threatening to take non-judicial action when there is no right or intention to take such action;
- vii. Communicating by post card;

- viii. Using symbols or language indicating debt collection besides the name of the debt collector on envelopes.
 - 1. Benign language not actionable. *Strand v. Diversified Collection Service, Inc.*, 380 F.3d 316 (8th Cir. 2004).
 - 2. "Judgment Enforcement Law Firm" on the envelope was a violation. *Keasey v. Judgment Enforcement Law Firm, PLLC* 2014 WL 1744268 (W.D.Mich. 2014).

f. Validation of debts [15 USC 1692g]

In the initial communication or within 5 days of the communication, the debt collector must send the debtor certain disclosures in writing, which include:

- i. The amount of the debt;
- ii. Who the current creditor is;
- iii. Informing the debtor if they don't dispute the debt within 30 days of the letter, the debt collector will assume its valid;
- iv. If the debtor notifies the debt collector in writing within the 30 day period that the debt is disputed, the debt collector will obtain verification of the debt and mail it to the debtor;
- v. If the debtor requests name of original creditor, if different from current creditor, within the 30 days, the debt collector will provide that information;
- vi. Statement that if the debtor requests verification of the debt, the debt collector will cease collecting until the verification is provided to the debtor.
 - 1. Subject of a lot of litigation has been what can debt collectors do, if anything, during the 30 day validation period or after a verification request
 - a. *Ellis v. Solomon and Solomon P.C.*, 591 F.3d 130 (2d Cir. 2010), the 2nd Circuit held that serving a Complaint during the 30 day period "overshadowed" the validation notice and was therefore a violation of the FDCPA.
 - b. Several courts have found that filing a lawsuit prior to verifying the debt is a "collection activity" and a violation of this section. See e.g.'s, *Garcia-Contreras v. Brock & Scott, PLLC*, 775 F.Supp.2d 808 (M.D.N.C. 2011); *Anderson v. Frederick J. Hanna & Associates*, 361 F.Supp.2d 1379, 1383 (N.D.Ga.2005).
 - c. Accepting payment during the dispute period is valid, but the consumer must be told that all disputes rights are in effect.

III. Civil Liability

- a. Any actual damages suffered (emotional distress damages allowed). Punitive damages not allowed under the FDCPA, but they are recoverable under the FRCA;
- b. Statutory damages
 - i. Up to \$1,000.00 for an individual action; or
 - ii. The lesser of \$500,000 or 1% of the debt collector's net worth in a class action.
- c. Attorneys fees
 - i. Most courts follow the "lodestar" method in awarding attorney fees. Here are some recent examples as to how these fees can add up and the risks involved in defending these claims.
 1. *Douyon v. NY Medical Health Care, P.C.*, 2014 WL 4948121 (E.D.N.Y. 2014) (awarded attorney fees in the amount of \$113,597.75 after a 10% reduction in the requested fees).
 2. *Erickson v. Credit Bureau Services, Inc.*, 2013 WL 672281 (D.Neb. 2013) (awarded attorney fees in the amount of \$88,121.75).
- d. Class actions
 - i. The new trend by consumer attorneys is to file punitive class actions.
 - ii. FRCP Rule 23 - Prerequisites. One or more members of a class may sue or be sued as representative parties on behalf of all members only if:
 1. The class is so numerous that joinder of all members is impracticable;
 2. There are questions of law or fact common to the class;
 3. The claims or defenses of the representative parties are typical of the claims or defenses of the class; and
 4. The representative parties will fairly and adequately protect the interests of the class.
 - A. Numerosity – A Plaintiff cannot establish numerosity by simply referencing the amount of lawsuits a law firm files each year. *Washington v. Brumbaugh & Quandahl*, 2017 WL4174754 (2017).
 - B. Commonality – Commonality requires a Plaintiff to show that class members have suffered the same injury. *Powers v. Credit Management Servs., Inc.*, 776 F.3d 567, 510 (8 Cir. 2015).

IV. Defenses to 1982(e) and 1692(f) – Letter Allegations

a. Materiality

- i. A statement cannot mislead unless it is material, so a false but non-material statement is not actionable. *Miller v. Javitch, Block & Rathbone*, 561 F.3d 588, 596 (6th Cir.2009).
- ii. The Fair Debt Collection Practices Act (FDCPA) is designed to provide information that helps consumers to choose intelligently; the statute addresses only misstatements that are in the sense that they could objectively affect the least sophisticated consumer's decisionmaking. Consumer Credit Protection Act § 802, 15 U.S.C.A. § 1692(e), (f).
- iii. A representation is material, within the meaning of the Fair Debt Collection Practices Act (FDCPA), if it frustrates a consumer's ability to intelligently choose his or her response. Consumer Credit Protection Act § 802, 13 U.S.C.A. § 1692 et seq.; *Grunwald v. Midland Funding, LLC*, 172 F.Supp. 3d, 1050 (8th Cir.2016).
- iv. *Grunwald v. Midland Funding*
 1. In *Grunwald* a consumer received the following language in a letter sent by the firm representing Midland: "At this time we can settle this matter for \$8,964.00. If you want to take advantage of this settlement offer, please send a check or money order made out to Midland Funding, LLC to the address listed above within the next ten days. The account balance of \$9,960.61 consists of the principle balance of \$9,930.61, plus incurred costs of \$30.00
 2. *Grunwald* alleged Midland violated the FDCPA by adding \$30.00 to her account balance before it prevailed at the state court level.
 3. The Court found *Grunwald's* allegations failed as a matter of law.
 - a. The Court found a \$30.00 misrepresentation in connection with a debt exceeding \$9,000.00 cannot be material as a matter of law.
 - b. The Court rejected the argument that any misstatement of a debt no matter how minor would constitute a violation of the statute.
 - c. The Court found the text of the letter read in full did not create any misrepresentation. Nowhere in the letter is the word "demand" used. The only demand, if any, is the opportunity to settle the case for less than the full amount.
 - d. The Court failed to perceive how even an unsophisticated consumer's response would have been altered by the addition of the \$30.00 fee.

b. Relatively innocuous

- i. Court's examining 1692(e) and (f) have also found that "relatively innocuous" communications do not violate the FDCPA. *Wade v. Regional Credit Associations*, 87 F.3d 1098 (9th Cir.1996).

1. See *Sutton v. Financial Recovery Services, Inc.*, 121 F.Supp. 3rd 309 (2015). Consumer filed FDCPA claim alleging misleading representation and unconscionable means 1692(f) in the collection of a debt. The basis of the suit was a settlement letter permitting 3 months of \$25.00 payments and at the end of the 3 months “hopefully” you will be able to pay the balance. Sutton argued the letter was inappropriately worded and confusing including questioning how it could benefit the consumer. The Court found all of *Sutton’s* arguments non persuasive and not in violation of 1692(f) and 1692(e). The Court stated “even from the standpoint of a least sophisticated consumer, this is nothing more than a **relatively innocuous** consumer attempting to settle a debt. While Financial Recovery Services, Inc. might have drafted the letter in a more precise fashion and better explained its offer, nothing about the letter is unfair and unconscionable. Accordingly, this claim is dismissed.”
- ii. Unsophisticated consumer
 1. In evaluating whether a debt collection letter is false, misleading or deceptive in violation of § 1692(e), the letter must be viewed through the eyes of an unsophisticated consumer. *Duffy*, 215 F.3d at 873. The “unsophisticated consumer” test was adopted by the Seventh Circuit in *Gammon v. G.C. Services Ltd. Partnership*, 27 F.3d 1254, 1257 (7th Cir.1994), which preferred it to the “least sophisticated consumer” standard used by a number of other circuits. See *Wilson v. Quadramed Corp.*, 225 F.3d 350, 254-55 (3rd Cir.2000); *Smith v. Computer Credit, Inc.*, 167 F.3d 1052, 1054 (6th Cir.1999); *Terran v. Kaplan*, 109 F.3d 1428, 1431-32 (9th Cir.1997); *United States v. Nat’l Fin. Serv., Inc.*, 98 F.3d 131, 136-39 (4th Cir.1996); *Clomon v. Jackson*, 988 F.2d 1314, 1318 (2^d Cir.1993); *Jeter v. Credit Bureau, Inc.*, 760 F.2d 1168, 1175 (11th Cir.1985). These tests are designed to protect consumers of below average sophistication or intelligence, but they also contain an “objective element of reasonable,” *Gammon*, 27 F.3d at 1257, that **prevents liability for bizarre or idiosyncratic interpretations of collection notices**,” *Wilson*, 225 F.3d at 354, quoting *Nat’l Fin. Serv., Inc.*, 98 F.3d at 136. See also *Duffy*, 215 F.3d at 874-75 *Peters v. General Service Bureau, Inc.*, 277 F.3d 1051, (C.A.8 (Neb.), 2002).

REGULATION F

The long-awaited Final Rule (Regulation F) for the Fair Debt Collection Practices Act (FDCPA) was issued Friday afternoon, concluding a seven-year rulemaking process. In its official press release, the Consumer Financial Protection Bureau's (CFPB or Bureau) Director, Kathleen Kraninger, stated that "Our debt collection rulemaking provides limits on debt collectors and provides clear rights for consumers. With this modernized debt collection rule, consumers will have greater control when communicating with debt collectors."

The Final Rule will be effective within a year from its publication in the Federal Register, which is expected to be December 2021. In its currently form, the Final Rule is not perfect and certainly presents challenges for the industry. The Rule, as it stands, presents challenges to small participants who will need a more robust infrastructure to ensure compliance. The Final Rule is certainly the first step in bringing some much-needed consistency to a statute that lacked a primary regulator until the CFPB was granted authority over the statute under Dodd-Frank. Whether Regulation F achieves the goal of clear rules of the road for industry while at the same time providing consumers with a clear understanding of what constituted appropriate debt collection activity remains to be seen. A summary of the Rule provided by the CFPB is part of this presentation.

Ultimately, the Final Rule did not add substantive changes from last year's proposed rule. A summary of the most significant regulations that were finalized are as follows:

- Limited content voicemail Messages will be exempt from the FDCPA
Debt collectors will now be allowed to leave a specific voicemail message for consumers to get a call back or response without running afoul of the FDCPA. This specific message cannot be used in a text.
- Opportunities to communicate with consumers by email and/or text
Debt collectors will no be able to communicate with consumers by email and text provided that the debt collector has reasonable procedures in place to ensure that emails and texts are sent to the proper consumer, that the consumer can establish a preference regarding how he or she wants to communicate and that consumer has not otherwise opted-out of receiving the electronic communication or withdrawn that consent. Confirmation of a consumer's telephone number or email address can come directly from the consumer, the creditor or a prior debt collection.
- Debt collectors are provided with a rebuttable presumption of non-compliance if they exceed frequency limits on telephone calls.
If a debt collector places more than seven calls within seven consecutive days or calls a consumer more than once within a seven day period after communicating with a consumer, a debt collector is presumed to have violated the FDCPA. The burden would then be on the debt collector to rebut that presumption.

The Rule adds the term “limited-content message” and excludes such messages from the Rule’s definition of communication. However, limited-content messages are attempts to communicate pursuant to the Rule.

The terms debt collector, debt, communication, attempt to communicate, and limited-content message are discussed in Section 3.

2.3 Communicating with consumers at inconvenient or unusual times or places

The Debt Collection Rule clarifies how the prohibition on communicating or attempting to communicate with consumers at inconvenient or unusual times or places applies to electronic communication media. With respect to all communication media, the Rule clarifies that the consumer does not need to use the word “inconvenient” to designate a time or place as inconvenient. Additionally, if a consumer initiates a communication with a debt collector at a time or place that the consumer previously designated as inconvenient, the debt collector may respond once during that time or at that place through the same medium of communication that the consumer used regardless of the fact that the consumer previously designated the time or place as inconvenient. The prohibition on communicating or attempting to communicate with a consumer at unusual or inconvenient times and places is discussed in Section 4.1.

2.4 Cease communication requests and refusals to pay

The Debt Collection Rule clarifies that a consumer submitting a cease communication request or refusal to pay notice may satisfy the requirement to submit the request or notice “in writing” by submitting the request or notice using an electronic medium of communication through which a debt collector accepts electronic communications from consumers, such as by email or through a website portal. The prohibition on communicating with a consumer after the consumer requests that the debt collector cease communication or refuses to pay is discussed in Section 4.5.

The Debt Collection Rule also clarifies that any person may request that a debt collector not use or cease using a particular medium of communication (e.g., email messages, email messages to a specific address, telephone calls, telephone calls to a specific number) to communicate with that person. Subject to certain exceptions, once a person has made such a request, the debt collector

may not communicate with the person through that medium. This prohibition is discussed in Section 7.2.

2.5 Electronic communication opt-out notice

The Debt Collection Rule requires a debt collector who communicates or attempts to communicate with a consumer electronically in connection with the collection of a debt to include a clear and conspicuous statement notifying the consumer of a reasonable and simple method that the consumer may use to opt out of receiving further electronic communications and electronic attempts to communicate to the particular email address, telephone number, or other electronic-medium address. The opt-out notice requirement is discussed in Section 5.

2.6 Definition of consumer and collection of decedent debt

Pursuant to the FDCPA, the Debt Collection Rule clarifies that, for the purpose of certain provisions of the Rule, the definition of “consumer” means not only the natural person obligated or allegedly obligated on the debt but also that person’s spouse, parent (if the person is a minor), legal guardian, and confirmed successor in interest. Additionally, if the natural person obligated or allegedly obligated on the debt is deceased, the term includes the deceased person’s surviving spouse, parent (if the deceased person was a minor), an executor or administrator of the deceased person’s estate (including the personal representative of the person’s estate), and a confirmed successor in interest.

The FDCPA’s expanded definition of consumer applies for purposes of 12 CFR 1006.6. Among other things, this provision of the Debt Collection Rule prohibits certain communications and attempts to communicate with a consumer about a debt and addresses third-party communications in connection with debt collection. Thus, the expanded definition of consumer generally allows a debt collector to discuss a debt with the persons included in that expanded definition.

The Rule also clarifies how a debt collector may locate a person authorized to act on behalf of a deceased consumer.

The requirements and prohibitions contained in 12 CFR 1006.6 are discussed in Sections 4, 5, and 6.

2.7 Third-party communications

The Debt Collection Rule identifies procedures that, when followed, provide a bona fide error defense to civil liability for unintentional violations of the prohibition against third-party communications sent by text or email message. The Rule also permits a debt collector to leave a limited-content message (i.e., a voicemail message for a consumer that includes only certain content described in the Rule) without violating the prohibition on communicating with third parties. The prohibition on communicating with third parties and the procedures for obtaining a bona fide error defense are discussed in Section 6.

2.8 Telephone call frequencies

The Debt Collection Rule clarifies the FDCPA's prohibition on repeated or continuous telephone calls or telephone conversations. Subject to certain exceptions, a debt collector is presumed to violate this prohibition if the debt collector places telephone calls to a person in connection with the collection of a particular debt more than seven times within a seven-day period or places a telephone call within seven days after engaging in a telephone conversation with the person about the particular debt. Conversely, a debt collector is presumed to comply with the prohibition if the debt collector places calls to a person in connection with the collection of a particular debt that are not in excess of either of these telephone call frequencies. The Rule provides a non-exhaustive list of factors that may be used to rebut the presumption of compliance or the presumption of violation. The prohibition on repeated or continuous telephone calls or telephone conversations, the presumptions of compliance and violation, and the factors that may be used to rebut the presumptions are discussed in Section 7.1.

2.9 Additional clarifications related to newer technologies

To clarify the application of the FDCPA to newer technologies, the Debt Collection Rule:

- Provides examples showing how a debt collector's use of newer technologies such as email and text messages could violate the FDCPA's general prohibition against harassing, oppressive, or abusive conduct. This prohibition and the examples are discussed in Section 7.
- Clarifies that a debt collector violates the FDCPA's general prohibition against deception if a debt collector sends private messages using social media without identifying himself

or herself as a debt collector. This prohibition and the clarification are discussed in Section 8.3.

- Clarifies that debt collectors generally may not communicate with a consumer using an email address that the debt collector knows is provided by the consumer's employer, unless the debt collector received the consumer's direct prior consent and the consumer has not withdrawn that consent, or the consumer used the email address to contact the debt collector and has not since opted out of communications to that email address. The prohibition on using an employer-provided email address is discussed in Section 9.6.
- Clarifies that a debt collector is prohibited from contacting persons through a social media platform if the communication or attempt to communicate is viewable by the general public or the person's social media contacts. This prohibition is discussed in Section 9.7.

2.10 Sale, transfer, or placement of certain debts

The Debt Collection Rule prohibits debt collectors from selling, transferring for consideration, or placing for collection a debt if the debt collector knows or should know that the debt was paid, was settled, or was discharged in bankruptcy, subject to certain exceptions. This transfer ban and the related exceptions are discussed in Section 10.1.

2.11 Duplicative disputes

If a consumer disputes a debt or any portion of a debt in writing within a certain period, the FDCPA generally requires a debt collector to cease collecting the debt or any disputed portion of the debt until the debt collector sends verification of the debt to the consumer. The Debt Collection Rule addresses how these requirements apply if the consumer sends a duplicative dispute as defined in the Rule. The requirement to cease collecting disputed debts and the Rule's provisions related to duplicative disputes are discussed in Section 12.

2.12 Disclosures

The FDCPA requires that a debt collector provide certain disclosures to consumers. The Debt Collection Rule clarifies the general standards a debt collector must meet when sending required

disclosures in writing or electronically. The Rule also clarifies that certain disclosures must be provided in a foreign language if the disclosures are included in a communication that uses that foreign language. The translation of the disclosures must be complete and accurate. These disclosure standards and language requirements are discussed in Section 13. Although this guide does not discuss the December 2020 Final Rule, that final rule clarifies, among other things, the information that must be included in validation notices.

2.13 Record retention

The Debt Collection Rule adds specific record retention requirements. Generally, debt collectors must retain evidence of compliance or noncompliance with the FDCPA and the Rule starting on the date that the debt collector begins collection activity on a debt until three years after the debt collector's last collection activity on the debt. If a debt collector records a telephone call, the debt collector must retain the recording until three years after the date of the telephone call. Section 14 discusses record retention.

3. Coverage

3.1 Debt collector

The Debt Collection Rule applies to debt collectors. 12 CFR 1006.1(c). Unless an exemption or exclusion in the Rule applies, a person (i.e., natural person, corporation, company, association, firm, partnership, society, or joint stock company) is a “debt collector” for purposes of the Rule if that person does one or both of the following:

- Uses any instrumentality of interstate commerce or mail in any business the principal purpose of which is the collection of debts. This prong of the definition of debt collector is sometimes called the “principal purpose” prong.
- Regularly collects or attempts to collect (directly or indirectly) debts owed or due to another person or asserted to be owed or due to another person. This prong of the definition of debt collector is sometimes called the “regularly collects” prong.

12 CFR 1006.2(i)(1).

Even if a person satisfies the principal purpose prong or the regularly collects prong (or both), the person is not a debt collector for purposes of the Debt Collection Rule if that person also satisfies one or more of the exclusions discussed in Section 3.1.1.

Additionally, if a state has applied for and been granted an exemption for a class of debt collection practices (as discussed in Section 3.1.2), then those practices in that state may be exempt from the relevant FDCPA and Rule provisions.

- ☐ However, the term debt collector includes any creditor that, in the process of collecting its own debts, uses any name other than its own that would indicate that a third person is collecting or attempting to collect such debts. 12 CFR 1006.2(i)(1).
- ☐ For purposes of the prohibition on taking or threatening to take nonjudicial action to effect dispossession or disablement of property, the term debt collector also includes any person who uses any instrumentality of interstate commerce or mail in any business the principal purpose of which is the enforcement of security interests. 12 CFR 1006.2(i)(1). See Section 9.4 for a discussion of this prohibition.
- ☐ A person who collects defaulted debt that the person has purchased is not a debt collector if that person does not have a business the principal purpose of which is debt collection and if that person does not collect or attempt to collect debts owed or due (or asserted to be owed or due) to another person. Comment 1006.2(i)-1.

3.1.1 Exclusions

A person is excluded from coverage under the Debt Collection Rule if the person is one or more of the following:

1. An officer or employee of a creditor while the officer or employee is collecting debts for the creditor in the creditor's name.
 2. A person while acting as a debt collector for another person if:
 - a. The person acting as a debt collector does so only for persons with whom the person acting as a debt collector is related by common ownership or affiliated by corporate control; and
 - b. The principal business of the person acting as a debt collector is not the collection of debts.
 3. An officer or employee of the United States or any state to the extent that collecting or attempting to collect any debt is in the performance of the officer's or employee's official duties.
 4. A person while serving or attempting to serve legal process on any other person in connection with the judicial enforcement of any debt.
 5. A nonprofit organization that, at the request of consumers, performs bona fide consumer credit counseling and assists consumers in liquidating their debts by receiving payment from such consumers and distributing such amounts to creditors.
 6. A person collecting or attempting to collect any debt owed or due, or asserted to be owed or due to another, to the extent such debt collection activity:
 - a. Is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement;
 - b. Concerns a debt that such person originated;
 - c. Concerns a debt that was not in default at the time such person obtained it; or
 - d. Concerns a debt that such person obtained as a secured party in a commercial credit transaction involving the creditor.
- ☞ "Creditor" means any person who offers or extends credit creating a debt or to whom a debt is owed. The term creditor does not, however, include any person to the extent that such person receives an assignment or transfer of a debt in default solely to facilitate collection of the debt for another.
12 CFR 1006.2(g).

7. A private entity, to the extent such private entity is operating a bad check enforcement program that complies with section 818 of the FDCPA.

8. A motor vehicle dealer excluded from coverage by section 1029(a) of the Dodd-Frank Act, 12 U.S.C. 5519(a). However, any such motor vehicle dealers who are FDCPA debt collectors still need to comply with the FDCPA.

12 CFR 1006.1(c), 1006.2(i)(2), and 1006.2(k).

3.1.2 State exemption

The FDCPA describes how a state may apply for an exemption from certain FDCPA requirements for debt collection practices occurring within that state. One state, Maine, applied for and received an exemption in 1995.³ The Debt Collection Rule made only minor changes to the procedures that a state would use to apply for an exemption. *See* 12 CFR Part 1006, Appendix A.

3.2 Debt

Generally, the Debt Collection Rule regulates a debt collector's communications regarding a debt, attempts to communicate about a debt, and other conduct with regard to a debt. The Rule defines "debt" as any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services that are the subject of the transaction are primarily for personal, family, or household purposes. An obligation can be a debt regardless of whether or not it has been reduced to a judgment. 12 CFR 1006.2(h).

As defined in the Rule, a debt only includes an obligation or alleged obligation of a consumer (i.e., a natural person). *See* 12 CFR 1006.2(e). Thus, the Rule only applies to debt incurred or allegedly incurred by a natural person. The Rule does not apply to the collection of an obligation or alleged obligation of a company or similar business entity. Comment 1006.2(h)-1.

Additionally, because a debt must arise from a transaction that is primarily for personal, family, or household purposes, the Rule does not apply to the collection of a debt that was incurred primarily for a business purpose. *See* 12 CFR 1006.2(h).

³ *See* 60 Fed. Reg. 66792 (Dec. 27, 1995).

3.3 Communications, attempts to communicate, and limited-content messages

Many of the Debt Collection Rule's prohibitions and requirements, including those discussed in Sections 4, 5 and 6 of this guide, apply to communications or attempts to communicate. Section 3.3 of this guide discusses the definitions of communications and attempts to communicate. It also discusses limited-content messages, which are not communications pursuant to the Rule.

3.3.1 Communications

The Debt Collection Rule defines "communicate" or "communication" to mean the conveying of information regarding a debt directly or indirectly to any person through any medium. 12 CFR 1006.2(d). A communication can occur through any medium, including any oral, written, electronic, or other medium. For example, a communication may occur in person or by telephone, audio recording, paper document, mail, email message, text message, social media, or other electronic media. Comment 1006.2(d)-1. Additionally, a communication can involve conveying information regarding a consumer's debt to any person (i.e., any natural person, corporation, company, association, firm, partnership, society, or joint stock company), not just a consumer.

Marketing or advertising that does not contain information about a specific debt or debts is not a communication under the Debt Collection Rule, even if a debt collector transmits the marketing or advertising message to a consumer. Comment 1006.2(d)-2.

Limited-content messages, which are discussed in Section 3.3.3, are not communications for purposes of the Debt Collection Rule.

3.3.2 Attempts to communicate

An "attempt to communicate" is any act to initiate a communication or other contact about a debt with any person through any medium, including by soliciting a response from such person. 12 CFR 1006.2(b). An act to initiate a communication or other contact about a debt is an attempt to communicate regardless of whether the attempt, if successful, would be a communication that conveys information regarding a debt directly or indirectly to any person. Comment 1006.2(b)-1.

An attempt to communicate is not limited to an act to initiate a "communication," as that term is defined in the Debt Collection Rule. It includes an act to initiate a contact that does not satisfy

the definition of communication. In other words, it includes an attempt to contact a person regardless of whether the debt collector intends to convey information about a debt as long as the contact is about a debt.

An attempt to communicate can be made through any medium, including in person or by telephone, audio recording, paper document, mail, email, text message, social media, or other electronic media.

An attempt to communicate includes leaving a limited-content message. 12 CFR 1006.2(b).

Examples: ABC, Inc. places a telephone call to a consumer about a debt. No one answers the telephone, and the caller does not leave a message. Even though ABC, Inc. did not engage in a communication, it has attempted to communicate with the consumer.

ABC, Inc. places a telephone call to a consumer about a debt. No one answers the telephone, and the caller leaves a voicemail message that does not convey information about a debt. Even though ABC, Inc. did not engage in a communication, it has attempted to communicate with the consumer.

ABC, Inc. places a telephone call to a person to acquire location information about a consumer. No one answers the telephone, and the caller does not leave a message. Even though ABC, Inc. did not engage in a communication, it has attempted to communicate with the person.

ABC, Inc. places a telephone call to a consumer about a debt. No one answers the telephone, and the caller leaves a voicemail message that does convey information about a debt. ABC, Inc. has engaged in a communication and has attempted to communicate with the consumer.

3.3.3 Limited-content messages

The Debt Collection Rule adds the term “limited-content message” and clarifies that a limited-content message is an attempt to communicate but is not a communication for purposes of the Rule. Thus, a limited-content message is subject to the requirements and prohibitions that apply to attempts to communicate. However, a limited-content message is not subject to the requirements and prohibitions that apply only to communications. For example, a limited-content message is not an initial or subsequent communication requiring the disclosures discussed in Section 11.

Definition

A “limited-content message” is a voicemail message for a consumer that includes all of the content that the Debt Collection Rule requires to be included in a limited-content message, that may include any of the content that the Rule permits to be included in a limited-content message, and that includes no other content. 12 CFR 1006.2(j). A voicemail message that includes any content other than the content required and permitted pursuant to the Rule is not a limited-content message and might be a communication depending on its content.

If a call drops and results in a partial message that does not include all of the required content, that message is not a limited-content message. However, such a message is not necessarily a communication under the Debt Collection Rule.

Content required or permitted in a limited-content message

The Debt Collection Rule requires that a limited-content message include all of the following:

☐ The definition of limited-content message is not an attempt to define the exclusive means by which a debt collector can leave a message that does not convey information about a debt. Thus, it is possible that a message for a consumer other than a limited-content message will not convey information about a debt, and therefore will not be a communication under the Debt Collection Rule. Such a message (similar to a limited-content message) would be an attempt to communicate pursuant to the Rule.

☐ If state law requires additional or different information to be included in voicemail messages, a debt collector may not be able to take advantage of the ability to leave limited-content messages.

- A business name for the debt collector that does not indicate that the caller is in the business of collecting debts. Because the Debt Collection Rule notes that a consumer could use the business name included in the message to conduct research regarding the caller, a message does not fail to be a limited-content message merely because a person who hears the message researches the debt collector's business name, and in doing so, determines that the caller is in the business of debt collection. In addition, leaving a limited-content message does not violate the Debt Collection Rule's requirement to meaningfully disclose the caller's identity with respect to that voicemail message. Comment 1006.2(j)-3.
 - ☐ A message does not fail to be a limited-content message merely because the business name used is not the debt collector's full legal name or a registered DBA. However, debt collectors must ensure that any business name used complies with other provisions of the FDCPA and the Debt Collection Rule, as well as with any other applicable laws.
 - ☐ If a debt collector properly uses a business name on an envelope (as discussed in Section 9.5), the debt collector could use the same business name in a limited-content message.
- A request that the consumer reply to the message.
- The name or names⁴ of one or more natural persons whom the consumer can contact to reply to the debt collector.
- A telephone number that the consumer can use to reply to the debt collector.

12 CFR 1006.2(j)(1).

In addition to the content described above, the Debt Collection Rule permits a limited-content message to include:

1. A salutation.
2. The date and time of the message.
3. Suggested dates and times for the consumer to reply to the message.

⁴ As discussed in Section 8.4, an employee of a debt collector may use an assumed name provided that the employee uses the assumed name consistently and that the debt collector can readily identify any employee using an assumed name.

4. A statement that, if the consumer replies, the consumer may speak to any of the company's representatives or associates. However, a message that includes a more detailed description of the representative or associate group is not a limited-content message. For example, a reference to an agent with the "credit card receivables group" is not a limited-content message because it includes more than a statement that the consumer's reply may be answered by a representative or associate. Comment 1006.2(j)(2)-1.

12 CFR 1006.2(j)(2).

Messages that are not limited-content messages

A message other than a voicemail message, such as a text message sent to a mobile phone, is not a limited-content message, even if it meets the content requirements for a limited-content message. 12 CFR 1006.2(j).

A message knowingly left for anyone other than the consumer obligated or allegedly obligated to pay the debt is not a limited-content message. For example, a voicemail message left after calling a telephone number that the debt collector knows belongs to the consumer's friend is not a limited-content message, even if the message includes no more than the required and permitted (i.e., optional) content. Comment 1006.2(j)-2.

Examples: ABC, Inc. places a telephone call to a consumer. The consumer does not answer, and the caller leaves a voicemail message stating: "This is Robin Smith calling from ABC, Inc. Please contact me or Jim Johnson at 1-800-555-1212." The caller left a limited-content message that includes only the required content. The message is not a communication but is an attempt to communicate. Alternatively, the caller could have left a voicemail message that included required and permitted content, such as: "Hi, this is Robin Smith calling from ABC, Inc. It is 4:15 p.m. on Wednesday, September 1. Please contact me or any of our representatives at 1-800-555-1212 until 6:00 p.m. Eastern time, or any weekday from 8:00 a.m. to 6:00 p.m. Eastern time." This limited-content message is not a communication but is an attempt to communicate.

Ficus Debt Collection Services places a telephone call to a consumer. The consumer does not answer, and the caller leaves a voicemail message stating: "This is Robin Smith calling from Ficus Debt Collection Services. Please contact me or Jim Johnson at 1-800-555-1212." Because the message includes a business name that indicates that the caller is in the business of collecting debt, the message is not a limited-content message.

Ficus Debt Collection Services places a telephone call to a consumer. The consumer does not answer, and the caller leaves a voicemail message stating: "This is Robin Smith calling from Ficus. I'm calling for Amy Jones regarding the overdue payment on your student loan. Please contact me or Jim Johnson at 1-800-555-1212." Because the caller stated that the call was regarding the overdue payment on the consumer's student loan, which is not required or permitted content, the message is not a limited-content message.

ABC, Inc. is attempting to acquire location information about a consumer obligated on a debt and calls a telephone number that ABC, Inc. knows does not belong to that consumer. No one answers the telephone, and the caller leaves a voicemail message with only the required content for a limited-content message. Because the caller is knowingly leaving a message for someone other than the consumer who is obligated on the debt, the message is not a limited-content message regardless of the content of the message.

4. Prohibitions on certain communications and attempts to communicate with a consumer

The Debt Collection Rule prohibits certain communications and attempts to communicate with a consumer in connection with the collection of a debt. For example, it generally prohibits communications with a consumer at inconvenient times or places, after a consumer has refused to pay, or after a consumer has requested a debt collector to cease communications. Additionally, it generally prohibits a debt collector from communicating or attempting to communicate with a consumer at the consumer's workplace if the debt collector knows or has reason to know that the consumer's employer prohibits the consumer from receiving such communications. Similarly, it generally prohibits communications with a consumer if the debt collector knows the consumer is represented by an attorney. 12 CFR 1006.6(b) and (c).

For purposes of these prohibitions, which are discussed in this Section 4, a "consumer" includes not only the natural person who is obligated or allegedly obligated to pay a debt but also that natural person's: (1) spouse; (2) parent (if the natural person is a minor); (3) legal guardian; and (4) confirmed successor in interest.⁵ If the natural person who is obligated or allegedly obligated to pay the debt is deceased, the term consumer also includes the executor or administrator⁶ of the natural person's estate as well as the natural person's surviving spouse, surviving parents (if the natural person was a minor), and confirmed successor in interest. 12 CFR 1006.6(a)(1)-(5); comments 1006.6(a)(1)-1, (a)(2)-1, and (a)(4)-1.

⁵ The term "confirmed successor interest" has the same meaning as it does in Regulation X, 12 CFR 1024.31, or Regulation Z, 12 CFR 1026.2(a)(27)(ii). A successor in interest can include, for example, a person who acquires an interest upon the death of a borrower, in a divorce proceeding, or through a transfer from a spouse or parent.

⁶ The terms "executor" or "administrator" include the personal representative of the consumer's estate. A "personal representative" is any person who is authorized to act on behalf of the deceased consumer's estate. Persons with such authority may include personal representatives under the informal probate and summary administration procedures of many states, persons appointed as universal successors, persons who sign declarations or affidavits to effectuate the transfer of estate assets, and other persons who dispose of the deceased consumer's financial assets or other assets of monetary value extrajudicially. Comment 1006.6(a)(4)-1.

4.1 Unusual or inconvenient times or places

Unless one or more of the exceptions discussed in Section 4.1.1 or Section 4.4 apply, a debt collector must not communicate or attempt to communicate with a consumer in connection with the collection of any debt:

1. *At any unusual time or at a time that the debt collector knows or should know is inconvenient to the consumer.* In the absence of the debt collector's knowledge of circumstances to the contrary, an inconvenient time for communicating with a consumer is before 8:00 a.m. and after 9:00 p.m. local time at the consumer's location. If a debt collector has conflicting or ambiguous information regarding a consumer's location, the debt collector complies if the debt collector communicates or attempts to communicate with the consumer at a time that would be convenient in all of the locations at which the debt collector's information indicates the consumer might be located. Comment 1006.6(b)(1)(i)-2. A debt collector is not required to determine where the consumer actually is located when communicating or attempting to communicate with the consumer. For purposes of determining the time of an electronic communication, an electronic communication or electronic attempt to communicate occurs at the time that the debt collector sends it, not, for example, at the time that the consumer receives or views it. Comment 1006.6(b)(1)(i)-1.
2. *At any unusual place or at a place that the debt collector knows or should know is inconvenient to the consumer.* Some communication media, such as mailing addresses and landline telephone numbers, are associated with a particular place, such as the consumer's home or workplace. A debt collector must not communicate or attempt to communicate with a consumer through a communication medium associated with an unusual place or a place that the debt collector knows or should know is inconvenient. For example, a consumer may designate the consumer's home as inconvenient, and the debt collector must not communicate or attempt to communicate with the consumer through any communication medium associated with the consumer's home, such as the consumer's home landline telephone number. Other communication media, such as email addresses and mobile telephone numbers, are not associated with a place. The prohibition on communicating or attempting to communicate at unusual or inconvenient places does not prohibit a debt collector from communicating or attempting to communicate with a consumer through media not associated with a place unless the debt collector knows that the consumer is at an unusual place, or knows that the consumer is at a place that the debt collector knows or should know is inconvenient to the consumer. Comment 1006.6(b)(1)(ii)-1.

Examples: Ficus Debt Collection Services has notes indicating that a consumer has a mobile telephone number with an area code associated with the Eastern time zone and a residential address in the Pacific time zone. Ficus Debt Collection Services has conflicting or ambiguous information regarding the consumer's location. Absent knowledge to the contrary, the convenient times for Ficus Debt Collection Services to communicate with the consumer are after 11:00 a.m. Eastern time (8:00 a.m. Pacific time) and before 9:00 p.m. Eastern time (6:00 p.m. Pacific time).

Ficus Debt Collection Services has notes indicating that a consumer has a mobile telephone number with an area code associated with the Eastern time zone and a landline telephone number with an area code associated with the Mountain time zone. Ficus Debt Collection Services has conflicting or ambiguous information regarding the consumer's location. Absent knowledge to the contrary, the convenient times for Ficus Debt Collection Services to communicate with the consumer are after 10:00 a.m. Eastern time (8:00 a.m. Mountain time) and before 9:00 p.m. Eastern time (7:00 p.m. Mountain time).

A consumer tells Ficus Debt Collection Services not to contact the consumer at the consumer's home. The consumer has a landline telephone number that is associated with the consumer's home. The consumer also has a mobile telephone number. Ficus Debt Collection Services knows or should know that a call to the home landline telephone number is a communication or attempt to communicate at an inconvenient place. Thus, a call to the home landline telephone number violates the Debt Collection Rule. In contrast, unless Ficus Debt Collection Services knows that the consumer is at home at the time that it calls the consumer's mobile telephone number, such a call does not violate the Rule's prohibition on communicating or attempting to communicate with a consumer at an inconvenient place. This is true even if the consumer receives the call to the mobile telephone number while at home.

A debt collector knows or should know that a time or place is inconvenient to a consumer if the consumer describes the time or place using the word "inconvenient." In addition, depending on the facts and circumstances, it is possible that a debt collector knows or should know that a time or place is inconvenient even if the consumer does not describe a time or place using the word "inconvenient." For example, a consumer might indicate that he or she should not be disturbed or cannot talk to the debt collector at certain times or places. Comment 1006.6(b)(1)-1.

However, the Debt Collection Rule does not require a debt collector to construe a consumer's statement that the consumer is "busy" or "cannot talk right now" (without anything further) to mean that the consumer is generally designating a time or place as inconvenient for future communications. Such a statement would indicate that the time or place is inconvenient for the current communication or attempt to communicate.

A debt collector may ask follow-up questions to clarify statements by the consumer in order to determine if a future communication or attempt to communicate would be at a time or place that is inconvenient to a consumer. For example, if a consumer asks a debt collector not to contact the consumer "at home," the debt collector may ask whether the consumer intends to prohibit the debt collector from communicating through all media associated with the consumer's home, including mail. Comment 1006.6(b)(1)-1.iii.

Examples: Ficus Debt Collection Services has a file that includes a note that a consumer cannot be disturbed on Tuesdays and Thursdays. Ficus Debt Collection Services knows or should know that Tuesdays and Thursdays are inconvenient times to contact the consumer.

Ficus Debt Collection Services calls a consumer. The consumer answers the call but states "I am busy" or "I cannot talk now." Ficus Debt Collection Services asks the consumer when a convenient time would be to talk. The consumer responds, "on weekdays, except from 3:00 p.m. to 5:00 p.m." Ficus Debt Collection Services asks the consumer whether there would be a convenient time on weekends. The consumer responds "no." Ficus Debt Collection Services knows or should know that the time period between 3:00 p.m. and 5:00 p.m. on weekdays and all times on weekends are inconvenient to the consumer.

4.1.1 Exception specific to the prohibition on communicating or attempting to communicate at inconvenient times or places

There is a limited exception that applies solely to the prohibition on communications and attempts to communicate at inconvenient times or places. If a consumer initiates a communication with a debt collector at a time or from a place that the consumer previously designated as inconvenient, the debt collector does not violate the prohibition on communicating at inconvenient times or places if the debt collector responds once at that time or place through the same medium of communication used by the consumer. After responding one time to the consumer-initiated communication, the Rule prohibits the debt collector from

communicating or attempting to communicate with the consumer at that time or place until the consumer conveys that the time or place is no longer inconvenient, or another exception applies. 12 CFR 1006.6(b)(1); comment 1006.6(b)(1)-2. If a debt collector's system generates an automated reply in response to a consumer-initiated communication at a time or from a place that the consumer previously designated as inconvenient, this system-generated reply would constitute a response using the same medium of communication. Although this one automated reply would not violate the prohibition on communications at inconvenient times or places, the debt collector could not communicate or attempt to communicate again with the consumer at that time or place until the consumer conveys that the time or place is no longer inconvenient, or another exception applies. For information on additional exceptions to the prohibition on communicating or attempting to communicate at unusual or inconvenient times or places, see Section 4.4.

Example: A consumer tells Ficus Debt Collection Services that communicating on Sundays is inconvenient. On the following Sunday, the consumer sends an email message to Ficus Debt Collection Services but does not indicate that Sundays are no longer inconvenient. Ficus Debt Collection Services receives the email at 3:00 pm and responds by sending a single email message to the consumer at 3:45 pm on Sunday. Ficus Debt Collection Services has not violated the prohibition on communicating at inconvenient times because the limited exception permits the debt collector to respond to the consumer's email message once by email message on Sunday. Additionally, if the consumer responds on Sunday to the email message that Ficus Debt Collection Services sent at 3:45 pm, the prohibition on communicating at inconvenient times does not prohibit Ficus Debt Collection Services from responding by email once on Sunday to the consumer's second email message.

4.2 Consumer represented by an attorney

Generally, a debt collector must not communicate or attempt to communicate with a consumer in connection with the collection of a debt if the debt collector: (1) knows an attorney is representing the consumer with respect to the debt; and (2) knows or can readily ascertain the attorney's name and address. 12 CFR 1006.6(b)(2).

However, a debt collector may communicate or attempt to communicate about a debt with a consumer represented by an attorney if one or more of the following applies:

- The attorney fails to respond within a reasonable period of time to a communication from the debt collector. A reasonable period of time generally depends on the facts and circumstances surrounding a debt collector's communication to the attorney.
- The attorney consents to the debt collector's direct communication with the consumer.
- One or more of the exceptions discussed in Section 4.4 applies.

□ The prohibition on communicating or attempting to communicate with a consumer who is represented by an attorney is debt specific. A debt collector is not required to assume that an attorney who represents a consumer with regard to one debt also represents the consumer regarding other debts.

12 CFR 1006.6(b)(2).

4.3 At a consumer's place of employment

Generally, a debt collector must not communicate or attempt to communicate with a consumer in connection with the collection of a debt at the consumer's place of employment if the debt collector knows or has reason to know that the consumer's employer prohibits the consumer from receiving such communications. 12 CFR 1006.6(b)(3). However, a debt collector may communicate or attempt to communicate with a consumer at the consumer's place of employment if one or more of the exceptions discussed in Section 4.4 applies.

If a debt collector knows or should know that a consumer's employer prohibits the consumer from receiving communications or attempts to communicate at the consumer's workplace, the debt collector may not communicate or attempt to communicate in connection with the collection of a debt using any communication media

- The Debt Collection Rule has a separate prohibition regarding sending emails to employer-provided email addresses. A debt collector must also comply with that prohibition, which is discussed in Section 9.6.
- A debt collector who does not know or have reason to know that a consumer's employer prohibits the consumer from receiving communications should carefully manage any communications or attempts to communicate at the consumer's workplace in order to avoid violations of the prohibition on third-party communications. This prohibition is discussed in Section 6.

associated with the consumer's workplace. This includes sending mail to the employer's address, calling a landline associated with the workplace, or calling or texting an employer-provided mobile telephone. However, a debt collector is not prohibited from using communication media not associated with the workplace, such as a consumer's personal mobile telephone or personal email address, unless the debt collector knows that the consumer is at work at the time of the communication.

The Debt Collection Rule does not specify actions or responses that a consumer must use to invoke the prohibition on communicating or attempting to communicate with a consumer at the consumer's workplace. A debt collector may know or have reason to know that an employer prohibits communications or attempts to communicate based on the facts and circumstances. For example, a debt collector knows or has reason to know that a consumer's employer prohibits the consumer from receiving such communication if the consumer tells the debt collector that the consumer cannot take personal calls at work. The debt collector may ask follow-up questions regarding the employer's prohibition or limitations on communications in order to clarify statements by the consumer. Comment 1006.6(b)(3)-1. For example, a debt collector may ask a consumer to identify times when the consumer is at the place of employment.

□ The Debt Collection Rule does not require a debt collector to track which employers prohibit communications at the workplace.

4.4 Exceptions

The prohibitions discussed in Sections 4.1 through 4.3 do not apply when a debt collector communicates or attempts to communicate with a consumer in connection with the collection of any debt if either or both of the following apply:

- The debt collector received the consumer's direct prior consent during a communication that does not violate the prohibitions discussed in Sections 4.1 through 4.3. In other words, the debt collector may not seek the consumer's direct prior consent in a communication that violates the prohibition on communicating at unusual or inconvenient times or places, the prohibition on communicating with a consumer represented by an attorney, or the prohibition on communicating with a consumer at the consumer's workplace. For example, a debt collector ordinarily could

□ If the debt collector learns during a communication that the debt collector is communicating with the consumer at an inconvenient time or place, the debt collector is prohibited from asking the consumer to consent to the continuation of that inconvenient communication. However, the debt collector may ask the consumer about other times or places that would be convenient for future communications. Comment 1006.6(b)(4)(i)-1.

not (1) call a consumer at midnight and obtain direct prior consent, or (2) call a consumer it knows to be represented by an attorney and obtain direct prior consent. Additionally, the consumer must provide consent directly to the debt collector. A debt collector has not obtained the consumer's direct prior consent if the consumer provided the consent to a third party, such as a creditor or a prior debt collector. Comment 1006.6(b)(4)(i)-2. Furthermore, direct prior consent must be given in advance of the communication or attempt to communicate to which the consent is meant to apply. Direct prior consent does not apply to the communication in which it is given.

- The debt collector has the express permission of a court of competent jurisdiction.

12 CFR 1006.6(b)(4).

4.5 After a refusal to pay or a cease communication notice

Generally, a debt collector must not communicate or attempt to communicate with a consumer with respect to a debt if the consumer notifies the debt collector in writing that the consumer refuses to pay the debt or that the consumer wants the debt collector to cease further communication with the consumer. 12 CFR 1006.6(c)(1).

However, the prohibition on communications and attempts to communicate after a debt collector's receipt of a written refusal to pay or request to cease communication does not apply when a debt collector communicates or attempts to communicate with a consumer with respect to the debt:

- To advise the consumer that the debt collector's further efforts are being terminated.
- To notify the consumer that the debt collector or creditor *may invoke* specified remedies that the debt collector or creditor ordinarily invokes.

□ The Bureau has interpreted the written early intervention notice required by the Mortgage Servicing Rule, 12 CFR 1024.39(d)(3), to fall within two exceptions to the prohibition on further communications and attempts to communicate. *See* 12 CFR 1024.39(d)(3), its commentary, and the Bureau's 2016 FDCPA Interpretive Rule (81 Fed. Reg. 71977 (Oct. 19, 2016)). Comment 1006.6(c)(2)-1. Thus, a debt collector does not violate the prohibition if it sends a written early intervention notice as required by the Mortgage Servicing Rule, even if the consumer has refused to pay or requested that the debt collector cease communications.

- Where applicable, to notify the consumer that the debt collector or creditor *intends to invoke* a specified remedy.

12 CFR 1006.6(c)(2).

For purposes of this prohibition, “in writing” includes a consumer’s refusal to pay or cease communication request provided through a medium of electronic communication through which the debt collector accepts electronic communications from consumers. Comments 1006.6(c)(1)-1 and -2.

The consumer’s refusal to pay or cease communication request is effective upon the debt collector’s receipt of that information. Comment 1006.6(c)(1)-1. The Debt Collection Rule does not specify the period of time afforded a debt collector to update its systems to reflect a cease communication request. However, depending upon the circumstances, a debt collector may have a bona fide error defense to civil liability if, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error, a debt collector communicates or attempts to communicate with a consumer after receiving, but before processing, a cease communication request. For example, if a debt collector who schedules an email message to be sent to a consumer subsequently receives a cease communication request by email but sends the previously scheduled email message to the consumer before the request can be processed (notwithstanding the maintenance of procedures to avoid such an error), the debt collector may be entitled to a bona fide error defense to civil liability.

Example: On August 3, a consumer mails a written notification to Ficus Debt Collection Services. The written notification indicates that the consumer refuses to pay a debt. On August 4, Ficus Debt Collection Services sends the consumer an email message. On August 6, Ficus Debt Collection Services receives the consumer’s written notification. The email message that Ficus Debt Collection Services sent on August 4 does not violate the prohibition on communicating or attempting to communicate further with the consumer with respect to the debt because the consumer’s notification is complete upon Ficus Debt Collection Services’ receipt of that information on August 6.

5. Opt-out notice for electronic communications or attempts to communicate with a consumer

The Debt Collection Rule requires a debt collector to include a clear and conspicuous opt-out notice in electronic communications and electronic attempts to communicate with a consumer in connection with the collection of a debt. The opt-out notice requirement applies if the electronic communication or attempt to communicate is sent by email, by text message, or by any other electronic medium that uses a specific electronic address. 12 CFR 1006.6(e).

For purposes of the opt-out notice requirement, the broader definition of consumer applies. Thus, the opt-out notice must be included in electronic communications and electronic attempts to communicate sent to the natural person who is obligated or allegedly obligated to pay a debt as well as to electronic communications and electronic attempts to communicate sent to that natural person's spouse, parent (if the natural person is a minor), legal guardian, and confirmed successor in interest.⁷ If the natural person who is obligated or allegedly obligated to pay the debt is deceased, the term consumer also includes the executor or administrator⁸ of the natural person's estate as well as the natural person's surviving spouse, surviving parents (if the natural person was a minor), and confirmed successor in interest. 12 CFR 1006.6(a)(1)-(5); comments 1006.6(a)(1)-1, (a)(2)-1, and (a)(4)-1.

⁷ The term "confirmed successor interest" has the same meaning as it does in Regulation X, 12 CFR 1024.31, or Regulation Z, 12 CFR 1026.2(a)(27)(ii). A successor in interest can include a person, for example, who acquires an interest upon the death of a borrower, in a divorce proceeding, or through a transfer from a spouse or parent.

⁸ The terms "executor" or "administrator" include the personal representative of the consumer's estate. A "personal representative" is any person who is authorized to act on behalf of the deceased consumer's estate. Persons with such authority may include personal representatives under the informal probate and summary administration procedures of many states, persons appointed as universal successors, persons who sign declarations or affidavits to effectuate the transfer of estate assets, and other persons who dispose of the deceased consumer's financial assets or other assets of monetary value extrajudicially. Comment 1006.6(a)(4)-1

5.1 Clear and conspicuous notice

The opt-out notice must be readily understandable. Although no minimum type size is required, the location and type size also must be readily noticeable and legible to consumers. *See* comments 1006.6(d)(4)(ii)(C)-1 and 1006.6(e)-1.

5.2 Reasonable and simple method to opt out

The opt-out notice must describe a reasonable and simple method by which the consumer can opt out of further electronic communications or attempts to communicate by the debt collector to the specific email address, telephone number for text messages, or other electronic-medium address to which the electronic communication or electronic attempt to communicate is sent. 12 CFR 1006.6(e).

Reasonable and simple methods for opting out

include providing an electronic means to opt out, such as a hyperlink, or allowing the consumer to opt out by replying to the communication with the word “stop.” However, requiring a consumer who receives the opt-out notice electronically to opt out by postal mail, telephone, or visiting a website without providing a link does not satisfy the requirement to provide a reasonable and simple method for opting out. Comments 1006.6(d)(4)(ii)(C)(4)-1 and 1006.6(e)-1.

- A debt collector who receives a request to “stop,” “unsubscribe,” “end,” “quit,” or “cancel” is considered to have received an opt-out request even if the specific term the consumer used does not conform precisely to the debt collector’s opt-out instructions.

Examples: Ficus Debt Collection Services sends a text message to a consumer’s mobile telephone number. The text message includes the following instruction: “Reply STOP to stop texts to this telephone number.” Assuming that it is readily noticeable and legible to consumers, this instruction constitutes a clear and conspicuous statement describing a reasonable and simple method to opt out of receiving further text messages from the debt collector to that telephone number.

Ficus Debt Collection Services sends a consumer an email that includes a hyperlink labeled: “Click here to opt out of further emails to this email address.” Assuming that it is readily noticeable and legible to consumers, this instruction constitutes a clear and

conspicuous statement describing a reasonable and simple method to opt out of receiving further emails from the debt collector to that email address.

Ficus Debt Collection Services sends the consumer an email that includes instructions that say: “You may opt out of receiving further email communications from Ficus Debt Collection Services to this email address by replying with an email message that has the word ‘stop’ in the subject line.” Assuming that it is readily noticeable and legible to consumers, this instruction constitutes a clear and conspicuous statement describing a reasonable and simple method to opt out of receiving further emails from the debt collector to that email address.

5.3 Payment of fees to opt out

The consumer must not be required to pay any fee to the debt collector in order to opt out. Additionally, the debt collector cannot require the consumer to provide any information other than opt-out preferences and the email address, telephone number, or other electronic-medium address subject to the opt out. 12 CFR 1006.6(e); comment 1006.6(e)-1.

Although the Debt Collection Rule does not prohibit the use of an opt-out method that requires a consumer to pay a fee to a third party, the requirement to pay such fees may affect whether the opt-out method is reasonable and simple under the Rule. The Rule does not require a debt collector to inform a consumer that text messaging rates or fees may apply.

5.4 Ceasing communications or attempts to communicate after receipt of an opt-out request

If a consumer has opted out of receiving electronic communications at a specific email address, telephone number (for text messages), or other electronic-medium address, the Debt Collection Rule generally prohibits a debt collector from continuing to send electronic communications to that particular email address, telephone number, or other electronic-medium address. This prohibition is discussed in Section 7.2.

The Debt Collection Rule does not specify a period of time afforded a debt collector to process an opt-out request. However, depending on the circumstances, a debt collector who

unintentionally communicates with a consumer electronically after receiving a consumer's request to opt out but before processing the request may have a bona fide error defense to civil liability under FDCPA section 813(c). For example, if a debt collector who schedules an email to be sent to a consumer later receives an opt-out request from the consumer but sends the previously scheduled email to the consumer before the request can be processed (notwithstanding the maintenance of procedures to avoid such an error), the debt collector may have a bona fide error defense to civil liability under FDCPA section 813(c) if it maintains and follows procedures reasonably adapted to avoid the error.

6. Prohibition on communications with third parties

Unless one or more of the exceptions discussed in Section 6.1 applies, a debt collector must not communicate in connection with the collection of any debt with any person other than: (i) the consumer; (ii) the consumer's attorney; (iii) a consumer reporting agency (if otherwise permitted by law); (iv) the creditor;⁹ (v) the creditor's attorney; or (vi) the debt collector's attorney. 12 CFR 1006.6(d)(1).

For purposes of this prohibition, the term "consumer" includes not only the natural person who is obligated or allegedly obligated to pay a debt but also that natural person's: (1) spouse; (2) parent (if the natural person is a minor); (3) legal guardian; and (4) confirmed successor in interest.¹⁰ If the natural person who is obligated or allegedly obligated to pay the debt is deceased, the term consumer also includes the executor or administrator¹¹ of the natural person's estate as well as the natural person's surviving spouse, surviving parents (if the natural person was a minor), and confirmed successor in interest. 12 CFR 1006.6(a)(1)-(5); comments 1006.6(a)(1)-1, (a)(2)-1, and (a)(4)-1.

Example: ABC, Inc. calls a mobile telephone number that it believes belongs to John Doe. John Doe is the natural person who ABC, Inc. alleges is obligated to pay a debt. Jane Doe, who is John's spouse, answers the mobile phone. ABC, Inc. does not allege that Jane is obligated on the debt. Jane informs ABC, Inc. that John is not available.

⁹ "Creditor" means any person who offers or extends credit creating a debt or to whom a debt is owed. The term creditor does not, however, include any person to the extent that such person receives an assignment or transfer of a debt in default solely to facilitate collection of the debt for another. 12 CFR 1006.2(g).

¹⁰ The term "confirmed successor interest" has the same meaning as it does in Regulation X, 12 CFR 1024.31, or Regulation Z, 12 CFR 1026.2(a)(27)(ii). A successor in interest can include a person who, for example, acquires an interest upon the death of a borrower, in a divorce proceeding, or through a transfer from a spouse or parent.

¹¹ The terms "executor" or "administrator" include the personal representative of the consumer's estate. A "personal representative" is any person who is authorized to act on behalf of the deceased consumer's estate. Persons with such authority may include personal representatives under the informal probate and summary administration procedures of many states, persons appointed as universal successors, persons who sign declarations or affidavits to effectuate the transfer of estate assets, and other persons who dispose of the deceased consumer's financial assets or other assets of monetary value extrajudicially. Comment 1006.6(a)(4)-1.

ABC, Inc. can discuss the debt with Jane without violating the prohibition on third-party communications because Jane is John's spouse.

Limited-content messages and certain other attempts to communicate are not communications and are not subject to the prohibition, even if a third party overhears them. Thus, a debt collector does not violate the prohibition on communications with third parties if the debt collector leaves a limited-content message or other attempt to communicate that is not a communication, and a third party overhears the message. However, if the message is a communication, then it is subject to the prohibition on third-party communications.

The Debt Collection Rule identifies procedures designed to avoid unintentional violations due to third-party access to email messages and texts that are communications pursuant to the Rule. If a debt collector adopts and follows procedures, as outlined in the Rule, the debt collector may have a bona fide error defense from civil liability for unintentional violations of the prohibition against third-party communications for these two forms of electronic communications. The bona fide error defense and related procedures are discussed in Section 6.2.

6.1 Exceptions

6.1.1 General discussion

The prohibition on third-party communications does not apply when a debt collector communicates with a person:

- With the prior consent of the consumer given directly to the debt collector. A debt collector has not obtained the consumer's direct prior consent if the consumer provided the consent to a third party, such as a creditor or a prior debt collector. *See comment 1006.6(b)(4)(i)-2.* Furthermore, direct prior consent must be given in advance of the communication to which it applies. Direct prior consent does not apply to the communication in which it is given.
- With the express permission of a court of competent jurisdiction.
- As reasonably necessary to effectuate a post-judgment judicial remedy.
- For the purpose of acquiring location information, as provided in 12 CFR 1006.10. Section 6.1.2 discusses communications for the purpose of acquiring location information.

6.1.2 Acquisition of location information

A debt collector is permitted to communicate with a person other than the consumer in order to acquire “location information” if the debt collector meets certain requirements. This section discusses the acquisition of location information exception to the prohibition on communicating with third parties.

For this purpose, the term “location information” means: (1) the place of abode of the consumer obligated or allegedly obligated on the debt and a telephone number at such place; and (2) the place of employment of the consumer obligated or allegedly obligated on the debt. 12 CFR 1006.10(a)(1) and (2). If the consumer obligated or allegedly obligated to pay a debt is deceased, “location information” also includes the place of abode, the telephone number at such place, and the place of employment for the executor or administrator of that consumer’s estate. Comment 1006.10(a)-1.

A debt collector communicating with a person other than the consumer obligated or allegedly obligated on the debt for the purpose of acquiring location information must identify himself or herself individually by name¹² and state that he or she is confirming or correcting the consumer’s location information. The Rule prohibits the debt collector from identifying his or her employer, unless the person the debt collector is contacting expressly requests that information. Additionally, a debt collector communicating for the purpose of acquiring location information must not do any of the following:

- State that the consumer owes any debt. If the consumer obligated or allegedly obligated to pay the debt is deceased, and the debt collector is attempting to locate the person who is authorized to act on behalf of the deceased consumer’s estate, the debt collector may state that the debt collector is seeking to identify and locate the person who is handling the financial affairs of the deceased consumer.
- Communicate by postcard.
- Use any language or symbol on any envelope or in the contents of any communication by mail indicating that the debt collector is in the debt collection business or that the communication relates to the collection of a debt.

¹² As discussed in Section 8.4, an employee of a debt collector may use an assumed name provided that the employee uses the assumed name consistently and that the debt collector can readily identify any employee using an assumed name.

A debt collector's ability to rely on the exception for acquiring location information is further limited if the debt collector knows the consumer is represented by an attorney with regard to the debt and knows or can readily ascertain that attorney's name and address. In such a case, the debt collector cannot communicate with any person other than that attorney, unless the attorney fails to respond to the debt collector's communication within a reasonable period of time. 12 CFR 1006.10(b)(5).

☞ A debt collector must comply with other provisions of the Debt Collection Rule, such as the prohibition on harassing, oppressive, or abusive conduct discussed in Section 7, when acquiring location information.

Additionally, the Debt Collection Rule limits the number of times that a debt collector may communicate with a person to acquire location information. A debt collector communicating with a person for the purpose of acquiring location information must not communicate more than once with such person unless: (1) the person requests that debt collector contact the person more than one time; or (2) the debt collector reasonably believes that the earlier response of such person was erroneous or incomplete and that such person now has correct or complete location information. 12 CFR 1006.10(c).

6.2 Reasonable procedures for email and text message communications

The Debt Collection Rule identifies procedures debt collectors can adopt and follow to obtain a bona fide error defense from civil liability for unintentional violations of the prohibition against third-party communications.¹³ If a debt collector establishes procedures that meet the criteria in the Rule and sends an email message or text message in accordance with those procedures, the debt collector has a bona fide error defense against civil liability for unintended violations of the prohibition on third-party communications with regard to that email or text message. However, the debt collector does not have a bona fide error defense regarding other violations of the FDCPA, the Rule, or other applicable law.

¹³ Any safe harbor provided by the Debt Collection Rule is a safe harbor only for purposes of compliance with the FDCPA and Regulation F and is not a safe harbor with regard to state laws, unless states choose to incorporate the federal safe harbor standards into their state legal frameworks.

The Debt Collection Rule has three separate procedures related to email messages. These procedures are discussed in Sections 6.2.1, 6.2.2, and 6.2.3. Depending on its practices, a debt collector could decide to adopt and maintain any or all of these email procedures. The Rule also has procedures related to text messages. These procedures are discussed in Section 6.2.4.

However, a debt collector is not required to adopt or follow the procedures identified in the Debt Collection Rule or to rely on the bona fide error defense for any particular email or text message.

The Debt Collection Rule does not identify procedures for communications sent by any medium other than email message¹⁴ or text message. Moreover, it does not identify the only procedures that may be reasonably adapted to avoid a violation of the prohibition on third-party communications. Thus, a debt collector would not necessarily violate the prohibition on third-party communications by communicating with a consumer electronically other than by email or text message, or by sending an email or text message without using the procedures identified in the Rule. Moreover, depending on the facts, a debt collector might be able to show by a preponderance of the evidence that any communication with a third party was unintentional and that the debt collector employed procedures reasonably adapted to avoid the unintentional error.

□ A debt collector who follows the procedures described in this Section 6.2 when sending an email or text message does not violate the prohibition on using unfair or unconscionable means to collect or attempt to collect any debt (discussed in Section 9) if the email or text message reveals the debt collector's name or other information indicating that the communication relates to the collection of a debt.

6.2.1 Email procedures based on communication between the consumer and the debt collector

As noted above, the Debt Collection Rule describes three separate procedures that a debt collector can adopt and follow in order to obtain a bona fide error defense when sending an email message. This section discusses procedures that are based on the debt collector's prior communications with the consumer.

¹⁴ Although the Debt Collection Rule does not define the term "email," the preamble notes that the Bureau declined to include direct messaging technology in mobile applications or on social media within the scope of the reasonable procedures for email communications.

A debt collector's procedures are reasonably adapted to avoid a bona fide error when sending an email message if those procedures include steps to confirm and document one or more of the following:

1. *Consumer use.* The debt collector is sending the email message to an email address that the consumer has used to communicate with the debt collector about the debt, and the consumer has not since opted out of communications to that email address. If the consumer used the email address to communicate with the debt collector about a different debt, this consumer use prong is not satisfied.

2. *Direct prior consent.* The debt collector has received direct prior consent from the consumer to use the email address to communicate with the consumer about the debt, and the consumer has not withdrawn that consent. A debt collector has not obtained the consumer's direct prior consent if the consumer provided the consent to a third party, such as a creditor or a prior debt collector. Furthermore, direct prior consent must be given in advance of the communication or attempt to communicate to which it applies. A consumer may provide consent directly to a debt collector through any medium of communication, such as in writing, electronically, or orally. Comment 1006.6(d)(4)(i)(B)-1. If a consumer provides an email address to a debt collector (including on the debt collector's website or online portal), the debt collector may treat the consumer as having consented directly to the debt collector's use of the email address to communicate with the consumer for purposes of the bona fide error defense if the debt collector discloses clearly and conspicuously that the debt collector may use the email address to communicate with the consumer about the debt. Comment 1006.6(d)(4)(i)(B)-2.

□ If a debt collector is adopting or maintaining procedures as discussed in this Section 6.2.1, the debt collector may want to consider adding a clear and conspicuous notice to any website, portal or other source it uses to collect email addresses. The notice would let a consumer know that, if the consumer provides an email address, the debt collector may treat the consumer as having consented to the debt collector's use of that email address to communicate with the consumer.

12 CFR 1006.6(d)(4)(i).

In addition to the steps detailed above, the debt collector's procedures also must include steps to reasonably confirm and document that the debt collector did not communicate with the consumer by sending an email message to an email address that the debt collector knows has led to a violation of the prohibition on third-party communications. 12 CFR 1006.6(d)(3)(ii). A debt collector knows that sending an email to an email address has led to a third party receiving the communication if any person has informed the debt collector of that fact. Comment 1006.6(d)(3)(ii)-1. To this end, a debt collector must accept and track complaints regarding third-party receipt of email messages.

6.2.2 Email procedures based on communication by the creditor

This section discusses the second of the Debt Collection Rule's three procedures that a debt collector can adopt and follow in order to obtain a bona fide error defense when sending an email message. The procedures discussed in this section can be used to obtain a bona fide error defense when sending an email message to an email address that a creditor obtained from a consumer. These procedures are sometimes referred to as "notice and opt-out" procedures.

A debt collector's procedures are reasonably adapted to avoid a bona fide error when sending an email message to an email address if the procedures include steps to confirm and document all of the following:

1. *The creditor obtained the email address from the consumer.* This prong is not satisfied if the creditor received the email address from another debt collector or other third party, such as a skip tracing service. The term "creditor" means any person who offers or extends credit creating a debt or to whom a debt is owed. The term creditor does not include any person to the extent that such person receives an assignment or transfer of a debt in default solely to facilitate collection of the debt for another. 12 CFR 1006.2(g).

2. *The creditor used the email address to communicate with the consumer about the account underlying the debt, and the consumer did not ask the creditor to stop using it.* Communications about the account include, for example, required disclosures, bills, invoices, periodic statements, payment reminders, and payment confirmations. Communications about the account do not include, for example, marketing or advertising materials unrelated to the consumer's account. Comment 1006.6(d)(4)(ii)(B)-1.

3. *Before the debt collector used the email address to communicate with the consumer about the debt, the creditor sent the consumer a written or electronic notice to an address the creditor obtained from the consumer and used to communicate with the consumer about the account.* The creditor's notice to the consumer must clearly and conspicuously disclose all of the following:

☞ Clear and conspicuous means readily understandable. In the case of written and electronic disclosures, the location and type size also must be readily noticeable and legible to consumers, although no minimum type size is mandated. Comment 1006.6(d)(4)(ii)(C)-1.

a. That the debt has been or will be transferred to the debt collector. To satisfy this requirement, the notice must identify the name of the specific debt collector to which the debt has been or will be transferred. Comment 1006.6(d)(4)(ii)(C)(1)-1.

b. The email address and the fact that the debt collector might use the email address to communicate with the consumer about the debt.

c. If others have access to the email address, that it is possible they may see the emails.

d. Instructions for a reasonable and simple method by which the consumer could opt out of such communications. Reasonable and simple methods for opting out when the notice is provided by mail include providing a reply form and a pre-addressed envelope together with the opt-out notice. Requiring the consumer to call or write to obtain a form for opting out, rather than including the form with the opt-out notice, does not satisfy the requirement to provide a reasonable and simple method for opting out. Reasonable and simple methods for opting out when the notice is provided electronically include providing an electronic means to opt out, such as a hyperlink, or allowing the consumer to opt out by replying to the communication with the word “stop.” However, requiring a consumer who receives the opt-out notice electronically to opt out by postal mail, telephone, or visiting a website without providing a link does not satisfy the requirement to provide a reasonable and simple method for opting out. Comment 1006.6(d)(4)(ii)(C)(4)-1.

e. The date by which the debt collector or the creditor must receive the consumer’s request to opt out, which must be at least 35 days after the date the notice is sent. The notice may instruct the consumer to respond to the debt collector or to the creditor but not to both. Comment 1006.6(d)(4)(ii)(C)(5)-1.

The creditor may provide the notice in a larger communication that conveys other information, as long as the notice is clear and conspicuous. Comment 1006.6(d)(4)(ii)(C)-3.

When a creditor sends the notice in writing, the creditor may use, but is not required to use, the following language:

“We are transferring your account to [debt collector’s name], and we are providing [debt collector’s name] with the following email address for you: [email address]. [Debt collector’s name] may use this email address to communicate with you about the debt. If others have access to this email address, then it is possible they may see the emails. If you would like to opt out of communications by [debt collector’s name] to [email address], please fill out the enclosed form and return it in the enclosed envelope so that we receive it by [date].”

When a creditor sends the notice electronically, the creditor may use, but is not required to use, the following language:

“We are transferring your account to [debt collector’s name], and we are providing [debt collector’s name] with the following email address for you: [email address]. [Debt collector’s name] may use this email address to communicate with you about the debt. If others have access to this email address, then it is possible they may see the emails. If you would like to opt out of communications by [debt collector’s name] to [email address], please click here by [date].”

4. *The opt-out period clearly and conspicuously disclosed in the creditor’s notice to the consumer has expired, and the consumer has not opted out.*

5. *The email address has a domain name that is available for use by the general public and the debt collector does not know that the email address is an employer-provided email address.* This requirement is not satisfied if the debt collector knows that the address is provided by the consumer’s employer. A debt collector knows that an email address is

☞ If a consumer requests that the debt collector not communicate using email or the email address identified in the opt-out notice after the expiration of the notice period, other provisions of the Debt Collection Rule prohibit the debt collector from communicating or attempting to communicate with the consumer using email or the specific email address identified in the notice. See Sections 5 and 7.2 for more information.

provided by the consumer’s employer if any person has informed the debt collector that the address is employer provided. However, the Debt Collection Rule does not require a debt collector to conduct a manual review of consumer accounts to determine whether an email address might be employer provided. Comment 1006.6(d)(4)(ii)(E)-2. The domain name of an email address is available for use by the general public when members of the general public are permitted to use the same domain name, whether for free or through a paid subscription. Such a name does not include one that is reserved for use by specific registrants, such as a domain name branded for use by a particular commercial entity (e.g., john.doe@springsidemortgage.com) or reserved for particular types of institutions (e.g., john.doe@agency.gov, john.doe@university.edu, or john.doe@nonprofit.org). Comment 1006.6(d)(4)(ii)(E)-1.

12 CFR 1006.6(d)(4)(ii).

In addition to the steps detailed above, the debt collector’s procedures also must include steps to reasonably confirm and document that the debt collector did not communicate with the consumer by sending an email message to an email address that the debt collector knows has led to a violation of the prohibition on third-party communications. 12 CFR 1006.6(d)(3)(ii). A debt collector knows that sending an email to an email address has led to a third party receiving the communication if any person has informed the debt collector of that fact. Comment

1006.6(d)(3)(ii)-1. To this end, a debt collector must accept and track complaints regarding third-party receipt of email messages.

6.2.3 Email procedures based on communication by a prior debt collector

This section discusses the third of the Debt Collection Rule's three procedures that a debt collector can adopt and follow in order to obtain a bona fide error defense when sending an email message. If a prior debt collector obtained an email address from a consumer in accordance with the procedures discussed in Section 6.2.1 or discussed in Section 6.2.2 and the immediately prior debt collector used that email address to communicate with the consumer about the debt, a subsequent debt collector may be able to establish a bona fide error defense with regard to the email address. This section discusses the procedures that a debt collector would need to adopt and follow to have a bona fide error defense in those circumstances.

A debt collector's procedures are reasonably adapted to avoid a bona fide error when sending an email message to an email address if the procedures include steps to confirm and document all of the following:

1. A prior debt collector obtained the email address in accordance with the procedures discussed in Section 6.2.1 or discussed in Section 6.2.2. The prior debt collector must have adopted such procedures prior to obtaining the email address and followed such procedures when obtaining the email address.
2. The immediately prior debt collector used the email address to communicate with the consumer about the debt. The immediately prior debt collector is the debt collector immediately preceding the current debt collector. For example, if ABC, Inc. returns a debt to the creditor and the creditor places the debt with Ficus Debt Collection Services, ABC, Inc. is the immediately prior debt collector for this purpose. Comment 1006.6(d)(4)(iii)-1.
3. The consumer did not opt out of such communications (i.e., email communications with the immediately prior debt collector using the specific email address).

12 CFR 1006.6(d)(4)(iii); comment 1006.6(d)(4)(iii)-1.

In addition to the steps detailed above, the debt collector's procedures also must include steps to reasonably confirm and document that the debt collector did not communicate with the consumer by sending an email message to an email address that the debt collector knows has led to a violation of the prohibition on third-party communications. 12 CFR 1006.6(d)(3)(ii). A debt collector knows that sending an email to an email address has led to a third party receiving the communication if any person has informed the debt collector of that fact. Comment

1006.6(d)(3)(ii)-1. To this end, a debt collector must accept and track complaints regarding third-party receipt of email messages.

Examples: After obtaining a consumer's email address in accordance with the procedures identified in the Debt Collection Rule and discussed in Section 6.2.1 or Section 6.2.2, ABC, Inc. communicates with the consumer about the debt using that email address. The consumer does not opt out of email communications at that email address. ABC, Inc. returns the debt to the creditor, who places it with Ficus Debt Collection Services. Ficus Debt Collection Services has adopted and followed reasonable procedures to ensure that it does not communicate with the consumer by sending an email to an email address that it knows has led to a violation of the prohibition on third-party communications. Ficus Debt Collection Services communicates with the consumer about the debt using the email address obtained by ABC, Inc. Ficus Debt Collection Services may have a bona fide error defense to civil liability for any unintentional third-party disclosure that occurs regarding that communication.

After obtaining a consumer's email address in accordance with the procedures identified in the Debt Collection Rule and discussed in Section 6.2.1 or Section 6.2.2, ABC, Inc. communicates with the consumer about the debt using that email address. The consumer does not opt out of communications using that email address. ABC, Inc. returns the debt to the creditor, who places it with XYZ Financial. XYZ Financial communicates with the consumer about the debt using the email address obtained by ABC, Inc., and the consumer does not opt out of communications using that email address. XYZ Financial returns the debt to the creditor, who places it with Ficus Debt Collection Services. Ficus Debt Collection Services has adopted and followed reasonable procedures to ensure that it does not communicate with the consumer by sending an email to an email address that it knows has led to a violation of the prohibition on third-party communications. Ficus Debt Collection Services communicates with the consumer about the debt using the email address obtained by ABC, Inc. and used by XYZ Financial. Ficus Debt Collection Services may have a bona fide error defense to civil liability for any unintentional third-party disclosure that occurs regarding that communication.

After obtaining a consumer's email address in accordance with the procedures identified in the Debt Collection Rule and discussed in Section 6.2.1 or Section 6.2.2, ABC, Inc. communicates with the consumer about the debt using that email address. The consumer does not opt out of communications using that email address. ABC, Inc. returns the debt to the creditor, who places it with XYZ Financial. XYZ Financial

does not communicate with the consumer by email. XYZ Financial returns the debt to the creditor, who places it with Ficus Debt Collection Services. Ficus Debt Collection Services communicates with the consumer about the debt using the email address obtained by ABC, Inc. The Debt Collection Rule does not provide Ficus Debt Collection Services with a bona fide error defense to civil liability for any unintentional third-party disclosure that occurs regarding that communication because the immediately prior debt collector (i.e., XYZ Financial) did not use the email address to communicate with the consumer about the debt.

6.2.4 Procedures for text messages

The Debt Collection Rule describes two sets of procedures that a debt collector can adopt and follow to obtain a bona fide error defense when sending a text message. A debt collector could adopt either or both of the procedures depending on whether the consumer has communicated with the debt collector by text message or whether the consumer has directly consented to the debt collector sending communications by text message.

Regardless of which set of procedures the debt collector adopts, procedures for text messages must include steps to reasonably confirm and document that the debt collector did not communicate with the consumer by sending a text message to a telephone number that the debt collector knows has led to a violation of the prohibition on third-party communications. 12 CFR 1006.6(d)(3)(ii). A debt collector knows that sending a text message to a telephone number has led to a third party receiving the communication if any person has informed the debt collector of that fact. Comment 1006.6(d)(3)(ii)-1. To this end, a debt collector must accept and track complaints regarding third-party receipt of text messages.

A debt collector's procedures are reasonably adapted to avoid a bona fide error when sending a text message to a telephone number if the procedures include the steps discussed above (i.e., steps to reasonably confirm and document that the debt collector did not send the text message to telephone number that the debt collector knows has led to a violation) and steps to confirm and document all of the following:

1. The consumer used the telephone number to communicate with the debt collector about the debt by text message. This prong is not satisfied if the consumer used the telephone number to communicate with the debt collector about the debt only by telephone call.
Comment 1006.6(d)(5)(i)-1.

2. The consumer has not since opted out of text message communications to that telephone number.

3. Within the past 60 days, either (a) the consumer sent a text message to the debt collector from that telephone number, or (b) the debt collector confirmed that the telephone number has not been reassigned from the consumer to another user since the date of the consumer's most recent text message to the debt collector from that telephone number. The debt collector must confirm that the telephone number has not been re-assigned using a complete and accurate database.

☐ For purposes of the procedures described in this Section 6.2.4, the database that the FCC established in *In re Advanced Methods to Target & Eliminate Unlawful Robocalls* (33 FCC Rcd. 12024 (Dec. 12, 2018)) will qualify as a complete and accurate database when it is released. Additionally, any commercially available database that is substantially similar in terms of completeness and accuracy to the FCC's database will qualify as a complete and accurate database for purposes of the procedures.

12 CFR 1006(d)(5)(i).

Alternatively, a debt collector's procedures are reasonably adapted to avoid a bona fide error when sending a text message to a telephone number if the procedures include steps to reasonably confirm and document that the debt collector did not send the text message to a telephone number that the debt collector knows has led to a violation and steps to confirm and document all of the following:

1. The debt collector received prior consent directly from the consumer to use the telephone number to communicate with the consumer about the debt by text message.
2. The consumer has not since withdrawn that consent.
3. Within the past 60 days either (a) the debt collector obtained or renewed the consumer's consent to use the telephone number to communicate by text message, or (b) the debt collector confirmed that the telephone number has not been reassigned from the consumer to another user since the date of consumer's most recent consent to use that telephone number to communicate about the debt by text message. The debt collector must confirm that the number has not been re-assigned using a complete and accurate database.

12 CFR 1006.6(d)(5)(ii).

7. Prohibitions on harassing, oppressive, or abusive conduct

A debt collector must not engage in conduct in connection with the collection of a debt if the natural consequence of that conduct is to harass, oppress, or abuse any person.¹⁵ 12 CFR 1006.14(a). The conduct covered can occur regardless of the communication media the debt collector uses in connection with the collection of a debt, including but not limited to in-person interactions, telephone calls, audio recordings, paper documents, mail, email messages, text messages, social media, or other electronic media.

In addition to this general prohibition, the Debt Collection Rule sets out specific conduct that is prohibited because the natural consequence of that conduct is to harass, oppress, or abuse a person. For example, the Rule specifically prohibits a debt collector from placing telephone calls or engaging any person in telephone conversations repeatedly or continuously with the intent to annoy, abuse, or harass any person. Similarly, the Rule prohibits a debt collector from communicating or attempting to communicate with a person through a medium of communication if that person has requested that the debt collector not use that communication medium. The general prohibition applies to this and other specific prohibited conduct described in this Section 7, as well as any other conduct in connection with the collection of a debt.

Whether a debt collector's conduct violates the general prohibition against harassing, oppressive, or abusive conduct may depend on the cumulative effect of the debt collector's conduct through any communication media that the debt collector uses. Depending on the facts and circumstances, conduct that on its own would not violate the general prohibition or any specific prohibition in the Debt Collection Rule, nonetheless may violate the general prohibition when such conduct is evaluated cumulatively with other conduct. 12 CFR 1006.14(a); comments 1006.14(a)-1 and -2.

¹⁵ A person includes not only a consumer but any natural person, corporation, company, association, firm, partnership, society, or joint stock company.

Examples: In connection with the collection of a debt, Ficus Debt Collection Services sends a consumer numerous, unsolicited text messages each day for several consecutive days. The consumer does not respond. Ficus Debt Collection Services does not communicate or attempt to communicate with the consumer using any other communication medium. Even if Ficus Debt Collection Services' conduct does not violate any specific prohibition in the Debt Collection Rule, it is likely that the natural consequence of Ficus Debt Collection Services' text messages is to harass, oppress, or abuse the person receiving the text messages. When such natural consequence occurs, the Ficus Debt Collection Services is in violation of the prohibition against harassing, oppressive, or abusive conduct.

In connection with the collection of a debt, Ficus Debt Collection Services places seven unanswered telephone calls within seven consecutive days to a consumer. During this same period, Ficus Debt Collection Services also sends the consumer unsolicited emails about the debt. The frequency of Ficus Debt Collection Services' telephone calls during the seven-day-period does not exceed the telephone call frequencies described in the Debt Collection Rule, so Ficus Debt Collection Services is entitled to the presumption of compliance discussed in Section 7.1.1. However, even if no evidence is offered to rebut the presumption of compliance for the number of telephone calls and even if the emails themselves do not violate a specific provision of the Rule, it is likely, based on the cumulative effect of the debt collector's telephone calls and emails that the natural consequence of such cumulative conduct is harassment. When such natural consequence occurs, Ficus Debt Collection Services is in violation of the prohibition against harassing, oppressive, or abusive conduct.

7.1 Repeated or continuous telephone calls or telephone conversations

In connection with the collection of a debt, a debt collector must not place telephone calls or engage any person in telephone conversations repeatedly or continuously with the intent to annoy, abuse, or harass any person at the called number. 12 CFR 1006.14(b)(1).

The Debt Collection Rule describes how a debt collector may obtain a presumption of compliance as well as how a debt collector may be presumed to have violated this prohibition. When determining whether a presumption applies, a debt collector is permitted to exclude certain calls. The Rule also sets forth factors that can be used to rebut the presumptions.

A debt collector who complies with the prohibition against repeatedly or continuously placing telephone calls or engaging any person in telephone conversations complies with the general prohibition against engaging in conduct the natural consequence of which is to harass, oppress, or abuse any person solely with respect to the frequency of its telephone calls. The debt collector nevertheless could violate the general prohibition if the natural consequence of another aspect of the debt collector's telephone calls, unrelated to frequency, is to harass, oppress, or abuse any person in connection with the collection of a debt. Comment 1006.14(b)(1)-1.

The presumptions are discussed in Section 7.1.1, and excluded calls are discussed in Section 7.1.2. The factors to rebut the presumption of compliance are discussed in Section 7.1.3, and the factors to rebut the presumption of violation are discussed in Section 7.1.4.

7.1.1 Rebuttable presumptions related to telephone call frequency

A debt collector has a presumption of compliance with the prohibition against causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously

☐ “Placing a telephone call” includes conveying a ringless voicemail (i.e., audio messages that allow debt collectors to bypass a person’s opportunity to answer the telephone by connecting directly to the person’s voicemail) but does not include sending an electronic message (e.g., a text or an email message) that may be received on a mobile telephone. Comment 1006.14(b)-1.

☐ The Debt Collection Rule does not preempt a state law that affords greater protection to consumers by imposing a call frequency limit. Thus, the Rule does not affirmatively permit debt collectors to comply with the presumption regarding call frequency in the Rule instead of an applicable state-law frequency limit that affords greater protection to consumers.

with intent to annoy, abuse, or harass any person at the called number if a debt collector does not do either of the following:

1. Place a telephone call to a particular person in connection with the collection of a debt more than seven times within seven consecutive calendar days.
2. Place a telephone call to a particular person in connection with the collection of a debt within a period of seven consecutive calendar days after having had a telephone conversation with the person in connection with the collection of such debt.

12 CFR 1006.14(b)(2)(i).

For the presumption of compliance to apply, the debt collector must not exceed either prong of the standard.

Conversely, a debt collector is presumed to violate the prohibition related to telephone call frequency if the debt collector places a telephone call to a particular person in connection with the collection of a particular debt either:

1. More than seven times within seven consecutive calendar days; or
2. Within seven consecutive calendar days after having had a telephone conversation with the person in connection with the collection of such debt.

12 CFR 1006.14(b)(2)(ii).

The presumption of violation applies if the debt collector exceeds one or both prongs of the standard.

For purposes of these presumptions, the date of the telephone conversation with the person in connection with the collection of a particular debt is the first day of the seven-consecutive-day period. Additionally, "particular debt" means each of a consumer's debts in collection. However, in the case of student loan debts, the term "particular debt" means all student loan debts that a consumer owes or allegedly owes that were serviced under a single account number at the time the debts were obtained by a debt collector. 12 CFR 1006.14(b)(4). If student loans (such as student loans originated by different lenders or student loans originated under private and federal loan programs) are not serviced under the same account number at the time the debts are obtained by a debt collector, a debt collector is not required to treat those student loan debts as a single debt.

When determining which presumption applies, certain telephone calls do not count. The types of telephone calls that do not count (i.e., that are excluded) are discussed in Section 7.1.2. *See* 12 CFR 1006.14(b)(3).

If a debt collector places a telephone call (other than an excluded call) and initiates a conversation or leaves a voicemail about one or more particular debts, the debt collector counts the telephone call as a telephone call in connection with the collection of each particular debt for which the debt collector initiates a conversation or leaves a voicemail. For example, if a debt collector is collecting two credit card debts, Debt A and Debt B, and leaves a voicemail about both debts, the debt collector counts the voicemail as a call in connection with Debt A and in connection with Debt B. Conversely, if the debt collector leaves a voicemail message about Debt A only, the debt collection counts the voicemail as a call in connection with Debt A only.

- If, within a period of seven consecutive days, a debt collector attempts to communicate with a particular person by placing telephone calls to a particular telephone number, and the debt collector then learns that the telephone number is not that person's number, the telephone calls that the debt collector made to that number are not considered to have been telephone calls placed to that person during that seven-day period for purposes of presumptions related to telephone call frequency. Comment 1006.14(b)(2)(i)-3.

If a debt collector places a telephone call to a person but neither initiates a conversation about a particular debt nor leaves a voicemail that refers to a particular debt or if the debt collector's telephone call is unanswered, the debt collector counts the telephone call as a telephone call in connection with the collection of at least one particular debt, unless an exclusion discussed in Section 7.1.2 applies. A debt collector may count an unanswered telephone call as one telephone call placed toward any one particular debt, even if the debt collector intended to discuss more than one particular debt had the telephone call resulted in a telephone conversation. Comment 1006.14(b)(4)-1.i.

If a debt collector and a person discuss a particular debt during a telephone conversation, the debt collector has engaged in a telephone conversation in connection with the collection of that particular debt, regardless of which party initiated the discussion about the particular debt. Comment 1006.14(b)(4)-1.ii. For example, if the debt collector initiates the call with the consumer about Debt A, but the consumer asks about Debt B, the call counts as a conversation for both Debt A and Debt B, even though the debt collector only initiated conversation about Debt A. However, with respect to the call frequency related to how many calls a debt collector places within seven days, this counts only as a call for Debt A because the debt collector placed the call only with respect to Debt A. The consumer then initiated the discussion about Debt B.

Examples: On April 1, ABC, Inc. first attempts to communicate with a consumer in connection with the collection of a credit card debt. On that date, ABC, Inc. places a telephone call and leaves a limited-content message. Between April 2 and April 5, ABC, Inc. places six more telephone calls to the consumer about the debt, all of which go unanswered. If ABC, Inc. does not place any additional telephone calls about the debt until April 8, it is presumed to comply with the prohibition related to telephone call frequency. However, if ABC, Inc. does place an additional call about the debt before April 8 and none of the calls fits within one or more exclusions discussed in Section 7.1.2, ABC, Inc. is presumed to violate the prohibition related to telephone call frequency because it has placed more than seven telephone calls within seven consecutive days.

On August 13, a consumer places a call to ABC, Inc. and speaks with a representative of ABC, Inc. regarding a particular debt. If ABC, Inc. does not place a telephone call to the consumer in connection with the collection of that debt prior to August 20, it is presumed to comply with the prohibition related to telephone call frequency. However, if ABC, Inc. does place a telephone call to the consumer in connection with the collection of that debt before August 20 and the call does not fit within one or more exclusions discussed in Section 7.1.2, ABC, Inc. is presumed to violate the prohibition related to telephone call frequency because it will have placed a telephone call within seven consecutive days of having a telephone conversation about a particular debt.

On October 6, ABC, Inc. places its first call to a particular third party for the purpose of obtaining location information about the consumer. The call is not answered. Between October 6 and October 12, the debt collector places six more unanswered telephone calls to that third party for the purpose of obtaining location information about the consumer. The debt collector is presumed to comply with the prohibition related to telephone call frequency. However, if ABC, Inc. places an additional telephone call to the third party in connection with the collection of that debt before October 13 and none of the calls fits within one or more exclusions discussed in Section 7.1.2, ABC, Inc. is presumed to violate the prohibition related to telephone call frequency because it will have placed more than seven telephone calls within seven consecutive days.

On May 1, ABC, Inc. begins attempting to collect a medical debt, a credit card debt, and a residential mortgage debt from the same consumer. On May 1, ABC, Inc. places a telephone call to the consumer, intending to discuss all three debts, but the consumer does not answer. The caller leaves a voicemail message that does not specifically refer to any particular debt. ABC, Inc. may count the voicemail as one

telephone call placed toward any one of the particular debts, even though it intended to discuss all of the debts if the telephone call had resulted in a telephone conversation. For purposes of the telephone call frequency limits, assume ABC, Inc. counts the telephone call as having been placed with respect to the credit card debt. In order to have a presumption of compliance, between May 1 and May 8, ABC, Inc. can place no more than an additional six telephone calls regarding the credit card debt, seven telephone calls regarding the medical debt, and seven telephone calls regarding the residential mortgage debt. Further, if during that period, ABC, Inc. speaks with the consumer about any particular debt, it cannot place any additional calls regarding that debt for a period of seven consecutive days from the date that of the conversation to meet the requirements of the second prong.

ABC, Inc. is attempting to collect three student loan debts from the same consumer. The three student loans were serviced under the same account number at the time that ABC, Inc. obtained them. On May 1, ABC, Inc. places a telephone call to the consumer, intending to discuss all three debts, but the consumer does not answer. Between May 1 and May 8, ABC, Inc. can place no more than an additional six telephone calls regarding the student loan debts in order to obtain a presumption of compliance. All three student loan debts are treated as a single debt for purposes of the presumptions related to call frequency because the loans were serviced under the same account number when a debt collector obtained them.

ABC, Inc. is attempting to collect a medical debt and a credit card debt from the same consumer. On May 1, ABC, Inc. calls and engages in a telephone conversation with the consumer. ABC, Inc. and the consumer discuss the medical debt, but do not discuss the credit card debt. Assume the telephone call is not one of the excluded calls listed in Section 7.1.2. ABC, Inc. has placed a telephone call to the consumer and has engaged in a telephone conversation with the consumer in connection with the medical debt. However, ABC, Inc. has not placed a telephone call to or engaged in a telephone conversation with the consumer in connection with the collection of the credit card debt. In order to obtain a presumption of compliance, ABC, Inc. cannot call the consumer to initiate a conversation about the medical debt for seven consecutive days from May 1 but may call the consumer during that period about the credit card debt.

Additional examples can be found in the commentary for 12 CFR 1006.14(b).

7.1.2 Certain telephone calls excluded from the telephone call frequencies

A telephone call placed to a person does not count toward the telephone call frequencies for the presumptions described in Section 7.1.1 if the telephone call is:

- *Placed with the person's prior consent given directly to the debt collector and within a period no longer than seven consecutive days after receiving the direct prior consent.* If a person gives direct prior consent for additional telephone calls about a particular debt to a debt collector, any telephone calls that the debt collector thereafter places to the person about that particular debt do not count toward the telephone call frequencies for a period of up to seven consecutive days. The date the debt collector receives direct prior consent counts as the first day of the seven-consecutive-day period. A person's direct prior consent may expire before the end of the seven-consecutive-day period. A person's direct prior consent expires when any of the following occur: (1) the person consents to additional telephone calls for a shorter time period and such time period has ended; (2) the person revokes such direct prior consent; or (3) the debt collector has a telephone conversation with the person regarding the particular debt. Comment 1006.14(b)(3)(i)-2.
- *Not connected to the dialed number.* A debt collector's telephone call does not connect to the dialed number if, for example, the debt collector receives a busy signal or an indication that the dialed number is not in service. A debt collector's telephone call does connect to the dialed number (and does not fit within this exclusion) if, for example, the call is answered and subsequently dropped, the call causes a telephone to ring at the dialed number but no one answers the call, or the call does not cause a telephone to ring but is connected to a voicemail or other recorded message, even if the debt collector is unable to leave a voicemail. Comment 1006.14(b)(3)(ii)-1. If a telephone call is connected to the dialed number (even if the debt collector hears only silence), the telephone call does not meet this exclusion. If a debt collector is unsure whether the telephone call connected to the dialed number, the debt collector should treat the telephone call as connected to the dialed number and count the telephone call toward the call frequencies.
- *Placed to a consumer's attorney, the creditor, the creditor's attorney, the debt collector's attorney, or a consumer reporting agency (if otherwise permitted by law).* Telephone calls placed to these parties do not count toward the call frequencies.

12 CFR 1006.14(b)(3).

Examples: On Friday, April 3, Ficus Debt Collection Services places an initial telephone call to a consumer to discuss a credit card debt. During the telephone conversation, the consumer tells the caller from Ficus Debt Collection Services to “call back on Monday.” Ficus Debt Collection Services calls the consumer on Monday, April 6 to discuss the credit card debt. Ficus Debt Collection Services has not exceeded the telephone call frequencies because Ficus Debt Collection Services placed the telephone call to the consumer on Monday pursuant to the consumer’s direct prior consent. However, Ficus Debt Collection Services may be presumed to have violated the prohibition related to call frequencies if it places any additional telephone calls to the consumer in connection with the collection of the credit card debt before April 6, unless another exclusion applies.

Between Monday, June 1 and Wednesday, June 3, Ficus Debt Collection Services places three unanswered telephone calls to a consumer in connection with the collection of a medical debt. On Wednesday, June 3, Ficus Debt Collection Services sends the consumer an email message in connection with the collection of the medical debt. The consumer responds by email on Thursday, June 4, requesting additional information about available repayment options related to the debt and writes, “You can call me at 123-456-7891 to discuss the repayment options.” After receipt of the email, Ficus Debt Collection Services places eight unanswered telephone calls to the consumer between Monday, June 8, and Wednesday, June 10. Ficus Debt Collection Services has not exceeded the telephone call frequencies because the consumer provided direct prior consent. The eight telephone calls placed during the seven-consecutive-day period that began with Ficus Debt Collection Services’ receipt of the consumer’s direct prior consent on Thursday, June 4 are excluded from the telephone call frequencies. However, any telephone calls that Ficus Debt Collection Services places after the end of the seven-day-period (i.e., on or after Thursday, June 11) would count toward the telephone call frequencies, unless the consumer again gives direct prior consent to Ficus Debt Collection Services.

7.1.3 Factors to rebut a presumption of compliance related to telephone call frequency

If a debt collector does not place telephone calls in excess of the call frequencies discussed in Section 7.1.1, the debt collector has a presumption of compliance related to telephone call frequency. However, the presumption of compliance is rebuttable. To rebut the presumption of compliance, it must be proven that a debt collector nevertheless caused a telephone to ring or

engaged a person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass a person at the called number. For purposes of determining whether a presumption of compliance has been rebutted, it is assumed that a debt collector intends the natural consequences of its actions.

Factors that may rebut the presumption of compliance include but are not limited to:

- *The frequency and pattern of telephone calls the debt collector places to a person, including the intervals between the telephone calls.* The considerations relevant to this factor include whether the debt collector places telephone calls to a person in rapid succession (e.g., two unanswered telephone calls to the same telephone number within five minutes) or in a highly concentrated manner (e.g., seven telephone calls to the same telephone number within one day). Comment 1006.14(b)(2)(i)-2. It may also be relevant if the debt collector concentrates telephone calls on days that may be less convenient for the consumer (such as Sundays or holidays). Application of this factor is not limited to rapid succession or highly concentrated calling, however, and is dependent on all of the relevant facts and circumstances that may indicate an intent on the part of the debt collector to harass, annoy, or abuse the consumer.
- *The frequency and pattern of any voicemails that the debt collector leaves for a person, including the intervals between the voicemails.* The considerations relevant to this factor include whether the debt collector left voicemails for a person in rapid succession (e.g., two voicemails within five minutes left at the same telephone number) or in a highly concentrated manner (e.g., seven voicemails left at the same telephone number within one day).
- *The content of a person's prior communications with the debt collector.* Among the considerations relevant to this factor are whether the person previously informed the debt collector, for example, that the person did not wish to be contacted about the particular debt, that the person was refusing to pay the debt, or that the person did not owe the particular debt. This factor also includes a consumer's cease communication notification described in Section 4.5 and a consumer's request that the debt collector not use telephone calls to communicate or attempt to communicate with the consumer as discussed in Section 7.2. The amount of time elapsed since any prior communication with the person may also be relevant to this factor.
- *The debt collector's conduct in prior communications and attempts to communicate with the person.* Among the considerations relevant to this factor are whether the debt collector used obscene, profane, or otherwise abusive language in any prior communications or attempts to communicate, used or threatened to use violence or other criminal means to harm the person, or called at an inconvenient time or place. The

amount of time elapsed since any prior communication with the person may also be relevant to this factor.

Comment 1006.14(b)(2)(i)-2.

These and other factors may be considered either individually or in combination with one another. The factors may be viewed in light of any other relevant facts and circumstances. Therefore, the factors may apply to a varying degree. Comment 1006.14(b)(2)(i)-2.

7.1.4 Factors to rebut a presumption of a violation related to telephone call frequency

If a debt collector places telephone calls in excess of either of the call frequencies discussed in Section 7.1.1, the debt collector is presumed to violate the prohibition related to telephone call frequency. However, the presumption that the debt collector has violated the prohibition is rebuttable. To rebut the presumption of a violation, it must be proven that a debt collector nevertheless did not cause a telephone to ring or engage any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number. For purposes of determining whether a presumption of a violation has been rebutted, it is assumed that a debt collector intends the natural consequences of its actions.

Factors that may rebut the presumption of a violation include but are not limited to:

- *Whether a debt collector placed a telephone call to comply with or as required by applicable law.* For example, a telephone call to inform the consumer of available loss mitigation options in compliance with the Bureau's mortgage servicing rules under Regulation X, 12 CFR 1024.39(a), may be an example of a call placed to comply with applicable law.
- *Whether a telephone call was directly related to active litigation involving the collection of a particular debt.* The direct relationship between the additional telephone call and the active debt collection litigation is a factor that may rebut the presumption of a violation. A telephone call to complete a court-ordered communication or as part of negotiations to settle active debt collection litigation involving the collection of a particular debt may be examples of calls directly related to active litigation involving the collection of a particular debt. However, the debt collector must comply with the prohibition on communicating or attempting to communicate with a consumer represented by an attorney with regard to the specific debt. This prohibition is discussed in Section 4.2.

- *Whether a debt collector placed a telephone call in response to a consumer's request for additional information when the exclusion for telephone calls made with the consumer's direct prior consent does not apply.* The fact that the debt collector placed the additional call in response to the consumer's request is a factor that may rebut the presumption of a violation. For example, a consumer may tell the debt collector that the consumer would like more information about a debt but end the call before the debt collector can confirm whether the consumer's general statement about seeking more information constitutes the consumer's consent for the debt collector to place additional calls within the next seven days to provide the requested information. A telephone call to provide the requested information may be an example of a call placed in response to a consumer's request for additional information when the exclusion for calls made with the consumer's direct prior content does not apply.
- *Whether a debt collector placed a telephone call to convey information to the consumer that would provide the consumer with an opportunity to avoid a demonstrably negative effect relating to the collection of the particular debt, where the negative effect was not in the debt collector's control, and where time was of the essence.* Evidence must show that the information would provide the consumer with an opportunity to avoid a demonstrably negative effect relating to the collection of the particular debt.

Comment 1006.14(b)(2)(ii)-2.

These and other factors may be considered either individually or in combination with one another. The factors may be viewed in light of any other relevant facts and circumstances. Therefore, they may apply to a varying degree. Comment 1006.14(b)(2)(ii)-2.

Examples regarding these factors can be found in the commentary to 12 CFR 1006.14(b)(2)(ii).

7.2 Prohibited communication media

In connection with the collection of any debt, a debt collector must not communicate or attempt to communicate with a person¹⁶ through a medium of communication¹⁷ if that person has requested that the debt collector not use that medium to communicate with the person. 12 CFR 1006.14(h)(1). For example, if a person tells a debt collector to "stop calling," the person has

¹⁶ A person includes not only a consumer but any natural person, corporation, company, association, firm, partnership, society, or joint stock company.

¹⁷ A medium of communication includes oral, written, and media, such as telephone, audio recording, paper document, mail, email, text message, social media, and other electronic media.

requested that the debt collector not use telephone calls to communicate with that person. Thereafter, the debt collector is prohibited from communicating or attempting to communicate with the person through telephone calls. Similarly, if a person tells a debt collector to “stop emailing me,” the person has requested that the debt collector not use email messages to communicate with that person. Comment 1006.14(h)(1)-3.i. The debt collector may ask follow-up questions regarding preferred communication media to clarify a person’s statements. Comment 1006.14(h)(1)-1.

Within a medium of communication, a person may request that a debt collector not use a specific address or telephone number. For example, if a person has two mobile telephone numbers, the person may request that the debt collector not use one or both mobile telephone numbers. Comment 1006.14(h)(1)-2. Similarly, if a consumer opts out of receiving emails at a particular email address or text messages at a particular telephone number (as discussed in Section 5), the consumer has requested that the debt collector not use that email address or telephone number to electronically communicate with the consumer. Comment 1006.14(h)(1)-3.ii. A debt collector may send an electronic confirmation of the person’s request to opt out, provided that the electronic confirmation contains no information other than a statement confirming the person’s request and the debt collector’s intent to honor the person’s request. 12 CFR 1006.14(h)(2)(i). Any other communications or attempts to communicate sent to that particular email address or telephone number after the consumer opts out violate 12 CFR 1006.14(h)(1), unless an exception applies.

Notwithstanding this prohibition, a debt collector may communicate or attempt to communicate with a person through a medium of communication that the person has requested the debt collector not use if otherwise required by applicable law. 12 CFR 1006.14(h)(2)(iii). For example, a debt collector who is subject to the periodic statement requirement for residential mortgage loans under Regulation Z, 12 CFR 1026.41, may be permitted to mail periodic statements to a person who tells the debt collector to stop mailing letters to the person if the person has not consented to receive statements electronically in accordance with 12 CFR 1026.41(c). Although the person has requested that the debt collector not use mail to communicate with the person, the debt collector may mail the person periodic statements because the periodic statements are required by applicable law. Comment 1006.14(h)(2)-1.

Additionally, if a person initiates contact with a debt collector using a medium of communication that the person previously asked the debt collector not to use, the debt collector is permitted to respond once through the same medium of communication used by the person even though the person previously asked the debt collector not to use that medium. For example, a person may ask a debt collector not to text the person’s mobile phone. If the person initiates contact with a debt collector by texting from the person’s mobile phone number, the

debt collector may thereafter contact the person one time by texting that mobile phone number. 12 CFR 1006.14(h)(2)(ii).

The Debt Collection Rule does not specify the period of time afforded to a debt collector to update its systems to reflect a person's request not to communicate or attempt to communicate using a particular medium of communication. However, depending upon the circumstances, FDCPA section 813(c)'s bona fide error defense to civil liability may apply where, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error, a debt collector communicates or attempts to communicate with a person through a medium of communication after the person has requested that the debt collector not use that medium but before the debt collector has implemented the person's request.

7.3 Other prohibited harassing, oppressive, or abusive conduct

7.3.1 Violence or other criminal means

In connection with the collection of a debt, a debt collector must not use or threaten to use violence or other criminal means to harm the physical person, reputation, or property of any person. 12 CFR 1006.14(c).

7.3.2 Obscene or profane language

In connection with the collection of a debt, a debt collector must not use obscene or profane language, or language the natural consequence of which is to abuse the hearer or reader. 12 CFR 1006.14(d).

7.3.3 Debtor's list

In connection with the collection of a debt, a debt collector must not publish a list of consumers who allegedly refuse to pay debts, except to a consumer reporting agency or to a person who is permitted to obtain a consumer report under sections 603(f) or 604(a)(3) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or 1681b(a)(3)). 12 CFR 1006.14(e).

7.3.4 Coercive advertisements

In connection with the collection of a debt, a debt collector must not advertise for sale any debt to coerce payment of the debt. 12 CFR 1006.14(f).

7.3.5 Meaningful disclosure of identity

In connection with the collection of a debt, a debt collector must not place telephone calls without meaningfully disclosing the caller's identity, except when the debt collector is acquiring location information. 12 CFR 1006.14(g). For more information on the acquisition of location information, see Section 6.1.2. A debt collector who leaves only a limited-content message for a consumer does not violate the requirement to meaningfully disclose the caller's identity with respect to that voicemail message.

8. False, deceptive, or misleading representations or means

A debt collector must not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. This general prohibition covers the specific conduct described in this Section 8, the requirements to include certain disclosures in initial and subsequent communications as described in Section 11, as well as any other conduct by the debt collector in connection with the collection of a debt. 12 CFR 1006.18(a).

8.1 False, deceptive, or misleading representations

A debt collector must not falsely represent or imply that:

1. The debt collector is vouched for, bonded by, or affiliated with the United States or any state, including through the use of any badge, uniform, or facsimile thereof.
2. The debt collector operates or is employed by a consumer reporting agency, as defined by section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f)).
3. Any individual is an attorney or that any communication is from an attorney.
4. The consumer committed any crime or other conduct in order to disgrace the consumer.
5. A sale, referral, or other transfer of any interest in a debt causes or will cause the consumer to lose any claim or defense to payment of the debt or become subject to any practice prohibited by the Debt Collection Rule.
6. Accounts have been turned over to innocent purchasers for value.
7. Documents are legal process (e.g., documents are part of a lawsuit or other legal proceeding, including but not limited to a formal pleading, subpoena, or writ).
8. Documents are not legal process forms or do not require action by the consumer.

12 CFR 1006.18(b)(1).

Additionally, a debt collector must not falsely represent (1) the character, amount, or legal status of any debt; or (2) any services rendered, or compensation that may be lawfully received, by any debt collector for the collection of a debt. 12 CFR 1006.18(b)(2).

A debt collector must not represent or imply that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages of any person unless such action is lawful and the debt collector or creditor intends to take such action. 12 CFR 1006.18(b)(3).

8.2 False, deceptive, or misleading collection means

A debt collector must not:

1. Threaten to take any action that cannot legally be taken or that is not intended to be taken.
2. Communicate or threaten to communicate to any person credit information that the debt collector knows or should know is false, including the failure to communicate that a disputed debt is disputed.
3. Use or distribute any written communication that simulates or that the debt collector falsely represents to be a document authorized, issued, or approved by any court, official, or agency of the United States or any state, or that creates a false impression about its source, authorization, or approval.
4. Use any business, company, or organization name other than the true name of the debt collector's business, company, or organization. A debt collector does not violate this provision if the debt collector uses a business name that does not indicate that the debt collector is the business of collecting debts when leaving a limited-content message. As noted in Section 3.3.3, a limited-content message must include a business name that does not indicate that the debt collector is in the debt collection business. Additionally, as discussed in Section 8.4, a debt collector's employee may use an assumed name if certain criteria are satisfied.

12 CFR 1006.18(c).

8.3 False representations or deceptive means and disclosure of identity in certain social media requests

A debt collector must not use any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer. 12 CFR 1006.18(d).

The Debt Collection Rule clarifies that, in the context of social media, a debt collector makes a false representation or implication if the debt collector does not disclose its identity as a debt collector in certain social media requests. For example, if a debt collector sends a private message, in connection with the collection of a debt, requesting to be added as one of the consumer's contacts on a social media platform marketed for social or professional networking purposes, the debt collector must disclose its identity as a debt collector in the request. Comment 1006.18(d)-1.i. Similarly, if a debt collector privately communicates with a friend or coworker of a consumer on a social media platform, for the purpose of acquiring location information about the consumer, the debt collector must identify himself or herself individually by name¹⁸ (but cannot identify the name of his or her employer unless the consumer's friend or coworker expressly requests that information). Comment 1006.18(d)-1.ii. The debt collector also must comply with all other applicable provisions of the Debt Collection Rule, including the prohibition on communicating with third parties (discussed in Section 6) and the applicable requirements regarding the acquisition of location information (discussed in Section 6.1.2).

8.4 Assumed names

The prohibition regarding false, deceptive, or misleading representations or means does not prohibit a debt collector's employee from using an assumed name when communicating or attempting to communicate with a person, provided that the employee uses the assumed name consistently and that the debt collector can readily identify any employee using an assumed name. 12 CFR 1006.18(f).

A debt collector may use any method of managing assumed names that enables it to determine the true identity of any employee using an assumed name. For example, a debt collector may require an employee to use the same assumed name when communicating or attempting to

¹⁸ As discussed in Section 8.4, an employee of a debt collector may use an assumed name provided that the employee uses the assumed name consistently and that the debt collector can readily identify any employee using an assumed name.

communicate with any person and prohibit any other employee from using the same assumed name. Comment 1006.18(f)-1.

9. Unfair or unconscionable means

A debt collector must not use unfair or unconscionable means to collect or attempt to collect any debt. This prohibition applies to the specific conduct described in this Section 9, as well as any other conduct by the debt collector in connection with the collection of a debt. 12 CFR 1006.22(a).

9.1 Collection of unauthorized amounts

A debt collector must not collect any amount unless such amount is expressly authorized by the agreement creating the debt or is otherwise permitted by law. For this purpose, the term “any amount” includes any interest, fee, charge, or expense incidental to the principal obligation. 12 CFR 1006.22(b).

9.2 Postdated payment instruments

A debt collector must not do any of the following:

- Accept from any person 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. The debt collector must provide the notice in writing not more than ten days and not less than three days (excluding legal public holidays identified in 5 U.S.C. 6103(a), Saturdays, and Sundays) prior to such deposit.
- Solicit any postdated check or other postdated payment instrument for the purpose of threatening or instituting criminal prosecution.
- Deposit or threaten to deposit any postdated check or other postdated payment instrument prior to the date on such check or instrument.

12 CFR 1006.22(c).

9.3 Charges resulting from concealment of purpose

A debt collector must not cause 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. 12 CFR 1006.22(d).

9.4 Nonjudicial action regarding property

A debt collector must not take or threaten to take any nonjudicial action to effect dispossession or disablement of property if:

- There is no present right to possession of the property claimed as collateral through an enforceable security interest;
- There is no present intention to take possession of the property; or
- The property is exempt by law from such dispossession or disablement.

12 CFR 1006.22(e).

9.5 Post cards and content on envelopes

A debt collector must not communicate with a consumer regarding a debt by postcard. 12 CFR 1006.22(f)(1).

Additionally, a debt collector must not use any language or symbol, other than the debt collector's address, on any envelope when communicating with a consumer by mail. However, a debt collector may use the debt collector's business name on an envelope if such name does not indicate that the debt collector is in the debt collection business. 12 CFR 1006.22(f)(2). The phrase "language or symbol" does not include language and symbols that facilitate communications by mail, such as: the debtor's name and address; postage; language such as "forwarding and address correction requested"; and the United States Postal Service's Intelligent Mail barcode. Comment 1006.22(f)(2)-1.

9.6 Email address provided by the consumer's employer

Generally, a debt collector is prohibited from communicating or attempting to communicate with a consumer by sending an email to an email address that the debt collector knows is provided to the consumer by the consumer's employer. 12 CFR 1006.22(f)(3).

This prohibition does not apply if one or more of the following is satisfied:

- *The consumer provided direct prior consent to the debt collector to use the email address.* For this exception to apply, the consumer must give his or her consent directly to the debt collector. Consent provided to the creditor or a prior debt collector does not satisfy the exception. Additionally, the exception only applies if the debt collector obtained the consumer's consent to use the email address before sending the email, and the consumer has not withdrawn that consent. 12 CFR 1006.22(f)(3); comments 1006.6(d)(4)(i)-1 and 1006.22(f)(3)-1.
 - *The consumer has used the email address to communicate with the debt collector about the debt.* Pursuant to this exception, a debt collector who receives an email directly from a consumer from an email address provided by the consumer's employer may communicate or attempt to communicate with the consumer at that email address, even if the consumer has not provided direct prior consent to the debt collector. For example, a consumer might use an employer-provided email address to send a debt collector an email message that requests information about a debt but does not explicitly give direct prior consent to the debt collector's use of that email address. In these circumstances, the prohibition on communicating or attempting to communicate with the consumer at an employer-provided email address does not apply. This exception only applies if the consumer has not since opted out of communications to that email. 12 CFR 1006.22(f)(3); comment 1006.22(f)(3)-1.
- ☐ A debt collector does not know that a consumer's email address is employer provided merely because the domain name for that email address is the same as the domain name for an email address that a different consumer has told the debt collector is employer provided.
 - ☐ A debt collector also must comply with the prohibition discussed in Section 4.3.
 - ☐ The consumer could at any time opt out of receiving emails at the employer-provided email address or otherwise request not to receive emails at that address (as discussed in Section 7.2). If the consumer does so, the debt collector could no longer communicate or attempt to communicate with the consumer at the employer-provided email address.

- *The debt collector obtained the email address from a prior debt collector pursuant to the procedures described in 12 CFR 1006.6(d)(4)(iii).* These procedures are discussed in Section 6.2.3. This exception only applies to email addresses obtained from prior debt collectors and does not apply to email addresses obtained from the creditor, as discussed in Section 6.2.2. 12 CFR 1006.22(f)(3); comment 1006.22(f)(3)-1.

9.7 Social media messages viewable by the public or the consumer's contacts

A debt collector must not communicate or attempt to communicate with a person in connection with the collection of a debt using a social media platform if the communication or attempt to communicate is viewable by the general public or the person's social media contacts. 12 CFR 1006.22(f)(4).

For example, if a consumer's "wall" posts are viewable by the general public or the consumer's social media contacts, such as "friends," "followers," or "connections," the debt collector could not communicate or attempt to communicate in connection with the collection of a debt using that aspect of the social media platform.

If a social media platform enables a debt collector to send a private message to a person and that message is not viewable by the general public or the person's contacts, this provision of the Debt Collection Rule does not prohibit a debt collector from communicating or attempting to communicate with a consumer in connection with the collection of a debt by sending such a private message. However, other provisions of the Rule (i.e., 12 CFR 1006.6(b) or 1006.14(h)) may prohibit

the debt collector from sending such a private message if, for example, the person has requested that the debt collector not use that medium to communicate. In addition, a debt collector would violate 12 CFR 1006.6(d) by sending such a private message that includes information about the debt to the wrong person. Comment 1006.22(f)(4)-1. See also Section 8.3 regarding disclosure of identity in social media requests.

- As discussed in Section 5, debt collectors are required to include a reasonable and simple method by which the consumer can opt out of receiving further private social media messages. Consumers also have the option to opt out of all social media communications, or communications through a particular platform.

10. Other requirements and prohibited practices related to debts

10.1 Prohibition on the sale, transfer for consideration, or placement for collection of paid, settled, or discharged debts

Generally, a debt collector must not sell, transfer for consideration,¹⁹ or place for collection a debt if the debt collector knows or should know that the debt has been paid, that the debt has been settled, or that the debt has been discharged in bankruptcy. 12 CFR 1006.30(b)(1). A debt collector does not transfer a debt for consideration when the debt collector sends information about the debt, as opposed to the debt itself, to another party. For example, a debt collector does not transfer a debt for consideration when the debt collector sends a file with data about the debt to another person for analytics, “scrubbing,” or archival. A debt collector also does not transfer a debt for consideration when the debt collector reports to a credit reporting agency information that a debt has been paid or settled or discharged in bankruptcy. Comment 1006.30(b)(1)-1.

- ☐ A debt collector knows or should know that a debt has been paid or settled if, for example, its account management system indicates that the debt has been paid or settled.
- ☐ Depending on the circumstances, a debt collector may have a bona fide error defense regarding the transfer of a debt discharged in bankruptcy if a debt collector utilized a commercial database to reasonably assess whether the debt had been discharged in bankruptcy prior to its transfer.

¹⁹ A debt collector transfers a debt for consideration if the debt collector receives or expects to receive compensation for the transfer.

Notwithstanding this general prohibition on transferring debt, a debt collector may transfer for consideration a debt if the debt collector does any of the following:

- Transfers the debt to the debt's owner.
However, unless another exception applies, the debt collector may not transfer the debt or the right to collect the debt to another entity on behalf of the debt owner.
Comment 1006.30(b)(2)(i)(A)-1.
- Transfers the debt to a previous owner of the debt, if the transfer is authorized under the terms of the original contract between the debt collector and the previous owner.
- Transfers the debt as a result of a merger, acquisition, purchase and assumption transaction, or a transfer of substantially all of the debt collector's assets.

☐ Section 615(f)(1) of the Fair Credit Reporting Act (15 U.S.C. 1681m(f)(1)) states that no person shall sell, transfer for consideration, or place for collection a debt if such person has been notified under section 605B of that Act (15 U.S.C. 1681c-2) that the debt has resulted from identity theft. Nothing in the Debt Collection Rule alters a debt collector's obligation to comply with the prohibition set forth in section 615(f)(1) of the Fair Credit Reporting Act. *See* comment 1006.30(b)(1)-2.

12 CFR 1006.30(b)(2)(i).

Additionally, a debt collector may sell, transfer for consideration, or place for collection a debt that has been discharged in bankruptcy if the debt is secured by an enforceable lien and the debt collector notifies the transferee that the consumer's personal liability for the debt was discharged in bankruptcy. 12 CFR 1006.30(b)(2)(ii).

The Debt Collection Rule's prohibition on transferring debt does not prohibit the securitization of a debt or the pledging of a portfolio of debt as collateral in connection with a borrowing. 12 CFR 1006.30(b)(2)(iii).

10.2 Application of payment to multiple debts

If a consumer makes a single payment to a debt collector with respect to multiple debts that the debt collector is collecting from the consumer, the debt collector must apply the payment in accordance with the consumer's instructions (if any). Additionally, the debt collector must not apply the payment to any debt that the consumer has disputed. 12 CFR 1006.30(c).

10.3 Legal actions by debt collectors

A debt collector who brings a legal action against a consumer to enforce an interest in real property securing the consumer's debt (such as a judicial foreclosure action) must bring the action only in a judicial district or similar legal entity in which such real property is located. 12 CFR 1006.30(d)(1).

A debt collector who brings a legal action against a consumer other than to enforce an interest in real property securing the consumer's debt must bring such action only in the judicial district or similar legal entity in which the consumer signed the contract sued upon or in which the consumer resides at the commencement of the action. 12 CFR 1006.30(d)(2).

Nothing in the Debt Collection Rule authorizes debt collectors to bring legal actions. 12 CFR 1006.30(d)(3).

10.4 Prohibition on furnishing certain deceptive forms

A debt collector must not design, compile, or furnish any form that the debt collector knows would be used to cause a consumer falsely to believe that a person other than the consumer's creditor is participating in collecting or attempting to collect a debt that the consumer allegedly owes to the creditor. 12 CFR 1006.30(e).

- The prohibition on furnishing deceptive forms in FDCPA section 812 applies to any person, not just to debt collectors. However, the Debt Collection Rule applies only to debt collectors.

11. Disclosures in initial or subsequent communications

11.1 Initial communications

A debt collector must disclose in its initial communication with a consumer that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose. If the debt collector's initial communication with the consumer is oral, the debt collector must make the disclosure again in its initial written communication with the consumer. 12 CFR 1006.18(e)(1). However, this disclosure is not required to be included in a formal pleading made in connection with a legal action. 12 CFR 1006.18(e)(3). With the exception of formal pleadings, a debt collector must make the disclosure in the debt collector's initial communication with a consumer, regardless of the medium of communication and regardless of whether the debt collector or the consumer initiated the communication.

As discussed above, the disclosure is required in the initial *communication*. Thus, a debt collector is not required to include the disclosure in an attempt to communicate that is not a communication. However, if a debt collector includes content that directly or indirectly conveys any information regarding the debt, the debt collector's contact with the consumer is a communication, and the debt collector must include the disclosure if the communication is an initial communication. Comment 1006.18(e)(1)-1. Additionally, if a debt collector includes the disclosure in a message what would otherwise be a limited-content message, the message is no longer a limited-content message because the disclosure is not required or permitted content for limited-content messages. See Section 3.3.3 for more information on limited-content messages.

Example: ABC, Inc. has not previously communicated with a consumer. ABC, Inc. places a telephone call to the consumer, who does not answer. ABC, Inc. leaves a limited-content message for the consumer. After listening to the debt collector's message, the consumer calls ABC, Inc. and discusses the debt with a representative of ABC, Inc. Because the consumer-initiated call is the initial communication between

ABC, Inc. and the consumer, ABC, Inc. must disclose to the consumer during that telephone call that it is attempting to collect a debt and that any information obtained will be used for that purpose. Additionally, following the telephone call, ABC, Inc. must include the disclosure in its initial written communication with the consumer. ABC, Inc. is not required or permitted to provide this disclosure in the limited-content message.

A debt collector must make the disclosure in the same language or languages that the debt collector used for the rest of the communication in which the disclosure is included. Any translation of the disclosures must be complete and accurate. 12 CFR 1006.18(e)(4).

Example: ABC, Inc.'s initial communication with the consumer takes place in Spanish. ABC, Inc. must disclose in Spanish that it is a debt collector attempting to collect a debt and that any information obtained will be used for that purpose.

11.2 Subsequent communications

In each subsequent communication after the initial communication, the debt collector must disclose that the communication is from a debt collector. 12 CFR 1006.18(e)(2). This disclosure is not required in a formal pleading made in connection with a legal action. 12 CFR 1006.18(e)(3). A debt collector must make the disclosure in the same language or languages that it used for the rest of the communication in which the disclosure is conveyed. Any translation of the disclosure must be complete and accurate. 12 CFR 1006.18(e)(4).

Example: After its initial communication with a consumer, ABC, Inc. has a communication with the consumer that takes place partly in English and partly in Spanish. During this communication, ABC, Inc. must disclose that the communication is from a debt collector in both English and Spanish. This is true even if ABC, Inc.'s initial communication with the consumer took place in Spanish, and ABC, Inc. provided the initial communication disclosure required by 12 CFR 1006.18(e)(1) in Spanish.

12. Validation notices, disputes, and requests for verification and original-creditor information

Section 809(a) of the FDCPA requires a debt collector to send a consumer a written notice containing the following information:

- The amount of the debt;
- The name of the creditor to whom the debt is owed;
- A statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;
- A statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and
- A statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

The debt collector must provide this written notice, sometimes referred to as a validation notice, within five days after the debt collector's initial communication with the consumer, unless the debt collector included the information in its initial communication, or the consumer has paid the debt. For information about initial communications, see Section 11.1.

Additionally, section 809(b) of the FDCPA requires debt collectors to take certain actions and to refrain from taking certain actions if a consumer either disputes the debt in writing or requests the name and address of the original creditor in writing during the thirty-day period after the consumer receives the validation notice. In turn, FDCPA section 809(c) states that a consumer's failure to dispute a debt may not be construed by any court as an admission of liability.

The October 2020 Final Rule implements and interprets FDCPA sections 809(b) and (c) but does not address FDCPA section 809(a). The December 2020 Final Rule implements and interprets FDCPA section 809(a) and further interprets FDCPA sections 809(b) and (c). Currently, the guide only discusses the October 2020 Final Rule. The Bureau will update this guide to include the provisions of the December 2020 Final Rule.

12.1 Overshadowing of rights to dispute or request original-creditor information

During the validation period (i.e., the thirty-day period after a consumer's receipt of the validation notice), a debt collector must not engage in any collection activities or communications that overshadow or are inconsistent with the disclosure of the consumer's rights to dispute the debt and to request the name and address of the original creditor. The Bureau may provide by regulation a safe harbor from the prohibition against overshadowing for debt collectors when they use certain Bureau-approved disclosures. 12 CFR 1006.38(b)(1).

12.2 Requests for original-creditor information

If a consumer sends a request in writing for the name and address of the original creditor within the validation period, a debt collector must cease collection of the debt. The debt collector must cease collection upon receipt of the written request and may not resume collection of the debt until the debt collector sends the name and address of the original creditor to the consumer. If the debt collector wishes to resume collection of the debt, the debt collector must provide the name and address of the original creditor to the consumer in writing or electronically. The Bureau may provide by regulation for alternative procedures when the original creditor is the same as the current creditor. 12 CFR 1006.38(c)(1). If the debt collector provides the information electronically, it must do so in accordance with section 101(c) of the Electronic Signatures in Global and National Commerce Act (E-SIGN Act) (15 U.S.C. 7001(c)). 12 CFR 1006.42(b).

A consumer has requested the name and address of the original creditor in writing if, for example, the consumer:

- Mails the written request to the debt collector.

- Provides the request to the debt collector using a medium of electronic communication through which the debt collector accepts electronic communications from consumers, such as an email address or a website portal.
- Delivers the written request in person or by courier to the debt collector.

Comment 1006.38-1.

12.3 Responses to disputes

If a debt collector receives a dispute in writing from a consumer within the validation period, a debt collector must cease collection of the debt or any disputed portion of the debt. Generally, the debt collector must cease collection upon receipt of the written dispute and may not resume collection until it sends a copy of verification of the debt or a copy of a judgment to the consumer. If the debt collector wants to resume collection of the debt, the debt collector must respond (i.e., provide a copy of the judgment or other verification) in writing or electronically. 12 CFR 1006.38(d)(2)(i). If the debt collector responds electronically, it must do so in accordance with the E-SIGN Act, 15 U.S.C. 7001(c). 12 CFR 1006.42(b).

A consumer has disputed the debt in writing if, for example, the consumer:

- Mails the written dispute to the debt collector.
- Provides the dispute to the debt collector using a medium of electronic communication through which a debt collector accepts electronic communications from consumers, such as an email address or a website portal.
- Delivers the written dispute in person or by courier to the debt collector.

Comment 1006.38-1.

The failure of a consumer to dispute the validity of a debt does not constitute a legal admission of liability by the consumer. 12 CFR 1006.38(d)(1).

12.4 Responses to duplicative disputes

The Debt Collection Rule includes an alternative process for responding to duplicative disputes. A duplicative dispute is a dispute submitted by the consumer in writing within the validation period:

1. That is substantially the same as another written dispute that the consumer previously submitted within the validation period;
2. To which the debt collector already responded as required by the Rule; and
3. That does not include new and material information to support the dispute.

12 CFR 1006.38(a)(1).

A later dispute can be substantially the same as an earlier dispute even if the later dispute does not repeat verbatim the language of the earlier dispute. Comment 1006.38(a)(1)-1. Information is new if the consumer did not provide the information when submitting an earlier dispute. Information is material if it is reasonably likely to change the verification the debt collector provided or would have provided in response to the earlier dispute. Comment 1006.38(a)(1)-2.

Example: ABC, Inc. is collecting a debt from a consumer and sends the consumer a validation notice. In response, the consumer submits a written dispute within the validation period asserting that the consumer does not owe the debt. The consumer does not include any information in support of the dispute. ABC, Inc. mails the consumer a copy of verification of the debt. The consumer then sends a canceled check showing the consumer paid the debt. Because the check is new and material information, the dispute is not duplicative. ABC, Inc. must cease collection until it responds to the dispute as discussed under section 12.3 above.

As an alternative to sending verification of the debt or a copy of the judgment to the consumer, a debt collector that reasonably determines that a dispute is a duplicative dispute may resume collection after sending the consumer a notice in writing or electronically. The notice must:

1. *Inform the consumer that the dispute is duplicative.*
2. *Provide a brief statement of the reasons for the debt collector's determination that the dispute is duplicative.* A debt collector complies with the requirement to provide a brief statement of the reasons for its determination if the notice states that the dispute is substantially the same as an earlier dispute submitted by the consumer and the consumer has not included any new and material information in support of the earlier dispute.
3. *Refer the consumer to the debt collector's response to the earlier dispute.* A debt collector complies with the requirement to refer the consumer to the debt collector's response to the earlier dispute if the notice states that the debt collector responded to the earlier dispute and provides the date of that response. Comment 1006.38(d)(2)(ii)-1.

12 CFR 1006.38(d)(2).

If the debt collector wants to resume collection of the debt, the debt collector must respond in writing or electronically. A debt collector may respond electronically to a dispute that it determines to be duplicative without obtaining the relevant consumer's E-SIGN consent. 12 CFR 1006.38(d)(2)(ii).

13. Sending required disclosures

With certain exceptions noted below, if the FDCPA or the Debt Collection Rule requires a debt collector to provide a written or electronic disclosure, the debt collector must provide the disclosure: (1) in a manner that is reasonably expected to provide actual notice; and (2) in a form that the consumer may keep and access later. 12 CFR 1006.42(a)(1). These requirements generally do not apply to the notice of a reasonable and simple method to opt out as discussed in Section 5, the initial communication disclosure discussed in Section 11.1, or the subsequent communication disclosure discussed in Section 11.2. However, these requirements do apply if these disclosures are included in a written or electronic validation notice sent after the debt collector's initial communication with the consumer or if these disclosures are included in a written or electronic response to a dispute or request for information about the original creditor. 12 CFR 1006.42(a)(2).

Generally, a debt collector satisfies these requirements if the debt collector mails a printed copy of a disclosure to the consumer's last known address. However, mailing a printed copy to the last known address does not satisfy the requirement if the debt collector, at the time of mailing, knows or should know that the consumer does not currently reside at, or receive mail at, that location. Comment 1006.42(a)(1)-3. Additionally, a debt collector who sends a required disclosure in writing or electronically and who receives a notice that the disclosure was not delivered has not sent the disclosure in a manner that is reasonably expected to provide actual notice. Comment 1006.42(a)(1)-2.

If a consumer has opted out of debt collection communications by email to a particular email address or by text to a particular telephone number, a debt collector cannot use that email address or telephone number to send required disclosures. Comment 1006.42(a)(1)-4.

In determining whether a debt collector has provided the disclosure in a manner that is reasonably expected to provide actual notice, relevant factors include whether the debt collector:

- Identified the purpose of the communication by including, in the subject line of an electronic communication transmitting the disclosure, the name of the creditor to whom the debt currently is owed or allegedly is owed and one additional piece of information identifying the debt. The additional piece of information might be a truncated account number, the name of the original creditor, the name of any store brand associated with the debt, the date of sale of a product or service giving rise to the debt, the physical

address of service, or the billing or mailing address on the account. The additional piece of information may not be the amount of the debt.

- Permitted receipt of notifications of undeliverability from communications providers, monitored for any such notifications, and treated any such notifications as precluding a reasonable expectation of actual notice for that delivery attempt.
- Identified itself as the sender of the communication by including a business name that the consumer will be likely to recognize, such as the name included in a creditor's notice sent to satisfy the reasonable procedures for a bona fide error defense discussed in Section 6.2.2 or the name that the debt collector used in a prior limited-content message left for the consumer or in an email message sent to the consumer.

Comment 1006.42(a)(1)-1.

If a debt collector sends certain disclosures electronically, the debt collector must send the disclosures in accordance with the E-SIGN Act. As discussed in Section 12, a debt collector must send a validation notice to a consumer within five days of the debt collector's initial communication with the consumer, unless the debt collector included the information in its initial communication with the consumer or the consumer paid the debt. If the debt collector includes the validation notice in its initial communication, the debt collector can send the validation notice electronically without regard to the E-SIGN Act. However, if the debt collector electronically sends the validation notice to a consumer after the debt collector's initial communication with the consumer (i.e., does not include the validation notice in its initial communication with the consumer), the debt collector must send the validation notice in accordance with the E-SIGN Act, 15 U.S.C. 7001(c). Additionally, if the debt collector electronically discloses information in response to a request for information about the original creditor or for verification of the debt, the debt collector must do so in accordance with the E-SIGN Act, 15 U.S.C. 7001(c). 12 CFR 1006.42(b).

14. Record retention

Generally, a debt collector must retain records that are evidence of compliance or noncompliance with the FDCPA and the Debt Collection Rule starting on the date that the debt collector begins collection activity on a debt until three years after the debt collector's last collection activity on the debt. 12 CFR 1006.100(a). However, there is a special rule for retaining telephone call recordings.

Nothing in the Debt Collection Rule prohibits a debt collector from retaining records that are evidence of compliance or noncompliance with the FDCPA and the Rule for more than three years after the applicable date. Comment 1006.100-1

If a debt collector records a telephone call made in connection with the collection of a debt, the debt collector must retain the recording for three years after the date of the telephone call. 12 CFR 1006.100(b). The Debt Collection Rule does not require a debt collector to record telephone calls, and this special record retention rule only applies if the debt collector chooses to record telephone calls. See comment 1006.100(b)-1.

14.1 Scope of records to be retained

A debt collector must retain records that evidence that the debt collector performed the actions and made the disclosures required by the FDCPA or the Debt Collection Rule, as well as records that evidence that the debt collector refrained from conduct prohibited by the FDCPA or Rule. If a record is of a type that could evidence compliance or noncompliance depending on the conduct of the debt collector that is revealed within the record, then the record is one that is evidence of compliance or noncompliance and the debt

collector must retain it. Such records include, but are not limited to, records that evidence that the debt collector's communications and attempts to communicate in connection with the collection of a debt complied (or did not comply) with the FDCPA and Rule. For example, a debt collector must retain telephone call logs as evidence of compliance or noncompliance with the prohibition against harassing telephone calls. Comment 1006.100(a)-1.

☐ A debt collector must have (or have access to) records reasonably substantiating its claim that a consumer owes a debt in order to avoid engaging in deceptive or unfair collection practices in violation of the Debt Collection Rule when it attempts to collect the debt. Thus, records reasonably substantiating a debt collector's claim that a consumer owes a debt are records that are evidence of compliance or non-compliance.

The Debt Collection Rule does not require a debt collector to create additional records for the sole purpose of evidencing compliance with the Rule. For example, the Rule does not require a debt collector to create call logs showing that it has not attempted to communicate with any consumers at times that the consumers designated as inconvenient. However, if the debt collector creates call logs (such as for business purposes or to comply with other applicable laws or requirements), the call logs are evidence of compliance or noncompliance with the Rule, and the collector must retain them. Comment 1006.100(a)-2.

14.2 Retention period

Generally, a debt collector must retain records starting on the date that the debt collector begins collection activity on a debt and keep them for at least three years after the debt collector's last collection activity on the debt. 12 CFR 1006.100(a).

An event such as the debt collector transferring the debt for consideration to another party would start the running of the debt collector's three-year record retention clock with respect to the debt, provided that the transfer of the debt represents the debt collector's last collection activity on the debt. In contrast, the debt's discharge in bankruptcy, or the consumer's curing of default on the debt, would not represent the time at which the three-year record retention clock starts to run if the debt collector

continues collection activity on the debt after that time, such as might occur when the debt is secured and an enforceable lien on the collateral that secured the debt survives the bankruptcy discharge (and collection activity pursuant to the lien continues after the discharge). Comment 1006.100(a)-4.

As noted above, there is a special rule that applies if a debt collector records a telephone call made in connection with the collection of a debt. In that case, the debt collector must retain the recording for not less than three years after the date of the telephone call. 12 CFR 1006.100(b).

- ☞ Although the Debt Collection Rule does not require debt collectors to retain any records beyond three years after the debt collector's last collection activity on the debt, restarting debt collection activity at any time would mean that the last collection activity on the debt had not yet occurred.
- ☞ A debt collector may keep records for a period that is longer than the retention period required pursuant to the Debt Collection Rule. Additionally, other applicable laws may require the debt collector to retain records for a longer period.

14.3 Form of records

The Debt Collection Rule does not require a debt collector to retain actual paper copies of documents. Records may be retained by any method that reproduces the records accurately (including computer programs) and that ensures that the debt collector can easily access the records (including a contractual right to access records possessed by another entity). Comment 1006.100(a)-3.