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By Electronic Submission and Post

Comment Intake – Debt Collection
Bureau of Consumer Financial Protection
1700 G Street, NW
Washington, DC 20552

Re: Docket No. CFPB-2019-0022/RIN 3170-AA41

Dear Director Kraninger:

The Receivables Management Association International (RMAI) is pleased to submit our comments to the proposed Debt Collection Practices Rule (Regulation F) issued by the Consumer Financial Protection Bureau (the Bureau) on May 6, 2019 (Docket No. CFPB-2019-0022/RIN 3170-AA41).

RMAI would like to begin our comments on the proposed rule with a statement of sincere gratitude to the Bureau and its staff in thoughtfully reflecting on the comments you received in the 2013 Advanced Notice of Proposed Rulemaking (ANPR) and the 2016 Small Business Regulatory Enforcement Fairness Act (SBREFA) process which ultimately resulted in the proposed rule that is before us today. It is clear to RMAI that the Bureau is attempting to develop reasonable rules that equally reflects the concerns of both the consumer and business communities.

As background, RMAI is the nonprofit trade association that represents more than 500 companies that purchase or support the purchase of performing and nonperforming receivables on the secondary market. RMAI member companies work in a variety of financial services fields, including debt buying companies, collection agencies, law firms, originating creditors, international members, and industry-related product and service providers. RMAI's Receivables Management Certification Program (also referred to as RMCP)[1] [see Appendix A] and its Code

[1] Receivables Management Association International, *Receivables Management Certification Program* (February 25, 2019), publicly available at https://rmaintl.org/RMCP (last accessed August 18, 2019).

of Ethics[2] [see Appendix B] set the "gold standard" within the receivables management industry due to their rigorous uniform industry standards of best practice which focuses on protecting consumers.

General principles

RMAI's response is developed from six overarching principles:

- Consumer access to credit is a privilege – not a right. When this privilege is exercised responsibly, everyone benefits – consumer borrowers, lenders and, ultimately, the nation's economy.

- The rule should protect and promote ethical debt collection practices, which safeguards the rights of consumers and provides rules of the road for collectors.

- The rule should be as clear as possible (which benefits both consumers and businesses) by utilizing unambiguous text; providing reasonable but effective remedies; and adopting appropriate safe harbors for good faith efforts to comply with the law.

- When practical, the rule should adopt the industry best practices contained in the RMAI certification program as they were designed to go above and beyond state and federal requirements and have already been successfully adopted by leading segments of the receivables industry.

- The rule should reflect modern life by embracing communication technologies that consumers actively use today rather than outdated modes of communication that were in use more than 40 years ago when the FDCPA was adopted. It should also contain the flexibility to adapt with future innovations in communication technologies.

- The rule should have universal applicability to all debt that has been charged off (or the equivalent thereof) in order to ensure that consumers are treated fairly and equitably. Neither consumers nor the receivables industry will benefit from maintaining different or conflicting standards based on the entity performing the collection activity or the type of asset class being collected. Ultimately, it will cause needless confusion and mistrust within the system of collection in the United States to not maintain universal application of the rules.

[2] Receivables Management Association International, *Code of Ethics* (August 13, 2015), publicly available at https://rmaintl.org/ethics (last accessed August 18, 2019).

Industry Overview

The importance of receivables in a credit-based economy

The use of credit is the cornerstone of the United States financial system. Consumers, businesses, and local, state, and federal governments all rely on the availability and extension of credit to purchase goods and services. A credit-based economy is dependent on free-market principles that support the extension of credit, such as the right to contract and the right to possess and dispose of property.

An account receivable is the byproduct of an extension of credit because it represents the promise to repay the creditor for the credit that was extended for the purchase of goods or services. An account receivable is an asset that can be purchased and sold just like any other asset. Debt buying companies are businesses that purchase receivable portfolios from originating creditors or other debt buying companies on the secondary market. When a debt buying company purchases an account from a creditor, it purchases the contract and all rights, benefits, and liabilities associated with the contract that were held by the creditor. These purchases can include accounts that are performing (i.e., making payments), as well as those that are non-performing (i.e., in default).[3]

The free marketability of receivables creates significant benefits to both the business and consumer communities. For consumers, it allows credit to be widely available, keeps the cost of credit lower, provides greater socio-economic advancement opportunities, and enhances the availability of products, services, and conveniences. For businesses, it facilitates the sale and reinvestment of corporate assets, permits small businesses to compete against larger companies, and allows companies to change their business models based on evolving corporate priorities.[4]

Furthermore, secondary market resale transactions offer consumers unique benefits that are not always available when accounts are retained by originators or first tier purchasers. When banks and other originators initially sell their receivable portfolios, they tend to rely on a limited number of national debt buying companies due to convenience and the companies' ability to handle multiple asset-classes over a broad geographic range of operations. However, due to the significant volume and complexity of accounts maintained by large debt buying companies, it is not unusual for some to resell their special asset or state-specific accounts on the secondary market to state, regional, or specialty asset companies that are more familiar with the customers and nuances in a particular market. This provides consumers with a host of benefits, including

[3] David E. Reid, *The Debt Buying Industry*, Receivables Management Association International White Paper (April 2015), publicly available at https://rmaintl.org/DebtBuyingWhitePaper (last accessed August 16, 2019).
[4] *Securitization of Assets: Problems and Solutions, Testimony before the U.S. Senate Committee on Banking, Housing, and Urban Affairs*, 111th Congress, 1st session, p. 25 (2009) (Testimony of Mr. George Miller), publicly available at https://www.govinfo.gov/content/pkg/CHRG-111shrg56262/pdf/CHRG-111shrg56262.pdf (last accessed August 16, 2019).

but not limited to: (1) greater access to lower-cost settlements, (2) increased sensitivity to local circumstances, (3) superior expertise in a particular asset category, and (4) certain enhanced consumer services.[5]

RMAI and its members understand that almost no one enters a consumer-creditor relationship with any intent other than making the required payments for the credit, product, or service that was received. However, life intervenes with unexpected events such as job losses, health emergencies, loss of spousal income, or economic downturns that disrupt prior intentions. The writers of the United States Constitution anticipated these "personal recessions" by granting Congress the authority to enact "uniform Laws on the subject of Bankruptcies."[6] But those who do not pursue the fresh start available under the Bankruptcy Code remain in a debtor/creditor relationship and as in all contractual relationships the contract confers rights and responsibilities upon each party to the agreement, including the right of the creditor to receive payment.

The role the RMAI Certification Program has played in the industry

Rolled out in 2013, RMAI's Certification Program sets best practices and industry standards and is an important pro-consumer effort[7] led by the receivables management industry. The result has been to provide consumers the protections they need and deserve, without constructing artificial barriers to the professional and ethical collection of legitimate receivables.

While the program was first designed to certify debt buying companies, it has expanded to include certifications for law firms, collection agencies, and vendors (e.g., receivable brokers). Currently, 220 individuals and 135 companies hold these internationally respected certifications. These individuals and companies are committed to upholding standards that in the vast majority of cases exceed current state and federal laws, regulations, and rules. Presently, all of the largest debt buying companies in the United States are RMAI certified and we estimate that approximately 80 to 90 percent of all recently charged-off receivables that have been sold on the secondary market are owned by an RMAI certified company.

A review of the Bureau's Consumer Response Portal (the Portal) shows that 97.97 percent of RMAI's certified companies (the vast majority being small businesses) are either complaint-free or have maintained a statistical zero-percent complaint rate on the Portal since the Bureau started tracking debt collection complaints/inquiries in July 2013. Only 2.27 percent of certified

[5] David E. Reid, *The Value of Resale on the Receivables Secondary Market*, Receivables Management Association International White Paper (April 2016), publicly available at https://rmaintl.org/SecondaryMarketWhitePaper (last accessed August 16, 2019).
[6] U.S. Const. art. 1, § 8, cl. 4.
[7] RMCP's Mission Statement reads in part, the certification program "is an industry self-regulatory program administered by RMAI that is designed to provide enhanced consumer protections through rigorous and uniform industry standards of best practice."

companies have a complaint/inquiry volume of greater than one percent with the remaining 0.76 percent of certified companies being rounded up to a one percent complaint/inquiry rate.

A before-and-after analysis of lawsuits filed against RMAI certified businesses found that after certification, litigation on average decreased by 20.8 percent in the seven-year span from 2012-2018. During the same time-period, litigation against all businesses in the receivables industry increased by 3.1 percent, with Fair Debt Collection Practices Act (FDCPA), Fair Credit Reporting Act (FCRA), and Telephone Consumer Protection Act (TCPA) lawsuits experiencing a 3.5 percent decrease, 13.5 percent increase, and a 26.7 percent increase, respectively. The correlation between RMAI certified businesses and a 20.8 percent decrease in lawsuits, compared to the industry as a whole, reinforces the beneficial effect of the program's high standards and its focus on compliance.[8]

Highlights of the RMAI certification program include a commitment to ongoing education, independent third-party audits, designation of a company Chief Compliance Officer ("CCO"), and compliance with robust standards including:

- Vendor Management: Ensuring that anyone with access to or contact with consumer accounts adheres to the same criteria as the certified company, including assurance of data security systems/policies.

- Data & Documentation Integrity: Compliance with a comprehensive list of data and documentation requirements that exceeds all state and federal requirements. Version 7.0 of the RMAI certification program currently maintains unique asset class criteria for auto, credit cards, bankruptcy, judgments, and medical receivables. RMAI anticipates rolling out specific criteria for student loans and fin-tech in version 8.0 in first quarter 2020.

- Consumer Disputes: Creating a culture that promotes open lines of communication with consumers to address disputes regardless of the mode of communication the consumer chooses to use. When RMAI's certification standards are viewed in their entirety, they provide a level of consumer protection unseen elsewhere within the receivables industry. The standards include, but are not limited to, requirements that all certified businesses be registered on the Bureau consumer portal, maintain well-defined dispute policies, proactively address issues in credit reports, provide consumers direct access to the CCO, and prohibit the sale or resale of accounts that are currently in dispute or have been identified as fraudulent.

[8] Pamela Hong, *The Impact of the Receivables Management Certification Program on Litigation*, Receivables Management Association International White Paper (June 2019), publicly available at https://rmaintl.org/LitigationWhitePaper (last accessed August 16, 2019).

- Portfolio-Sale Standards: Ensuring the integrity of account information and transparency in the sale and resale process is paramount. Standards on chain-of-title, due diligence in the portfolio review, and representations and warranties in the purchase-and-sale agreement combine to ensure the integrity of the account information, thereby providing important consumer protections.

RMAI is appreciative of the Bureau's references to RMAI's certification program in both the 2016 SBREFA outline[9] and the 2019 proposed rule[10] as it helps to reinforce our ongoing efforts within the broader industry. Importantly, as original creditors see the value of the certification program, we are seeing an increase in the number of creditors requiring that their approved buyers be RMAI certified.

Statutory and Regulatory Burdens

Antiquated laws

The receivables management industry in the United States suffers from antiquated laws and regulations – the primary example being the FDCPA, adopted by Congress in 1977. It might seem odd to reference a 42-year-old statute as antiquated, but for an industry that is dependent on communications and technology in the way that the receivables management industry is, such a characterization is appropriate considering the statute has not been updated to address the tectonic advancements that have occurred in communications and technology since its enactment.

To read the FDCPA, one would think the use of a telegram is a common practice in debt collection. In fact, the only modes of communication addressed in the FDCPA are "mail" (7 references), "telephone" (5 references), and "telegraph" (3 references). Absent are any references to cell phones, personal computers, emails, text messages, chat boxes, smartphone apps, answering machines, voicemail, social-media platforms, and the Internet.

The lack of clarity as it relates to modern technology in the FDCPA has resulted in a complex patchwork of judicial decisions, many of which come to contradictory conclusions, stretching from coast to coast. This has created an environment where law-abiding businesses face lawsuit after lawsuit concerning whether their business practices conform to the requirements of the FDCPA. Industry members want to follow the law, but it is difficult, if not impossible, with conflicting court decisions and an absence of clear guidelines or safe harbors. The evolution of the FDCPA is inconsistent with the law's stated purpose – "to insure that those debt collectors

[9] See, footnotes 85 and 92; http://files.consumerfinance.gov/f/documents/20160727_cfpb_Outline_of_proposals.pdf.
[10] See, footnotes 378, 402, 647, and 743; https://files.consumerfinance.gov/f/documents/cfpb_debt-collection-NPRM.pdf.

who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses" (emphasis added).[11]

Similar challenges exist with the TCPA which was adopted in 1991. The TCPA contains only two references to cell phones and zero references to text messaging despite the fact that it is supposed to provide guidance on phone solicitations. But given that only 3 percent of the U.S. population had cell phones in 1991[12] (compared to 96 percent today)[13] and the first text message was sent a year after the TCPA's adoption, the lack of references should not be surprising. Similar to the FDCPA, without statutory amendments, courts have been left to interpret the law's applicability to modern communication technology which has only created more uncertainty following conflicting judicial decisions.

In the end, what is most important for consumers is to be able to communicate with businesses in the modern modes that they have grown accustomed to and prefer rather than creating artificial barriers to communication. With continued rapid changes in technology, any solution must stress flexibility over rigidity. To demonstrate the scope of the problem with the aforementioned laws, one only needs to point to the Centers for Disease Control and Prevention's 2018 National Health Interview Survey,[14] which indicated that 57.1 percent (50.8 percent in their 2016 survey[15]) of homes only had cellphone service.

Lack of regulation

Compounding the problem, in the case of the FDCPA, was that the Federal Trade Commission (FTC), the government agency with primary oversight of the FDCPA from 1977 to 2011, had no rulemaking authority to provide much-needed clarifications. Had Congress chosen to provide FDCPA rulemaking authority in the original act, it could have stemmed decades of needless litigation and conflicting judicial interpretations which have confounded the industry and consumers alike. With the adoption of the Dodd–Frank Wall Street Reform and Consumer Protection Act in 2010 (Dodd-Frank), this much-needed rulemaking authority was granted the

[11] 15 U.S.C. 1692(e).
[12] Percentages calculated from CTIA (the nonprofit trade association representing the wireless communications industry) statistics on wireless subscribers; see, http://files.ctia.org/pdf/CTIA_Survey_Year-End_2008_Graphics.pdf (last accessed August 16, 2019).
[13] Pew Research Center, *Mobile Fact Sheet* (June 12, 2019), publicly available at https://www.pewinternet.org/fact-sheet/mobile/ (last accessed August 16, 2019).
[14] Stephen J. Blumberg, Ph.D., and Julian V. Luke, *Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, July-December 2018*, U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Health Statistics (June 2019), publicly available at https://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201906.pdf (last accessed August 16, 2019).
[15] Stephen J. Blumberg, Ph.D., and Julian V. Luke, *Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, July-December 2016*, U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Health Statistics (May 2017), publicly available at https://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201705.pdf (last accessed August 16, 2019).

newly authorized Bureau. However, with eight years having passed since the July 21, 2011, official start of the Bureau, the much-anticipated clarity the industry has long sought is only now becoming a reality with the issuance of the NPRM.

RMAI favors a strong role for government in the regulation of the receivables management industry. RMAI equally believes in the importance of a strong self-regulatory role for the industry given our ability to quickly respond to market trends. A strong self-regulatory program that focuses on robust consumer protections benefits both consumers and the industry. RMAI members want to ensure that there can be no room for bad actors in the industry as they not only harm consumers but also reputationally harm by association all of the companies that are following the letter of the law.

RMAI welcomes the proposed rules and looks forward to its adoption after public comment and review process occurs.

However, effective regulation cannot occur in a vacuum, it requires a thoughtful understanding of the role of debt collection in the consumer-credit cycle and accurate identification of any systemic problems that need to be addressed. RMAI cautions the Bureau to avoid calls for onerous regulations that are ultimately designed to target the behavior of a few outlying entities but will have the effect of harming the business operations of the vast majority of the industry that are complying with the law. Instead, the Bureau should ask whether the benefits of any proposed regulation will exceed the unintended costs of those regulations on the consumer population.

A 2015 Working Paper[16] that was published by the Mercatus Center at George Mason University generally captured RMAI's cost-benefit concerns when it concluded that:

- Bad regulations can injure consumers and the economy.
- Riskier borrowers (those most likely to default) tend to be most harmed by increased restrictions on collection practices.
- Additional regulations often force lower income users to turn to higher-risk products such as payday lending and auto title loans.
- Small businesses should not be disproportionately burdened by unnecessary regulatory compliance costs which tend to force unnecessary consolidations within the industry.

[16] Todd J. Zywicki, *The Law and Economics of Consumer Debt Collection and Its Regulation*, Mercatus Working Paper, Mercatus Center at George Mason University (September 2015), publicly available at https://www.mercatus.org/system/files/Zywicki-Debt-Collection-v2.pdf (last accessed August 16, 2019).

- Regulations should be based on careful cost-benefit analysis and consider changing consumer lifestyles and communication technologies.

Several independent and unrelated research articles prepared by economists at Federal Reserve Banks have also identified a link between the availability of consumer credit and over-regulation of the banking and collection industry. A 2017 Federal Reserve of New York staff report[17] used empirical analysis to conclude that increased impediments on the collection of debt would have a corresponding decrease in access to consumer credit. The authors divided the 50 states into two groups in their analysis – states that had adopted increased restrictions on the collection of debt and states that had not. The results of the study showed "restricting collection activities leads to a decrease in access to credit and to a deterioration in indicators of financial health." While the decrease in access to credit was seen across all credit scores, it was more prevalent with those who had lower credit scores.

Similar results were identified in a 2015 Federal Reserve Bank of Philadelphia working paper,[18] which found a "statistically significant" correlation between the adoption of state debt-collection laws and the reduction of consumer credit. Specifically, it found that an increase in debt-collection requirements resulted in a 16 percent decrease in the number of debt collectors and lowered recovery rates on charged-off credit cards by nine (9) percent, which resulted in a reduction of new revolving lines of credit by approximately two (2) percent. Based on this, the paper's author concluded that "stricter debt collection laws reduce the effectiveness of contract enforcement in consumer credit markets and reduce the availability of revolving debt."

Finally, the Federal Reserve Bank of Minneapolis published a research paper[19] in 2013 that found that the median reduction in profitability of community banks with less than $50 million in assets was 45 basis points when they had to increase staffing by two employees due to additional regulatory burdens. The staffing increases on small financial institutions were based on the expected cost of salary for professionals possessing the necessary skills and capabilities to oversee the regulatory requirements. The additional costs were expected to result in 33 percent of small community banks becoming unprofitable. This research paper was cited by the Federal Reserve Bank of Dallas[20] in analyzing the precipitous drop in the number of small-sized and

[17] Julia Fonseca, Katherine Strair, Basit Zafar, *Access to Credit and Financial Health: Evaluating the Impact of Debt Collection*, Federal Reserve Bank of New York, Staff Report 814 (May 2017), publicly available at https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr814.pdf?la=en (last accessed August 16, 2019).
[18] Viktar Fedaseyeu, *Debt Collection Agencies and the Supply of Consumer Credit*, Federal Reserve Bank of Philadelphia – Working Paper 15-23 (June 2015), publicly available at https://www.philadelphiafed.org/-/media/research-and-data/publications/working-papers/2015/wp15-23.pdf (last accessed August 16, 2019).
[19] Ron J. Feldman, Jason Schmidt, Ken Heinecke, *Quantifying the Costs of Additional Regulation on Community Banks*, Federal Reserve Bank of Minneapolis – Economic Policy Paper 13-3 (May 2013), publicly available at https://www.minneapolisfed.org/research/economic-policy-papers/quantifying-the-costs-of-additional-regulation-on-community-banks (last accessed August 16, 2019).
[20] Preston Ash, Christoffer Koch and Thomas F. Siems, *Too Small to Succeed?— Community Banks in a New Regulatory Environment*, The Federal Reserve Bank of Dallas, "Financial Insights", Vol. 4 Issue 4 (December 31,

medium-sized community banks between 1992 and 2015. RMAI can confirm that a similar correlation has taken place within the receivables industry since 2011. With the adoption of new compliance requirements by state and federal entities over the last eight years, there has been a similar precipitous drop in debt buying companies, collection agencies, and collection law firms within the industry. RMAI is in strong favor of a regulatory framework that would embrace the value of maintaining a robust and compliant marketplace.

It is important to note that RMAI does not cite the aforementioned reports by the Mercatus Center and the Federal Reserve Banks to discourage the adoption of regulations; rather, it cites those reports merely to remind the Bureau of the possible negative consequences to both consumers and industry that comes from over-regulation and to highlight the importance the cost-benefit analysis should have on the final rule.

RMAI Analysis of the Proposed Rules

Below, please find RMAI's comments and observations on the proposed rules broken down by section. If a section from the rule is not addressed, it is because RMAI is generally supportive of the proposed rule's provisions and do not have any comments to contribute.

I.	Subject:	Attempt to Communicate (definition)
	Section(s):	1006.2(b)
	Rule Page(s):	449
	Analysis Page(s):	49-51
	Interpretation Page(s):	493-494

The Bureau requests comment on proposed § 1006.2(b) and on proposed comment 2(b)–1.[21]

RMAI generally supports the proposed definition of "attempt to communicate" but requests an amendment to clarify the phrase "or other contact" in order to prevent absurd interpretations being asserted by litigious individuals. We agree with the Bureau's need to have a definition that includes "a broader range of conduct than the proposed definition of communication"[22] so as to encompass limited-content messages. However, RMAI is concerned that certain attempts to communicate are so detached from the collection of a debt that there is no rational basis to include such communications within the proposed definition.

2015), publicly available at https://www.dallasfed.org/~/media/documents/outreach/fi/2015/fi1504.pdf (last accessed August 16, 2019).

[21] NPRM, p. 51.

[22] NPRM, p. 51.

As the phrase "or other contact" is not limited to the conveying of information concerning a debt, all communications made by debt collectors to any person concerning anything become an "attempt to communicate." A debt collector placing an order for office supplies, communicating with her attorney, or ordering lunch for the office, all become attempts to communicate. RMAI believes that the Bureau did not intend such communications to be encompassed within the proposed definition, particularly if the proposed definitions would cover a debt collector's personal, non-commercial communications. We urge the Bureau to adopt a definition that avoids the potential for overly broad interpretations by including within the definition a requirement that the attempt to communicate concerns or is related to a debt or an alleged debt. The Bureau should also provide exemptions similar to those contained in section 805(b); namely, that a debt collector does not engage in an attempt to communicate when the debt collector initiates contact with "a consumer reporting agency if otherwise permitted by law, the creditor, an attorney, agent or vendor of the creditor, or an attorney, agent or vendor of the debt collector."[23] RMAI suggests the Bureau consider adopting the following revised definition:

> "*Attempt to communicate* means any act to initiate a communication or other contact with any person through any medium, including by soliciting a response from such person, when such act is related to or concerns a debt or alleged debt. A debt collector does not engage in an attempt to communicate when undertaking any act to initiate a communication or other contact with a consumer reporting agency if otherwise permitted by law, the creditor, an attorney, agent or vendor of the creditor, or an attorney, agent or vendor of the debt collector. An attempt to communicate includes providing a limited-content message, as defined in paragraph (j) of this section."

Under this revised definition, the Bureau's intent of covering "a broader range of conduct than the proposed definition of communication," is left intact because the attempt to communicate is still not required to include the conveyance of information concerning a debt. However, the attempt to communicate must at least be related to a debt or an alleged debt.

II.	Subject:	Consumer (definition)
	Section(s):	1006.2(e) 1006.6(a)
	Rule Page(s):	449 452
	Analysis Page(s):	52-55 71-78
	Interpretation Page(s):	496-497

[23] See § 805(b). We believe that the addition of "agent" and "vendor" is appropriate given the broad coverage of the proposed definition.

The Bureau requests comment on the definition of consumer in proposed § 1006.2(e), including on whether the definition should include deceased consumers.[24]

RMAI supports the proposed definition of "consumer" as it appears in section 1006.2(e) which is inclusive of the definition which appears in section 1006.6(a). In particular, RMAI appreciates the Bureau including deceased consumers within the definition. In general, RMAI members have long considered deceased individuals as being covered by the FDCPA and as such we anticipate little to no impact on our membership. Providing additional clarity regarding who should receive a validation notice and who has the right to dispute a debt will help all interested parties to resolve the debt in a consumer's estate.

The Bureau requests comment on proposed § 1006.6(a)(4).[25]

RMAI supports the inclusion of the executor or administrator of a consumer's estate, if the consumer is deceased, in proposed section 1006.6(a)(4). However, rather than relying solely on the commentary to clarify that the terms "executor" and "administrator" includes the personal representative of a consumer's estate, RMAI requests section 1006.6(a)(4) explicitly state that the term consumer includes a "personal representative" of an estate. RMAI recommends the following minor edit in section 1006.6(a)(4) for the Bureau's consideration: "The executor [~~or~~], administrator or personal representative of the consumer's estate, if the consumer is deceased."

The Bureau requests comment on the scope of the definition of personal representative in proposed comment 6(a)(4)–1 and on any ambiguity in the illustrative descriptions of personal representatives. The Bureau specifically requests comment on experiences under the FTC's Policy Statement on Decedent Debt.[26]

RMAI supports the Bureau's commentary in defining a personal representative of the consumer's estate as "any person who is authorized to act on behalf of the deceased consumer's estate." RMAI agrees that proposed comment 6(a)(4)–1's adoption of the general description of the term personal representative from Regulation Z, 12 CFR 1026.11(c), comment 11(c)–1 (persons "authorized to act on behalf of the estate"), rather than the general description found in the FTC's Policy Statement (persons with the "authority to pay the decedent's debts from the assets of the decedent's estate"), is non-substantive. RMAI appreciates that the Bureau appears to have provided a non-exhaustive list of persons with such authority in the commentary but recommends expressly stating in the commentary that the list of persons with such authority is illustrative, and not exhaustive, due to differences in state law.

[24] NPRM, p. 55.
[25] NPRM, p. 74.
[26] NPRM, p. 75-76.

The Bureau requests comment on proposed § 1006.6(a)(5), including on the benefits and risks of communications about debts between debt collectors and confirmed successors in interest.[27]

RMAI supports the inclusion of a confirmed successor in interest, as defined in Regulation X, 12 CFR 1024.31, and Regulation Z, 12 CFR 1026.2(a)(27)(ii), in the definition of consumer found in 1006.6(a). Individuals with an ownership interest in a particular asset of a decedent's estate will desire open communication regarding the debt. As such, RMAI sees no risk related to permitting communications between debt collectors and confirmed successors-in-interest.

Comment on "Waiting Period"

Most debt collectors involved with estate recovery apply a self-imposed waiting period before commencing collection attempts as agencies specializing in decedent debt are sensitive to the fact that no family desires collection calls or letters in the days following the passing of a family member.

While the Bureau's proposed rule contains no "waiting period" requirement prior to commencing collection activities, RMAI supports the inclusion of such a waiting period. Since probate in most states cannot even begin until some period of time elapses after death, usually 7-10 days, RMAI would support the establishment of a fourteen (14) day waiting period on collection-related activities from the date of passing. RMAI considered suggesting a longer waiting period but since some states require a claim to be filed within a relatively short period of time following the date of death, we thought 14 days would be reasonable. We would recommend against any waiting period beyond thirty (30) days.

III.	Subject:	Debt (definition)
	Section(s):	1006.2(h)
	Rule Page(s):	449-450
	Analysis Page(s):	55-56
	Interpretation Page(s):	N/A

In general

RMAI recommends a single definition for the term "debt" rather than creating a bifurcated definition as envisioned in the proposed rule which requires the reader to understand the nuances between the FDCPA and the Dodd-Frank Act. RMAI believes that the ambiguity resulting from a bifurcated definition will lead to inconsistent judicial interpretations. For purposes of clarity, as well as consistency with prior regulatory and judicial decisions, RMAI advocates for the

[27] NPRM, p. 78.

definition provided in the FDCPA at 15 U.S.C. 1692a(5), which is similar to the definition contained in the proposed rule except for the reference to the Dodd-Frank Act.

If there is a reason to reference the application of the term "debt" within the Dodd-Frank Act, RMAI suggests limiting it to a specific section or context for clarity. The use of the wording "the term debt means debt as that term is used in the Dodd-Frank Act" is unnecessary and confusing.

IV.	Subject:	Limited-Content Messages (definition)
	Section(s):	1006.2(j)
	Rule Page(s):	451-452
	Analysis Page(s):	57-70
	Interpretation Page(s):	494-496

The Bureau requests comment on whether the proposal to define a limited-content message that a debt collector could leave for a consumer without risking a violation of FDCPA sections 805(b) or 807(11) will enable debt collectors to establish contact with consumers while reducing the number of telephone calls that consumers receive. The Bureau further requests comment on the costs and benefits of permitting debt collectors to leave limited-content messages for consumers, including on whether those costs and benefits differ depending on whether a debt collector leaves a limited-content message: (1) in a voicemail message on a home, mobile, or work telephone; (2) in a live conversation with a third party who answers the consumer's home, mobile, or work telephone number; or (3) by text message.[28]

RMAI appreciates the Bureau's proposal to add a limited-content message and believes that the use of those messages will enable debt collectors to establish contact with consumers through the placement of significantly fewer calls.

In responding to a recent RMAI survey, only 55.3 percent of respondents indicated they currently leave some form of voice message while 44.7 percent simply hang up the phone when there is no live answer. RMAI believes a 55.3 percent message rate is low given the importance of the information the business is calling to discuss with the consumer. This low rate is nonetheless understandable given the potential risk of liability caused by the lack of reference to message recording technology in the FDCPA. RMAI could not find any statistical evidence of the prevalence of telephone answering machines in 1977 when the law was enacted; however, the fact that by 1987 only 10 percent of households had telephone answering machines[29]

[28] NPRM, p. 65-66.
[29] Ramirez, Anthony. "All About/Answering Machines; For Yuppies, Now Plain Folks, Too." *The New York Times* 27 Jan. 1991: https://www.nytimes.com/1991/01/27/business/all-about-answering-machines-for-yuppies-now-plain-folks-too.html.

suggests that the percentage was infinitesimal and would explain why the technology was not referenced.

Had Congress provided rulemaking authority when the FDCPA was enacted, RMAI firmly believes it would have avoided, if not curtailed, decades of FDCPA litigation surrounding the use of new communication technologies.[30] Until Congress provided this authority in 2010, courts were left to interpret the statute on a case-by-case basis, which unfortunately resulted in a wide range of judicial opinions that provided little to no conclusive guidance to the industry.[31] The ability to leave limited-content messages will almost certainly reduce litigation costs for debt collectors that are currently trying to leave messages that they believe are compliant with current judicial interpretations but nevertheless result in FDCPA litigation.[32]

With clear Bureau guidance on this subject matter, 91.7 percent of RMAI members indicated that they would provide a limited-content message that operated as a safe harbor when attempting to contact a consumer by phone and 59.2 percent anticipated placing fewer calls as a result.

The presumption that many people make is that consumers don't want to speak to debt collectors. RMAI does not believe this to be true. The fact of the matter is that people are being constantly bombarded with calls, whether it be from telemarketers, political candidates, time share opportunities, requests for donations, or countless fraudulent scams, that they have chosen not to answer any calls and instead to let them all go to voice mail. The feeling being that if it is a legitimate call, the caller will leave a message. This dynamic, given the hesitancy of debt collectors to leave messages in the current legal environment, leaves consumers who would like to resolve their debt at a disadvantage: calls without messages continue, leading to consumer frustration and complaints; some accounts continue to accrue fees or interest as time passes

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[30] Melissa Travis, COMMENT: THE THREE Cs VERSUS THE DINOSAUR: UPDATING THE TECHNOLOGICALLY ARCHAIC FDCPA TO PROVIDE CONSUMERS, COLLECTORS, AND COURTS CLARITY, 44 J. Marshall L. Rev. 1033, 1043-1044 (Summer 2011) ("Although communications technology has advanced greatly since the FDCPA's implementation thirty years ago, the FTC lacks rule-making authority to address these innovations. Because the FDCPA remains silent regarding technological tools invaluable to consumers, collectors, and the courts . . . lack the necessary guidance to adhere to, understand, and analyze the statute's communications provisions.").

[31] Shera Erskine, Note And Comment: Please Leave A Message After The Tone: How Florida Lawyers Should Approach The "Mini-Miranda" Warning Requirement Of The Fair Debt Collection Practices Act, 32 Nova L. Rev. 245, 250 (Fall 2007) ("Regardless of the reason behind the increase in litigation against debt collection firms, debt collectors are left in the dark as to how to keep up with technology without violating multiple provisions of the FDCPA.").

[32] William P. Hoffman, Comment: Recapturing The Congressional Intent Behind The Fair Debt Collection Practices Act, 29 St. Louis U. Pub. L. Rev. 549, 573 (2010) ("The FDCPA should be amended to . . . expressly state that messages left for consumers, whether by email, text message, or voicemail, are not 'communications' under the FDCPA and thus do not require a Mini-Miranda warning. In order to be excluded from this definition, the message should only indicate the name of the caller, that the call concerns an adult matter and that the debtor should contact the person leaving the message as soon as possible. This innocuous request should not be considered a communication, as it does very little to directly or indirectly communicate the presence of a debt." As the FTC Commentary states, messages left for a debtor were never intended to be considered a "communication" within the definition of the statute.

without communication; and businesses, unable to communicate with the consumer, turn to litigation as a last resort.

A limited-content message will help bridge this divide by encouraging early conversations that will ultimately lead to positive results for both the consumer and business. Consumers will incur less interest and fees on the outstanding debt, reduced likelihood of litigation, receive fewer incoming calls, and gain an increased ability to get back on their financial feet. Businesses, on the other hand, will dedicate fewer resources to collections due to reduced attempts at contact, incur less expense from outsourcing to multiple collection agencies, and perhaps most importantly, reduce their involvement in litigation, both as a plaintiff and as a defendant.

The Bureau requests comment on whether there are other communication media, such as email, by which debt collectors should be permitted to leave limited-content messages, including in particular on the advantages and disadvantages of the proposed approach, which would not permit debt collectors to send limited-content messages by email.[33]

RMAI believes that the limited-content message should not be restricted to any particular medium but should be applied universally. We cannot think of any scenario where the information left in the Bureau's approved format would only be appropriate for voice messages left by telephone.[34] Universal application would certainly reduce any potential confusion as to its applicability.[35]

When telephone numbers and physical addresses are reassigned after the consumer changes their number or moves, it creates the possibility that an unintended recipient will receive a call or letter. However, email addresses are generally not reassigned, even if the creator ceases using it, thereby creating little to no chance of accidental disclosure to a third party. As such, emails are an inherently safe form of communication. Given the protections associated with email

[33] NPRM, p.66.

[34] See, Hoffman, supra note 32. Calling for Congress to amend the FDCPA to provide for limited content messages that are not "communications" for use in voicemail, email and text messages because "[a]llowing collectors the opportunity to leave messages for debtors is instrumental in creating a meaningful dialogue between the two parties."

[35] FTC Staff Commentary on FDCPA, 53 Fed. Reg. 50103 (Dec. 13, 1988); see also, *Brown v. Van Ru Credit Corp*., 804 F.3d 740, 742 (6th Cir. 2015) ("To convey information regarding a debt, a communication must at a minimum imply the existence of a debt. Otherwise, whatever information is conveyed cannot be understood as 'regarding a debt.'"); *Lavallee v. Med-1 Sols., LLC*, No. 17-3244, 2019 U.S. App. LEXIS 23664, at *13 (7th Cir. Aug. 8, 2019) ("If a message doesn't inform its reader that it even pertains to a debt, it simply cannot 'convey[] ... information regarding a debt.' § 1692a(2)."); *Brown v. Van Ru Credit Corp.*, 804 F.3d 740, 742 (6th Cir. 2015) ("A communication must at a minimum imply the existence of a debt."); (*Marx v. Gen. Revenue Corp*., 668 F.3d 1174, 1177 (10th Cir. 2011) aff'd 568 U.S. 371, 133 S. Ct. 1166, 185 L.Ed.2d 242 (2013) (fax that did not expressly reference or could "reasonably be construed to imply a debt" was not a communication.).

communications,[36] the Bureau could even consider allowing additional information to be transmitted beyond the limited content message.[37]

In addition, the Bureau requests comment on whether a debt collector should be permitted to leave limited-content messages with third parties only in certain circumstances (e.g., if a third party answers the consumer's telephone number) and whether a debt collector should be able to include additional content in a limited content message if leaving it with a third party (e.g., a request that the third party take a message).[38]

RMAI requests that debt collectors be allowed to leave a limited-content message with a third party, utilizing the Bureau's approved format, as the content does not expressly indicate or reasonably imply that the message relates to the collection of a debt and therefore is not a communication.[39]

RMAI does not believe that the Bureau should restrict the circumstances in which a debt collector can leave limited-content messages with third parties. Debt collectors are often uncertain as to whether the number they are calling is one that currently belongs to the consumer; thus, the ability to leave a limited-content message with a third party will reduce the number of calls required to establish right-party contact and identify wrong numbers. Since a verbal request to take a message would simply act as a contemporaneous transcription of the Bureau's approved voice message, RMAI sees no reason why it should not be permitted.

The Bureau also requests comment on the proposed commentary. In particular, the Bureau requests comment on whether proposed comment 2(j)–4 properly interprets the requirement to "meaningful[ly] disclose the caller's identity" as satisfied when a debt collector places a telephone call and leaves only a limited-content message, and on whether there are other disclosures that would satisfy the meaningful disclosure requirement of FDCPA section 806(6) without causing the message to become a communication (i.e., without conveying information about a debt directly or indirectly to any person).[40]

RMAI believes that proposed comment 2(j)-4 properly interprets the requirement to meaningfully disclose the caller's identity as satisfied when a debt collector places a telephone call and leaves only a limited-content message. The limited-content message requires the debt collector to provide the name or names of one or more natural persons whom the consumer can contact, as well as a telephone number that the consumer can use to reply to the debt collector.

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[36] The one exception regarding the inherent safety of emails would be if an email address was obtained through a skip-trace service in which case a limited-content message would be appropriate.
[37] See, Hoffman, supra note 32, at 574 ("In addition, the FDCPA should give the same presumption of privacy to email that it gives to collection efforts sent by U.S. Mail.").
[38] NPRM, p. 66.
[39] See note 35, supra.
[40] NPRM, p. 66.

This constitutes meaningful disclosure of the caller's identity in satisfaction of FDCPA section 806(6).

The Bureau requests comment on all aspects of proposed § 1006.2(j), including on the proposed interpretation that none of the content described in proposed § 1006.2(j)(1) and (2) conveys information regarding a debt. The Bureau also requests comment on whether the proposal to allow a limited-content message to include a generic statement that the message relates to an "account" raises a risk that the message would convey information about a debt to a third party hearing or observing the message, and whether there is an alternative statement that would better minimize such risk.[41]

RMAI supports the Bureau's proposal permitting debt collectors to leave limited-content messages. Furthermore, RMAI agrees with the Bureau's proposed interpretation that none of the content described in proposed section 1006.2(j)(1) and (2) conveys information regarding a debt. The use of the term "account" does not raise a risk that the message conveys information about a debt to a third party because it is a generic term used in many contexts other than debt collection.

The Bureau further requests comment on whether there is sufficient information required or permitted in the limited-content message to prompt consumers to make a return call or text to the included telephone number and, if not, what additional information could be included in the message that would not cause the message to constitute a communication.[42]

RMAI does not believe that the proposal on limited-content messages contains sufficient information to prompt consumers to make a return call/text/email. The message is far too generic for the vast majority of the population to distinguish the message from a scam or similar fraudulent communication. In fact, RMAI believes the examples provided in proposed comment 2(j)–2 will empower criminal activity by allowing individuals to disguise themselves as debt collectors. The more consumers fall prey to scams utilizing the new limited-content message, the lower the return rate will be for legitimate calls and texts.

RMAI recommends, at a minimum, that a brand description of the account (i.e. Best Buy, Macy's, Chase, etc.) be included in the limited-content message. However, to truly protect consumers from scams and ensure a return call/text/email, RMAI recommends adding a brand description and four consecutive digits from the account number.

Utilizing the example limited-content message provided by the Bureau, the message could read: "Hi, this message is for Sam Jones. Sam, this is Robin Smith. I'm calling to discuss [~~an~~] your Best Buy account ending in 5387. It is 4:15 p.m. on Wednesday, September 1. You can reach me or, Jordan Johnson, at 1-800-555-1212 today until 6:00 p.m. eastern, or weekdays from 8:00 a.m.

[41] NPRM, p. 70.
[42] NPRM, p. 70.

to 6:00 p.m. eastern." RMAI believes this message would elicit a response as it would reassure the consumer that it is a valid call. Additionally, there is nothing in the message that would suggest the call is regarding the collection of a debt.

RMAI also requests that the approved text for limited-content messages be moved from the interpretation analysis pages to the actual rule. RMAI believes that any safe harbor that may arise by utilizing the Bureau's text will be lost if it does not have the full weight and authority of the rule.

The Bureau also requests comment on whether including a sender or recipient email address or a vanity telephone number in a limited-content message could convey information about a debt to a third party hearing or observing the message and reduce the utility of a bright-line definition.[43]

RMAI expects that, in some circumstances, a debt collector's vanity phone number or an email address would convey information (ex. 1-800-PAY-DEBT) about a debt to a third party hearing or observing the message. As a result, RMAI believes the requirements that debt collectors not leave an email address and enumerate a phone number, rather than spell it out, would not create a hardship for debt collectors and would instead preserve a bright-line rule.

Finally, the Bureau requests comment on the media by which debt collectors anticipate that they would send limited-content messages and on whether additional clarification is necessary regarding sending limited-content messages by media other than telephone.[44]

RMAI is concerned that despite the clear guidance on what is required and permitted in a limited-content message, debt collectors will face litigation over completely innocuous terms that connect the required and permitted content. For that reason, RMAI encourages the Bureau to expressly establish as "safe harbors" the example messages contained in Comment 2(j)-2 and develop additional examples to cover other scenarios (such as messages communicated to third parties) and other media (such as email and text messaging). We also encourage the Bureau to develop several examples of email subject lines that could be granted "safe harbor" status as RMAI could see this as a future area of litigation if not addressed.

V.	Subject:	Prohibitions Regarding Unusual or Inconvenient Times or Places
	Section(s):	1006.6(b)(1)
	Rule Page(s):	453
	Analysis Page(s):	80-85
	Interpretation Page(s):	497-499

[43] NPRM, p. 70.
[44] NPRM, p. 70.

The Bureau requests comment on proposed § 1006.6(b)(1)(i). The Bureau requests comment on proposed comment 6(b)(1)(i)–1.[45]

RMAI supports the proposed rule, analysis, and interpretations contained in section 1006.6(b) with one exception. RMAI does not believe the time and place restrictions should apply to emails just as it does not apply to the mailing or receiving of a letter. Both an email and a letter are passive forms of communications.[46] Neither act will wake an individual from their sleep or cause any disruption in the daily acts of an individual. Just as a consumer has ultimate control to decide when they look into their mailbox for letters and when to open those letters, consumers have the same control to decide when to open their email inbox and when to open their emails. No one would suggest that a debt collector who places a batch of letters in the mail at 3:00am is violating the FDCPA and the same should be true for an IT department that sends batches of emails out at 3:00am.

Furthermore, RMAI is concerned about unnecessary lawsuits that industry participants will have to defend when an email is sent by a debt collector within the permitted 8:00am-9:00pm time frame, but its delivery is held up (through no fault of the sender) resulting in the email not being delivered until after 9:00pm. The recipient will have no evidence contained in the received email that would prove it was sent before 9:00pm and based on the rule could proceed with litigation. The sender will then have to spend time and resources to defend themselves and show proof that they sent the email at an allowable time – and all for a passive communication.

VI.	Subject:	Reasonable Procedures for Email and Text Message Communications
	Section(s):	1006.6(d)(3)
	Rule Page(s):	455-457
	Analysis Page(s):	95-113
	Interpretation Page(s):	502-504

In general

RMAI sees clarification by the Bureau on the use of various modern communication technologies as perhaps the single-most important issue contained in the proposed rulemaking. As stated earlier,[47] but worth repeating given the topic of this section, to read the FDCPA, one would think the use of a telegram is a common practice in debt collection. The only modes of communication addressed in the FDCPA are "mail" (7 references), "telephone" (5 references),

[45] NPRM, p. 83.
[46] See note 37, supra.
[47] See p. 5, Antiquated Laws, supra.

and "telegraph" (3 references). Absent are any references to cell phones, personal computers, emails, text messages, chat boxes, smartphone apps, answering machines, voicemail, social-media platforms, and the Internet. A transformation in communication technologies has taken place over the last 42 years which has been entirely unrecognized by the FDCPA. This transformation is evidenced by the United States Postal Service reporting a 23 percent decline in household mail containing correspondence or transactions since 2007 (which does not include advertising, periodicals, packages or unclassified mail).[48]

The Bureau requests comment on proposed § 1006.6(d)(3).[49]

In RMAI's response[50] to the CFPB's Request for Information Regarding Inherited Regulations and Inherited Rulemaking Authorities,[51] RMAI recommended that the Bureau create safe-harbor procedures for the use of emails and texts, which have become a consumer's preferred means of communication. RMAI believes that the proposals in Section 1006.6(d)(3), which identify safe-harbor procedures for debt collectors who unintentionally communicate with an unauthorized third-party about a consumer's debt when trying to communicate with the consumer by email or text message, provide the type of clarity that the receivables industry has been trying to obtain.

In particular, the Bureau requests comment on the risk of third-party disclosure and resulting consumer harm posed by debt collection communications that take place by email or text message. The Bureau is especially interested in any data or other information bearing on the harm associated with such disclosure.[52]

In the case of email, RMAI sees virtually no risk of third-party disclosure or consumer harm resulting from emailing a current or former non-work email address maintained by the consumer. As mentioned earlier, emails are an inherently safe form of communication. When telephone numbers and physical addresses are reassigned after the consumer changes their number or moves, it creates the possibility that another person will receive a call or letter that was intended for the consumer. However, there is no evidence to suggest email addresses are similarly reassigned, even if the creator ceases using it, thereby creating little to no chance of accidental disclosure.

RMAI agrees with the Bureau that any accidental third-party disclosure that comes from either seeing the information displayed on a computer screen or accessing an email account is entirely

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[48] John Mazzone and Samie Rehman, *The Household Diary Study: Mail Use & Attitudes in FY 2017*, United States Postal Service, p.1 (March 2018) ("In part, the decline in correspondence is a continuation of longterm trends but it is also strongly related to changing demographics and new technologies.").
[49] NPRM, p. 99.
[50] CFPB Docket No. 2018-0012-72 (June 26, 2018); https://www.regulations.gov/document?D=CFPB-2018-0012-0072 (last accessed August 28, 2019).
[51] 83 Fed. Reg. 12881 (March 26, 2018); CFPB Docket No. 2018-0012.
[52] NPRM, p. 99.

in the control of the consumer.[53] The consumer can choose when to open an email and whether to keep it opened on an unattended computer, in much the same way that the consumer can choose whether to open a letter in front of another person and whether to leave the letter out in the open where it might be viewed. As for unauthorized access to an email account, the consumer has ultimate privacy control if they enable password access to the account, which is arguably more secure than a letter in a mailbox.

In the case of text messaging, RMAI sees some limited potential for accidental third-party disclosure based on the reassignment of telephone numbers that are no longer in use. However, RMAI believes this is not significantly different from a debt collector sending a letter to an old street address. However, RMAI believes the protections put in place in the proposed rule by the Bureau are reasonable and will reduce the likelihood of such disclosure.

The Bureau also requests comment on whether the procedures identified in proposed § 1006.6(d)(3) are likely to increase debt collectors' use of emails and text messages to communicate with consumers.[54]

With the establishment of the safe harbor for email and text communications, RMAI is confident the procedures identified in proposed section 1006.6(d)(3) will increase debt collectors' use of emails and text messages to communicate with consumers and will likely result in a reduction of phone calls.

Although it should be noted that in the case of online lending, RMAI does not anticipate that consumers would see an increase in emails or text messages because those have been the primary modes of communication from the start of the financial relationship.

The Bureau also requests comment on whether additional clarification is needed about the requirement that a debt collector's procedures include steps to reasonably confirm and document that the debt collector acted in accordance with proposed § 1006.6(d)(3)(i) and (ii).[55]

RMAI appreciates the clarification that using emails and text messages does not require additional consent, and that prior consent obtained by an originator or a prior debt collector can be transferred to debt buying companies and collectors in order to facilitate the continued use of electronic communications with the consumer. The various provisions that allow a consumer's consent to be transferred from a creditor to a debt collector or debt buyer will help eliminate these artificial barriers to communication and help reduce friction and litigation in the debt-collection process.

[53] NPRM, p. 192 ("Moreover, consumers generally should be able to manage over the-shoulder risk by choosing where and when to read electronic communications and how to configure their devices.").
[54] NPRM, p. 99.
[55] NPRM, p. 99.

In addition, the Bureau requests comment on whether to clarify the meaning of the term email in proposed § 1006.6(d)(3), such as by specifying that it includes direct messaging technology in mobile applications or on social media platforms.[56]

RMAI recommends an expansive definition for emails that would be inclusive of private communication tools offered by social media platforms. This would be consistent with the FDCPA definition of "communication."[57] Similar to emails, social media platforms do not reassign accounts to other consumers once they are closed and as such should be a safe manner of communication that is subject to password protection.

There are also modern forms of communication technologies that are mobile application or web-based, which allow consumers to initiate a live written conversation with a business through a "chat box" option. We see this type of technology deployed by airlines, hotels, and retail businesses on websites that have chat boxes that read "Hello, how may I help you?" If this is the way consumers wish to engage on their account, the rule should accommodate such uses.

Not expanding the definition to include new direct-messaging technologies would be a lost opportunity. RMAI strongly believes that the rule needs to allow consumers to be able to communicate with businesses in the modern modes that consumers have grown accustomed to using rather than creating artificial barriers to communication. With technology changing so fast, the rule needs to stress flexibility over rigidity.

In addition, the Bureau requests comment on whether to apply the recency requirement to emails.[58]

RMAI disagrees with CFPB's assessment that the recency requirements for emails and text messaging should be the same "for consistency and ease of administration." As mentioned previously, emails are inherently safe given that they are generally not subject to reassignment and have password-protection capabilities. As such, RMAI would recommend that any recency standard contained in the final rule not apply to email addresses.

The proposed rule does not define when a consumer's contact would qualify as recent. The Bureau therefore also requests comment on whether and how to define recent in the context of proposed § 1006.6(d)(3)(i)(A), including on whether contact by the consumer in the past year should qualify as recent.[59]

[56] NPRM, p. 99.
[57] 15 U.S.C. 1692a(2) ("conveying of information regarding a debt directly or indirectly to any person through any medium.").
[58] NPRM, p, 103.
[59] NPRM, p. 103.

RMAI generally agrees that one year should be the minimum threshold for determining that a consumer contact was recent. However, with the conditions contained in section 1006.6(d)(3), RMAI believes a longer period would be appropriate for telephone numbers. RMAI does not believe a recency standard should apply to email addresses for the previously mentioned reasons.

The Bureau also requests comment on proposed § 1006.6(d)(3)(i)(B)(1)'s requirement to provide the notification no more than 30 days before the debt collector's first communication pursuant to proposed § 1006.6(d)(3)(i)(B), including on whether the period should be shortened or lengthened.[60]

RMAI supports the proposed standard as drafted.

The Bureau also requests comment on whether to clarify, for purposes of proposed § 1006.6(d)(3)(i)(B)(1), what constitutes a reasonable period within which to opt out when an opt-out notice is not provided through a telephone conversation.[61]

If the Bureau decides to define what constitutes a "reasonable period" to provide a consumer to opt out of email or text communications, RMAI would recommend seven (7) days. RMAI believes that almost all requests to opt-out will be received within one week. Of course, if an opt out request is received beyond seven days, the industry would cease using the email or text for future communications.

VII.	Subject:	Opt-out Notice for Electronic Communications or Attempts to Communicate
	Section(s):	1006.6(e)
	Rule Page(s):	457
	Analysis Page(s):	113-120
	Interpretation Page(s):	504-505

The Bureau requests comment on proposed § 1006.6(e) and its related commentary, including on the costs to debt collectors and benefits to consumers.[62]

RMAI supports the proposed rule as we believe consumers should have an easy and efficient way to opt-out of future electronic communications. We appreciate the clarity that the opt-out provision applies only to the email address or telephone number that was used by the debt collector to communicate with the consumer rather than a general cease and desist against all

[60] NPRM, p. 107-108.
[61] NPRM, p. 108.
[62] NPRM, p. 117.

communication. One of the overall goals of the rule should be to identify ways to encourage conversations rather than to prevent them. With open communication, we believe that issues can be resolved relatively quickly, including concerns relating to identity and account balance. RMAI respects the fact that a consumer may choose to not want a communication directed to a particular email or phone number and this provision, as worded, will facilitate that outcome.

RMAI does not anticipate that its members will be exposed to any onerous costs in implementing this proposed rule as drafted. RMAI would be opposed to any attempt to change the rule to an "opt-in" requirement as that would have a harmful result on both the debt collector (i.e. an inability to communicate) and the consumer (i.e. a reduced ability to communicate is likely to result in higher rates of collection litigation). An opt-in approach would add significant costs to the collection of a debt.

In addition, the Bureau requests comment on the potential consumer harms posed by written electronic communications, including the proportion of consumers in debt collection that do not maintain unlimited text messaging plans and the cost to such consumers of receiving text messages.[63]

RMAI does not anticipate this rule resulting in any cost to the vast majority of consumers. While there does not appear to be any comprehensive statistical analysis by a government or trade group on the percentage of U.S. consumer's that have unlimited texting as part of their mobile phone plans, a 2015 blog on Instant Census reported the following: "Our estimate is that between 83% and 92% of U.S. cellphones have unlimited texting, and our best guess is that the number is 88%."[64] Assuming this trend continued since 2015, the number of individuals without unlimited text messaging is most likely a fraction of what it was four years ago. This is not to suggest that the CFPB should not be concerned about potential costs to the small percentage of consumers which may have a 10-cent fee associated with a text, but the consumer would have the ability to opt-out after the first text without any material harm.

The Bureau also requests comment on whether consumers are likely to find it harassing, oppressive, or abusive to receive written electronic communications, such as emails and text messages, without having a simple mechanism to make them stop, and the costs consumers incur when trying to unsubscribe from written electronic communications that do not contain an unsubscribe option.[65]

As stated above, RMAI supports the proposed rule, which contains a requirement for a simple opt-out or unsubscribe mechanism to stop future electronic communications.

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[63] NPRM, p. 117.
[64] Josh Zagorsky, *Almost 90% of Americans Have Unlimited Texting*, Instant Census (Dec. 8, 2015) publicly available at https://instantcensus.com/blog/almost-90-of-americans-have-unlimited-texting and archived at https://zenodo.org/record/3381629#.XWg_3ehKiCg and last accessed August 29, 2019.
[65] NPRM, p. 117-118.

In addition, the Bureau requests comment on whether to identify a non-exclusive list of words or phrases that express an opt-out instruction. In pre-proposal outreach, for example, one consumer advocate urged that debt collectors be required to honor standard phrases, such as "stop," "unsubscribe," "end," "quit," and "cancel."[66]

RMAI has no objection to the words "stop," "unsubscribe," "end," "quit," and "cancel" to convey a consumer's direction to cease electronic communications from an email address or telephone number from which the consumer received an inbound communication. However, RMAI would prefer an exclusive list of words rather than an illustrative sample of words to convey a desire to opt-out of electronic communications so as not to create subjective interpretations of the meanings of various words.

The Bureau also requests comment on whether to specify the period within which a debt collector must process a consumer's request to opt out pursuant to proposed § 1006.6(e), and, if so, what that period should be.[67]

RMAI feels that it would be reasonable for the CFPB to define a period within which a debt collector must process and implement a consumer's request to opt-out. For consistency among federal acts, RMAI suggests the Bureau seek alignment with the 10-business day requirement contained in the Controlling the Assault of Non-Solicited Pornography and Marketing (CAN-SPAM) Act;[68] however, we suspect that most businesses will be able to process requests in a shorter time period.

VIII.	Subject:	Acquisition of Location Information
	Section(s):	1006.10
	Rule Page(s):	457-458
	Analysis Page(s):	120-122
	Interpretation Page(s):	505-506

In general

RMAI supports the adoption of section 1006.10 as it restates sections 803(7) and 804 of the FDCPA concerning requirements and limitations on debt collectors when communicating with persons other than the consumer for the purpose of acquiring location information about the consumer.

[66] NPRM, p. 118.
[67] NPRM, p. 118.
[68] 15 U.S.C. 7704(a)(4)(A)(i).

The Bureau has provided some helpful guidance in the analysis and interpretation pages of the rule concerning how to apply this provision to decedent debt. The Bureau takes a slightly modified approach than that taken by the FTC in its Policy Statement on Decedent Debt[69] but ultimately, we are comfortable with either approach. RMAI believes that both approaches are designed to assist in opening the lines of communication by allowing minor adjustments in the call script to explain the purpose of the call.

The Bureau requests comment on proposed comment 10(b)(2)–1, including on any experiences with the language contained in the FTC's Policy Statement on Decedent Debt and on whether the rule should follow the FTC's approach.[70]

RMAI supports the ability of debt collectors to obtain location information for the person with authority to act on behalf of a deceased consumer's estate, without the improper disclosure of information about a debt. To avoid any suggestion that a debt collector is communicating with third parties in a way that implies a deceased consumer owes a debt, RMAI supports the ability of a debt collector to say it "is seeking to identify and locate a person who is authorized to act on behalf of the deceased consumer's estate."

While the FTC allows for a reference to "outstanding bills" in their policy guidance, RMAI believes the industry could easily adapt to the Bureau's proposed language with little to no disruption. However, RMAI notes that it is not aware of any issues with the current use of the language from the FTC's Policy Statement on Decedent Debt. RMAI also is not aware of any data to support the conclusion that references to "outstanding bills" would reveal information about whether a deceased consumer was delinquent on those bills or whether a deceased consumer owes a debt.

Unless data can be identified to support the conclusion that the use of the FTC language is causing consumer harm or leading to the improper disclosure of information, RMAI suggests authorizing the use of both statements. This would allow the Bureau to obtain data regarding the use of each statement.

IX.	Subject:	Repeated or Continuous Telephone Calls or Telephone Conversations
	Section(s):	1006.14(b)
	Rule Page(s):	459-460
	Analysis Page(s):	124-170
	Interpretation Page(s):	506-512

[69] Statement of Policy Regarding Communications in Connection with the Collection of Decedents' Debts, 76 FR 44915, 44919 (July 27, 2011) , https://www.ftc.gov/sites/default/files/documents/federal_register_notices/statement-policy-regarding-communications-connection-collection-decedents-debts-policy-statement/110720fdcpa.pdf (last accessed September 4, 2019).
[70] NPRM, p. 122.

The Bureau requests comment on proposed § 1006.14(b)(1)(i) and on comment 14(b)(1)–1.[71]

RMAI agrees with the Bureau's analysis that telephone-calling technology has evolved since its adoption in 1977 and the proposed rule needs to be construed from that vantage point. It seems reasonable to treat the act of "placing" a call with the intent to verbally communicate with the consumer as the modern-day equivalent of causing the phone to ring. As the Bureau points out, that would address phones that ring, vibrate, create visual alerts, or result in the voice messages being placed directly into voicemail.

The Bureau also requests comment on whether to interpret FDCPA section 806 and 806(5) as prohibiting debt collectors from using communication media other than telephone calls frequently and repeatedly with intent to annoy, abuse, or harass any person in connection with the collection of any debt.[72]

RMAI agrees with the Bureau that the scope of section 806 and 806(5) is broad enough to include modern communication media such as emails and text messaging if they are misused to harass, oppress, or abuse a person in connection with the collection of a debt.

The Bureau requests comment on the proposed approach, including on whether the frequency limits should apply to communication media other than telephone calls and, if so, to which media.[73]

RMAI agrees with the Bureau's proposal to confine frequency limits to only telephone calls and not to other media such as letters, emails, and text messages. As the Bureau notes in its analysis, the cost of sending mail adequately deters collectors from sending excessive communications by mail. Furthermore, RMAI is not aware of any evidence suggesting that consumers are annoyed, harassed, or abused by a high-volume of mail from debt collectors. Consistent with the Bureau's findings, RMAI members have been reluctant to use email or text messages in contacting consumers due to the lack of regulatory guidance. As such, RMAI is unaware of any evidence to suggest that consumers are being annoyed, harassed, or abused by a high volume of electronic communications.

However, the Bureau's proposal already creates a simple and practical solution that leaves the ultimate power in the hands of the consumer. Should any debt collector attempt to email or text a consumer at a frequency (whatever that number might be) that the consumer finds objectionable, the consumer can opt-out of future communications. If the debt collector does not honor such a request, it would be a violation of the FDCPA. There is no reason to apply a communication

[71] NPRM, p. 126.
[72] NPRM, p. 126.
[73] NPRM, p. 128.

limitation designed for phone calls, for which the consumer must provide a written cease and desist request, to electronic communications that are less intrusive and subject to a simple electronic opt-out mechanism. For the foregoing reasons, RMAI sees no reason for the Bureau to set frequency levels for these types of passive communication methodologies.

The Bureau requests comment on the proposal to establish a bright-line rule to determine when a debt collector's calling frequency has violated FDCPA section 806(5) and the prohibition in proposed § 1006.14(b)(1)(i), as well as to prevent an unfair act or practice under Dodd-Frank Act section 1031(b).[74]

RMAI strongly supports the Bureau's proposal to establish a bright-line rule. RMAI believes that a bright-line rule brings much needed clarity to an area that has been the subject of much litigation. However, as discussed below,[75] RMAI is concerned that a limit of seven calls is insufficient when the debt collector has not yet confirmed at least one number at which the consumer can be reached.

The Bureau requests comment on this aspect of the proposal and on whether, if a rebuttable presumption approach were adopted, the Bureau should retain any of the exceptions described in proposed § 1006.14(b)(3).[76]

RMAI supports the Bureau's proposal of a bright-line rule over a rebuttable presumption standard. However, in the event the Bureau decides to adopt a rebuttable presumption approach, RMAI requests that the Bureau retain the exceptions described in proposed section 1006.14(b)(3). These exceptions will aid courts in determining whether the collector has rebutted the presumption in cases in which any calls placed in excess of the frequency limits fall under one or more of the exceptions.

The Bureau requests comment on several aspects of proposed § 1006.14(b)(2)(i). First, the Bureau requests comment on the proposal to set the frequency limit at seven telephone calls to a particular consumer within seven consecutive days regarding a particular debt, including on the harms to consumers that may be prevented by this limit and on how such a limit may impact debt collectors.[77]

RMAI supports the Bureau's proposal to adopt a bright-line rule limiting the frequency of telephone calls to seven calls a week, except as discussed below. As the Bureau correctly notes[78] in its analysis of section 1006.14(b), courts have not developed a consensus on call frequency. This is largely because the issue of whether a particular number of calls over a given period of

[74] NPRM, p. 135.
[75] See response to note 77, infra.
[76] NPRM, p. 136.
[77] NPRM, p. 141-142.
[78] NPRM, p. 130.

time is harassing, oppressive, or abusive is a question of fact, driven by the unique details of each case. However, given the varying outcomes in call volume cases, RMAI sees a bright-line rule as the only reasonable way to give the industry guidance for developing uniform and compliant policies and procedures.

The one major concern RMAI has about the Bureau's bright-line rule is how the rule is applied prior to obtaining a confirmed telephone number. RMAI is concerned that the limit of seven calls per week is insufficiently flexible for situations in which a collector has multiple unconfirmed phone numbers for a consumer. It is not uncommon for an account to be placed or sold with three or more phone numbers for the consumer. As such, RMAI requests that the proposed call frequency apply only after a confirmed phone number for the consumer has been identified.

A collector can confirm a phone number at which a consumer can be reached in one of the following ways: (1) by having a telephone conversation with the consumer in which the consumer provides a telephone number or confirms that the dialed number is a good number for the consumer; (2) by reaching a voicemail system with an outgoing recording that indicates the consumer's name; or (3) by having a telephone conversation with a third-party who confirms that the dialed number is a good number for the consumer.

By way of example, utilizing a very common scenario, when a call goes unanswered or connects to a voicemail system with a generic message (i.e. "You have reached 555-555-1212, please leave a message."), it is not possible to determine whether the intended consumer can be reached at that number. In a recent RMAI survey of its membership, 55.3 percent of respondents indicated that it takes on average three or more call attempts to determine whether the intended consumer can be reached at a particular phone number. In that same survey, 12.5 percent of respondents indicated it took over 10 calls. The failure to receive a live answer to an out-bound call combined with the industry's reluctance to leave a voice message[79] makes calling the number back at a future day/time the only viable option.

It is important to note that confirmation of a telephone number is not synonymous with a right-party contact. A telephone number can be confirmed (i.e. by third party or voice mail) without actually speaking to the consumer (i.e. right-party contact). RMAI members reported in a recent survey that a right-party contact takes three or more calls 85.4 percent of the time compared to 55.3 percent for confirmation of a number.

Under the Bureau's official interpretation of the rule,[80] until the collector confirms that a number is wrong, the collector must assume that each number on an account is correct. Therefore, for example, when handling an account with five potential phone numbers, the collector can make only two calls to two of the numbers and one call to the other three numbers. In this scenario, the

[79] See response to note 28, supra.
[80] NPRM, p. 508.

proposed call limitation will make it almost impossible to confirm that a given number is a correct number for the consumer within a reasonable period of time. The longer it takes for a collector to make right-party-contact, the longer the consumer is exposed to potential harm in the form of interest and fee accumulation, negative credit reporting, and litigation. And, as mentioned earlier, regulatory restrictions on debt collection have a negative impact on the availability of credit for all consumers, but most notably for those in lower socio-economic groups.[81]

This is not intended to suggest that RMAI supports unfettered call activity on calls made prior to obtaining a confirmed telephone number. Rather, RMAI suggests that calls made prior to confirming a telephone number be evaluated under the unique circumstances of a particular account (ex. taking into consideration how many unconfirmed telephone numbers are associated with the consumer); or in other words, whether those calls are excessive should be viewed under current legal standards. Alternatively, the Bureau could adopt a reasonable call frequency level for each telephone number associated with an account until a confirmed telephone number can be identified.

Finally, the Bureau in its analysis[82] discussed the possibility that a consumer could have multiple accounts in collection status at any given time and how this might impact inbound calls. Eighty-six percent of RMAI members have reported that one-quarter or less of their portfolios have multiple accounts in collection from the same consumer. While RMAI acknowledges that consumers might have several accounts in collections with multiple collectors at the same time, it does not believe that businesses should be further restricted on call frequency beyond what the Bureau is proposing based on circumstances that are entirely beyond the control of those businesses.

In addition, the Bureau requests comment on whether debt collectors currently are able to, or under the proposed rule would expect to be able to, establish right-party contact through voicemails or electronic media, such that debt collectors may have less of a need to place repeated telephone calls to consumers.[83]

RMAI believes that the proposed rule's guidance on the use of voicemails, emails, text messages, and other types of electronic media will help in reducing the number of telephone calls required to establish right-party contact. Since email addresses are not currently provided in many existing portfolios, largely due to the lack of regulatory guidance on their use, RMAI expects the benefits will be minor upon the rule's adoption but will grow over time as email addresses are more commonly included as a crucial piece of data. It should be noted, with the

[81] See responses to notes 16, 17 and 18, supra.
[82] NPRM, p. 142.
[83] NPRM, p. 143.

rule's one-year implementation period, RMAI anticipates that newly charged-off accounts will have email addresses associated with them.

Second, the Bureau requests comment on the proposal to measure the frequency of telephone calls on a per-week basis.[84] ***The Bureau requests comment on its approach and on the merits of limiting telephone calls based on a different time period (e.g., by day, by month, or through a combination of time periods).***[85]

RMAI supports the Bureau's proposal to measure the frequency of telephone calls on a per-week basis. RMAI agrees that collectors are unlikely to place all of their permitted calls in a single day because collectors prefer to place calls on different days, at different times, and at different numbers in an effort to more quickly and efficiently establish right-party contact with the consumer. By not combining daily and weekly limits, the proposed rule allows collectors sufficient flexibility to schedule calls based upon the consumer's particular circumstances. The Bureau's draft proposal on this topic is easily understood and able to be operationalized. RMAI cautions against an overly complex limitation that would cause unnecessary confusion.

Third, the Bureau requests comment on the proposal to apply frequency limits on a per-debt, rather than on a per-consumer, basis. As proposed, § 1006.14(b)(2)(i) could permit, for example, a debt collector who is attempting to collect two debts from the same consumer to place up to 14 telephone calls in one week to that consumer without violating the FDCPA, the Dodd-Frank Act, or Regulation F based on the frequency of its calling. The Bureau requests comment on this aspect of the proposal, which also is discussed further in the section-by-section analysis of proposed § 1006.14(b)(5).[86]

RMAI also supports the Bureau's proposal to apply frequency limits on a per-debt basis. This proposal is far more workable because applying frequency limits on a per-consumer basis would require collectors to consistently tie multiple accounts for one consumer and track calls across all accounts. Not all collection systems are capable of tracking calls across multiple accounts, which is perhaps especially true in the case of small businesses, thus the application of a per-consumer limit would result in substantial compliance costs to replace or update those systems. Even if cost was not an issue, a per-consumer basis incorrectly assumes that debt collectors are able to combine consumer information from multiple accounts. In the case of third-party collection, it would not be unusual for a creditor/owner of a debt to not want their data combined with accounts of other creditors. This would particularly be applicable in the case of medical debt because of requirements associated with the Health Insurance Portability and Accountability Act of 1996.[87] Recently adopted state privacy laws, such as the California Consumer Privacy Act,[88]

[84] NPRM, p. 143.
[85] NPRM, p. 144.
[86] NPRM, p. 144.
[87] Pub.L. 104–191.
[88] California Civil Code, section 1798.100.

would also complicate how a consumer request to delete certain information would be treated if multiple accounts belonging to different creditors are combined on a system.

Furthermore, it is not always possible to recognize that two or more accounts belong to the same consumer. For example, a consumer can sign up for a credit card account under the name "John T. Consumer." That same consumer can obtain another account under the name "J.T. Consumer," and yet another account under the name "J. Thomas Consumer." In such a circumstance, the collector would need another identifier, such as a social security number, to recognize that the accounts belong to the same consumer. However, not all accounts are placed for collection with a social security number attached. Of note, in response to an RMAI survey 51.7 percent of respondents stated that less than 10 percent of consumers in their databases had more than one account placed with them.

Fourth, the Bureau requests comment on the proposal to count telephone calls placed about a particular debt to different telephone numbers associated with the same consumer together for purposes of determining whether a debt collector has exceeded the limit in proposed § 1006.14(b)(2)(i) (i.e., an aggregate approach).[89] ***The Bureau requests comment on the merits of an aggregate versus a per-telephone number limit.***[90]

RMAI supports the Bureau's proposal to aggregate calls from different telephone numbers for the purpose of calculating the seven call limit after at least one number has be confirmed to belong to the consumer. However, as discussed above,[91] RMAI recommends that a more flexible approach be adopted by the Bureau for calls made to multiple telephone numbers associated with an account before a number has been confirmed.

Finally, the Bureau requests comment on proposed comment 14(b)(2)(i)–2. In particular, the Bureau requests comment on whether the Bureau should provide additional clarification about how a debt collector determines that a telephone number is not associated with a particular person, or whether, for purposes of the proposed frequency limits, there is an alternative way to treat telephone calls inadvertently made to the wrong person.[92]

RMAI appreciates the clarification that calls placed to a wrong number do not count toward the seven-call limitation. However, RMAI is concerned about situations in which the collector does not learn that a particular number is a wrong number. Until the collector knows that the number does not belong to the consumer, it is obligated to assume that it could be a correct number and count it toward the seven-call limitation. For this reason, as explained above, RMAI proposes

[89] NPRM, p. 144.
[90] NPRM, p. 145.
[91] See response to note 77, supra.
[92] NPRM, p. 145.

that a collector be provided greater flexibility for calls made to multiple telephone numbers associated with an account before a number has been confirmed.[93]

The Bureau requests comment on proposed § 1006.14(b)(2)(ii). The Bureau considered, but does not propose, a frequency limit that would have limited only the total number of telephone calls that a debt collector could place to a person about a debt during a defined time period, regardless of whether the debt collector had engaged in a telephone conversation with that person about that debt during the relevant time period. The Bureau requests comment on the merits of such an alternative approach.[94]

RMAI agrees with the Bureau that a debt collector who has been able to engage in a telephone conversation with a consumer about a debt generally has less reason to communicate with the consumer within the following week and would therefore support the proposed seven-day prohibition on another call regarding the debt. Besides, if there is a legitimate reason for another call, the Bureau provides several reasonable exceptions under section 1006.14(b)(3).

The Bureau requests comment on proposed § 1006.14(b)(3) and its related commentary, including on whether any other types of telephone calls should be excluded from the frequency limits.[95]

RMAI believes that the proposed exceptions in section 1006.14(b)(3) are reasonable and necessary to ensure that the proposed call-frequency limits do not impair mutually-desired communications between collectors and consumers and that collectors are able to initiate other communications that do not have the potential to annoy, harass, or abuse the consumer. RMAI agrees that the specific exemptions listed would neither sacrifice nor diminish the clarity of a bright-line rule.

As discussed extensively above,[96] and partially repeated below, RMAI requests that one additional exception be provided to address phone calls made prior to obtaining a confirmed telephone number. RMAI is concerned that the limit of seven calls per week is insufficiently flexible in situations in which a collector has multiple unconfirmed phone numbers for a consumer.

By way of example, utilizing a very common scenario, when a call goes unanswered or connects to a voicemail system with a generic message (i.e. "You have reached 555-555-1212, please leave a message."), it is not possible to determine whether the intended consumer can be reached at that number. In a recent RMAI survey of its membership, 55.3 percent of respondents

[93] See response to note 77, supra.
[94] NPRM, p. 155.
[95] NPRM, p. 157-158.
[96] See response to note 77, supra.

indicated that it takes on average three or more call attempts to determine whether the intended consumer can be reached at a particular phone number. In that same survey, 12.5 percent of respondents indicated it took over 10 calls. The failure to receive a live answer to an out-bound call combined with the industry's reluctance to leave a voice message[97] makes calling the number back at a future day/time the only viable option.

Under the Bureau's proposed interpretation of the rule,[98] until the collector confirms that a number is wrong, the collector must assume that each number on an account is correct. Therefore, for example, when handling an account with five potential phone numbers, the collector can make only two calls to two of the numbers and one call to the other three numbers. In this scenario, the proposed call limitation will make it almost impossible to confirm that a given number is a correct number for the consumer within a reasonable period of time. The longer it takes for a collector to make right-party-contact, the longer the consumer is exposed to potential harm in the form of interest and fee accumulation, negative credit reporting, and litigation. And as mentioned earlier, regulatory restrictions on debt collection have a negative impact on the availability of credit for all consumers, but most notably for those in lower socio-economic groups.[99]

Furthermore, RMAI questions how there can be an intent to annoy, abuse, or harass a person when the collector does not even know whether the number they are calling is a good telephone number at which to reach the consumer. It is an accepted fact in the collection industry that many consumers, even those who pay their bills on time, do not provide their creditors with updated telephone numbers within 30 days as is generally required by the terms of their credit agreement. Therefore, the intent of the initial call is to confirm a valid telephone number for the consumer. It is only after the collector has a confirmed telephone number that the purpose of additional calls may be called into question as the intent has shifted to the collection of the debt.

This should not be interpreted to suggest that RMAI supports unlimited call activity prior to obtaining a confirmed telephone number; rather, there needs to be a reasonable accommodation within the (b)(3) exceptions so as to not force an outcome that is detrimental to both the consumer and the business community. There are any number of possible solutions the Bureau could consider; however, RMAI suggests that calls made prior to confirmation of a telephone number not be subject to the seven-call limit and instead that they be evaluated on a case-by-case basis. In the alternative, RMAI suggests that the Bureau adopt a reasonable call-frequency level for each telephone number associated with an account until a confirmed telephone number can be identified.

[97] See response to note 28, supra.
[98] NPRM, p. 508.
[99] See responses to notes 16, 17 and 18, supra.

The Bureau requests comment on the proposal to exclude from the frequency limits the placement of telephone calls that are made to respond to a request for information. The Bureau specifically requests comment on whether there should be any separate limit on the number of telephone calls a debt collector could place under the exception. As proposed, § 1006.14(b)(3)(i) would permit a debt collector who engages in a telephone conversation with a consumer to place an unlimited number of unanswered telephone calls to the consumer during the next seven days in an effort to provide the requested information. As proposed, § 1006.14(b)(3)(i) also would permit the debt collector to continue to exceed the frequency limits until the debt collector reached the consumer to respond to the request. A debt collector responding to a person's request for information may not need to place repeated or continuous telephone calls to reach the consumer, however, because such a debt collector is likely to have reliable contact information and the consumer presumably will be expecting the debt collector's telephone call. The Bureau requests comment on this approach and on alternatives to it. The Bureau also requests comment on whether additional clarification is needed on how to determine whether a debt collector makes a particular telephone call in response to a request for information, as opposed to for some other purpose, or on how to determine whether the debt collector has responded to a request for information, such that the exclusion no longer applies.[100]

RMAI supports the Bureau's proposal to exclude from the frequency limits the placement of telephone calls that are made to respond to a request for information. If a consumer requests information from a collector, then the call-frequency limits should not preclude the collector from fulfilling that request. RMAI agrees with the Bureau that a consumer would expect, and would not be harmed by, a return telephone call from the collector responding to that request. Furthermore, RMAI does not believe that it is necessary to put a limit on the number of calls made in response to a consumer's request for information. RMAI agrees that the collector responding to such a request will have reliable contact information for the consumer and that the consumer will be expecting a call from the collector, thus it should not be necessary for the collector to make an excessive number of calls in order to deliver the information requested by the consumer.

RMAI expects that its members would document within their account notes the date, time, and purpose of the call and such documentation should be sufficient for demonstrating the purpose of the call. Alternatively, operations that utilize call recording technology would have sufficient proof to identify the purpose of the call.

The Bureau requests comment on proposed § 1006.14(b)(3)(ii) and its related commentary, including on whether there should be a separate limit on the number of telephone calls that a

[100] NPRM, p. 159-160.

debt collector could place under the proposed exception or whether there should be any other type of limitation or condition on the proposed exception.[101]

Likewise, RMAI supports the Bureau's proposal to exclude from the frequency limits telephone calls that a debt collector places to a person with the person's prior consent given directly to the debt collector. RMAI agrees that a consumer can determine when further communications with a debt collector are desired and the proposed call-frequency limits should not prevent a debt collector from placing a call to the consumer when the consumer has directly given consent for that call. RMAI does not believe that it is necessary to put a limit on the number of calls made with the consumer's consent. A debt collector who is given direct consent to call by a consumer is not likely to abuse that consent by placing calls for the purpose of annoying, harassing, or abusing that consumer. Additionally, it should be noted that it is the consumer, not the debt collector, who maintains the ultimate power to alter or retract their consent at any time.

The Bureau requests comment on proposed § 1006.14(b)(3)(iii), including on whether the Bureau should include any other specific examples in commentary.[102]

RMAI agrees with the Bureau's proposal to exclude from the frequency limits calls that are not connected to the dialed number. RMAI agrees that a consumer is unlikely to be aware of or be harassed by a call that does not cause the consumer's phone to ring or that does not connect to the consumer's voicemail. RMAI appreciates the clear examples provided by the Bureau in the commentary but requests clarification from the Bureau on whether a call placed to a consumer where the collector hears nothing other than dead air would fall under the "unable to connect" hypotheticals contained in the Bureau's commentary[103] and proposed interpretation[104] of the proposed rule. It is RMAI's opinion that, in addition to the Bureau's exclusion of busy signals and out-of-service notifications, a call should not count toward the frequency limits if the person placing the call does not hear any rings or tones to suggest that the call recipient's telephone is ringing or the voicemail system is recording.

The Bureau requests comment on proposed § 1006.14(b)(3)(iv), including on whether telephone calls that a debt collector places to certain other persons also should be excluded from the frequency limits and, if so, which categories of persons should be excluded.[105]

RMAI agrees that calls placed to a consumer reporting agency, creditor, or to the attorneys representing the consumer or creditor should be excluded from the frequency limits. RMAI further agrees that debtor collectors have non-harassing reasons for placing calls to the described

[101] NPRM, p. 161.
[102] NPRM, p. 162.
[103] NPRM, p. 161.
[104] NPRM, p. 510.
[105] NPRM, p. 162-163.

persons more often than proposed section 1006.14(b)(2) would permit, and that the described persons are unlikely to be annoyed, harassed, or abused by those calls.

The Bureau requests comment on all aspects of proposed § 1006.14(b)(4). The Bureau specifically requests comment on whether proposed § 1006.14(b)(4) adequately addresses concerns about debt collectors making telephone calls in rapid succession and, if not, what approach would address such calling behavior without imposing undue or unnecessary costs on debt collectors.[106]

RMAI supports the Bureau's proposal for a bright-line rule for determining whether a volume of placed calls violates sections 806 or 806(5) of the FDCPA or sections 1031(c) or 1036(a)(1)(B) of the Dodd-Frank Act. RMAI agrees that a bright-line rule will bring much needed clarity, which should reduce litigation and threats of litigation concerning repeated or continuous contacts. A bright-line rule will also assist debt collectors in creating procedures for compliance with the FDCPA and the Dodd-Frank Act. RMAI believes that proposed section 1006.14(b)(4) adequately addresses concerns about debt collectors making telephone calls in rapid succession, because debt collectors are unlikely to use their seven calls by making them in rapid succession in a single day. Instead, debt collectors will strategically space their calls throughout the seven-day period in an effort to establish contact with the consumer.

The Bureau also requests comment on whether, instead of a bright-line rule, the Bureau should adopt a rebuttable presumption of compliance and of a violation.[107]

RMAI does not recommend replacing the bright-line rule with a rebuttable presumption. Even though a rebuttable presumption provides greater flexibility, it does so at the expense of legal certainty. Due to the expense of litigating FDCPA cases, especially fact-driven cases like those involving allegations of excessive call volume, it would not be beneficial for consumers or for debt collectors to litigate over whether a presumption can be rebutted.

Finally, the Bureau requests comment on the alternative of adopting only a rebuttable presumption of a violation or only a rebuttable presumption of compliance. For example, one alternative would be to provide a safe harbor only for telephone calls below the frequency limits, with no provision for telephone calls above the frequency limits. Such an approach would provide certainty to both debt collectors and consumers about a per se permissible level of calling, but it would leave open the question of how many telephone calls is too many under the FDCPA and the Dodd-Frank Act. The Bureau does not propose such an approach because it appears that it would not provide the clarity that debt collectors and consumers have sought; nor does it appear to provide the same degree of consumer protection as a per se prohibition against telephone calls in excess of a specified frequency. Another alternative that

[106] NPRM, p. 165.
[107] NPRM, p. 165.

the Bureau considered is a safe harbor for telephone calls below the limits paired with a rebuttable presumption of a violation for telephone calls above the limits. (The Bureau also considered the opposite: a rebuttable presumption of compliance for telephone calls below the limits paired with a per se prohibition against telephone calls in excess of the limits). The Bureau requests comment on the merits of these alternative approaches and others that the Bureau may not have considered.[108]

RMAI believes circumstances may make it necessary to contact a consumer for legitimate reasons in excess of the frequency limits. RMAI believes that a *per se* violation for calls in excess of the frequency limits can cause significant harm to consumers. For example, in the case of debt collection litigation, a debt collector attorney may be instructed by the court to call a consumer to advise of an important court date or that the consumer is absent from a scheduled court hearing and that her immediate presence is required to avoid an adverse result. A *per se rule* would render the call a violation, even though it was carried out for a legitimate purpose. After all, section 806(5) prohibits engaging any person in a "telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass the person." (emphasis added).[109] Thus, to deem legitimate calls in excess of the frequency limits a *per se* violation is inconsistent with section 806(5).

The Bureau requests comment on the proposed definition of particular debt. The Bureau specifically requests comment on the proposal to apply the frequency limits in proposed § 1006.14(b)(2) generally on a per-debt, as opposed to per-person, basis. The Bureau requests comment on whether, if the proposed per-debt approach is adopted, additional clarification is needed about how to count telephone calls when a debt collector places one telephone call to a consumer to discuss more than one particular debt. In particular, the Bureau requests comment on whether the rule should clarify how the frequency limits apply when a debt collector places an unanswered telephone call to a consumer to discuss two of the consumer's debts (e.g., a credit card debt and a medical debt), or when a debt collector who is collecting two such debts leaves the consumer only a general message that does not refer specifically to either debt (e.g., "Please remember to pay what you owe"). The Bureau similarly requests comment on whether clarification is needed for the situation in which a debt collector has a telephone conversation with a consumer about more than one debt but does not specifically refer to either debt, and on whether the proposal appropriately counts the single conversation as having been about all of the debts for purposes of the frequency limits.[110]

RMAI supports the Bureau's definition of "particular debt" to mean "each of a consumer's debts in collection." RMAI agrees that debt collectors generally make separate efforts to collect on various debts in order to comply with client requirements and to keep distinct and accurate

[108] NPRM, p. 166-167.
[109] NPRM, p. 163.
[110] NPRM, p. 169-170.

records for each account. RMAI also agrees that collectors often designate particular employees to collect accounts owed to certain clients and they often have particular employees who are dedicated for the collection of certain types of debt. In those situations, it is not always productive or even possible to address all of the consumer's accounts in one call. Nor would the consumer benefit from a situation in which a debt collector felt pressure to communicate about multiple accounts in one call. Furthermore, as the Bureau has noted, some collection systems are not set up to consolidate multiple accounts for a single consumer, thus setting call-frequency limits on a per-consumer basis will require expensive upgrades which will negatively impact small businesses. Technological upgrades, such as this, would be an example of the importance of the one-year implementation period. Finally, RMAI agrees that creditors could address the per-consumer call limits by placing each defaulted account for a consumer with separate debt collectors.

Because of differences in account types, imposing a per-person limit can be harmful to consumers. For example, a debt collector may be engaged by one creditor to collect a charged-off credit card debt from a consumer. After reaching the call frequency limit for a particular week, the debt collector may be engaged by another creditor to collect a defaulted motor vehicle loan from the same consumer that is five days away from repossession absent a payment. If the frequency limits were imposed on a per-person basis, the debt collector would not be able to call the consumer.

Based on issues with aggregating multiple accounts,[111] RMAI requests that the Bureau not attempt to require the merging of multiple accounts when placing collection calls except as discussed below.[112]

If a debt collector places a call to discuss a debt and the consumer initiates a discussion on another debt which was not the intention of the call, RMAI recommends the call should only count toward the limit for the debt that the collector intended to discuss and not for the debt on which the conversation was initiated by the consumer. Instead, when the consumer initiates conversation about an additional debt, then for that debt the call should be treated as a response to a request for information under proposed section 1006.14(b)(3)(i).

RMAI understands that it might be difficult for the consumer to determine which debt a debt collector was calling about when the collector places an unanswered call or leaves the consumer a general message that does not refer to a specific debt, such as the limited-content message proposed in section 1006(2)(j). However, if the Bureau adopts RMAI's proposed edits[113] to the limited content message, it would eliminate any confusion as to which debt a call was made to discuss.

[111] See response to note 86, supra.
[112] See response to note 114, infra.
[113] See response to note 42, supra.

Finally, the Bureau requests comment on: (1) the proposal to aggregate certain student loan debts for purposes of § 1006.14(b)(2), including whether some student loan debts serviced under the same account number should be counted separately; and (2) whether any types of debts other than student loans should be aggregated, such that multiple debts that were serviced under a single account number at the time the debts were obtained by the debt collector (or met other specified conditions) would be treated as a single debt for purposes of the frequency limits. Under such an approach, for example, multiple medical debts could be aggregated for purposes of § 1006.14(b)(2) if they met certain conditions, such as being serviced under the same account number at the time the debt collector obtained them. The Bureau requests comment on such an approach, including on the possible difficulties of aggregating accounts other than student loan accounts given the different facts that could apply to each debt.[114]

RMAI agrees that student loan accounts that were serviced under a single account-number when the debts were received by the debt collector should be treated as one debt for purposes of section 1006.14(b)(2) and would not expect this to create any difficulties or challenges with complying with call-frequency limits. RMAI further believes that other types of debts that are aggregated by a creditor and serviced under a single account-number prior to their transmittal to a debt collector should also be treated as a single debt.

X.	Subject:	Prohibited Communication Media
	Section(s):	1006.14(h)
	Rule Page(s):	461
	Analysis Page(s):	171-174
	Interpretation Page(s):	512-513

The Bureau requests comment on proposed § 1006.14(h)(1) and its related commentary.[115]

RMAI supports the proposed rule as drafted. We find it consistent with the provisions of FDCPA section 806.

The Bureau requests comment on the exceptions in proposed § 1006.14(h)(2).[116]

RMAI supports the proposed rule as drafted. RMAI believes the two enumerated exceptions to the rule are helpful to both consumers and debt collectors as they are designed to facilitate communications that are reasonable under the circumstances. In the case of the first exception, it

[114] NPRM, p. 170.
[115] NPRM, p. 172.
[116] NPRM, p. 173.

is fairly common for businesses to send an individual who opts-out of email communication a confirmation message to indicate that the consumer's request has been honored. There is no reason why providing this type of confirmation should not apply to the collection industry. As for the second exception, it only makes sense to allow a business to respond to a consumer-initiated communication using the same medium used by the consumer, even in circumstances where a consumer had previously chosen to opt-out from that communication medium.

The Bureau requests comment on whether there are specific laws that require communication with the consumer through one specific medium, and if so, whether additional clarification is needed regarding the delivery of legally required communications through a specific medium of communication required by applicable law if the consumer has generally requested that the debt collector not use that medium to communicate with the consumer.[117]

State and federal laws, contract provisions, and court orders can require a specific form of communication which could contradict a consumer's express direction to opt-out of a communication medium. For example, requirements that documents be provided to a consumer "in writing" could be contravened by a consumer's express direction not to communicate with them via mediums that would accommodate writings.

Numerous state debt collection laws require certain notices be "mailed." The majority of states require that a notice of a dishonored check or other payment instrument or EFT be sent by first-class, regular, certified or registered mail. Some state debt collection laws specify first-class mail in certain instances. For example:

- In California, a notice of negative credit reporting must be in writing and delivered in person or mailed first class, postage prepaid. Cal. Civ. Code § 1785.26(c).

- In Massachusetts, a creditor must provide verification to the consumer by first-class mail. Mass. Regs. Code. Tit. 940 § 7.08(2).

- In Utah, a notice of negative credit reporting must be in writing and delivered in person or mailed first class, postage prepaid. Utah Code Ann. § 70C-7-107(3)(a).

Some states require that a notice of a right to cure be sent by certified or other specific type of mail. For example:

- District of Columbia: Certified Mail – D.C. Code Ann. § 28-3812(b)(3).

- Maine: Certified or Ordinary Mail – Me. Rev. Stat. tit. 9-A, § 5-110(1)(A), (B).

[117] NPRM, p. 174.

- Pennsylvania: Certified Mail – 12 Pa. Cons. Stat. Ann. § 6309(c)(1)(i), (ii).

- West Virginia: "Notice is given when it is deposited in a mailbox properly addressed and postage prepaid." – W. Va. Code § 46A-2-106.

A conflict could come by way of the Electronic Funds Transfer Act, state laws relating to service of process, state contract law, or even by a court order. Therefore, the Bureau should clarify that compliance with a conflicting law and/or court order would be seen as a safe harbor or serve as a defense to a claim under the FDCPA.

XI.	Subject:	False, Deceptive, or Misleading Representations or Means
	Section(s):	1006.18
	Rule Page(s):	461-464
	Analysis Page(s):	175-181
	Interpretation Page(s):	513-514

The Bureau requests comment on all aspects of proposed § 1006.18 and on whether additional clarification would be useful.[118]

With one exception relating to the practice of law which is discussed below,[119] RMAI is fully supportive of the Bureau's proposed rules concerning false, deceptive, or misleading communications as we find them highly consistent with FDCPA section 807.

In particular, the Bureau requests comment on whether additional clarification regarding false or misleading representations would be helpful in the decedent debt context, or whether to require any affirmative disclosures when debt collectors communicate in connection with the collection of a debt owed by a deceased consumer.[120]

RMAI supports the inclusion of an affirmative non-liability disclosure when debt collectors communicate in connection with the collection of a debt owed by a deceased consumer. Debt collectors desire to avoid any misleading impression that an individual is personally liable for the deceased consumer's debts, or that that debt collectors can seek assets outside of the deceased consumer's estate to satisfy the consumer's debt. Expressly permitting such disclosures, and creating explicit language that is approved for use, is consistent with the Bureau's goals in preventing false, deceptive, or misleading representations. RMAI believes such disclosures,

[118] NPRM, p. 176.
[119] See response to note 123, infra.
[120] NPRM, p. 176.

which have been used for many years based on the FTC Policy Statement on Decedent Debt,[121] are in the best interests of consumers and debt collectors because they minimize the likelihood of deception during communications.[122]

The Bureau requests comment on whether the safe harbor proposed for meaningful attorney involvement in debt collection litigation submissions provides sufficient clarity for consumers, attorneys, and law firms.[123]

RMAI is concerned that the Bureau may be attempting to regulate the profession of law through its interpretation of section 807 and paragraph (g) of section 1006.18 of the proposed rule. RMAI agrees with the Bureau that an attorney who "acts as a debt collector" outside the jurisdiction of a state bar falls under the provisions of the FDCPA. Clearly, attorneys should not be using their professional license as a blanket shield from FDCPA compliance. However, determining whether attorneys have deviated from the professional standards required by the jurisdictions in which they are licensed is a matter which can only be determined by the applicable licensing jurisdiction. This is because the purpose of the rules of professional conduct is not to establish civil liability, but solely as a basis for attorney discipline.[124]

RMAI also appreciates the views of some individuals who claim it is sometimes difficult to determine where debt collection ends and the practice of law begins. However, this challenge essentially gets to the heart of the matter because it is not for them to determine. It is within the sole authority of the state bar in each jurisdiction that oversees the profession of law to make that determination.[125]

Furthermore, the creation of a meaningful-involvement standard applicable to attorneys engaged in the practice of law creates several inherent conflicts with the constitutional principles of "separation of powers"[126] and "federalism."[127] The entities that license and regulate attorney conduct exist within the state-level judicial branches of government (there is no federal licensing authority) whereas the Bureau is a federal executive-branch administrative agency.

The aforementioned being said, RMAI appreciates the fact that the Bureau attempted to carve out a safe harbor for "meaningful attorney involvement." However, RMAI is concerned that attorneys will not be able to demonstrate that they qualify for the safe harbor without disclosing

[121] See note 70, supra.
[122] See also responses to notes 24, 25, 26, and 27, supra.
[123] NPRM, p. 181.
[124] *The Legislative History of the Model Rules of Professional Conduct: Their Development in the ABA House of Delegates*, p. 20 (1987).
[125] See id.
[126] Black's Law Dictionary defines as "the division of governmental authority into three branches of government . . . each with specified duties on which neither of the other branches can encroach . . ."
[127] Black's Law Dictionary defines as "the legal relationship and distribution of power between the national and regional governments within a federal system of government."

privileged communications, a client's confidential information, or the attorney's privileged work product.[128] The need to prove up the safe harbor will often conflict with the attorney's fiduciary duty to the client and the attorney's obligations as an officer of the court.

RMAI notes that it has also adopted a standard[129] for "meaningful attorney involvement" for law firms that are certified by the RMAI certification program. The RMAI standard states: "A collection law firm shall establish policies and procedures to ensure meaningful attorney involvement prior to the filing of any collection-related lawsuit. A practicing attorney employed by the firm shall review (by way of example rather than limitation) documents, venue, applicable statute of limitations, court procedures, and applicable laws and regulations before suit is filed." RMAI has found this standard to be useful because it is a policy-based analysis and the question for the independent third-party auditor is simply whether the law firm has a policy in place which comports with their professional responsibilities.

XII.	Subject:	Use of Workplace Email Addresses
	Section(s):	1006.22(f)(3)
	Rule Page(s):	466
	Analysis Page(s):	183-188
	Interpretation Page(s):	514-516

The Bureau requests comment on all aspects of proposed § 1006.22(f)(3). In particular, the Bureau requests comment on whether FDCPA section 805(a)(3)'s framework should apply to emails to a consumer's work account, so that such emails are presumptively prohibited only when a debt collector knows or should know that a consumer's employer prohibits the consumer from receiving such communications.[130]

RMAI generally agrees with the Bureau's approach to work emails, including its analysis for not applying section 805(a)(3)'s framework to work emails. RMAI agrees that the risk of accidental third-party disclosure is too great given an employer's legal right to access and read employees' emails.

However, RMAI disagrees with the Bureau's position that prior express consent to a creditor to use the consumer's work email cannot be transferred from a creditor to a debt collector. RMAI requests that the Bureau permit the use of a work email address where the consumer has given express consent, particularly in the case of a work email address that the consumer provides on a credit application. A work email address that was part of the original application should be available for debt collection communications as it is intricately tied to the terms and conditions

[128] See, American Bar Association, *Model Rules of Professional Conduct* 1.6.
[129] See note 1 (standard C5, p. 45), supra.
[130] NPRM, p. 188.

from which a decision to extend credit was made. Furthermore, in the context of an assignee of an account under common law contract principles, the assignee acquires all of the assignor's rights under the assigned contract, including but not limited to the contractual right to communicate via email and other electronic means.[131] Make no mistake, a creditor's right to communicate with its obligor by electronic means has become an important term of credit contracts and is enforceable.[132]

Finally, in the case of the sale of accounts, the Bureau's analysis suggests that certain account details cannot be transferred to the new account owner. This runs counter to the free marketability of assets that is a centerpiece of the American economic system[133] as well as established public policy that creditors should transfer all data and documents when selling accounts. Since consumers have the ultimate power to request that collectors not communicate with them at work, there is no reason to create a different standard for the use of a work email address that the consumer has granted express consent to use.

The Bureau also requests comment on whether more clarification is necessary regarding when a debt collector knows or should know that the debt collector is communicating using a consumer's work email address and, if so, what circumstances should indicate to a debt collector that an email address is provided by a consumer's employer.[134]

RMAI requests further clarification on this aspect of the rule. While RMAI appreciates the Bureau's attempt to carve out a workplace email exception[135] for widely used personal email domains (e.g. gmail), RMAI feels the official comment needs to adopt a bright-line standard. RMAI suggests the following edit to proposed official comment 22(f)(3)-3:

> "In the absence of contrary information, a debt collector neither would know nor should know that an email address is provided to the consumer by the consumer's employer if the email address's domain name is one commonly associated with a provider of non-work email addresses, which shall include but not be limited to the following providers: aol.com, att.net, bellsouth.net, charter.net, comcast.net, cox.net, earthlink.net, facebook.com, gmail.com, hotmail.com, icloud.com, juno.com, live.com, mac.com, me.com, mail.com, msn.com, outlook.com, sbcglobal.net, verizon.net, and yahoo.com."

RMAI feels that absent a bright-line standard, the determination of which email domains are associated with non-work emails will become a matter for litigation.

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[131] *Olvera v. Blitt & Gaines, P.C.*, 431 F.3d 285, 289 (7th Cir. 2005) ("[T]he common law puts the assignee in the assignor's shoes, whatever the shoe size.").
[132] See *Reyes v. Lincoln Auto. Fin. Servs*., 861 F.3d 51, 57 (2d Cir. 2017) (Contract that provided borrower's consent to have his creditor contact him by "written, electronic or verbal means" is a "bargained-for exchange" and could not be unilaterally revoked.
[133] See, Reid, supra note 5, at 3 ("A Brief History").
[134] NPRM, p. 188.
[135] NPRM, p. 516, proposed comment 22(f)(3)-3.

The Bureau further requests comment on the scope of proposed § 1006.22(f)(3). As proposed, it would apply only to email contacts with the person obligated or allegedly obligated to pay a debt (i.e., a person defined as a consumer under proposed § 1006.2(e)). The Bureau requests comment on whether it should be broadened to apply to email contacts with a consumer as defined in proposed § 1006.6(a).[136]

RMAI has no concerns regarding the possible expansion of the scope of section 1006.22(f)(3) to include the definition of consumer as proposed in section 1006.6(a).

XIII.	Subject:	Social Media Platforms
	Section(s):	1006.22(f)(4)
	Rule Page(s):	466
	Analysis Page(s):	189-191
	Interpretation Page(s):	516

The Bureau requests comment on all aspects of proposed § 1006.22(f)(4), including on whether debt collectors anticipate that they will use social media platforms to contact consumers.[137]

RMAI supports the Bureau's proposed rule concerning social media platforms. The ability to use social media platforms that have private message capabilities is an important component of the proposed rule. RMAI is a strong proponent of the Bureau adopting regulatory clarification on modern communication technologies that were created after the FDCPA's adoption.[138] With regulatory clarification, RMAI anticipates that its members will entertain the use of this unobtrusive form of communication with consumers, provided the medium permits private communications with the consumer. RMAI believes that the use of social media platforms will ultimately result in fewer telephone calls being placed. As younger populations of people begin acquiring credit, these platforms will continue to become an even more common source of communication. One of the goals of the proposed rule is to improve, not frustrate, communications between consumers and businesses. Utilizing the modes of communication actually used by consumers is a logical method of achieving this goal. RMAI appreciates the Bureau's acknowledgement of the role social-media platforms play in modern life, including how they are being utilized for communication.

It should be noted that the governing board of RMAI's certification program is considering the adoption of a social media standard in the next version of the program. The working draft of the standard presently reads as follows:

[136] NPRM, p. 188.
[137] NPRM, p. 190.
[138] See p. 5, Antiquated Laws, supra.

A Certified Business, including its employees and agents:

(a) Shall not initiate any engagement with a consumer on a public-facing social media platform for the purposes of, or related to, debt collection. The act of engaging includes "friending," "liking," "posting," "linking," "inviting," or other forms of interaction where one publicly communicates, shows a relationship, or indicates approval. A consumer that initiates an engagement on a Certified Business' social media page does not violate this standard;

(b) May look at and use information that a consumer makes available for public consumption on a social media platform, provided that there are no laws or regulations that prohibit such activity; and

(c) May communicate with consumers utilizing private communication tools offered by social media platforms, provided that they comply with FDCPA requirements and there are no laws or regulations that prohibit such activity.

The Bureau also requests comment on whether debt collectors have any non-harassing purpose for attempting to communicate with consumers using public-facing social media platforms and, if so, whether proposed § 1006.22(f)(4) should have an exception for attempts to communicate such as limited-content messages.[139]

RMAI sees no reason why debt collectors would need to communicate with consumers using a public-facing social media platform and recommends that no exceptions be created that would permit such attempts.

The Bureau further requests comment on the scope of proposed § 1006.22(f)(4). As proposed, it would apply only to social media contacts with the person obligated or allegedly obligated to pay a debt (i.e., a person defined as a consumer under proposed § 1006.2(e)). The Bureau requests comment on whether it should be broadened to apply to social media contacts with any person described as a consumer in proposed § 1006.6(a).[140]

RMAI has no position regarding the possible expansion of the scope of section 1006.22(f)(4) to include the definition of consumer as proposed in section 1006.6(a).

[139] NPRM, p. 190.
[140] NPRM, p. 190-191.

XIV.	Subject:	Collection of Time-Barred Debt
	Section(s):	1006.26
	Rule Page(s):	467
	Analysis Page(s):	193-201
	Interpretation Page(s):	N/A

Debt collectors generally are familiar with the concept of statutes of limitations, and the proposed definition generally should be consistent with debt collectors' understanding of the term . . . The Bureau requests comment on the proposed definition and whether any additional clarification is needed.[141]

RMAI agrees with the Bureau's assessment that "debt collectors generally are familiar with the concept of statues of limitations, and the proposed definition generally should be consistent with debt collectors' understanding of the term." As such, RMAI recommends no further amendment or clarification of the term.

Debt collectors generally are familiar with the concept of time-barred debt, and the definition of time-barred debt in proposed § 1006.26(a)(2) is consistent with debt collectors' understanding of the term . . . The Bureau requests comment on the proposed definition and on whether any additional clarification is needed.[142]

RMAI agrees with the Bureau's assessment that "debt collectors generally are familiar with the concept of time-barred debt, and the definition…is consistent with debt collectors' understanding of the term." RMAI wishes to highlight the existence of some consumer confusion associated with the use of the term "time-barred debt." Some consumers misunderstand the term to mean that debt is barred from <u>any</u> form of collections rather than its intended meaning to describe debts that are barred from litigation. RMAI suggests the Bureau consider replacing the term "time-barred debt" with the term "out-of-statute debt" so as to prevent future consumer confusion.

The Bureau requests comment on proposed § 1006.26(b) and on whether any additional clarification is needed. In particular, the prohibitions in proposed § 1006.26(b) would apply only if the debt collector knows or should know that the applicable statute of limitations has expired. It sometimes may be difficult, however, to determine whether a "know or should have known" standard has been met. Such uncertainty could increase litigation costs and make enforcement of proposed § 1006.26(b) more difficult. In part to address this concern, the Small Business Review Panel Outline described an alternative strict-liability standard pursuant to which a debt collector would be liable for suing or threatening to sue on a time-barred debt even if the debt collector neither knew nor should have known that the debt was

[141] NPRM, p. 194.
[142] NPRM, p, 194-195.

time barred. The Bureau specifically requests comment on using a "knows or should know" standard in proposed § 1006.26(b) and on the merits of using a strict liability standard instead.[143]

RMAI agrees with this section as drafted as it is very consistent with the best practices contained in Standard A12 of RMAI's certification program which states:

"A Certified Company shall not knowingly bring or imply that it has the ability to bring a lawsuit on a debt that is beyond the applicable statute of limitations, even if state law revives the limitations period when a payment is received after the expiration of the statute."

While RMAI substantially agrees with the Bureau's analysis that while, "in many cases, a debt collector will know, or can readily ascertain, whether a statute of limitations has expired," there are just as many instances where "a debt collector may be genuinely uncertain even after undertaking a reasonable investigation."[144]

First, for example, all states have multiple statutes of limitations, and which statute applies to a particular obligation is determined by the type of agreement evidencing that obligation. However, courts in different states may make different determinations even when examining the same types of agreements. One area of uncertainty concerns whether a particular action is subject to Uniform Commercial Code Article 2 -725's four-year limitations period or a state's longer period for contract claims.[145] Some states consider an unsigned credit card agreement a written

[143] NPRM, p. 199-200.
[144] NPRM, p. 198.
[145] For example, the debt collector may sue to recover an unpaid account stated debt arising from multiple sales of goods. The debt collector may reasonably believe the transaction is subject to the statute governing actions for breach of contract, under the theory of the debt was an "open account." But opposing counsel may counter that the transaction was, at its core, a goods sale, making the Uniform Commercial Code (UCC) Article 2-725's four-year statute of limitations applicable. Both interpretations would be correct, depending on where the claim was brought. For example, in Michigan, the claim would be subject to that state's six-year limitations period for actions on breach of contract C.f. *Fisher Sand & Gravel Co. v. Neal A Newbie, Inc.*, 494 Mich. 543, 560 (Mich. 2013)("an action on an account stated is indeed an independent cause of action, separate and distinct from the underlying transactions giving rise to the antecedent debt. Therefore, it is immaterial whether the underlying transactions involved the sale of goods."). See also, *Son v. Coal Equity, Inc.*, 122 Fed. Appx. 797, 801 (6th Cir. 2004) (applying Kentucky's five-year limitation period under KRS § 413.120(10) for actions "upon a merchant's account for goods sold and delivered" because UCC 2-725's "application here is outweighed by the tenets of statutory construction relevant to Kentucky's particular legislative history."). But in New York, on similar facts, the court applied the UCC's four-year limitations period of 2-725. *Troy Boiler Works, Inc. v. Sterile Techs., Inc.*, 3 Misc. 3d 1006, 777 N.Y.S.2d 574 (Sup. Ct. 2003). In the context of "store-branded" credit cards issued by a third-party finance company, there are similar divisions. For example, two New Jersey decisions find that such credit cards are subject to Article 2. *Midland Funding LLC v. Thiel*, 446 N.J. Super. 537, 144 A.3d 72 (Super. Ct. App. Div. 2016); *New Century Fin. Servs. v. McNamara*, No. A-2556-12T1, 2014 N.J. Super. Unpub. LEXIS 602 (Super. Ct. App. Div. Mar. 20, 2014). However, courts in other jurisdictions have rejected the analysis and applied the longer contract limitations period. *Midland Funding LLC v. Schellenger*, 127 N.E.3d 1046, 1049 (Ill. 2019); Gray v. Suttell & Assocs., 123 F. Supp. 3d 1283 (E.D. Wash. 2015).

contract,[146] others an oral contract,[147] and still others an open account or account stated.[148] Even within a state the courts can disagree,[149] and in some there is little or no guidance.[150]

Second, determining the correct statute of limitations is critical not only for knowing the length of the limitations period, but also for knowing when the cause of action accrues, which is generally when the limitations period begins. With regard to credit card debt, courts in some states have determined the period begins when the last payment or purchase is made,[151] and others when the default occurred, i.e., when the payment was missed.[152] In some states it could be either.[153]

Third, the majority of states have "borrowing statutes" that apply the shorter of either the statute of limitations of the forum state where the lawsuit is filed or of the state where the cause of action accrued. Even here, courts differ on where the cause of action on a credit card account accrues.[154]

Fourth, most credit card agreements have a choice-of-law provision specifying that the law of the state where the creditor is located will apply to the agreement. However, court decisions in a

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[146] *Unifund CCR Partners v. Piaser*, 11th Dist. Ashtabula No. 2016-A-0076, 2018-Ohio-3016; *Roper v. Portfolio Recovery Assocs*., LLC, No. 4:14-cv-00729-SWW, 2015 U.S. Dist. LEXIS 135579 (E.D. Ark. Oct. 5, 2015); *Unifund CCR, LLC v. Lowe*, 159 Idaho 750, 752, 367 P.3d 145, 147 (2016); *Phoenix Recovery Group, Inc. v. Mehta*, 663 S.E.2d 290 (Ga. Ct. App. 2008); *Hill v. American Express*, 289 Ga. App. 576 (657 SE2d 547) (2008).

[147] *Gemini Capital Group v. New*, 807 N.W.2d 157 (Iowa Ct. App. 2011); *Fulk v. LVNV Funding LLC*, 55 F. Supp. 3d 967 (E.D. Ky. 2014); *Conway v. Portfolio Recovery Assocs*., No. 3:13-cv-007-GFVT, 2017 U.S. Dist. LEXIS 143647, (E.D. Ky. 2017).

[148] *Butler v. Hudson & Keyse, L.L.C.*, No. 14-07-00534-CV, 2009 Tex. App. LEXIS 1108 (App. Feb. 19, 2009)

[149] In Alabama, it might be an open account (see *Thomas v. Am. Express Bank, FSB*, 139 So. 3d 809 (Ala. Civ. App. 2013) and *Midland Funding LLC v. Brown*, Circuit Court of Mobile County, Alabama, Case No. CV-2015-900026.00 (April 10, 2015)); an account stated (see *Brown v. Encore Capital Grp. Inc*., 2015 U.S. Dist. LEXIS 51266 (N.D. Ala. Apr. 20, 2015), *In re Bunch*, 2014 Bankr. LEXIS 4891 (Bankr. N.D. Ala. 2014) and *In re Pritchett*, 2006 Bankr. LEXIS 5014 (Bankr. N.D. Ala. Oct. 26, 2006)); or, a simple contract (see *In re Taylor*, No. 14-33126-DHW Chapter 13, 2015 Bankr. LEXIS 3444, at *7 (Bankr. M.D. Ala. Oct. 9, 2015)).

[150] *Uche v. N. Star Capital Acqusition*, LLC, No. 4:09CV3106, 2011 U.S. Dist. LEXIS 27840, at *5 (D. Neb. Mar. 17, 2011) ("Nebraska law is unsettled on the question of whether actions to collect credit-card debt are actions based on written contract or actions based on open accounts. . . ").

[151] *Gemini Capital Group v. New*, 807 N.W.2d 157 (Iowa Ct. App. 2011).*Asset Acceptance, LLC v. Grove*, No. 14-1265, 2015 W. Va. LEXIS 1002 (Oct. 16, 2015).

[152] *Nordstrom v. Geragosian*, No. HHBCV126017902S, 2015 Conn. Super. LEXIS 71 (Super. Ct. 2015); *Lambert v. Hitchens*, Civil Action No. 80C-JN-7, 1985 Del. Super. LEXIS 1062 (Super. Ct. July 22, 1985).

[153] *N.H. Hydraulics, Inc. v. Crean Equip., Inc*., 2010 Vt. Super. LEXIS 14, *2-3 ("[I]n the context of open accounts and credit-card accounts, the general rule is that the limitations period is measured by the date the charges became due (i.e., the date of the missed payment) or the date of the last payment, whichever is later in time.").

[154] *Taylor v. First Resolution Inv. Corp.*, 2016-Ohio-3444, 148 Ohio St. 3d 627, 2016 Ohio LEXIS 1654 (Ohio 2016), cert. denied, 137 S. Ct. 398, 196 L. Ed. 2d 297, 2016 U.S. LEXIS 6626 (U.S. 2016) (action accrued where the credit card application and payments were mailed and where the creditor suffered its loss); *Portfolio Recovery Assoc., LLC v King*, 55 A.D.3d 1074 (NY. 2008) (action accrued at the residence of the original creditor rather than the current creditor); *Conway v. Portfolio Recovery Assocs.*, No. 3:13-cv-007-GFVT, 2017 U.S. Dist. LEXIS 143647 (E.D. Ky. Sep. 5, 2017) (where the consumer had the option to make credit card payment via internet and telephone, or by sending payments to various addresses, the cause of action was determined to have accrued in the consumer's state of Kentucky rather than in Virginia where the creditor was located).

number of states explain that choice-of law-provisions do not apply to statutes of limitations unless expressly addressed,[155] or that their application will be addressed on a case-by-case basis.[156]

Fifth, even where a state does not have a borrowing statute and a contract is silent on the applicable state limitations period, courts may apply the statute of limitations of a foreign jurisdiction because it finds there is no "substantial state interest" in the dispute.[157]

Finally, most states toll their limitations period when a defendant is not amenable to service of process. For example, section 811(a)(2) of the FDCPA permits a debt collector to file a lawsuit "in the judicial district or similar legal entity" where the consumer signed the agreement. To the extent a lawsuit is filed in such a place and the consumer does not reside there, she may not be amenable to service.[158]

Each of these circumstances poses unique challenges for determining the applicable limitations period. The ultimate facts may not be revealed until a claim is fully litigated, and, for this reason, courts do not interpret the expiration of the limitations period as barring their jurisdiction. To be sure, in most jurisdictions, only a court can determine if, as a matter of law, a claim is subject to an expired limitations period and is time-barred.[159] Thus, given the complexities surrounding the

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[155] *Smither v. Asset Acceptance, LLC*, 919 N.E.2d 1153, 1157-1158 (Ind. Ct. App. 2010); *Retail Pharm. Mgmt. Servs. v. Amerisourcebergen Drug Corp.*, 2013 U.S. Dist. LEXIS 15377 (E.D. Okla. Feb. 5, 2013); *Western Video Collectors, L.P. v. Mercantile Bank*, 23 Kan. App. 2d 703 (Kan. Ct. App. 1997); *In re Ashe*, No. 14-04541-HB, 2016 Bankr. LEXIS 876 (U.S. Bankr. D.S.C. 2016); *Nez v. Forney*, 783 P.2d 471, 472 (N.M. 1989); *In re Ashe*, No. 14-04541-HB, 2016 Bankr. LEXIS 876 (U.S. Bankr. D.S.C. 2016).

[156] *Gilbert Spruance Co. v. Pa. Mfrs. Ass'n Ins. Co.*, 134 N.J. 96, 629 A.2d 885, 888 (N.J. 1993).

[157] See *Heavner v. Uniroyal, Inc*., 63 N.J. 130, 141 (1973) (where the New Jersey Supreme Court applied a foreign state's shorter limitations period when "[t]he cause of action arises in another state, the parties are all present in and amenable to the jurisdiction of that state, New Jersey has no substantial interest in the matter, the substantive law of the foreign state is to be applied, and its limitation period has expired at the time suit is commenced here."); *Jackson v. Midland Funding, LLC*, 754 F. Supp. 2d 711, 715 (D.N.J. 2010) (A New Jersey debt collection lawsuit against a New Jersey resident was subject to the shorter limitations period of the state of her prior residence because that is where she opened and when it defaulted).

[158] See e.g., *Brossman v. Fed. Deposit Ins. Corp*., 510 A.2d 471 (Del. 1986) (Delaware limitations period tolled under 10 Del. C. § 8117 when defendant is not amenable to service for a claim on a breach of contract for payment of a debt); *D'Angelo v. Petroleos Mexicanos*, 398 F. Supp. 72 (D. Del. 1975), the defendant had never been a resident of Delaware and service of process over it was not possible. In holding that the Delaware three-year limitations period had been tolled so long as the defendant debtor was not amenable to service, the court emphasized that "for over 120 years a tolling provision like section 8117 has been part and parcel of the three year statute of limitations." *Id*., at 80.

[159] Expiration of procedural limitations period does not prohibit the filing of a lawsuit because it is not a substantive bar to a legal action. *Notte v. Merchants Mut. Ins. Co.*, 185 N.J. 490, 500 (2006) ("Statutes of limitations . . . are not self-executing . . . the defense that a claim is time-barred must be raised by way of an affirmative defense, either in a pleading or by a timely motion, or it is waived . . . Therefore, until adjudicated time-barred, a stale claim filed after the expiration of the applicable statute of limitations is nonetheless valid."); *John Doe A. v. Diocese of Dallas*, 234 Ill. 2d 393, 413, 917 N.E.2d 475, 487, 334 Ill. Dec. 649 (2009) ("[T]he bar of a statute of limitations does not go to the court's jurisdiction to hear a case.").

application of the appropriate limitations periods, it is no surprise that a debt collector may file a lawsuit under the reasonable, good-faith, belief that the limitations period has not expired.[160]

Consumers will be protected by having both the general "unfair and deceptive practices" prohibition of the FDCPA as well as a "know or should know" standards of compliance required for debt collectors. The "know or should know" standard will ultimately be fully developed by the federal judiciary just as the subjective unfair and deceptive practices have been defined over time to be an effective shield for consumers.

In addition, RMAI is proud to note that the vast majority of the debt buying industry in the United States has voluntarily held itself to an even higher standard of practice for the protection of consumers than the Bureau is able to provide through rulemaking. RMAI prohibits all of its certified businesses from reviving a statute of limitations based on receipt of a consumer payment, even though the vast majority of states permit such practices. RMAI's expectation of its members is that once a debt is out-of-statute it will always be out-of-statute. Based on this standard, once a debt is out-of-statute, RMAI certified businesses only seek payments under the terms of the contract and forever abandon litigation as an option.

XV.	Subject:	Communication Prior to Furnishing Information
	Section(s):	1006.30(a)
	Rule Page(s):	467
	Analysis Page(s):	201-205
	Interpretation Page(s):	517

The Bureau requests comment on proposed § 1006.30(a) and its related commentary.[161]

RMAI agrees with the Bureau's proposed rule that would prohibit furnishing information to a consumer reporting agency about a debt before communicating with the consumer about that debt. RMAI also agrees with the Bureau's proposed official comment,[162] which clarifies that the communication required by section 1006.30(a) is subject to the definition of "communication" provided in section 1006.2(d) and can be accomplished through the methods outlined in section 1006.42. Tying section 1006.30(a) with sections 1006.2(d) and 1006.42 will help clarify that the industry may communicate via mail, telephone, email, and text as long as it is not associated with a limited-content message.

[160] *Pepe v. Cavalry SPV I, LLC*, No. 2:15-08634 (WJM), 2016 U.S. Dist. LEXIS 68948 (D.N.J. May 26, 2016) (citing and collecting cases); *Simmons v. Miller*, 970 F. Supp. 661, 664 (S.D. Ind. 1997) (The FDCPA "seeks to proscribe intentional creditor misconduct" and is not applicable to a collection suit that may not have been time-barred because of a lack of clarity as to what limitations applied under Indiana law).
[161] NPRM, p. 203.
[162] NPRM, p. 517.

XVI.	Subject:	Prohibition on the Sale, Transfer, or Placement of Certain Debts
	Section(s):	1006.30(b)
	Rule Page(s):	467-468
	Analysis Page(s):	205-212
	Interpretation Page(s):	517-518

The Bureau requests comment on all aspects of proposed § 1006.30(b)(1).[163]

RMAI generally supports the Bureau's proposed restrictions on the sale, transfer, or placement of certain debts as they parallel sale restrictions contained in RMAI's certification program. RMAI certified debt buying companies are already prohibited from selling any consumer accounts when the account has been settled-in-full or paid-in-full, and also when the account has been identified as having been created as a result of identity theft or fraud.[164] However, RMAI would encourage the Bureau to consider expanding its prohibitions to mirror the following two additional sale prohibitions[165] that RMAI imposes but the Bureau has not addressed:

- When the company does not have access to Original Account Level Documentation on the accounts

- When the consumer has communicated (written or verbal) to the company that he or she disputes the validity or accuracy of the debt or has requested verification of the debt pursuant to FDCPA 15 U.S.C. 1692g (however, this restriction may be lifted if, after receiving the communication, the company confirmed the validity of the debt through the use of Original Account Level Documentation and provided the consumer the results of such confirmation).

RMAI's certification program currently does not have a prohibition on the sale of accounts that have been discharged or closed in bankruptcy but plan to add this prohibition in the next version of the certification program. The prohibition which has been tentatively drafted to effectuate this currently reads:

> "When the account has been "discharged and closed" in bankruptcy, except when associated with secured liens or obligations associated with a non-bankrupt co-obligor."

RMAI feels the exceptions for "secured liens or obligations associated with a non-bankrupt co-obligor" are an important distinction which is not addressed in the Bureau's proposed language and which RMAI encourages the Bureau to add.

[163] NPRM, p.209.
[164] See note 1 (standard B4(c) and (d), p. 44), supra.
[165] See note 1 (standard B4(a) and (b), p. 44), supra.

Issues concerning bankruptcy are nuanced, which is the reason why RMAI spent time analyzing how best to address it in its certification program. Below are several examples of debt that survives bankruptcy, which is the reason why RMAI requests language similar to the proposed RMAI certification standard in section 1006.30(b)(1) or an exception created in section 1006.30(b)(2):

- Creditors may be secured in all types of bankruptcy actions. Creditors who obtain judgments against a debtor may obtain a judgment lien. The debtor may have provided a consensual lien through a mortgage, on a title to a vehicle, or through a UCC-1 financing statement on personal property. Although a debtor obtains a discharge, any lien that is not avoided through an order of the bankruptcy court survives the discharge. Although the underlying personal liability has been extinguished, the lien survives, and creditor may look to its in-rem rights to foreclose on its lien interest.

- Section 11 U.S.C 523 of the Bankruptcy Code provides that certain debts are not subject to discharge. Some of these obligations are for tax liabilities, student loans, and domestic support obligations. In addition, certain debts may be adjudicated non-dischargeable based on fraud, breach of a fiduciary duty, or willful and malicious acts.[166] Since these exceptions may apply to an individual debt, the specific obligation may be excepted from discharge, but the debtor will receive his or her discharge of all the other debts. This is similar to the circumstances where a debt is reaffirmed under 11 U.S.C. 524. The debtor may agree to reaffirm a debt to one creditor for a house or car obligation, but not the other debts. The other debts get discharged but the reaffirmed debt survives the discharge and is fully collectible.

- A bankruptcy may be filed individually or jointly with a spouse. There are many times where there are two individuals on an obligation. However, there are instances where only one of the liable parties file for bankruptcy protection. In those situations, there is no prohibition to collecting from the non-bankrupt party after discharge.

In particular, the Bureau requests comment on whether additional categories of debt, such as debt currently subject to litigation and debt lacking clear evidence of ownership, should be included in any prohibition adopted in a final rule.[167]

RMAI supports a requirement that any debt whose ownership cannot be substantiated with a clear chain of title should be prohibited from sale or resale. RMAI notes that maintaining a chain of title is a current and widely established practice within the debt buying industry. Additionally, RMAI's certification program requires its certified businesses to both obtain a complete chain of

[166] 11 U.S.C. 523(a)(2), (a)(4), and (a)(6).
[167] NPRM, p. 209.

title for receivables they purchase and also provide a complete chain of title for receivables they wish to sell.[168] Specifically, the chain of title requirement reads: "A copy of each bill of sale or other document evidencing the transfer of ownership of the debt from the initial sale by the Charge-Off creditor to each successive owner that when reviewed in its totality provides a complete and unbroken chain of title documenting the name and dates of ownership of the creditor and each subsequent owner up to and including the Certified Company."[169]

RMAI generally agrees that in most circumstances debt that is in active litigation should not be sold; however, RMAI notes that there are exceptions (e.g., sale or a merger of a business and assignment of a mortgage) that prevent us from supporting an absolute prohibition.

The Bureau also requests comment on how frequently consumers identify a specific debt when filing an identity theft report, and on how frequently debt collectors learn that an identity theft report was filed in error and proceed to sell or transfer the debt.[170]

RMAI members generally find that consumers who fill out the FTC's online identity theft report,[171] a state identity theft report such as the California Office of Attorney General's Identity Theft Victim's Complaint and Affidavit,[172] or file a formal police report tend to provide more information identifying a specific debt than other claims of identity theft. Information provided in the California identity theft report is particularly helpful as it contains relevant questions, the answers to which help to substantiate the claim as well as assists law enforcement. It also contains an affidavit acknowledging that the consumer understands that falsely filing a report may be a violation of the law.

RMAI has no knowledge concerning the prevalence of falsely filed identity theft reports that were subsequently sold or transferred.

The Bureau also requests comment on any potential disruptions that proposed § 1006.30(b)(1)(i) would cause for secured debts, such as by preventing servicing transfers or foreclosure activity related to mortgage loans.[173]

There is no question section 1006.30(b) will disrupt consumer credit in the context of secured loans where the right to payment is subject to a bankruptcy discharge, but the borrower retains the collateral. In a Chapter 7 Bankruptcy case, 11 U.S.C. 521(2)(a) requires a debtor, within 45 days of the commencement of their case, file a "Statement of Intention"[174] disclosing whether

[168] See note 1 (standard B1(c), p. 38), supra.
[169] See note 1 (standard B1(c)(xiv), p. 39), supra.
[170] NPRM, p. 209.
[171] https://www.identitytheft.gov/
[172] https://oag.ca.gov/sites/all/files/agweb/pdfs/privacy/id_theft_affidavit.pdf
[173] NPRM, p. 209.
[174] See, Bankruptcy Court Official form available at https://www.uscourts.gov/sites/default/files/form_b108.pdf and last accessed August 15, 2019.

they intend to reaffirm, redeem, or surrender secured collateral. Prior to enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), Pub. L. No. 109-8, 119 Stat. 23, several courts would permit a debtor to "ride-through" secured collateral by retaining it without reaffirming the underlying loan obligation.[175] However, ride-throughs still occur. According to one legal aid website, Chapter 7 debtors may when completing the Statement of Intention:

> Retain the property and… work it out with lender:
>
> Check "Retain the property and [explain]……" to tell the lender you want to keep the property and keep making payments, but you do not want to reaffirm the debt. Put "keep paying" in the blank space. The lender does not have to agree. If you miss a payment later, the lender can repossess the property and sell it to pay the loan. But they cannot try to get the rest of the debt from you if the property was not worth enough to pay off the whole loan. You can also check "other" if want to keep the property, but you cannot prove to the court that you can afford the payments.[176]

RMAI believes the practice of retaining secured collateral, post Chapter 7 discharge and "work[ing] it out with the lender" is not uncommon. Under proposed section 1006.30(b)(1)(i)(B) a debt collector would be prohibited from transferring the secured loan to a servicer. To be clear, although the debt is subject to a Bankruptcy Court's discharge injunction, the debtor has retained the collateral, desires to remain in possession of the collateral and the lender is accepting the voluntary payments.

And, even when an unsecured debt is discharged, a bankruptcy debtor may choose to make voluntary payments, although these instances are very rare.

Also, even though the underlying debt may be subject to a discharge injunction, the creditor can exercise rights to the collateral under law. A debt collector may transfer the account for the purpose of recovering the collateral through repossession or foreclosure. Proposed section 1006.30(b)(1)(i)(B) is unclear as to this and may substantially impair a creditor's right to recover secured collateral.

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[175] In re Belanger, 962 F.2d 345, 348 (4th Cir. 1992) noted as superseded *Daimler Chrysler Fin. Servs. Am., LLC v. Jones (In re Jones)*, 591 F.3d 308, 312 (4th Cir. 2010).

[176] See, e.g., MassLegalHelp.org, a website, which states. The website states it "is part of the Massachusetts Legal Aid Websites Project. . . a collaborative effort of the civil legal aid community of Massachusetts . . . based at Massachusetts Law Reform Institute and get our funding from the Massachusetts Legal Assistance Corporation." It states that the website's "mission is to use the Web in new and creative ways to improve access to justice for low income and disadvantaged people," https://www.masslegalhelp.org/about-us and last accessed August 15, 2019.

RMAI also believes proposed section 1006.30(b)(1)(i)(A) would also substantially disrupt settlements in the context of secured loans. We understand that defaulted secured loans may be "settled" under an agreement that allows the consumer to retain the collateral but continue to make payments, albeit for a reduced amount. RMAI urges the Bureau to amend section 1006.30(b)(1)(i)(A) to read "The debt has been paid or [~~settled~~] satisfied."

We urge the Bureau to amend proposed section 1006.30(b)(2) to include two exceptions. First, an exception when a discharged debtor continues to make voluntary payments and second, for the purposes of servicing collateral security or recovering collateral security for a discharged debt.

Finally, we believe other circumstances will arise when a debt of the type restricted by proposed section 1006.30(b)(1)(i) must or should be transferred for the purposes of complying with a court order or agreement between the debtor and a debt-collector creditor or to avoid consumer harm and to protect the accuracy and integrity of the collection process. For example, a debt purchaser in liquidation may not be able to effect the "transfer of substantially all of"[177] to an entity desiring to acquire part of its portfolio (such as a regional portfolio). Some of the debts transferred may be the discharged debts secured by collateral described above. The Bureau should provide an exception in proposed section1006.30(b)(2) permitting transfers pursuant to a plan of liquidation, court order or agreement between the debtor and her creditor.

Finally, the Bureau requests comment on whether any of the currently proposed categories of debts should be clarified and, if so, how; and on whether additional clarification is needed regarding the proposed "know or should know" standard.[178]

With the exception of our response above,[179] RMAI is a strong proponent of the marketability of receivables on the secondary market. The use of credit is a cornerstone of the United States financial system. Consumers, businesses, and the government all rely on the availability and extension of credit to purchase goods and services. A credit-based economy is dependent on free market economic principles that support the extension of credit such as the right to contract and the right to possess and dispose of property.[180] As such, RMAI is strongly opposed to any expansion of the categories of debt that would be subject to the sale prohibitions contained in this proposed rule.

[177] Section 1006.30(b)(2)(iv).
[178] NPRM, p. 209.
[179] See response to note 163, supra.
[180] See, Reid, supra note 5.

The Bureau requests comment on proposed § 1006.30(b)(2), including on whether additional exceptions are necessary to allow for transfers of debts for non-debt collection business purposes, and on whether the proposed exceptions should be more narrowly tailored or clarified. The Bureau also requests comment on the costs and benefits to consumers of allowing debts to be transferred under the proposed exceptions.[181]

RMAI agrees with the Bureau's development of the proposed rule, including the exceptions contained therein, to permit sale or transfer of debts in limited circumstances. RMAI suggests addressing the minor amendments discussed above[182] in paragraph (b)(1) of section 1006.30 rather than treating them as exceptions in paragraph (b)(2).

However, RMAI does request one additional exception be added to paragraph (b)(2) concerning identity theft. RMAI asks the Bureau leave an avenue for a creditor or account owner to overcome a claim of identity theft if they have conclusive evidence that supports there was no identity theft. RMAI believes such an exception needs to be narrowly tailored with a high threshold to overcome a claim of identity theft; however, we feel it is nonetheless necessary based on reports from our members who have experienced false claims of identity theft as a means to avoid paying a valid debt.

RMAI notes that the exceptions the Bureau proposed in section 1006.30(b)(2) are very similar to the exceptions contained in the RMAI certification program that permits accounts that fail to meet RMAI's high standards for data and documents to be sold or transferred for the following administrative purposes: "(i) putbacks to an originating creditor or prior owner based on terms of the contract; (ii) sales/transfers to subsidiaries or affiliates of the Certified Company; (iii) sales made part of a merger or acquisition transaction involving all or substantially all of the Certified Company's assets; and (iv) transfers to a creditor made in connection with the Certified Company's default on a loan or lending agreement."[183]

XVII.	Subject:	Validation Notice
	Section(s):	1006.34
	Rule Page(s):	469-476
	Analysis Page(s):	214-287
	Interpretation Page(s):	518-528

Proposed § 1006.34(a)(1)(ii) would clarify that a debt collector could provide the validation information orally in the initial communication. The Bureau requests comment on whether

[181] NPRM, p. 212.
[182] See response to note 163, supra.
[183] See note 1 (standard B1(a), p. 38), supra.

clarification regarding content and formatting requirements is needed for a debt collector who provides the validation information orally.[184]

RMAI appreciates the Bureau's clarification that the validation notice may be given orally in the initial communication.

RMAI encourages the Bureau to adopt a consistent approach with regard to delivery of the validation information. With respect to the validation notice, the Bureau has developed Model Form B-3 that will not only provide a safe harbor for debt collectors that choose to use the Form, but importantly will also provide consumers with consistent messaging that is "clear and conspicuous."

RMAI believes these benefits would be equally applicable to a standard script developed by the Bureau for debt collectors choosing to deliver the validation notice orally. Developing such a script would ensure that the important elements of the validation notice are "clear and conspicuous," providing a safe harbor for debt collectors that choose to use the script. Such a script should also allow for the inclusion of the optional disclosures described in section 1006.34(d)(3).

The Bureau requests comment on the effects of any potential inconsistency between proposed comment 34(a)(1)–1 and the consumer protections that the FTC sought to achieve when it published its Policy Statement on Decedent Debt.[185]

As stated earlier,[186] RMAI supports the broader interpretation of the definition of consumer to be inclusive of deceased individuals and the executor or administrator of their estates. As such, RMAI believes it is necessary for the sake of consistency to require that a debt collector deliver the validation notice to the executor/administrator for a deceased consumer's estate in circumstances where the debt collector had not already provided the validation notice to the deceased consumer prior to the consumer's death. RMAI does not see any inconsistencies between the proposed official comment 34(a)(1)–1 and the FTC's Policy Statement on Decedent Debt.

The Bureau proposes § 1006.34(a)(1) to implement and interpret FDCPA section 809(a) and pursuant to its authority under FDCPA section 814(d) to prescribe rules with respect to the collection of debts by debt collectors. The Bureau requests comment on proposed § 1006.34(a)(1) and its related commentary.[187]

[184] NPRM, p. 216.
[185] NPRM, p. 218-219.
[186] See responses to notes 24 & 25, supra.
[187] NPRM, p. 219.

RMAI supports section 1006.34(a)(1). RMAI appreciates the Bureau's proposal to clarify that the validation notice can be delivered electronically, and that the validation information can be provided orally in the initial communication.

DEFINITIONS

The Bureau requests comment on proposed § 1006.34(b)(1), including on whether basing the clear and conspicuous standard on existing regulations, such as Regulation E, presents any consumer protection or compliance issues, including for validation information delivered electronically or orally. The Bureau also requests comment on whether additional clarification about the meaning of clear and conspicuous would be useful in the context of the specific information that proposed § 1006.34(a)(1) would require.[188]

Because "clear and conspicuous" can be a fact-specific standard, RMAI encourages the Bureau to clarify that written or electronic disclosures are sufficiently clear and conspicuous if given in a particular type size and location. This could be accomplished through a rebuttable presumption, under which the disclosures are presumed to be clear and conspicuous if they are provided in a certain prescribed manner. For example, the Bureau could establish that written disclosures are presumptively clear and conspicuous if they are contained on the front side of the first page, in no smaller than 12-point type, and/or in type of at least the same size as the type used for the body of the written communication. While there might be other ways to provide disclosures that are clear and conspicuous, a debt collector would not benefit from the rebuttable presumption if the debt collector does not utilize the specific method prescribed by the Bureau.

The Bureau requests comment on proposed § 1006.34(b)(2) and on whether additional clarification about the term initial communication would be helpful. The Bureau specifically requests comment on the scenario in which a debt collector's first attempt to communicate with a consumer is through an electronic communication method, such as an email or a text message, and the consumer provides no response. For example, as proposed, if a debt collector sends a consumer an email notifying the consumer that a debt has been placed with the debt collector but includes no other information, the debt collector would be required to send the consumer a validation notice within five days, even if the consumer did not reply to the debt collector's email. The Bureau requests comment about the risks, costs, and benefits to industry and consumers of treating these types of debt collection communications as initial communications that would trigger § 1006.34(a)(1).[189]

As discussed above at Section IV, RMAI believes that the limited-content message should not be restricted to any particular medium but should be applied universally. Therefore, RMAI requests

[188] NPRM, p. 220-221.
[189] NPRM, p. 222.

that the Bureau clarify that a first attempt to communicate made via an email or text message is not an initial communication if the email or text message contains only the content permitted by section 1006.2(j).

The Bureau requests comment on proposed § 1006.34(b)(3) and on comment 34(b)(3)–1, including on whether the itemization date definition will facilitate compliance with the requirement to disclose the validation information in § 1006.34(c)(vii) through (ix), and on whether additional clarification regarding the itemization date definition is needed. The Bureau also requests comment on whether the proposed itemization date definition would not capture certain debt types, such as mortgage debt where coupon books are provided instead of periodic statements, and on whether additional or alternative reference dates should be considered. The Bureau also requests comment on whether creditors' data management systems capture information related to the reference dates that the proposed itemization date definition would incorporate. Further, the Bureau requests comment on whether the proposed definition should mandate a single reference date, which would standardize validation notices across all relevant markets, and if so, what reference date might be suitable for all types of debt. In addition, the Bureau requests comment on how the proposed definition should function with respect to a debt that multiple debt collectors have attempted to collect. For example, the Bureau requests comment on whether a subsequent debt collector should be permitted to use a different itemization date than a prior debt collector used for the same debt.[190]

RMAI appreciates the flexibility provided by proposed section 1006.34(b)(3) and believes that it will facilitate compliance with the requirement to disclose the verification information in section 1006.34(c)(2)(vii)-(ix). RMAI believes that, for any given type of debt, the creditors' data management system will have captured at least one of the four potential reference dates listed in section 1006.34(b)(3)(i)-(iv). RMAI is concerned that mandating the use of a single reference date will result in substantial compliance costs and litigation risks for debt collectors because there is no single date which would be applicable across all debt types. Also, because creditors generally do not provide debt collectors with copies of validation notices sent by prior debt collectors, RMAI encourages the Bureau to permit a subsequent debt collector to use a different itemization date than a prior debt collector. RMAI believes that any confusion experienced by a consumer due to the use of different itemization dates by different debt collectors will be minimal because the information required by section 1006.34(c)(2), including the itemization required by (vii)-(ix), will facilitate the consumer's recognition of the debt.

Finally, the Bureau requests comment on whether the proposed itemization date definition should be structured as a prescriptive ordering of potential reference dates, such as a hierarchy. For example, this alternative approach could require a debt collector to determine the itemization date by identifying the first date in a hierarchy of four reference dates set forth

[190] NPRM, p. 224-225.

in proposed § 1006.34(b)(3)(i) through (iv) for which a debt collector could ascertain the amount of the debt using readily available information. With respect to this alternative approach, the Bureau requests comment on whether the use of any particular reference date, such as the last statement date, is more likely than other reference dates, such as the charge-off date, to improve consumer understanding of the required disclosures. The Bureau also requests comment on whether, for purposes of a hierarchy, any particular reference date would be more likely than others to impose costs or burdens on debt collectors.[191]

RMAI strongly supports the flexibility offered by the proposed section 1006.34(b)(3) and does not believe that a prescriptive ordering of potential reference dates will improve consumer understanding. Also, RMAI is concerned that a prescriptive ordering will result in additional compliance costs and litigation risks for debt collectors. Creditors do not always provide a transaction date. On the other hand, creditors generally provide the charge-off date and the last payment date to debt collectors when those pieces of information are applicable to the debt.

The Bureau requests comment on proposed § 1006.34(b)(3)(i) and on comment 34(b)(3)(i)–1, including on how often creditors provide periodic statements, written statements, and invoices to debt collectors, and on whether there are specific debt types for which creditors may not provide such statements. In addition, the Bureau requests comment on whether a validation notice that a previous debt collector provided to the consumer should constitute a last statement for purposes of proposed § 1006.34(b)(3)(i).[192]

RMAI appreciates the flexibility provided in section 1006.34(b)(3) and believes that for some debts the last statement date will be the best date from which to itemize the amount of the debt. However, it is important to retain the other options proposed by the Bureau because creditors often do not provide periodic statements, written statements, or invoices to debt collectors unless those documents are requested by the consumer or are needed by the debt collector to address a consumer dispute. RMAI does not recommend that validation notices provided by prior debt collectors be treated as a "last statement" for purposes of proposed section 1006.34(b)(3)(i) because creditors generally do not provide subsequent debt collectors with copies of notices delivered by prior debt collectors.

For these reasons, proposed § 1006.34(b)(3)(ii) would permit debt collectors to use the charge-off date—i.e., the date that the debt was charged off—as the itemization date. The Bureau requests comment on proposed § 1006.34(b)(3)(ii). The Bureau generally requests comment on how often creditors provide charge-off information to debt collectors and on whether there are specific debt types for which charge off is not a relevant concept. In addition, the Bureau requests comment on whether creditors assess fees or penalties at charge off, which would cause the amount the consumer owed at charge off to differ significantly from the amount that

[191] NPRM, p. 225.
[192] NPRM, p. 226-227.

appeared on the last periodic statement, invoice, or other written statement that the consumer received.[193]

RMAI strongly supports the inclusion of clause (ii) which allows debt collectors to use the charge-off date for the itemization date. This is especially important for debts associated with revolving lines of credit such as credit cards. Federal law regulates the classification and treatment of retail credit issued by federally chartered institutions, which requires that subject loans be charged off once they are a certain number of days past due.[194] Therefore, the charge-off date and charge-off balance are well-known and reliable starting points for the itemization of debts charged off pursuant to those regulations. There have been failed efforts at the state level to require itemization at the point of origination, but creditors are simply unable to provide such an itemization for revolving lines of credit like credit cards. Furthermore, if it were possible, the itemization of a credit card debt from origination would likely confuse consumers because they have received periodic statements reflecting an account balance that includes the prior month's charges, fees, and interest but have never received a statement from the creditor itemizing interest. For consumers who have had a credit card for many years, this itemization could be hundreds of pages, if required to go back to origination.

Creditors generally provide the charge-off date and charge-off balance to debt collectors for debts that were charged off. Also, many creditors deliver a charge-off statement to the consumer that reflects the charge-off balance. For those debts, the charge-off date is the natural place to begin itemization.

Measuring account balances from the point of origination works for certain fixed asset classes (i.e. where the original account balance is static, based solely on a single transaction, and not subject to new account transactions) such as auto, student loans, etc. However, for open and revolving lines of credit (i.e. credit cards) measuring an account balance from the point of origination is not possible for originators based on the nature of the credit instrument. Revolving and open lines of credit have the following elements which are absent on fixed lines of credit: (i) the ability to combine new and old purchases on the same account, (ii) a zero balance is never required on these accounts as balances can be carried over each month due to the consumer's option to not provide a payment in full, and (iii) carried over account balances are subject to compounding interest.

The Bureau requests comment on proposed § 1006.34(b)(3)(iii), including on how often creditors provide debt collectors with last payment date information. The Bureau also requests comment on how proposed § 1006.34(b)(3)(iii) should be applied if a third party made the last

[193] NPRM, p. 227.
[194] *See* Uniform Retail Credit Classification and Account Management Policy, 65 Fed. Reg. 36,903 (Jun. 12, 2000).

payment on the debt. For example, such a third-party payment might include a partial payment on a consumer's medical debt by an insurance provider.[195]

Creditors often provide the date of last payment when placing debts with debt collectors. However, the last payment date information generally does not specify whether that last payment was made by the consumer or by a third party. For example, for debts that are based upon a deficiency the date of last payment will often reflect the date that proceeds from the sale of the collateral were applied to the consumer's balance. However, even if the last payment was made by a third party, for many types of debt the date of last payment is often the best starting point for an itemization of the amount of the debt.

The Bureau requests comment on proposed § 1006.34(b)(3)(iv) and on comment 34(b)(3)(iv)–1, including on how often creditors provide transaction date information to debt collectors and on whether the transaction date concept is inapplicable to certain debt types.[196]

Creditors often provide transaction date information for certain debt types. For example, creditors often provide a date of service, or treatment date, with respect to medical debts. Also, creditors often provide a contract date for debts such as those arising under a retail-installment contract involving a single extension of credit that the consumer was to repay over time. For those and similar debt types, the transaction date might be the best starting point for an itemization of the amount of the debt. However, as discussed above, the transaction date would not be the best starting point for debts based on open or revolving lines of credit, such as credit cards, which involve multiple extensions of credit over a long period of time.

VALIDATION NOTICE

To facilitate compliance with proposed § 1006.34, as well as to account for the possibility that more debt collectors may begin providing the validation information electronically, proposed § 1006.34(b)(4) would define validation notice to mean a written or electronic notice that provides the validation information described in proposed § 1006.34(c). The Bureau requests comment on proposed § 1006.34(b)(4).[197]

RMAI supports proposed section 1006.34(b)(4). Our members welcome this long-awaited modernization of the validation process and believe consumers will benefit from the provision of the validation notice in electronic form. The information provided in the validation notice typically comes into the possession of debt collectors in electronic format and providing such information to consumers in its native format, rather than printing and mailing the information,

[195] NPRM, p. 228.
[196] NPRM, p. 229.
[197] NPRM, p. 229.

provides consumers with the same format of validation information that is in the debt collector's possession. To be sure, the E-SIGN Act is designed to facilitate "purely electronic transactions" which Congress believed "will help to provide consumers with an alternative to paper transactions" [198] and, some twenty years later, it is common for consumer credit transactions to originate exclusively in electronic form.[199]

The Bureau requests comment on proposed § 1006.34(b)(5) and on comment 34(b)(5)–1. In particular, the Bureau requests comment on debt collectors' current practices for determining the end of the validation period. The Bureau also requests comment on whether the length of the five-day timing presumption should be modified and on whether different timing presumptions should apply depending on whether a validation notice is delivered by mail or electronically, for example by email or text message. Finally, the Bureau requests comment on whether a different timing presumption should apply if validation information is provided orally.[200]

RMAI supports the Bureau's proposed definition of "validation period" provided at section 1006.34(b)(5). Debt collectors generally add a few days to the thirty-day period to ensure sufficient time for the notice to be delivered. RMAI agrees that a five-day period is appropriate for validation notices that are delivered by mail. However, it is not necessary to add additional days to validation notices that are delivered electronically because electronic delivery is nearly instantaneous and is not affected by weekends or holidays. RMAI also supports comment 34(b)(5)-1 and agrees that if a subsequent validation notice is sent then the validation period should be calculated based on the date that the consumer receives, or is assumed to receive, the subsequent validation notice.

The Bureau requests comment on proposed § 1006.34(c)(1).[201]

RMAI supports the cross reference in section 1006.34(c)(1) to the consumer disclosure required in section 1006.18(e) which informs consumers that the purpose of the communication is for the collection of a debt.[202]

The Bureau requests comment on proposed § 1006.34(c)(2), including on whether any of the proposed items should be excluded or any additional items should be added. The Bureau also

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[198] Committee on Commerce, Science, and Transportation, 106 S. Rpt. 131 (July 30, 1999).
[199] Julapa Jagtiani and Catharine Lemieux, *Fintech Lending: Financial Inclusion, Risk Pricing, and Alternative Information*, working paper presented to 17th Annual Bank Research Conference, sponsored by the Federal Deposit Insurance Corporation's Center for Financial Research and the Journal of Financial Services Research, p. 1 (June 16, 2017) (the authors note the "explosive growth" of online lending since 2010 "which has started to change the way consumers . . . secure financing.") publicly available at https://www.fdic.gov/bank/analytical/cfr/bank-research-conference/annual-17th/papers/14-jagtiani.pdf and last accessed August 14, 2019.
[200] NPRM, p. 232.
[201] NPRM, p. 233.
[202] See response to note 118, supra.

requests comments on whether proposed § 1006.34(c)(2)'s content requirements risk overwhelming consumers and decreasing their understanding, thereby making the proposed disclosures less effective.[203]

RMAI strongly supports the inclusion of the 10 data points that the Bureau has included in proposed section 1006.34(c)(2). This information should be readily available to third-party collection agencies by their clients. It is a standard practice for debt buying companies to obtain these data points at the point of purchase. In addition, all RMAI certified businesses are required to obtain all 10 data fields, as well as additional fields, at the point of purchase or they are prohibited from purchasing the accounts.[204]

The Bureau requests comment on proposed § 1006.34(c)(2)(i) and on whether additional clarification would be useful.[205]

RMAI supports proposed section 1006.34(c)(2)(i) as drafted and feels no additional clarification is required.

The Bureau requests comment on proposed § 1006.34(c)(2)(ii) and on comment 34(c)(2)(ii)–1, including on whether additional clarification would be useful. The Bureau specifically requests comment on how debt collectors currently determine the complete version of a consumer's name if creditors or third parties, such as a skip tracing vendors, provide conflicting name information. The Bureau also requests comment on what a debt collector should be required to do to reasonably determine the consumer's complete name information.[206]

RMAI supports the Bureau's proposed interpretation of "consumer's name" and agrees that a debt collector should provide the most complete version of the consumer's name about which the debt collector actually has knowledge. Consumers often omit part of their name, such as a middle name or suffix, when contracting for credit. And creditors generally place debts for collection using the name that the consumer provided to the creditor. As a result, debt collectors do not always have the consumer's full name. RMAI supports comment 34(c)(2)(ii)-1 and agrees that it would be unreasonable for a debt collector to omit name information that is actually known to the debt collector in a manner that would create a false, misleading, or confusing impression about the consumer's identify. However, RMAI requests that the Bureau clarify that while it would be unreasonable to omit known name information, a debt collector is not obligated to ascertain the consumer's full name prior to commencing collection efforts.

[203] NPRM, p. 236.
[204] See note 1 (standard B1(c), p. 38), supra.
[205] NPRM, p. 237.
[206] NPRM, p. 238.

The Bureau requests comment on proposed § 1006.34(c)(2)(iii) and on comment 34(c)(2)(iii)–1. In particular, the Bureau requests comment on whether merchant brand or similar information should be required for debts other than credit card debts.[207]

RMAI supports proposed section 1006.34(c)(2)(iii) as drafted and feels no additional clarification is required. The merchant brand is a critical piece of information as a consumer may only be familiar with the merchant brand and not the bank that issued the credit card on behalf of the merchant. RMAI appreciates the Bureau adding the conditional phrase "to the extent available to the debt collector" to the requirement as there may be limited circumstances where this information may not be available to the debt collector. This requirement is consistent with RMAI's certification program which requires purchasers of receivables to use commercially reasonable efforts to obtain "the store or brand name associated with the account at charge-off if different from the charge-off creditor's name."[208] The reason why RMAI made this subject to "commercially reasonable efforts" is for the same reason why the Bureau used the conditional phrase in the requirement.

RMAI supports applying the merchant-name requirement to similar accounts that are marketed and serviced in the name of the merchant rather than the entity providing the financing.

The Bureau requests comment on proposed § 1006.34(c)(2)(iv).[209]

RMAI generally supports proposed section 1006.34(c)(2)(iv). However, to deter lawsuits over perceived technical violations, RMAI requests that the Bureau clarify that debt collectors need not provide the full business name or name of incorporation of the creditor to whom the debt was owed on the itemization date. Instead, a debt collector should be able to satisfy this requirement by providing the name under which that creditor transacted business, or a commonly-used acronym, or any name used by that creditor from the inception of its relationship with the consumer.[210] This clarification will advance the goal of consumer recognition because consumers are likely to be more familiar with a commonly-used trade name than with the technical legal name.[211]

The Bureau requests comment on proposed § 1006.34(c)(2)(v) and on comment 34(c)(2)(v)–1, including on whether the Bureau should mandate truncation of account numbers rather than making truncation optional. Further, the Bureau requests comment on whether additional clarification about truncation would be helpful. For example, such clarification might explain

[207] NPRM, p. 239.
[208] See note 1 (standard B1(c), p. 38), supra.
[209] NPRM, p. 240.
[210] *See Maguire v. Citicorp. Retail Servs.*, 147 F.3d 222, 235 (2d Cir. 1998); *Leonard v. Zwicker & Assocs., P.C.*, 713 Fed. Appx. 879, 883 (11th Cir. 2017); *Iadevaio v. Ltd. Fin. Servs., L.P.*, No. 17-CV-4112 (JFB)(SIL), 2019 U.S. Dist. LEXIS 147677 (E.D.N.Y. Aug. 29, 2019).
[211] *Leonard*, 713 Fed. Appx. at 883.

when a truncated account number is recognizable, or how debt collectors may indicate that digits have been omitted from a truncated account number.[212]

RMAI supports proposed section 1006.34(c)(2)(v) as drafted and feels no additional clarification is required because there are well-accepted norms for when account numbers should be truncated and how those truncated numbers should be displayed. Also, consumers are familiar with truncated account numbers and will recognize an account number from the last four digits.

The Bureau requests comment on proposed § 1006.34(c)(2)(vii).[213]

RMAI supports proposed section 1006.34(c)(2)(vii) as drafted and feels no additional clarification is required. Please see related commentary above regarding the itemization date requirements in section 1006.34(b).[214]

The Bureau requests comment on proposed § 1006.34(c)(2)(viii) and on comment 34(c)(2)(viii)–1.[215]

RMAI supports proposed section 1006.34(c)(2)(viii) as drafted and feels no additional clarification is required, provided that "charge-off" remains an optional point to ascertain the itemization date for revolving lines of credit as discussed above.[216]

The Bureau requests comment on proposed § 1006.34(c)(2)(ix) and on comment 34(c)(2)(ix)–1. In particular, the Bureau requests comment on whether the itemization should be more detailed—for example, by reflecting each fee charged and each payment received—or whether certain itemization categories, such as credits and payments, should be combined. The Bureau also requests comment on whether the itemization proposal is practicable across all categories of debt or conflicts with disclosure requirements established by other applicable law, such as State case law, statutory law, and regulatory law, as well as disclosures required by judicial opinions or orders.[217]

RMAI supports proposed section 1006.34(c)(2)(ix) as drafted but feels that the official commentary needs to allow for a certain amount of flexibility for how the itemization is formatted due to itemization nuances that have been adopted by various states, both statutorily and in court rules. If the Bureau gets overly prescribed in its requirements, it will likely result in litigation at the state level. Alternatively, the Bureau could prescribe an itemization format with a conditional phrase "unless an alternative format is required by a state provided that the elements

[212] NPRM, p. 242.
[213] NPRM, p. 243.
[214] See responses to notes 190-195, supra.
[215] NPRM, p. 244.
[216] See response to note 193, supra.
[217] NPRM, p. 246.

are addressed in the state format." However, RMAI feels that the Bureau must provide clear guidance that for revolving lines of credit, the itemization format has to be based on the charge-off date.[218]

The language the Bureau proposes is very similar to what is required in the RMAI certification program for "credit cards & asset classes not listed" which reads: "The unpaid balance due on the account, with a breakdown of the post-charge-off balance, interest, fees, payments, and creditor/owner authorized credits or adjustments."[219]

The Bureau requests comment on proposed § 1006.34(c)(2)(x) and on comment 34(c)(2)(x)–1.[220]

RMAI agrees it is reasonable to interpret "amount of the debt" as referred to in FDCPA section 809(a)(1) as the current amount of the debt on the date the validation information is provided.[221]

As such, the letter should include a date, which is not included in Model Form B-3. Several states require that the date of the letter be included.[222]

The Bureau requests comment on proposed § 1006.34(c)(3) generally, including on whether any of the proposed items should be excluded or any additional items should be added.[223]

RMAI agrees that consumers should be informed of their rights in concise language that they can understand. However, just as we cautioned in our 2013 ANPR response, consumers are being overloaded with disclosures required by state and local regulatory agencies. RMAI members are concerned that the longer the consumer notices get, the more likely the consumers will ignore the disclosures. This result clearly runs counter to the well-meaning intent of the various disclosure requirements. RMAI strongly recommends that consumers be provided with a short and concise large-font notice in all written correspondence, including electronic communications, which directs consumers to a Bureau-controlled "know your rights" webpage which is dedicated to informing and educating consumers of their rights. Such a statement could read: "**CONSUMERS HAVE RIGHTS UNDER THE LAW. TO LEARN ABOUT YOUR RIGHTS, GO TO [INSERT WEB ADDRESS].**"

RMAI believes that this approach will create a more educated consumer population and will allow the Bureau to adjust the messaging at any point in time without the need for additional

[218] See response to note 193, supra.
[219] See note 1 (standard B1(c), p. 38), supra.
[220] NPRM, p. 247.
[221] NPRM, p. 471.
[222] Code Ark. R. 031 00 001 § XIV(b); Ill. Admin. Code tit. 68 § 1210.60(b); Mich. Comp. Laws Ann. § 339.918(1)(b).
[223] NPRM, p. 249.

rulemaking. RMAI members are also concerned with the perception that they are providing legal advice to consumers. The easiest way to avoid this perception is to relieve debt collectors of crafting messages about a consumer's rights and instead permit them to deliver a short and concise large-font notice directing consumers to the Bureau's "know your rights" webpage.

The Bureau requests comment on proposed § 1006.34(c)(3)(i).[224]

RMAI agrees with the Bureau that providing the validation period end date is "an integral feature of a consumer's dispute right,"[225] and that it will provide consumer certainty as to when that right ends. RMAI appreciates that the Bureau has clarified that the validation end date is "30 days after the consumer receives or is assumed to receive the validation information," and that "the debt collector may assume that a consumer receives the validation information on any date that is at least five days (excluding legal public holidays, Saturdays, and Sundays) after the debt collector provides it." This assumption removes the inherent uncertainty of a sender attempting to calculate a timeframe based on receipt.

The Bureau requests comment on proposed § 1006.34(c)(3)(ii). In particular, the Bureau notes that the proposed 1006.34(c)(3)(ii) disclosure language that appears on proposed Model Form B–3 omits the statutory phrase, "if different from the current creditor." The Bureau intentionally omitted this phrase to achieve a plain language disclosure that enhances consumer understanding. The Bureau requests comment on whether omitting this phrase on proposed Model Form B–3 would enhance consumer understanding by simplifying the statutory language, or whether it might lead consumers incorrectly to conclude that a debt collector always would need to cease collection upon request for original-creditor information, even if the original creditor and the current creditor were the same.[226]

Model Form B-3 appears to be drafted for situations in which the debt collector is collecting on behalf of the original creditor. Accordingly, it does not expressly refer to any entity as a "Current Creditor" or "Original Creditor" since they are the same. RMAI shares the concern that this might lead to consumer confusion in determining who the current creditor is and whether it is different from the original creditor.

Section 1006.34(d)(3) allows for optional disclosures that "would not be regarded as overshadowing or inconsistent with the disclosure about the consumer's right to dispute the debt or request the name and address of the original creditor."[227] RMAI recommends that the optional disclosures include the ability to expressly identify the original creditor, the last four digits of the

[224] NPRM, p. 250.
[225] NPRM, p. 250.
[226] NPRM, p. 251-252.
[227] NPRM, p. 274.

original account number or other account identifier, the current creditor, and the current creditor's account number.

Certain jurisdictions require some of this information in the validation notice,[228] and it is currently provided in the validation notice by the majority of RMAI members to aid consumers' recognition of the debt.

RMAI believes retaining the statutory phrase "if different from the current creditor" would assist consumer understanding as to when the request is applicable.

The Bureau requests comment on whether debt collectors require additional clarification about how to comply with FDCPA section 809(a)(3).[229]

We believe compliance with section 809(a)(3) is satisfied by providing the disclosure in the initial communication or by sending it, in writing, to the consumer within five days of the initial communication, along with the other disclosures required by section 809(a). Our members report using the exact wording of section 809(a)(3) or similar language that tracks the language of section 809(a)(3). We further agree with the Bureau's understanding that section 809(a)(3) is meant to "alert consumers to an oral dispute option . . ."[230] However, the Court of Appeals for the Third Circuit does not agree that section 809(a)(3) provides for oral disputes.[231] Several district courts within the Third Circuit have held that in light of the Third Circuit's interpretation, it violates section 809(a) for a debt collector to provide the section 809(a)(3) disclosure using the exact wording of section 809(a)(3) or a form that is substantially similar.[232] The Bureau's interpretation is consistent with RMAI's understanding of section 809(a)(3).

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[228] N.Y. Comp. Codes R. & Regs. tit. 23, § 1.2(b) (name of original creditor); NYC Administrative Code 20-493.1 (name of original creditor); Code of the City of Yonkers, § 31-162(A) (name of original creditor); Wash. Rev. Code Ann. § 19.16.250(8) (original account number or redacted original account number); Wash. Rev. Code Ann. § 19.16.250 (name of original creditor).

[229] NPRM, p. 254.

[230] NPRM, p. 253.

[231] *Graziano v. Harrison*, 950 F.2d 107, 112 (3d Cir. 1991) ("We therefore conclude that subsection (a)(3), like subsections (a)(4) and (a)(5), contemplates that any dispute, to be effective, must be in writing."). Other Circuit Courts of Appeal that have addressed the issue disagree and conclude § 809(a)(3) provides for oral disputes. See, e.g., *Clark v. Absolute Collection Serv.*, 741 F.3d 487, 490 (4th Cir. 2014); *Hooks v. Forman, Holt, Eliades & Ravin, LLC*, 717 F.3d 282, 285 (2d Cir. 2013); *Camacho v. Bridgeport Financial, Inc.*, 430 F.3d 1078, 1081 (9th Cir. 2005).

[232] *Cadillo v. Stoneleigh Recovery Assocs., LLC*, No. 17-7472-SDW-SCM, 2017 U.S. Dist. LEXIS 210870, at *6 (D.N.J. Dec. 21, 2017) ("Although this Court is satisfied that Defendant's collection notice put Plaintiff on notice of her right to dispute the debt by stating: 'Unless you notify this office within thirty (30) days after receiving this notice that you dispute the validity of this debt or any portion thereof, this office will assume this debt is valid,' (Compl. Ex. A), the collection letter does not adequately inform Plaintiff that she must do so in writing."). See also, *Smith v. Am. Coradius Int'l, LLC*, No. 3:19-CV-0546, 2019 U.S. Dist. LEXIS 100504, at *8-9 (M.D. Pa. June 17, 2019); *Joseph v. Rickart Collection Sys., Inc.*, No. 19-5413, 2019 U.S. Dist. LEXIS 89362, 2019 WL 2281581 (D.N.J. May 29, 2019); *Henry v. Radius Global Solutions, LLC*, 357 F. Supp. 3d 446 (E.D. Pa. Jan. 18, 2019); *Durnell v. Stoneleigh Recovery Assocs., LLC*, No. 18-2335, 2019 U.S. Dist. LEXIS 2270, 2019 WL 121197 (E.D. Pa. Jan. 7, 2019); *Guzman v. HOVG, LLC*, 340 F. Supp. 3d 526 (E.D. Pa. Oct. 31, 2018). *Cadillo* is presently before the Third Circuit (No. 19-02811). On September 12, 2019, the Court of Appeals for the Third Circuit heard oral

The Bureau requests comment on proposed § 1006.34(c)(3)(iv).[233]

As discussed above,[234] RMAI supports the provision of a notice that directs consumers to a Bureau's 'know your rights" webpage. If the Bureau concurred with RMAI's comments, RMAI would recommend rewording section 1006.34(c)(3)(iv).

The Bureau requests comment on proposed § 1006.34(c)(3)(v) and on comment 34(c)(3)(v)–1.[235]

RMAI supports proposed section 1006.34(c)(3)(v) and comment 34(c)(3)(v)–1 as drafted and feels no additional clarification is required.

The Bureau requests comment on proposed § 1006.34(c)(3)(vi) and on comment 34(c)(3)(vi)–1.[236]

RMAI supports proposed section 1006.34(c)(3)(vi) and comment 34(c)(3)(vi)–1 as drafted and feels no additional clarification is required.

The Bureau requests comment on proposed § 1006.34(c)(4). The Bureau specifically requests comment on whether validation information should include consumer response information, and, if so, on whether any of the proposed items should be excluded or any additional items should be added.[237]

RMAI supports proposed section 1006.34(c)(4) as drafted and feels no additional clarification is required.

The Bureau requests comment on proposed § 1006.34(c)(4)(i), including on whether any dispute prompts should be added, revised, or removed. In addition, the Bureau requests comment on the potential risks, costs, and benefits of the dispute prompts for both consumers and industry, including on whether proposed § 1006.34(c)(4)(i) will impact dispute volumes or affect the proportion of specific disputes that debt collectors receive as compared to generic disputes.[238]

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argument in the consolidated matter *Ricco v. Sentry Credit, Inc.,* Nos. 18-1463, 18-2008, 18-2267, 18-2440 & 18-2741. An audio file of the oral argument is publicly available at https://www2.ca3.uscourts.gov/oralargument/audio/18-1463MaureenRicciov.SentryCredit,Inc.,etal.mp3 and last accessed August 14, 2019.

[233] NPRM, p. 255.

[234] See response to note 223, supra.

[235] NPRM, p. 257.

[236] NPRM, p. 258.

[237] NPRM, p. 161.

[238] NPRM, p. 263.

RMAI members have found that, with regard to purchased debt portfolios, over 98 percent are accurate and that consumer "disputes" are usually resolved when the consumer requests and receives an answer or explanation to a question or concern. Respectfully, the Bureau's approach of only providing a dispute option precludes, as a practical matter, a consumer from simply asking a question. RMAI requests that the prompts provided to the consumer should be ordered to reflect the most common responses on top. Accordingly, RMAI proposes the following:

How do you want to respond?
Check all that apply:

- ☐ **I want to pay all or part of this debt and enclose this amount**: $☐
  (make your check payable to: North South Group. Please include the reference number 584-345)
- ☐ **I do not dispute the debt, but I have a question or would like to discuss payment options.** Please contact me by the following method:
  - ☐ Telephone: _____
  - ☐ Email: _____
  - ☐ Text: _____
- ☐ **I want to dispute the debt because:**
  - ☐ The amount is wrong
  - ☐ It is not my debt
  - ☐ The debt was already paid
  - ☐ Other (please describe on reverse or attach additional information)
- ☐ **I want you to send me the name and address of the original creditor, if different from the current creditor.**
- ☐ **Quiero esta forma en Español.**

The Bureau requests comment on whether the Bureau should propose rules concerning website communications. In particular, the Bureau requests comment about the risks, costs, and benefits to consumers and industry related to prescribing requirements for the content and formatting of debt collector website communications.[239]

RMAI does not believe rulemaking is needed concerning requirements for the content and formatting of website communications.

The Bureau requests comment on proposed § 1006.34(c)(4)(ii).[240] [original creditor information prompt]

As explained in more detail above in RMAI's response to the request for comment on proposed section 1006.34(c)(3)(ii), the ideal solution in situations where the current creditor is different from the original creditor is to allow an optional disclosure that identifies both. RMAI believes

[239] NPRM, p. 264.
[240] NPRM, p. 265.

the statutory phrase "if different from the current creditor" should be included in the prompt to assist consumer understanding as to when the request is applicable.

The Bureau requests comment on proposed § 1006.34(c)(4)(iii). The Bureau understands that some debt collectors use letter vendors to mail validation notices and that, in some cases, the letter vendor's mailing address may appear on validation notices in lieu of the debt collector's mailing address. The Bureau requests comment on whether proposed § 1006.34(c)(4)(iii) would be consistent with current practices related to debt collectors' use of letter vendors to mail validation notices.[241]

RMAI understands some debt collectors use letter vendors whose addresses appears on validation notices. Section 1006.34(c)(4)(iii) should be interpreted to include the address where the debt collector receives the consumer responses contemplated by this section.

FORM OF VALIDATION NOTICE

The Bureau requests comment on proposed § 1006.34(d)(1)(i).[242]

RMAI appreciates that the proposed form is clean and uses simple English as opposed to "legalese" (we quote the actual statute which arguably was written for lawyers by lawyers). We would like to make the following specific comments and suggestions regarding the form.

We also like that the first set of information given is to identify the creditor that charged-off the debt and the relationship between the creditor and the collector. In addition to the summary of the account which we believe is crucial information, we propose that the first sentence be modified to read as follows:

> North South Group is a debt collector and is trying to collect a debt you owe to the Bank of Rockville. Bank of Rockville's address as of January 2, 2017 was P.O. Box 123, Boca Raton, Fl 12345-1234. [The debt was purchased by our client ABC Corp on Jan 1, 2018] Your NSG account number is 12345678. We will use any information you give us to help collect the debt. We will also use any information you give us to resolve any issues you wish to raise in regard to this debt.

By providing the information right up front, we eliminate what we have found to be a major source of disputes that arise when a consumer gets a letter from a company he or she never heard of before saying a debt is owed to said company. We also suggest that in the case of affinity card

[241] NPRM, p. 266.
[242] NPRM, p. 270.

accounts the relationship between the creditor and the card name be provided. For example, Home Store Goods Mastercard issued by Bank of Somewhere.

We propose modifying the tear off section below to contain check off boxes in the following order:

How do you want to respond?
Check all that apply:

- ☐ **I want to pay all or part of this debt and enclose this amount**: $ ☐
  (make your check payable to: North South Group. Please include the reference number 584-345)
- ☐ **I do not dispute the debt, but I have a question or would like to discuss payment options.** Please contact me by the following method:
  - ☐ Telephone: _____
  - ☐ Email: _____
  - ☐ Text: _____
- ☐ **I want to dispute the debt because:**
  - ☐ The amount is wrong
  - ☐ It is not my debt
  - ☐ The debt was already paid
  - ☐ Other (please describe on reverse or attach additional information)
- ☐ **I want you to send me the name and address of the original creditor, if different from the current creditor.**
- ☐ **Quiero esta forma en Español.**

This order is based on a survey of our membership regarding the responses they have received from validation notices they have sent out. We have found that in most purchased debt portfolios 98-99 percent are accurate in all respects, and more often than not, disputes are resolved when the consumer contacts the collector and explains their concerns and allows the collector to provide a response. Without a consumer providing information as to the nature of his or her dispute, it's impossible for the collector to address the dispute. What we have found is that when a collector understands the nature of the consumers dispute/concern the matter can most often be resolved amicably ending in a satisfied consumer.

Another area of concern is to distinguish between inquiries and disputes. As stated previously, a little information goes a long way. We think that forcing consumers to "dispute a debt" when all they really want is more information creates an unnecessary adversarial atmosphere which can only raise the anxiety of the consumer. We recognize that getting a debt collection letter is not a pleasant experience. As a result, we want to provide a methodology where a consumer is encouraged to engage with a collector to resolve the debt at issue. If a consumer perceives that any communication with the collector will be adversarial, its less likely they will seek to communicate.

The Bureau requests comment on proposed comment 34(d)(1)(ii)–1, on the risk of confusion or deception caused by the second-person framing of the model validation notice in the deceased-consumer context, and on options for reducing any possible confusion or deception.[243]

RMAI does not perceive any potential inconsistency between proposed comment 34(a)(1)–1 and the consumer protections that the FTC sought to achieve when it published its Policy Statement on Decedent Debt. RMAI agrees that the Bureau's proposed interpretation is preferable to addressing the validation information using the name of the deceased consumer or using "the estate of" with the name of the deceased consumer.

Similarly, RMAI supports the clarification in proposed commentary to sections 1006.34(a)(1) and 1006.38, which makes clear that person who is authorized to act on behalf of the deceased consumer's estate, such as the executor, administrator, or personal representative, operates as the consumer for purposes of proposed sections 1006.34(a)(1) and 1006.38.

The Bureau requests comment on proposed § 1006.34(d)(2) and on proposed comment 34(d)(2)–1. In particular, the Bureau requests comment on whether the Bureau should provide additional clarification about how to deliver Model Form B–3 electronically in a manner that affords protection from liability pursuant to proposed § 1006.34(d)(2). For example, the Bureau requests comment on whether to prescribe or define additional formatting requirements (e.g., type size) or delivery standards for validation notices delivered electronically. The Bureau also requests comment on the risks, costs, and benefits to consumers and industry of extending the protection from liability pursuant to proposed § 1006.34(d)(2) to validation notices delivered electronically.[244]

RMAI requests that the Bureau provide additional clarification on electronic delivery of Model Form B-3, particularly with respect to the "format, and placement of the validation information described in section 1006.34(c)" and the optional disclosures of section 1006.34(d)(3) as required by section 1006.34(d)(1)(ii). RMAI supports safe-harbor protection for electronic delivery of the Model Form B-3 and believes without safe-harbor status, the model form may not be widely adopted for electronic communications.

The Bureau requests comment on proposed § 1006.34(d)(3)(i).[245]

RMAI agrees with the Bureau that a debt collector's telephone contact information should be an optional disclosure that may be provided in the validation notice. Not only does it provide the

[243] NPRM, p. 271-272.
[244] NPRM, p. 273.
[245] NPRM, p. 275.

consumer with an additional method of communication, it is specifically permitted or required in a number of states.[246]

Additionally, and consistent with the Bureau's approach toward electronic communications, an optional disclosure should be allowed for a debt collector's email address.

The Bureau requests comment on proposed § 1006.34(d)(3)(ii).[247]

RMAI agrees with the Bureau that a reference code should be allowed as an optional disclosure. A reference code allows a debt collector, when communicating with a consumer, to quickly and accurately access the consumer's account. RMAI recommends that the Bureau also allow placement of the reference code on the tear-off portion of the validation notice to ensure the information conveyed by the consumer is associated with the correct account.

The Bureau requests comment on proposed § 1006.34(d)(3)(iii), including on whether the payment disclosures should be permitted and, if so, whether the payment disclosures should be modified.[248]

RMAI agrees with the Bureau that a payment disclosure is an appropriate option to include with respect to the validation notice. The FDCPA does not prohibit collection activities during the validation period provided they do "not overshadow or [are] inconsistent with the disclosure of the consumer's right to dispute the debt or request the name and address of the original creditor."[249]

The statement "Contact us about your payment options" would neither overshadow nor be inconsistent with the disclosures. First, the request for payment within the validation period does not impart a sense of urgency. Second, an invitation to contact the debt collector about payment options does not overshadow the consumer's right to dispute the debt in writing because it does not imply that a verbal dispute will trigger the verification requirement and because the encouragement to contact the debt collector is specific to inquiring about payment options or an inquiry.[250]

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[246] Cal. Civ. Code § 1788.12(d) (telephone number permitted); 4 Colo. Code Regs. § 903-1 and Colo. Rev. Stat. Ann. § 5-16-123(1)(b)(I)(B) (telephone number required); Code Me. R. 02-030 Ch.300, § 2(C)(4) (telephone number required); Code Me. R.02-030 Ch.300, § 2(C)(3) (hours of operation required); Mass. Regs. Code tit. 209 § 18.17(13) and Mass. Regs. Code tit. 940 § 7.07(22) (telephone number and office hours required); N.Y., Code § 20-493.1(a)(1) ("call-back" number required); N.C. Gen. Stat. § 58-70-115(6) (telephone number required); Tex. Fin. Code Ann. § 392.304(a)(6) (telephone number required); Wis. Admin. Code § DFI-Bkg 74.11(6)(a) (telephone number required).

[247] NPRM, p. 275.

[248] NPRM, p. 276-277.

[249] 15 U.S.C. § 1692g(b).

[250] Contrast with *Caprio v. Healthcare Revenue Recovery Grp., LLC*, 709 F.3d 142 (3d Cir. 2013) where the statement "If we can answer any questions, or if you feel you do not owe this amount, please call us toll free . . ." was held to overshadow and contradict the requirement that a dispute must be in writing.

The Bureau requests comment on proposed § 1006.34(d)(3)(iv) and on comment 34(d)(3)(iv)–1. The Bureau requests comment on conflicts that might arise between the Bureau's model validation notice and other disclosures required by applicable law. In particular, the Bureau requests comment on whether proposed § 1006.34(d)(3)(iv) would allow debt collectors to comply with applicable law, including on whether any disclosures required by applicable law must be included on the front of the validation notice. The Bureau also requests comment on whether proposed § 1006.34(d)(3)(iv) should cover a debt collector who includes on the reverse of the model form disclosures that are permitted, but not required, by applicable law.[251]

While many states allow notices to be placed on the second or reverse page with sufficient notice on the first or front page, there are state laws that require certain notices be placed on the front page or be otherwise "prominent" or "clear and conspicuous."[252]

When placement is optional, debt collectors may choose to place notices on the front page to comply with the "clear and conspicuous" standard. As described by one state regulator: "'Clear and conspicuous' is a fact-specific standard. Facts could necessitate that a disclosure be on the front page of a communication by a debt collector, but not necessarily in every case. Debt collectors should consider factors such as the prominence of the disclosure, the proximity to related information, whether the disclosure is likely to be seen, and whether the information is readable and understandable."[253] Thus, in the absence of a bright-line standard, debt collectors may prefer to place some state-required notices on the front of the validation notice to reduce risk.

RMAI believes proposed section 1006.34(d)(3)(iv) should cover a debt collector who includes on the reverse of the model form disclosures that are permitted, but not required, by applicable law.

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[251] NPRM, p. 278.

[252] Cal. Civ. Code § 1788.52(d)(1) (debt buyer disclosure in initial written communication must be "prominent"); Mass. Regs. Code. tit. 940 § 7.07(24) (out-of-statute debt notice must be "placed on the front page"); N.M. Admin. Code § 12.2.12.9 (out-of-statute debt notice must be "clear and conspicuous and shall be placed on the front page"); N.Y. Comp. Codes R. & Regs. tit. 23, § 1.2(b) (validation information must be "clear and conspicuous"); N.Y. Comp. Codes R. & Regs. tit. 23, § 1.3 (out-of-statute debt notice must be "clear and conspicuous"); (6 RCNY 2-191 (out-of-statute debt notice must be "in at least 12 point type that is set off in a sharply contrasting color from all other type on the permitted communication, and shall be placed adjacent to the identifying information about the amount claimed to be due or owed on such debt"); Tex. Fin. Code Ann. § 329.307(f) (out-of-statute debt notice "must be in at least 12–point type that is boldfaced, capitalized, or underlined or otherwise conspicuously set out from the surrounding written material").

[253] "FAQs: Regulation of debt collection by third-party debt collectors and debt buyers (23 NYCRR 1)," New York State Department of Financial Services. Visit: https://www.dfs.ny.gov/faqs/industry_faqs/debt (last visited September 13, 2019).

RMAI notes that the prompt, as displayed in Model Form B-3, would not conform to the requirements of one state.[254]

The Bureau requests comment on proposed § 1006.34(d)(4).[255]

RMAI welcomes the proposed rule providing guidance on delivering validation notices electronically.

The Bureau requests comment on proposed § 1006.34(d)(4)(i).[256]

RMAI asks the Bureau to clarify whether section 1006.34(d)(4)(i) includes "checkboxes".

The Bureau requests comment on proposed § 1006.34(d)(4)(ii).[257]

RMAI supports the proposed rule providing guidance on the use of hyperlinks in electronic validation notices for the purposes specified.

XVIII.	Subject:	Spanish-Language Translation Disclosures
	Section(s):	1006.34(d)(3)(vi) 1006.34(e)
	Rule Page(s):	475 476
	Analysis Page(s):	279-281 283-284
	Interpretation Page(s):	526 526-527

In general

RMAI supports the Bureau's proposed rule that allows a debt collector to provide a statement in Spanish that informs consumers they can request a Spanish-language validation notice or a Spanish-language form, so long as providing it remains optional.

RMAI is strongly opposed to any attempt to mandate translation requirements for the following reasons:

[254] Wis. Admin. Code § DFI-Bkg 74.13 ("Where the notice required. . . is printed on the reverse side of any collection notice or validation sent by the licensee, the front of such notice shall bear the following statement in not less than 8 point type: 'Notice: See Reverse Side for Important Information.'"
[255] NPRM, p. 282.
[256] NPRM, p. 282.
[257] NPRM, p. 283.

- To effectively communicate in any particular language requires extensive knowledge of that language. It is unrealistic to expect businesses in diverse regions of the nation to have Spanish-language capability, or for that matter capability in any of the other 150-plus languages that have more than a million speakers worldwide.

- The provision of a Spanish-language option will create an expectation that the employees of the business are conversant in Spanish. RMAI anticipates that the businesses that will take advantage of this option will be the ones that have Spanish-language speakers on staff.

- Given the strict-liability nature of some provisions in the FDCPA, an error in communication, regardless of the language that is spoken or written, could be a violation of the statute.

- The availability of translation services alleviates some of these concerns, but the cost of those services would create a significant financial burden on small businesses.

RMAI appreciates the Bureau's explanation in Comment 34(e)-1 that "[t]he language of a validation notice a debt collector obtains from the Bureau's website is considered a complete and accurate translation."[258] RMAI encourages the Bureau to provide validation notices in Spanish, as well as other languages commonly spoken within the United States, so that debt collectors can address the needs of consumers with limited English proficiency without the risk of litigation.

XIX.	Subject:	Electronic Delivery of the Validation Notice and Other Disclosures
	Section(s):	1006.42(b) 1006.42(c) 1006.42(d) 1006.42(e)
	Rule Page(s):	478-481
	Analysis Page(s):	302-337
	Interpretation Page(s):	531-535

The Bureau requests comment on proposed § 1006.42(b), including on the frequency with which debt collectors currently provide required disclosures electronically, and the proportion of such disclosures provided by email, text message, and other electronic means. To the extent debt collectors do not currently provide required disclosures electronically, the Bureau

[258] NPRM, p. 527.

requests comment on why that is so. The Bureau also requests comment on whether to require that debt collectors who provide required disclosures electronically maintain reasonable written policies and procedures designed to ensure that debt collectors comply with the requirements of proposed § 1006.42(b).[259]

Consistent with section 809(a), if the initial communication with the consumer is electronic, debt collectors sometimes provide the required disclosure in the same communication. However, if the required disclosures are not provided in the initial communication, our members have been reluctant to later providing the required disclosures in electronic form. Their reluctance is tied to the "in writing" requirement of section 809(a) and the Bureau's previous interpretation that "in writing" requires compliance with 15 U.S.C. sections 7001, *et seq.* (E-Sign Act).[260]

RMAI certified members maintain reasonable procedures designed to ensure compliance with section 809.[261] Such procedures are required regardless of the medium through which the required disclosures are communicated. We also believe debt collectors are incentivized by section 813(c) to develop reasonable policies and procedures to ensure compliance with all provisions of the FDCPA. Since RMAI is a strong proponent of industry participants maintaining robust policies and procedures, we would not oppose such a requirement. We do however question why such policies and procedures would be limited in scope to only electronic delivery of the required disclosures.

However, requiring such policies and procedures could impose costs on debt collectors, which, if passed on to creditors, could ultimately reduce consumers' access to credit. The Bureau therefore requests comment on the expected costs and benefits of requiring debt collectors who provide required disclosures electronically to maintain reasonable written policies and procedures designed to comply with the requirements of proposed § 1006.42(b).[262]

RMAI does not anticipate a significant cost to industry participants if they were required to adopt policies and procedures to ensure compliance with section 1006.42(b). Beyond the benefits afforded by section 813(c), RMAI believes that debt collectors that develop policies and procedures to ensure compliance with the FDCPA gain certain advantages in business development due to their culture of compliance. As noted, RMAI certified businesses are already

[259] NPRM, p. 302-303.
[260] See, *Lavallee v. Med-1 Solutions, LLC, United States* Court of Appeals for the Seventh Circuit, No, 17-3244, *Brief of Amicus Curiae Bureau of Consumer Financial Protection in Support of Plaintiff-Appellee*, p. 13 ("Where a written validation notice is required because the required information is not included in the initial communication and the debt is not paid within five days of the initial communication, the E-SIGN Act establishes the conditions that must be met if the debt collector wants to use email (or any 'electronic record,' for that matter) to satisfy that requirement.").
[261] See note 1 (standard A6, p. 27), supra, "Consumer Notices," ("A Certified Company shall establish and maintain a list of applicable local, state, and federal consumer collection notices/disclosures in the areas in which the Certified Company conducts business and maintain procedures to ensure that the appropriate notices/disclosures are added to consumer correspondence.").
[262] NPRM, p. 303.

required to maintain policies and procedures to ensure compliance with section 809. Consequently, there would be no additional cost for RMAI certified businesses to adopt an existing practice. RMAI's response to the Bureau's question is limited to a rule that simply requires a debt collector to maintain written policies and procedures and does not address a rule that imposes specific requirements that must be incorporated into such policies and procedures.

The Bureau requests comment on proposed § 1006.42(b)(1) and on proposed comment 42(b)(1)– 1, including on the extent to which debt collectors currently obtain E-SIGN Act consent directly from the consumer. If debt collectors currently do not obtain such consent, the Bureau requests comment on the reasons why not and on any specific circumstances in which debt collectors rely instead upon consent the consumer originally provided to the creditor under the E-SIGN Act. The Bureau also requests comment on whether to permit such reliance, or transfer of consent, in certain specific circumstances and, if so, what those circumstances should be.[263]

RMAI believes RMAI certified businesses currently obtain E-SIGN consent when electronically delivering consumer disclosures that are required to be provided in writing, as in the case of the required disclosure under section 809(a) when the required disclosure is not contained in the initial communication. When RMAI certified businesses do not obtain E-SIGN consent in the context of delivering the required disclosures under section 809(a), we believe it is because the required disclosures are contained within the initial communication. Compliance with E-SIGN is required when electronically delivering a consumer disclosure that is required to be provided "in writing."[264] Section 809(a) expressly provides that the required disclosures are only required to be provided "in writing" if they are not contained in the initial communication.[265]

Under section 1006.42(b)(1), collectors could comply with section 101(c) of the E-SIGN Act after the consumer provides affirmative consent directly to the debt collector. Realistically, collectors could not benefit from that method for a validation notice contained in something other than the initial communication unless they had previously received E-SIGN consent from the consumer with regard to another account the collector had previously serviced. If a collector was to call its consumers first and follow up with a written validation notice within 5 days of the initial communication, as required under the FDCPA, it would be extremely unlikely that a debt collector could obtain E-SIGN consent to be able to electronically provide the required notice before the expiration of the five-day period. Having the consumer mail or fax in written consent would be cumbersome, might not even qualify for E-SIGN consent, and even if the consumer mailed out consent immediately after the first communication, it would likely take upwards of five days for a collector to receive the mail and process it so as to replace the need to mail out a validation notice.

[263] NPRM, p. 307.
[264] 15 U.S.C. § 7001(c)(1).
[265] See Note 260, *supra.*

We encourage the Bureau to adopt a rule that where a consumer has previously provided E-SIGN consent with respect to the debt being collected, that consent should be treated as having been provided to a subsequent debt collector to provide written disclosures electronically to the consumer with respect to that debt. In the context of a debt purchaser, as a matter of law, such consent is deemed to have been transferred to it along with all other rights of the assignor creditor.[266] After all, if the debt itself was made and executed in compliance with the E-SIGN Act, it would be absurd to conclude that the right to payment was transferred as part of the assignment, but a right to communicate electronically with the obligor was not likewise assigned.

In instances where consent has not been obtained by the debt assignor, we propose allowing debt collectors to set up a separate web page solely dedicated to collecting E-SIGN consent, and consent will depend on a consumer's willingness and ability to complete an opt in process electronically. Practically and operationally, however, it may not be feasible or efficient for many collectors to use the E-SIGN Act approach.

The Bureau requests comment on proposed § 1006.42(b)(2) and on proposed comment 42(b)(2)–1. In particular, the Bureau requests comment on the risk that an email provider's spam filter may prevent a debt collector's email from reaching a consumer's inbox, including on whether any particular words or phrases in the subject line of an email are likely to cause a spam filter to identify a legitimate debt collection communication as spam and on whether debt collectors should be required to take any other steps to decrease the likelihood that an email will be filtered as spam. The Bureau also requests comment on whether any particular words or phrases in the subject line of an email or in the first line of a text message are likely to help consumers distinguish between spam and debt collection communications. In addition, the Bureau requests comment on the risks to consumers, if any, of including the name of the creditor to whom the debt is owed, a truncated account number, the date of sale of a product or service giving rise to the debt, the physical address of service, the billing address, or any other particular item of information in the subject line of an email or in the first line of a text message. The Bureau also requests comment on how consumers handle emails marked as spam, including on the frequency with which consumers review their spam folders to identify emails they should read, and the extent to which major email providers delete unread emails in spam folders.[267]

RMAI would begin by noting that email "spam" is commonly thought of in the same way as "junk mail" – it is unwanted bulk solicitations. Persons can choose to treat all unknown senders of email as "spammers" and cause emails from these unknown senders to be deleted or filtered to

[266] See Note 4, *supra.*; *Terech v. First Resolution Mgmt. Corp.*, 854 F. Supp. 2d 537, 541 (N.D. Ill. 2012); *Cavalry SPV I, LLC v. Watkins*, 36 Cal. App. 5th 1070, 1087 (2019) ("When a bank assigns a debt to a debt collector, the debt collector 'undisputedly step[s] into the shoes of their respective assignors … taking that debt subject to any existing waivers or defenses,'" citing and quoting *Terech*).
[267] NPRM, p. 309-310.

a separate "spam folder" which the consumer never reviews. Likewise, persons can also treat unknown postal mail in the same way by discarding mail from unknown senders without ever reading the contents. These are personal choices made by the recipient of both communications. To that end, it is common industry practice to maintain policies and procedures to demonstrate particular communications had been sent to a particular address and had not being returned or rejected as undeliverable.

RMAI suggests that the best solution is to differentiate any communication from junk mail and spam email.[268] In the context of email, we suggest this can be done by including some data in the subject line that will allow the recipient to understand that communication refers to a matter known to them. Email is inherently far more private that postal mail for several reasons. Unlike postal mail which during the process of being delivered to the recipient passes through third parties and may be left in a place after delivery (like a kitchen table) where anyone can view the outside content of an envelope, the same is not true of email. Most publicly available email platforms (such as Gmail, outlook.com, protonmail.com) require, at the minimum, a username and password to access emails delivered to the recipient. These platforms can also support a two-factor authentication, require the email recipient to enter a code from a separate device, in addition to their username and password, in order to access emails. Thus, the recipient of an email controls access to their email account and can choose whether to make its content known to others. The controls to access and view even the subject line of an email are in the sole possession of the email account holder. Under similar circumstances, in the context of where a voicemail was left on a consumers cellular phone service, converted to text and displayed on the consumer's cellphone, a New Jersey federal court dismissed a claim alleging that the display of information violated section 805(b) because "unlike the delivery of letters that could be opened and read by third parties, Plaintiff controls his own cell phone . . .[w]hether overheard or textualized, the voice mails on his phone are within his control."[269]

Given that disclosure of the subject line of received emails can only be caused by the recipient, information provided in an email subject line should be no different than the information provided in the body of an email or letter, with consideration given to protection of non-public personal information through redaction, masking other similar protections. After all, if a third person has access to the consumer's email account, they can view far more than an email's subject line. We propose, for example, that the subject line could identify the name of the creditor, amount of debt, a redacted account number, or the amount of the debt. Such a subject line would assist the consumer in distinguishing the email from spam.

[268] See also RMAI's comments to Section IV, *supra*. The same concerns with consumers mistaking limited content messages as scams or telemarketing calls is present in emails.

[269] *Nelson v. Receivables Outsourcing, LLC*, No. 17-11543 (RBK/AMD), 2018 U.S. Dist. LEXIS 137047, at *10 (D.N.J. Aug. 14, 2018)

Debt collectors can also take proactive steps to avoid spam filters such as incorporating a Sender Policy Framework (SPF) and/or DomainKeys Identified Mail into their email operations.

The Bureau requests comment on proposed § 1006.42(b)(3), including on how a debt collector who attempts to deliver a required disclosure electronically may become aware that the disclosure has not been delivered. The Bureau also requests comment on whether debt collectors should be required to take any steps in addition to those described in proposed § 1006.42(b)(3).[270]

Typically, when an email is sent, the recipient's email server will provide a response code when a message is accepted for delivery or if it encountered a problem. The Simple Mail Transfer Protocol (SMTP) codes are universal and can be deciphered to explain the reasons behind a delivery problem.[271] However, SMTP codes do not provide information concerning the recipient's engagement with email after delivery to the server.[272] But this is no different for postal mail. While a letter can be returned to the sender as undeliverable, if it is delivered to the recipient, the sender of the postal mail has no information concerning the postal recipient's engagement with the mailed item. However, unlike postal mail, whether a consumer engages (i.e., clicks open) an email can be determined using what is commonly referred to as "open and click tracking."[273] The technology, which is regularly used in marketing emails, informs the sender of not only when the recipient opens an email, but if the recipient "clicks" on a hyperlink contained in it.[274]

Email provides enhanced protections against third party disclosure and delivery and content engagement tracking that cannot be duplicated by postal mail. RMAI supports rulemaking that recognizes these benefits to the accuracy and integrity of the collection process and supports the use of electronic communications to deliver important information to consumers.

The Bureau requests comment on proposed § 1006.42(b)(4) and on proposed comment 42(b)(4)–1. In particular, the Bureau requests comment on the cost to debt collectors of developing and using a validation notice that is responsive to screen size and accessible via screen readers, including the one-time costs of designing such a disclosure and the ongoing costs of populating such a disclosure with information about individual debts. The Bureau also requests comment on how those costs might change if the Bureau provides debt collectors with source code for a version of the validation notice that would comply with proposed §

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[270] NPRM, p. 310-311.
[271] See generally, Vladimir V. Riabov, "SMTP (Simple Mail Transfer Protocol)". Handbook of Computer Networks: LANs, MANs, WANs, the Internet, and Global, Cellular, and Wireless Networks, Volume 2, Chapter 26, pp. 388-406 (Nov. 2011).
[272] *Id.*
[273] See, e.g., Brent Meyer, *Open and Click Tracking Has Arrived,* AWS Messaging & Targeting Blog, (Aug. 1, 2017) publicly available at https://aws.amazon.com/blogs/messaging-and-targeting/open-and-click-tracking-have-arrived/.
[274] *Id.*

1006.42(b)(4). In addition, the Bureau requests comment on whether the original-creditor disclosure described in proposed § 1006.38(c) and the validation-information disclosure described in proposed § 1006.38(d)(2) should be subject to proposed § 1006.42(b)(4).[275]

RMAI supports this proposed rule. We believe that electronically provided communications can readily be adopted to various screen formats and do not see the Bureau's proposal as creating any material burden. RMAI supports the Bureau providing source code for an electronic version of the validation notice.

The Bureau requests comment on proposed § 1006.42(c), including on whether the requirements relating to consent in section 101(c) of the E-SIGN Act—including as the Bureau proposes to interpret them—impose a substantial burden on electronic commerce in the debt collection context, and on whether proposed § 1006.42(c) is necessary and sufficient to eliminate those burdens. With respect to possible burdens on electronic commerce, the Bureau requests information on the costs of delivering required disclosures electronically, how those costs compare to delivering required disclosures on paper, and the broader impacts of increased electronic delivery in the debt collection context. The Bureau also requests comment on whether the procedures described in proposed § 1006.42(c) increase the material risk of harm to consumers and, if so, any adjustments that can be made to mitigate that risk.[276]

RMAI supports proposed section 1006.42(c). Section 101(c) of the E-SIGN Act imposes a substantial burden on electronic commerce in the debt collection context as explained in our comment to section 1006.22(b)(1) and as otherwise identified by the Bureau.[277] Section 1006.42(c) will reduce these burdens, but it does not eliminate the practical difficulties identified in our comment to section 1006.22(b)(1). It is our experience that the cost of delivering information to consumers electronically is materially less than delivering the same disclosures by print and postal mail.[278] We believe section 1006.42(c) provides significant consumer protections when debt collectors use section 1006.42(c). To be sure, under the proposed rule it is the consumer's choice whether to move forward with electronic delivery of the required notice.

The Bureau requests comment on proposed § 1006.42(c)(1) and on proposed comment 42(c)(1)–1, including on the risks and benefits of allowing debt collectors to use an email address or telephone number with respect to which the consumer provided to the creditor or a prior debt collector unwithdrawn E-SIGN Act consent related to the debt. The Bureau also requests comment on how often creditors obtain E-SIGN Act consent from consumers and how often consumers withdraw any such consent.[279]

[275] NPRM, p. 314.
[276] NPRM, p. 319.
[277] NPRM, pp. 314-317.
[278] See also NPRM, p. 318, n. 575.
[279] NPRM, p. 320.

RMAI believes that the use of electronic communications with consumers enhances the accuracy and integrity of the debt collection process. As to privacy, we incorporate here our comment to section 1006.42(b)(2) above. In addition, consumers remain in control of whether a debt collector can communicate written disclosures electronically through the opt-out option or by revoking E-Sign consent. [280]

The primary concern we have is that electronic delivery is permitted only if made to an email address or telephone number "that the creditor or a prior debt collector could have used to provide electronic disclosures related to that debt in accordance with section 101(c) of the E-SIGN Act."

First, some may construe this language to mean the creditor or prior debt collector did, in fact have E-Sign consent from the consumer. We do not believe this to be the Bureau's intention. Second, section 101(c) of the E-Sign Act does not reference email or text messages. Instead, it identifies providing an electronic record in an "electronic form."[281] We would believe that if a creditor or prior debt collector had an email or telephone number for the consumer and did not use the email or telephone number for delivery of written notices under the E-Sign Act, neither the creditor, prior debt collector or the current debt collector would have facts necessary to form an opinion whether the consumer was able, using such email or telephone, to "consent[] electronically, or confirm[] his or her consent electronically, in a manner that reasonably demonstrates that the consumer can access information in the electronic form that will be used to provide the information that is the subject of the consent."[282] In other words, we do not understand how anyone would know whether an email or telephone number could have been used to provide disclosures under E-Sign absent some record demonstrating the consumer already (1) confirmed consent electronically using the email or telephone *and* (2) was able to access the electronic record. In the end, if this is the intention of the Bureau, then section 1006.42(c)(1**)** can only be read to require that evidence that the creditor or prior debt collector obtained from the consumer E-Sign consent. Again, we do not believe this is the Bureau's intent.

If the Bureau's intention was to limit section 1006.42(c)(1**)** to consumer email addresses and telephone numbers regardless of whether E-Sign consent was obtained with respect to such email or telephone number, then, respectfully, we believe this interpretation does not promote the accuracy and integrity of the debt collection process and impairs electronic delivery of written disclosures.

Recall that a debt collector can deliver the section 809(a) disclosure in the initial telephone call. If the final rule allowed for the present debt collector to obtain the consumer's email address during that call, debt collectors could use section 1006.42(c) to deliver the required disclosure in

[280] See proposed § 1006.42(d) and 15 U.S.C. § 7001(c)(1)(A).
[281] 15 U.S.C. § 7001(c)(1)(B)(i).
[282] 15 U.S.C. § 7001(c)(1)(C)(ii).

real-time as the call was occurring and the consumer would immediately have access to the required disclosure. RMAI believes this approach promotes the accuracy and integrity of the collection call over existing law and urges the Bureau to revise section 1006.42(c)(1**)** consistent with this approach.

The Bureau requests comment on proposed § 1006.42(c)(2)(i) and on proposed comment 42(c)(2)(i)–1, including on the risks and benefits of allowing a debt collector to place a required disclosure in the body of an email without first providing the consumer with notice and an opportunity to opt out. In addition, the Bureau requests comment on whether creditors or debt collectors currently provide required disclosures bearing transaction-specific information in the body of emails and, if not, the reasons why not. The Bureau also requests comment on the prevalence of "in-transit" encryption technology and whether that technology has reduced any concerns about the security of emails. The Bureau also requests comment on the prevalence of technology that would allow a consumer to save or print a text message.[283]

As noted in our comment to section 1006.42(b) above, section 809(a) anticipates the provision of the required disclosure to the consumer in the initial communication, regardless of the medium by which that initial communication occurs, including but not limited to electronic communications. And, as RMAI has noted above, electronic communications only enhance the accuracy and integrity of the debt collection process and afford greater privacy protections than available in print. RMAI believes a consumer who is delivered the required notice electronically can readily access and print the disclosure. Such benefits are not available in the scenario where the initial communication is made by telephone and the required disclosure is provided orally during that communication.

But we also believe that our members are able to provide a required disclosure in the body of a text message. We request the Bureau reexamine section 1006.42(c)(2)(i) and allow the required disclosure to be provided in the body of a text message. We have not identified any compelling reason to restrict the placement of the section 809(a) disclosure from placement in the body of a text message while permitting it in an email. And, the reasons advanced by the Bureau concerning section 1006.42(c)(2)(i) are equally applicable to text messages.[284] To be sure, it is not uncommon for emails to be forwarded to telephone numbers as text messages.[285]

The Bureau requests comment on proposed § 1006.42(c)(2)(ii), including on the risks and benefits of allowing a debt collector to place a required disclosure on a secure website accessible by hyperlink, particularly compared to placing a required disclosure in the body of an email. The Bureau also requests comment on whether to clarify further what it means for a

[283] NPRM, p. 322.
[284] NPRM, p. 321.
[285] Dennis O'Reilly, *Auto-Forward Important Mail To Your Phone As A Text Message*, C|Net, (March 25, 2014 11:00 AM PDT) publicly available at https://www.cnet.com/how-to/auto-forward-important-email-to-your-phone-as-a-text-message/ and last accessed September 15, 2019.

hyperlink to be clear and conspicuous and, if so, what factors may be relevant to determining whether a hyperlink is clear and conspicuous. In addition, the Bureau requests comment on whether to clarify further what it means for a disclosure to remain available on a website for a reasonable time and, if so, the length of time that should qualify as reasonable. In addition, the Bureau requests comment on the prevalence of anti–virus software and other technologies that identify whether a hyperlink included in an email or text message is safe, and whether consumers using such technologies are likely click on hyperlinks from unrecognized debt collectors. The Bureau also requests comment on whether debt collectors who wish to provide required disclosures electronically would be more likely to do so in the body of an email under proposed § 1006.42(c)(2)(i) or on a secure website that is accessible by clicking on a hyperlinked included within an electronic communication under proposed § 1006.42(c)(2)(ii), and the reasons why.[286]

Electronic communications provide greater privacy and security then printed and mailed communications for the reasons stated above, which RMAI incorporates here. However, the use of a hyperlink to a secure website to deliver the required notice may further enhance the privacy and security of the electronic communications. RMAI believes a reasonable time for a disclosure to remain available on a website will depend on the circumstances of each case, but would imagine that six months should be reasonable in most cases. Again, section 809(a) contemplates oral delivery of the required disclosure in the initial communication. We understand that our members regularly provide copies of the required notice when requested by the consumer. Section 101(c)(1)(B)(iv) of the E-SIGN Act provides that a consumer is to be advised how she may obtain a paper copy of an electronic record and whether there is a charge for such a copy. In addition, RMAI believes it is reasonable to provide the consumer with an electronic copy of the required notice if it is no longer available on the secured website.

Our members have not reached a consensus on whether it is preferable to provide the required disclosure in the body of the email or text or through a hyperlink to a secure website. We believe the option to use either should be available given the inherent reliability and safety of emails.

The Bureau requests comment on proposed § 1006.42(d)(1) and its related commentary. In particular, the Bureau requests comment on whether, to limit the risk of third-party disclosure of the opt-out notice and to increase the likelihood that a consumer will receive actual notice of a required disclosure delivered by hyperlink, the rule should restrict the email addresses or telephone numbers to which a debt collector may send the opt-out notice that would be required by proposed § 1006.42(d)(1), such as by requiring that the opt-out notice be sent to an email address or telephone number other than the one to which the debt collector intends to send the hyperlink. The Bureau also requests comment on whether the information required to be provided under proposed § 1006.42(d)(1)(i) through (vi) is sufficient to allow a consumer to make an informed decision whether to opt out of receiving hyperlinked delivery of required

[286] NPRM, p. 324-325.

disclosures. The Bureau also requests comment on whether to clarify further what it means to provide a reasonable opt-out period and, if so, how long an opt-out period should be to qualify as reasonable. In particular, the Bureau requests comment on whether the requirement to allow a consumer more than five days to make an opt-out decision in response to an opt-out notice delivered electronically, as described in proposed comment 42(d)(1)–3, should be imposed or should be shortened or lengthened. In addition, the Bureau requests comment on how a debt collector could obtain a consumer's oral consent to hyperlinked delivery of required disclosures.[287]

RMAI generally supports section 1006.42(d)(1) as proposed. The concerns with misdirected email communications may, in many instances, be no different than those which exist for postal addresses, particularly when the consumer has provided the address to a creditor or debt collector. We do recognize the telephone numbers can be reassigned and present a greater risk of non-delivery and third-party disclosure. We believe our members will evaluate various factors (some which we have noted in our previous comments) before sending the electronic communication.

The Bureau requests comment on proposed § 1006.42(d)(2) and on proposed comment 42(d)(2)–1. In particular, the Bureau requests comment on whether the 30-day timing requirement should be lengthened or shortened. In addition, the Bureau requests comment on whether the information that proposed § 1006.42(d)(2)(i) through (iv) would require is sufficient to allow a consumer to make an informed decision whether to opt out of receiving hyperlinked delivery of required disclosures. The Bureau also requests comment on how often creditors communicate with consumers regarding the placement or sale of a debt. The Bureau also requests comment on whether debt collectors who wish to provide required disclosures electronically pursuant to proposed § 1006.42(c)(2)(ii) would be more likely to choose the notice-and-opt-out process described in proposed § 1006.42(d)(1) (communication by the debt collector) or the notice-and-opt-out process described in proposed § 1006.42(d)(2) (communication by the creditor), and the reasons why.[288]

RMAI believes the 30-day period in section 1006.42(d)(2) is unreasonably restrictive as proposed. The concerns with misdirected email communications may, in many instances, be no different than those which exist for postal addresses, particularly when the consumer has provided the address to a creditor or debt collector. We recognize that telephone numbers can be reassigned and present a greater risk of non-delivery and third-party disclosure. We believe our members will evaluate various factors (some which we have noted in our previous comment) before sending the electronic communication.

[287] NPRM, p. 328-329.
[288] NPRM, p. 331.

The Bureau requests comment on proposed § 1006.42(e)(1) and on proposed comment 42(e)(1)–1.[289]

RMAI generally supports proposed section 1006.42(e)(1) provided it is clarified to indicate that the mailing is made concerning the address of the consumer. First, the debt collector (or the creditor for that matter) will have what it believes to be the current residential address of the consumer. And, either the creditor or debt collector may have recently received correspondence from or communicate to the consumer at this address. But ours is a mobile society and consumers may move without advising their creditors or debt collectors of their new address. Second, RMAI believes clarification is needed for the meaning of "residential address." It could be interpreted to be the address of the consumer's residence and this presents difficulties in instances where the consumer utilizes an address other than the place of residence (e.g., a Post Office Box).[290] And, certain consumers, particularly small business owners, may have provided their creditor or debt collector with a commercial address as the place where they wish to receive mail.

We urge the Bureau to adopt section 1006.42(e)(1) amended to indicate the safe harbor is satisfied when a printed copy of the disclosure is mailed "to the consumer's last known address."

The Bureau requests comment on proposed § 1006.42(e)(2) and on proposed comment 42(e)(2)–1. In particular, the Bureau requests comment on whether using an email address selected through the procedures described in proposed § 1006.6(d)(3) is reasonably likely to provide actual notice to the consumer. The Bureau also requests comment on whether a debt collector who wishes to provide the validation notice in the body of an email that is the debt collector's initial communication with the consumer is more likely to send the validation notice to an email address described in proposed § 1006.42(c)(1) or to an email address selected through the procedures described in proposed § 1006.6(d)(3). In addition, the Bureau requests comment on whether a debt collector who wishes to provide a validation notice in the debt collector's initial communication with the consumer is likely to use the safe harbor in proposed § 1006.42(d)(2) and, if not, the reasons why not.[291]

The final electronic delivery option contemplated in the NPRM relates to a Validation Notice Approach, which would be permitted only for email communications. This would allow debt collectors to send the required validation information and disclosures as part of the initial contact email, without otherwise meeting the consent requirement of the Alternative Approach. Under this approach, the initial contact email must include the validation notice information and

[289] NPRM, p. 333.
[290] For example, United Parcel Service of America, Inc. (commonly known as "UPS") classifies "residential" as a "destination type" and states: "Residential: A residential delivery is defined as delivery to a location that is a home, including a business operating out of a home." https://www.ups.com/us/en/shipping/time/destinationtype.page last accessed September 15, 2019.
[291] NPRM, p. 337.

disclosures, as part of initial communication, in the body of the email and could be sent to an email address that the consumer "recently" used to contact the collector (for a purpose other than opting out of electronic communications), or to an email address that the creditor or a prior creditor used to contact the consumer.

Our concern with this approach is that it too narrowly restricts a collector's ability to send the validation information. A collector could only send the validation information under this approach to an email address that the consumer recently used to contact the debt collector (a rarity, especially if the collector has not had prior interactions with the consumer on another account, which is the case for the majority of consumers), or an email address that the creditor or a prior debt collector used to contact the consumer. Most debt purchasers typically receive email addresses from the prior owner of an account only sometimes – and some sellers do not provide email addresses at all. To truly modernize the FDCPA, we believe that email should be treated the same as letters sent via U.S. postal mail. This means that debt collectors should be allowed to use this electronic delivery method to an email address that the collector skip traced and has strong indications of recency and reliability.

We also ask for clarity with regard to text messaging, and how to deliver disclosures appropriately. A standard text message has a limit of 160 characters, and we ask the Bureau to clarify that a text message containing a link to the validation notice or other disclosure document is acceptable. If that is not the case, RMAI would ask the Bureau for more detail on how to appropriately deliver the validation notice or other disclosures via text messaging.

Additionally, we ask for clarity regarding delivery of the Gramm-Leach-Bliley Act (GLBA) privacy disclosures. Many debt collectors deliver the GLBA notice along with the validation notice, which is more cost-effective and efficient than sending the two notices separately. Under the proposed rule, while collectors could send a validation notice electronically, the GLBA notice would have to be sent separately via U.S. postal mail. This would be both inefficient and counter to the notion that debt collection-related notices and disclosures be sent electronically, so long as the requisite criteria are met. We ask the CFPB, pursuant to its authority under Dodd-Frank,[292] to clarify that the GLBA notice may be sent electronically along with the validation notice and other disclosures, per the electronic delivery methods proposed in the NPRM.

[292] Title X of the Dodd-Frank Act Wall Street Reform and Consumer Protection Act granted rulemaking authority for most provisions of Subtitle A of Title V of GLBA to the CFPB with respect to financial institutions and other entities subject to the CFPB's jurisdiction, except securities and futures-related companies and certain motor vehicle dealers. Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. No. 111-203, Title X, 124 Stat. 1983 (2010).

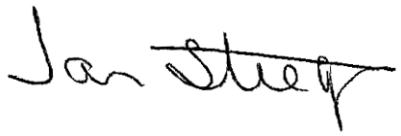
Conclusion

RMAI has been a strong public proponent for the adoption of rules to modernize and provide clarity in the FDCPA since the 2013 ANPR. RMAI's supportive position has been reiterated during countless meetings with the Bureau and other federal regulatory agencies; conversations on Capitol Hill; in educational sessions at RMAI conferences and non-RMAI conferences; during public testimonies before state legislative bodies; and in conversations with consumer advocates. As we approach the seventh year of this conversation, RMAI urges the Bureau to proceed with its review of the public comments provided by all sides, make fair and balanced edits based on those comments, and adopt a final rule as quickly as possible for the benefit of both consumers and the business community. Let's ensure the 43rd year after the FDCPA's adoption is the last year where the nation has to endure endless litigation regarding how the Act should be interpreted.

RMAI simply requests that the rule, as proposed, continues to be applied prospectively with an effective date one-year after the final rule is published (except where noted that longer time may be needed) so as to ensure adequate time to operationalize the changes, which is critically important for small businesses.

RMAI sincerely appreciates the opportunity to comment on the proposed rule and the Bureau's efforts to ensure strong consumer protections in an environment conducive to the lawful collection of consumer debt. Please do not hesitate to contact me if you need further clarification on RMAI's comments.

Sincerely,



Jan Stieger,
Executive Director

Appendices

Appendix A	RMAI's Receivables Management Certification Program
Appendix B	RMAI's Code of Ethics

APPENDIX A

Receivables Management Certification Program

Receivables Management Certification Program

I. Mission Statement

1.1 **Mission.** The RMAI Receivables Management Certification Program (Certification Program) is an industry self-regulatory program administered by RMAI that is designed to provide enhanced consumer protections through rigorous and uniform industry standards of best practice. The adoption of uniform standards for the receivables management industry helps ensure that those who are certified are aware of and are complying with state and federal statutory requirements, responding to Consumer Complaints and inquiries, and are following industry best practices.

II. Definitions

2.1 **Definitions.** The following terms, when capitalized, shall have the following meanings:

"Applicant" shall mean the person or legal entity who submits an Application to RMAI to be considered for initial certification or to renew their certification.

"Application" shall mean the procedure by which an Applicant submits information and documentation required by RMAI to be considered for initial certification or to renew their certification.

"Audit" or "Compliance Audit" shall mean an assessment of a Certified Party's conformity to the Certification Standards that is performed by an Auditor.

"Audit Period" shall mean the time between the date of the Certified Company's last full Compliance Audit (date of initial certification for first-time certified companies) and the sixteenth month after the Certified Company's initial certification or renewal date. The Audit shall always include a review of the accuracy of the information provided in the Certified Company's most recent Application.

"Auditor" shall mean an individual, company, or firm that is an independent third party approved or retained by the Council to perform Compliance Audits. The Council shall provide multiple options to Certified Companies for independent third parties, including individuals, companies, or firms that are not certified public accountants.

"Board" shall mean the RMAI Board of Directors.

"Broker" shall mean a business that facilitates the sale of Charged-Off receivables between a buyer and a seller, including electronic and physical marketplaces for the sale of receivables. Expressly excluded from this definition: (i) broker services not involving the sale of Charged-Off receivables and (ii) the sale of securities which is governed by the Securities and Exchange Commission.

"Certification Program" shall mean the RMAI Receivables Management Certification Program.

"Certification Standards" or "Standards" shall mean the minimum requirements necessary to become and to maintain the status of a Certified Party.

"Certified Company" shall mean any legal business entity regardless of its legal structure, including but not limited to corporations, partnerships, sole proprietorship, and associations, that has applied for and has been granted certification based on the requirements contained in the Governance Document of the Certification Program and remains in good standing.

"Certified Individual" shall mean a natural person who meets or exceeds the Certification Program requirements to be certified, has been granted certification, and remains in good standing.

"Certified Party" shall mean a Certified Individual and/or a Certified Company.

"CFPB" shall mean the federal Consumer Financial Protection Bureau.

"Charge-Off" shall mean the treatment of a receivable balance by a creditor as a loss or expense because payment is unlikely.[1] Those asset classes that are not subject to governmental requirements for Charge-Off or have not otherwise adopted the Charge-Off accounting standard should use Default.

"Charge-Off Balance" shall mean the amount alleged due on an account receivable at the time of Charge-Off.[2]

"Consumer Complaint" shall mean submissions that express dissatisfaction with, or communicate suspicion of wrongful conduct by, an identifiable entity related to a consumer's personal experience with a financial product or service.[3]

"Consumer Data" shall mean personally identifiable information associated with a consumer account that needs to be protected due to the confidential nature of the information.

"Council" shall mean the Receivables Management Certification Council.

"Debt Buying Company" shall mean a legal entity that is regularly engaged in the business of purchasing consumer and/or commercial receivables, whether it collects the debt itself, hires a third party for collection, or hires an attorney-at-law for litigation.

"Default" shall mean the failure to pay a debt when it is due as determined by applicable state or federal jurisdictional standards.

"Deficiency" shall mean a failing of a Certified Party to conform to one or more of the Certification Standards as identified through a Compliance Audit.

"Effective Date" shall mean the date the version of the Governance Document and the related provisions contained therein takes effect.

"Executive Director" shall mean the Executive Director of RMAI or his or her designee.

"FDCPA" shall mean the federal Fair Debt Collection Practices Act.

"FTC" shall mean the Federal Trade Commission.

"Governance Document" shall refer to all of the content contained on this and any prior or subsequent pages that comprise the Certification Program, including the appendices.

[1] Source: Definition used by the CFPB in 2016 consent orders.
[2] Source: Definition used by the CFPB in 2016 consent orders.
[3] Source: CFPB's Consumer Response Annual Report, 2013.

"Original Account-Level Documentation" means: (i) any documentation that a creditor or that creditor's agent (such as a servicer) provided to a consumer about a debt, (ii) a complete transactional history of a debt, created by a creditor or that creditor's agent (such as a servicer), or (iii) a copy of a judgment.[4]

"Remediation" shall mean the process of conforming to the Certification Standards once a Deficiency has been identified through a Compliance Audit.

"RMAI" shall mean Receivables Management Association International, a 501(c)(6) non-profit association, formerly known as "DBA International."

"Vendor" shall mean a company that has or is looking to develop a business relationship with an RMAI Certified Company.

III. Receivables Management Certification Council

3.1 **Governing Body.** The Receivables Management Certification Council (Council) is the governing body that administers the Certification Program on behalf of the Board.

3.2 **Appointment.** The Council shall be appointed by the Board. All vacancies that occur on the Council prior to the expiration of a term shall be filled by the Board for the remaining portion of the term.

3.3 **Composition.** The Council shall consist of eleven (11) individual members. The composition of the Council shall represent each of the following demographics:

A. An experienced consumer representative from: (i) academia, (ii) a consumer focused non-profit agency, (iii) the Better Business Bureau, (iv) a non-profit consumer credit counseling service, (v) a former attorney general or assistant attorney general, former employee of the CFPB or FTC, former member of a legislative branch consumer protection committee, or former member of the judiciary, or (vi) other consumer advocate familiar with the receivables management industry. The consumer representative shall be an ex-officio member of the Audit and Standards Committees. The consumer representative shall have no financial interest in a debt collection company and is not required to be a Certified Individual;

B. Representatives of six (6) certified Debt Buying Companies, provided that the Board ensures that small, medium, and large Certified Companies are equally represented;

C. A representative of a certified Vendor;

D. A representative of a certified third party collection agency;

[4] Source: Definition used by the CFPB in 2016 consent orders.

E. A representative of a certified consumer collection law firm; and

F. A representative of an originating creditor. The representative is not required to be a Certified Individual.

3.4 **Term.** Council Members shall serve a two (2) year term that commences on the first day of March and ends on the last day of February except that the first members of the Council shall have their terms staggered to create two classes. No individual may be appointed by the Board to more than two (2) consecutive terms on the Council.

3.5 **Qualifications.** Each Council Member shall be selected based on the following qualifications:

A. No more than one representative from a company (including parent and subsidiaries) may serve on the Council;

B. No Board member may serve on the Council;

C. The Council should reflect the diversity of the receivables management industry, to the maximum extent possible;

D. Council Members shall be recognized professionals who: (1) are in compliance with their respective Codes of Ethics within their industry, if applicable, (2) have not been convicted of a felony, and (3) have never been dismissed from the Council pursuant to section 3.6 of this Governance Document;

E. Council Members who represent Certified Companies pursuant to section 3.3 (B), (D), or (E) who do not hold a Certified Individual designation must submit to a background check before their appointment to the Council and become a Certified Individual within one (1) year of their appointment; and

F. Preference should be shown to individuals who are employed with companies that are members of the Better Business Bureau.

3.6 **Dismissal from the Council.** Any member of the Council may be removed from office by a two-thirds (2/3) vote of all Council Members, with prior notice to the Board of such potential action, for engaging in any conduct or behavior contrary to the best interests of the Certification Program. Council Members having three (3) or more unexcused absences from scheduled Council meetings per year may be dismissed.

3.7 **Relationship with RMAI.**

A. **Council Authority.** The Council and the Certification Program shall be contained within the RMAI corporate entity. The Council shall have the authority to:

1. Elect a Council Chair from the appointed Council Members to a one (1) year term that commences on the first day of March and ends on the last day of February. The Board may reverse the Council's selection of Council Chair pursuant to section 3.7(C) of the Governance Document;
2. Develop policies and procedures of the Council, including the creation of additional officers and committees not provided in this Governance Document;
3. Develop Certification designations[5], Certification Standards, educational requirements, examination requirements, Audit requirements, the granting and revocation of certifications, the Remediation of Deficiencies, and the general administration of the Certification Program, provided it is consistent with this Governance Document;
4. Upon recommendation of the Remediation Committee, suspend a Certified Party by a two-thirds vote, provided that such action is deemed to be an emergency and is based on credible information. The Certified Party shall be sent a certified letter and email within 24 hours of an emergency suspension stating the reasons for the suspension and inviting a response. Any suspension by emergency action of the Council shall require the Council to review, discuss, and/or modify said action within seven (7) days after receiving additional information on the matter from the Certified Party;
5. Suggest qualified individuals to the Board for appointment to the Council when a vacancy exists; and
6. Provide semi-annual reports to the Board regarding the Certification Program and monthly updates on the roster of Certified Parties.

B. **Board Authority.** Nothing in this Governance Document shall diminish the powers of the Board. The Board shall at a minimum:

1. Appoint the Council Members;
2. Review the actions of the Council pursuant to paragraph (C) of this section;
3. Hear appeals from Certified Parties on disciplinary actions taken by the Council;
4. Have oversight authority of the Council and the Certification Program to ensure that the Certification Program as developed and operated by the Council is conducted in a fair and equitable manner;
5. Provide staff for the operation of the Certification Program. The Executive Director shall serve as the chief staff position supporting the Certification Program;
6. Provide financial support for the Certification Program. The Council shall provide the Board with an annual budget for the operation of the Certification Program. The Board will exercise final authority in approving such budgets and the accompanying fee schedules for the Certification Program; and
7. Retain independent third parties to audit the Certification Program and the administration of the Certification Program to ensure conformity with this Governance Document and generally accepted business practices.

[5] The Council has currently adopted the Certification designations of "Certified Receivables Compliance Professional" (CRCP), "Certified Receivables Business" (CRB), and Certified Receivables Vendor (CRV).

C. **Board Review Procedures.** The Executive Director shall transmit to the Board all final decisions of the Council within two (2) business days of the decision, including the rationale for the decision. Except for the process provided in Article IX and the Remediation Procedures Manual (**Appendix F**), the Board shall have the right to reverse any decision of the Council, in their complete discretion, provided that such action takes place within fourteen (14) days from the Executive Director's transmittal. If no action is taken by the Board, the Council's decision shall automatically be implemented at the end of the 14th day. In the case of reversing a disciplinary action taken by the Council, the Board's power to reverse will be dependent on an appeal of such action by the Certified Party.

IV. Committees

4.1 **Standing Committees.** The Council Chair shall appoint all chairs of standing committees from the members of the Council. Committee Chairs shall appoint the members of their committees, unless provided otherwise. Each committee shall have a minimum of three (3) members and a maximum of seven (7) members, provided that a majority of the members on each committee shall be employees, officers, or owners of Certified Companies and meet the qualifications provided in section 3.5(C), (D), and (F). The Board may reverse any committee appointment pursuant to section 3.7(C) of the Governance Document. The standing committees shall include the following:

A. **Administration & Budget Committee.** The Administration & Budget Committee shall be responsible for issues concerning the administration and oversight of the Certification Program, Application procedures, Application approvals, and the development of a proposed annual budget and fee schedule. The committee is also responsible for assuring affordable access to the Certification Program.

B. **Audit Committee.** The Audit Committee shall be responsible for issues concerning the administration and oversight of the Certification Program's Compliance Audits.

C. **Educational Requirements Committee.** The Educational Requirements Committee shall be responsible for issues concerning the administration and oversight of the Certification Program's Educational Requirements. The development of all RMAI education programming shall be managed by the Board's Education Committee.

D. **Remediation Committee.** The Remediation Committee shall be responsible for issues concerning the administration and oversight of Deficiencies and Remediation within the Certification Program. The members of the Remediation Committee shall include the Committee Chair, the consumer representative on the Council, the Executive Director, the last individual serving as President of the Board who is not currently on the Board, the last individual serving as Council Chair who is not currently on the Board, and up to two additional individuals selected by the Committee Chair.

E. **Public Relations & Marketing Committee.** The Public Relations & Marketing Committee shall be responsible for educating and promoting the Certification Program with RMAI membership, the receivables management industry, press, public officials, and the general public. This shall include the development of all physical and electronic publications and resources, provided that they are developed jointly with the appropriate subject matter committees. All written material shall be approved or developed in collaboration with the Board's Editorial Committee to ensure a consistent message from RMAI.

F. **Standards Committee.** The Standards Committee shall be responsible for issues concerning the administration and oversight of the Certification Program's Certification Standards.

4.2 **Additional Committees and Task Forces.** The Council may establish additional committees or task forces in their discretion with the appointment of Chairs made by the Council Chair.

V. Certification Standards

5.1 **Base Line.** The Council may change the Certification Standards contained in this Governance Document, provided that any alteration does not decrease the base line level established by the Governance Document.

5.2 **Annual Review.** The Standards Committee shall annually review the Certification Standards and make recommendations to the Council for changes based on the effectiveness of the Certification Program, changes in laws and regulations, and the evolution of best practices.

5.3 **Uniformity.** The goal of the Certification Program is to create a national standard for compliance based on uniform principles that are formed by statutes, regulations, ethical standards, interactions with regulatory agencies, and best practices.

5.4 **Conformity.** A Certified Party, as a condition of certification, shall demonstrate conformity with the Certification Standards and acknowledge that violations may result in sanctions being imposed on the Certified Party under this Governance Document and policies adopted by the Council, including expulsion from the Certification Program.

5.5 **Company Certification Standards.** In order to become and remain certified, a company shall demonstrate the following, unless a stricter requirement is imposed by state or federal law or regulation:

A. **Chief Compliance Officer.** The company shall create and/or maintain the position of "Chief Compliance Officer" with a direct or indirect reporting line to the president, CEO, board of directors, or general counsel (unless the Chief Compliance Officer is the president, CEO, or general counsel). The Chief Compliance Officer shall be a Certified

Individual within six (6) months of appointment. A Certified Company shall have someone serving in an "acting" capacity while transitioning between Chief Compliance Officers and should attempt to fill a vacancy within three (3) months of the prior incumbent's departure. An "acting" Chief Compliance Officer is not required to be a Certified Individual unless he or she has served in such capacity for more than six (6) months. The Chief Compliance Officer shall be an employee, owner, or a corporate officer of the Certified Company or of a corporate affiliate of the Certified Company. The responsibilities of the position of Chief Compliance Officer shall be described in the Certification Standards Manual (**see Appendix A or B**).

B. **Conformity with the Certification Standards Manual.** The company shall conform to the Certification Standards Manual (**see Appendix A or B**) as may be amended from time-to-time by the Council.

C. **Publication.** The company shall authorize RMAI to publish its name, certification number, year certified, website address, mailing address, and telephone number along with its Chief Compliance Officer's name, title, certification number, year certified, employer issued telephone number, and employer issued email address on a publicly accessible website maintained by RMAI. Some categories of Certified Companies shall also publish on their company website certain information for the benefit of consumers which shall be described in the Certification Standards Manual (**see Appendix A**).

5.6 **Individual Certification Standards.** In order for an individual to become and remain certified, the individual shall demonstrate the following, unless a stricter requirement is imposed by state or federal law or regulation:

A. Educational Requirements. The individual shall comply with the Educational Requirements as established by Article VI of this Governance Document in order to be certified. The subject matter that will qualify for continuing education credit shall be listed in the Educational Requirements Manual (**see Appendix C**), unless otherwise qualified pursuant to section 6.8(C).

B. Publication. The individual shall authorize RMAI to publish his or her name, title, certification number, year certified, employer issued telephone number, and employer issued email address along with his or her employer's name, certification number, year certified, website address, mailing address, and telephone number on a publicly accessible website maintained by RMAI. The individual shall also be required to provide the same information to a consumer upon request.

C. Good Character. RMAI may revoke, terminate, suspend, or deny the Individual Certification of any person if the Council determines that such person has demonstrated a lack of good character that could place consumers in jeopardy or adversely reflect on the receivables management industry. Lack of good character may be concluded by engaging in any of the following:

(1) Illegal conduct involving moral turpitude;

(2) Conduct involving dishonesty, fraud, deceit, misrepresentation, or any misappropriation of confidential data or information; or

(3) Other conduct that adversely reflects on his or her fitness to engage in the business of debt collection.

5.7 **Amending Certification Standards.** The process for review and approval of any new or updated Certification Standards shall be as follows:

A. **Annual Review.** The Standards Committee shall annually review the Certification Standards and make suggestions for updates on or before the fifteenth day of October based upon evolving receivables management industry best practices, input from key stakeholders and communities of interest, areas of Board or Council concern, and recent regulatory and statutory changes. The changes will be documented in such a manner as to be easily recognizable as changes to the Certification Standards for the reader. The Standards Committee shall receive the Executive Director's input prior to proposing changes to the Council.

B. **Comments.** The Council shall provide a copy of the proposed changes on a website maintained by RMAI for thirty (30) days with the process for submitting comments prior to taking any official action, except in those instances where the changes are not substantive in nature.

C. **Approval.** After the completion of the comment period, the Council shall approve, alter and then approve, or reject the proposed changes to the Certification Standards. The Board may reverse any change to the Certification Standards approved by the Council prior to its implementation pursuant to section 3.7(C) of the Governance Document.

D. **Effective.** Provided that no action is taken by the Board to reverse the Council's approval of the revised Certification Standards, a copy of the revised Certification Standards shall be made available to the primary contact for each RMAI member, Certified Parties, and individuals and companies who have submitted an Application for initial certification, as well as made publicly accessible on a website maintained by RMAI. Each revised version of the Governance Document shall indicate an Effective Date. Certified Parties shall comply with the version of the Certification Standards in effect on the date their Application was received by RMAI and shall conform to any subsequent revisions to those Standards no later than their next biennial renewal; however, it is considered a best practice for a Certified Company to start to take reasonable steps to comply with any revised Standards upon their adoption.

VI. Educational Requirements for Individual Certification

6.1 **Base Line.** The Council may change the Educational Requirements for Individual Certification contained in this Governance Document, provided that any alteration does not decrease the base line level established by the Governance Document.

6.2 **Annual Review.** The Educational Requirements Committee shall annually review the Educational Requirements for Individual Certification and make recommendations to the Council for changes based on the effectiveness of the Certification Program, changes in laws and regulations, and the evolution of best practices.

6.3 **Uniformity.** The goal of the Certification Program is to create a national standard for the level of knowledge that is expected of Certified Individuals based on subject matter contained in case law, statutes, regulations, ethical standards, and best practices.

6.4 **Administration.** The Educational Requirements Committee shall manage the administration of the Educational Requirements for Individual Certification and the approval of any authorized providers with the assistance of staff. The development of all RMAI education programming shall be managed by the Board's Education Committee.

6.5 **Educational Requirements – Initial Certification.** An Applicant for Individual Certification shall have completed twenty-four (24) continuing education credits from an authorized provider prior to submitting an Application for initial certification. Included within the 24 continuing education credits shall be four (4) credits from RMAI's "Introductory Survey Course on Debt Buying" and two (2) credits from ethics course(s). The credits shall comply with the requirements of this Article and the Educational Requirements Manual (**see Appendix C**).

6.6 **Educational Requirements – Biennial Renewal.** A Certified Individual shall have completed twenty-four (24) continuing education credits from an authorized provider prior to submitting an Application for biennial renewal of their certification. Included within the 24 continuing education credits shall be four (4) credits from RMAI's "Current Issues in Receivables Management" courses and two (2) credits from ethics course(s). The credits shall comply with the requirements of this Article and the Educational Requirements Manual (**see Appendix C**).

6.7 **Educational Requirements – RMAI Courses.** RMAI or its authorized education providers shall annually provide the following courses based on guidance contained in the Educational Requirements Manual (**see Appendix C**):

A. **Introductory Survey Course on Debt Buying.** The "Introductory Survey Course on Debt Buying" shall be a four (4) credit course that focuses on the "core" laws and regulations that all Debt Buying Companies should know.

B. **Current Issues in Receivables Management.** "Current Issues in Receivables Management" course(s) totaling at least four (4) credits that focuses on the latest

statutory, regulatory, and judicial developments of relevance to the receivables management industry and their vendors.

C. **Ethics.** Ethics course(s) of at least two (2) credits.

6.8 **Educational Requirements – Continuing Education.** Certified Individuals shall take continuing education classes from an authorized provider based on the following criteria:

A. **Time Limit.** Continuing education credits shall only be accepted from courses taken within the two (2) year period immediately preceding the submission of an Application.

B. **Credit Calculation.** One (1) continuing education credit shall be equal to receiving fifty (50) minutes of class instruction. Instructors are eligible to receive double continuing education credit for providing class instruction, provided that an instructor cannot receive multiple credits for repeated lectures on the same material.

C. **Subject Matter.** Continuing education credits shall be provided for classes from a RMAI authorized provider in a subject matter listed in the Educational Requirements Manual (**see Appendix C**), except that an authorized provider may seek approval for continuing education credit for a class whose subject matter is not listed in the Certification Standards Manual if it is preapproved pursuant to criteria contained in the Educational Requirements Manual (**see Appendix C**).

D. **Online Classes.** Authorized providers may offer online classes. Applicants may not use more than sixteen (16) continuing education credits in a biennial cycle from online classes, provided that the Educational Requirements Committee may approve temporary waivers based on new educational requirements, new program implementation deadlines, or a temporary disability. Additionally, a Chief Compliance Officer of a Certified Company may seek a temporary waiver if he or she is not reasonably able to obtain live continuing education credits during the first six (6) months of appointment.

E. **Examination.** There shall not be an examination component for the entry level certification designation. If the Council creates additional certification designations beyond the entry level certification designation, the Council shall require an examination administered by RMAI and/or a contracted third party.

6.9 **Authorized Providers.** RMAI shall be an authorized provider of continuing education credit for the Certification Program. The Educational Requirements Committee may designate additional authorized providers based on demonstrated excellence in providing educational instruction in the subject matter required for the Certification Program and who meet the criteria contained in the Educational Requirements Manual (**see Appendix C**). The Council may, in its sole discretion, take action to restrict, suspend, or revoke the status of an authorized provider for any reason, including, but not limited to, failure to comply with the provisions of this Article or Appendix C.

6.10 **Non-Authorized Providers.** RMAI, in its complete discretion, may consider qualifying a class for continuing education credit from a non-authorized provider pursuant to criteria contained in the Educational Requirements Manual (**see Appendix C**), provided that the instructional material and a certificate of attendance are submitted to RMAI after completion of the course.

6.11 **Specialty Certifications.** The Educational Requirements Committee may recommend to the Council the creation of specialty certification designations beyond the entry level certification designation. The Educational Requirements Committee shall determine the required subject matter for any specialty certifications.

6.12 **Educational Requirements Manual.** The Educational Requirements Committee shall maintain an Educational Requirements Manual (**see Appendix C**) that provides guidance and clarification on: (i) continuing education requirements for the Certification Program, (ii) subject matter eligible for continuing education credit, (iii) requirements for becoming an authorized provider of continuing education classes, and (iv) examination requirements, if applicable.

6.13 **Amending Educational Requirements.** The Educational Requirements Committee shall follow the same process established in section 5.7 of this Governance Document for the review and approval of any new or updated Educational Requirements.

VII. Application

7.1 **Annual Review.** The Administration & Budget Committee shall annually review the Application Requirements Manual (**see Appendix D**) and make recommendations to the Council for changes as the Committee deems appropriate.

7.2 **Applications.** The Administration & Budget Committee shall create and amend from time-to-time the Applications required for the Certification Program based on the requirements of the Governance Document and the Application Requirements Manual (**see Appendix D**). Minor clerical amendments to Applications may be made by staff as needed.

7.3 **Application Review.** The Administration & Budget Committee shall be responsible for reviewing all Applications for the purpose of approving or denying the Applicant's request for certification. The members of the Committee shall utilize the requirements of the Governance Document and their professional judgment in making their determinations. The Committee may establish written internal review criteria to assist the Committee in discerning the appropriate weight to apply to subjective matters such as those concerning good character and prior business practices. Any Application denied or approved with probationary conditions, pursuant to section 7.11, shall be referred to the Council for final determination. The Committee, in its sole discretion, may forward any Application to the Council for final determination.

7.4 **Shared Certification.** A family of companies may be granted certification through a single Application, provided that their shared status is indicated in the publication requirements of section 5.5(C). The term "family of companies" shall mean business entities that: (i) have the same Chief Compliance Officer, (ii) have the same executive management team that exerts control over business operations, provided that this requirement may be waived by the Administration & Budget Committee if there exists other unifying factors that would obviate its necessity, (iii) maintain a uniform network of compliance on all accounts serviced between the business entities under the shared certification, (iv) are governed by the same corporate policies and procedures, (v) agree to be audited in a single unified audit, and (vi) agree any Deficiency and Remediation against one business entity will apply to all of the business entities under the shared certification.

7.5 **Certification Period.** The certification period for a Certified Party shall be three (3) years from the point the initial Application is approved. A renewal of certification shall be based on the anniversary date regardless of whether the Application is processed and approved before or after such date. A grace period of ninety (90) days shall be provided for renewals before the Certified Party automatically loses their Certification.

7.6 **Eligibility.** Only eligible Applicants shall be considered for certification. Eligibility shall include but may not be limited to the following:

A. Certification Standards. Agreeing to, achieving, and ongoing conformity with the Certification Standards.

B. Audit Procedures. Agreeing to and complying with the Audit Procedures.

C. Remediation Procedures. Agreeing to and complying with the Remediation Procedures.

D. Unresolved Deficiency Allegations. The Applicant shall not have any unresolved allegations pursuant to the requirements in Article IX of this Governance Document.

E. Prior Application Denial. The Applicant shall not have had an Application for certification denied within the prior year.

F. Prior Sanctions. The Applicant may have had sanctions imposed upon them in the past pursuant to the Certification Program; however, a former Certified Party who has been expelled from the Certification Program shall never be eligible for re-certification.

7.7 **Mergers/Acquisition/Change in Ownership of Certified Companies.** In the event of a change of structure or control of a Certified Company, the certification may or may not remain valid. Certified Companies involved in mergers, acquisitions, or changes in majority ownership must notify RMAI in writing of the new status within thirty (30) days of the close of the transaction. This notice shall be provided to the Administration & Budget Committee for review and shall include the following:

A. **Business Structure.** A description of the business structure of the new or changed entity shall be provided and shall include at a minimum a listing of the management team, the Employer Identification Number, and a declaration whether the new business structure is in conformity with the Certification Program.

B. **Transitional Plan.** In the event that it is determined that the new or changed entity is not in conformity with the Certification Program, the entity shall provide a transitional plan with a timeline that details how it intends to maintain or conform to the Certification Standards. The Administration & Budget Committee shall review the new or changed business structure and how the relationship of the original Certified Company is contained within the new business entity in order to determine whether the certification remains valid or will require re-Audit and/or re-Application. Non-Certified Companies involved with a merger or acquisition with a Certified Company are not allowed to claim to be certified or use the Certification Program logo until an Application has been submitted and approved by the Administration & Budget Committee.

7.8 **Certificate and Logo.** Certified Parties shall be provided with a certificate, a sample press release for media distribution, and graphics/art work with the Certification Program logo including an explanation of limitations and proper use of this mark. Displaying or utilizing the certificate or logo of the Certification Program shall immediately cease if after certification the Certified Party: (i) withdraws its certification; (ii) fails to renew its certification; (iii) has its certification suspended during such period; or (iv) has been expelled from the Certification Program.

7.9 **Voluntary Withdraw of Certification by a Certified Party in Good Standing.** Certified Parties may withdraw from certification at any time. A written letter signed by (i) the president/CEO/owner/officer of the Certified Company or (ii) the Certified Individual, as applicable, shall be sent to the Council documenting such a request. No certification fees are refunded in conjunction with voluntary withdrawals of certification. A Certified Party in good standing who voluntary withdraws from certification may reapply for certification at any time. This shall include any Certified Party that voluntarily withdraws from certification during the Audit process but prior to the completion of the Compliance Audit.

7.10 **Voluntary Withdraw of Certification by a Certified Party Prior to Remediating a Deficiency.** If a Certified Party is the subject of a Deficiency finding in a Compliance Audit and voluntarily withdraws from the Certification Program during the Remediation process but prior to entering into a Remediation Agreement with RMAI, the Deficiency shall be dismissed without prejudice and without any further action by the Remediation Committee or the Council. The Certified Party may not reapply for certification for a period of two (2) years from the effective date of its withdrawal, except in the case of a company where the allegation was against a Certified Individual serving as an employee and that employee is no longer employed by the company.

7.11 **Probationary Conditions.** The Administration & Budget Committee may recommend to the Council an Application for initial certification subject to probationary conditions,

provided such conditions shall not exceed the length of the initial three (3) year certification. The Committee may use probationary conditions when an issue regarding an Applicant's past character or past business practices raises concerns with the Committee and evidence of Applicant's rehabilitation may not be sufficient. The probationary conditions must be reasonable and based on the gravity of the circumstances at issue. A Certified Individual may not serve as the Chief Compliance Officer of a Certified Company if his or her individual certification is subject to probationary conditions.

VIII. Audit Procedures

8.1 **Base Line.** The Council may change the Audit Procedures contained in this Governance Document, provided that any alteration does not decrease the base line level of review established by the Governance Document.

8.2 **Annual Review.** The Audit Committee shall annually review the Audit Procedures to be followed and make recommendations to the Council for changes based on the effectiveness of the Certification Program, changes to the Certification Standards, and the evolution of generally accepted business practices.

8.3 **Scope.** The purpose of the Audit Procedures is to ensure that Certified Parties are conforming to the Certification Standards.

8.4 **Pre-Certification Audit.** A Pre-Certification Audit performed by an Auditor shall be required for a Vendor that is seeking initial certification; the results of such Audit shall be included with their Application.

8.5 **Full Compliance Audit of Certified Companies.** The following Audit Procedures shall apply to Full Compliance Audits of Certified Companies:

A. **Timing.** A Full Compliance Audit performed by an Auditor shall be required of each Certified Company once every three (3) years, occurring during the sixteenth to the twentieth month after the company's initial certification and renewal date. A Limited Compliance Audit, pursuant to section 8.6 and 9.4, may be performed at any time, at the direction of the Remediation Committee, based on the requirements of this Governance Document.

B. **Written Notice.** The Audit Committee staff shall provide a Certified Company with a written notice of its impending audit prior to the time period outlined in paragraph (A) of this section. A Certified Company may voluntarily perform a Full Compliance Audit at any point in time prior to receiving written notification by the Audit Committee and its submission shall serve to reset the Audit Period. When a Certified Company receives a written notice from the Audit Committee requesting a Full Compliance Audit be performed, the Certified Company shall have five (5) months to have the Audit completed, inclusive of the Audit Committee's receipt of the Audit findings. Failure to comply shall result in the immediate suspension of certified status. A written extension

of no more than two (2) months may be granted by the Audit Committee, in its discretion.

C. **Authorized Audit Providers.** The Audit Committee shall designate authorized Audit providers based on demonstrated excellence in the subject matter related to the Certification Program and who meet the criteria contained in the Audit Review Manual (**see Appendix E**). The Council may, in its sole discretion, take action to restrict, suspend, or revoke the status of an authorized Audit provider for any reason, including, but not limited to, failure to comply with the provisions of this Article or Appendix E. RMAI shall maintain a list of authorized Audit providers on the RMAI website from which Certified Companies may contract for the performance of Full Compliance Audits. Each Certified Company shall be responsible for negotiating and payment of all costs associated with its Audit.

D. **Scope of the Full Compliance Audit.** The Auditor shall validate conformity with the Certification Standards for the Audit Period that is the subject of the Full Compliance Audit. This review shall be based on the Certification Standards and criteria for observation and documentation contained in the Audit Review Manual (**see Appendix E**). An onsite inspection shall be one of the components of the review to ensure the Certified Company's processes are not just on paper but that they are integrated into the everyday workflow of the Certified Company. A Certified Company with multiple locations must verify conformity in all locations as the Certification Program does not provide for partial or process-based certification.

E. **Alternate Audit Method.** The Audit Committee may in its sole discretion permit a Certified Company who is performing another audit of a similar nature to add the Certification Program Full Compliance Audit to the list of audited deliverables for cost efficiency. The Certified Company shall be required to get the written preapproval of the Audit Committee for this exception to qualify. Only that portion of the audit that addresses the Certification Program Full Compliance Audit needs to be provided to the Audit Committee.

F. **Deficiencies.** If a Compliance Audit shows material deficiencies in a Certified Company's conformity with the Certification Standards, the Audit Committee shall forward the Compliance Audit to the Remediation Committee for remedial action.

8.6 **Limited Compliance Audits of Certified Companies.** A Limited Compliance Audit can be required by the Remediation Committee to verify compliance with a Remediation Agreement or to investigate a third party allegation of nonconformity with the Certification Standards as provided in Article IX of this Governance Document. The scope of a Limited Compliance Audit shall be restricted to the terms of the Remediation Agreement or the allegation. If the Audit is based on a third party allegation, the Auditor may contact such other individuals who may have knowledge of the facts and circumstances surrounding the allegation. Limited Compliance Audits shall be performed by an Auditor contracted by RMAI and whose costs, except travel and lodging, will be paid by RMA. Any travel and lodging expenses associated with a Limited Compliance Audit shall be paid by the

Certified Company being audited. It is the Certified Company's responsibility to bring together into one location all applicable representatives, documents, and information that are needed to verify conformance with company policies, procedures, processes, etc. that the Auditor will need in order to complete the Limited Compliance Audit.

8.7 **Audit of Certified Individuals.** The audit of Certified Individuals shall be conducted by RMAI staff or as otherwise determined by the Council.

8.8 **Audit Review Manual.** The Auditor, the Council, and applicable Committees of the Council shall use the Audit Review Manual (**see Appendix E**) as may be amended from time-to-time by the Council as a guide for determining certification approvals, denials, or remedial action based on conformity with the Certification Standards.

8.9 **Amending Audit Procedures.** The Audit Committee shall follow the same process established in section 5.7 of this Governance Document for the review and approval of any new or updated Audit Procedures.

IX. Remediation Procedures

9.1 **Base Line.** The Board may change the Remediation Procedures contained in this Governance Document, provided that any alteration does not decrease the base line level of review established by the Governance Document.

9.2 **Annual Review.** The Remediation Committee shall annually review the Remediation Procedures and make recommendations to the Board (which may be submitted through the Council) for changes based on the effectiveness of the Certification Program and prior experiences with the Remediation process.

9.3 **Scope.** The purpose of the Remediation Procedures is to provide an objective process for investigating third party allegations, regulatory actions, and remediating Audit Committee findings concerning a Certified Party's conformity with the Certification Standards.

9.4 **Third Party Allegations.** Any third party allegation of nonconformity with the Certification Standards made against a Certified Party shall be in writing and made to the Executive Director and Chair of the Remediation Committee, except in instances where the written allegation of nonconformity is in the public domain and from a reliable and verifiable source. No anonymous allegations shall be considered by the Remediation Committee. Except as provided in section 9.9 of this Article, when the Chair receives a written allegation, he or she shall call a meeting of the Remediation Committee to review the allegation. If the Committee determines that the allegation contains sufficient information to warrant an investigation, the Committee shall refer the allegation to the Audit Committee for a Limited Compliance Audit. In determining the sufficiency of the allegation, the Committee may seek additional information from the relevant parties.

9.5 **Recommendation of Remedial Action.** The Remediation Committee shall recommend to the Council such remedial action that it deems necessary to correct the deficiencies found in a Full or Limited Compliance Audit. Remediation shall be the goal of the Committee but in circumstances of egregious conduct where it is determined that remediation is not possible or warranted, the Remediation Committee may recommend disciplinary action against a Certified Party, including expulsion from the Certification Program.

9.6 **Emergency Action.** The Remediation Committee, by a two-thirds vote, shall have the authority to recommend to the Council the immediate suspension of a Certified Party provided that such action is deemed to be an emergency and is based on credible information.

9.7 **Remedial Powers of the Council.** The Board shall adopt a Remediation Procedures Manual (**see Appendix F**) that the Council shall follow when entering into Remediation Agreements with a Certified Party or when taking disciplinary action against a Certified Party, including expulsion from the Certification Program. The Board shall hear all appeals on disciplinary actions and its decision shall be final.

9.8 **Retaliatory Action Prohibited.** Direct or indirect retaliation of any kind by RMAI, the Council, or their directors, officers, staff, or agents against any individual that makes, initiates, or is involved in the making of an allegation is strictly prohibited. This prohibition on retaliation shall be enforced strictly by the Board and the Council. Similarly, allegations made with knowledge of their falsity, in whole or in part, are strictly prohibited. This prohibition on the making of knowingly-false allegations shall be enforced by the Council to the fullest extent possible, up to and including expulsion.

9.9 **Additional Procedures for Third Party Consumer Allegations.** RMAI encourages open communications between consumers and Certified Companies and does not serve as a liaison between the parties. The following procedures for handling third party consumer allegations are intended to encourage open communication and shall take place before RMAI investigates any third party consumer allegations against a Certified Company:

A. The consumer shall send a written communication to the Chief Compliance Officer of the Certified Company at the Chief Compliance Officer's mailing or email address listed on the RMAI website detailing the allegation or dispute. The Chief Compliance Officer shall ensure that the Certified Company provides the consumer with a written response;

B. If the consumer does not receive a written response within thirty (30) days, the consumer may file the allegation with the Executive Director (which shall contain a copy of the written communication required by paragraph A of this section) and the Chair of the Remediation Committee. The Executive Director shall attempt contact with the Chief Compliance Officer to encourage communication with the consumer; and

C. If the consumer does not receive a written response within thirty (30) days after the submission of the allegation to RMAI, the Chair of the Remediation Committee shall follow the process outlined in section 9.4 of this Article. The Executive Director and/or the Chair of the Remediation Committee shall ensure that consumers, who submit allegations against a Certified Company, receive reasonable follow-up communications as well as a final communication at the end of the review process.

9.10 **Amending Remediation Procedures Manual.** The Remediation Committee shall follow the same process established in section 5.7 of this Governance Document for the review and approval of any new or updated Remediation Procedures, except that the recommendations shall be made to the Board.

X. Fee Schedule

10.1 **Affordability.** The Council shall attempt to ensure that all fees and charges associated with the Certification Program are affordable and will result in neither a barrier for entry into the receivables management industry nor a reason that current companies fail to become certified.

10.2 **Application Fees.** The Council shall recommend to the Board in the Certification Program's annual budget an application fee schedule for the following:

A. **Individuals.** Individuals shall be assessed the following fees at the time of submitting an Application:

1. **Administrative Fee.** A one-time nonrefundable administrative fee shall be charged for all first time Applicants.
2. **Biennial Certification Fee.** A biennial certification fee, which shall cover the costs associated with administering the Certification Program.
3. **Background Check Fee.** A foreign applicant may be charged the differential cost between a domestic background check and a foreign background check if the committee has reason to believe a more in depth background check is warranted (ex. the individual is employed by a Certified Company). Any foreign applicant who was first certified prior to version 7.0 shall be exempt from this fee.

B. **Companies.** Companies shall be assessed the following fees at the time of submitting an Application:

1. **Administrative Fee.** A one-time nonrefundable administrative fee shall be charged for all first time Applicants.
2. **Biennial Certification Fee.** A biennial certification fee, which shall cover the costs associated with administering the Certification Program.

10.3 **Appeals Fee.** A fee of one thousand dollars ($1,000) shall be included with the filing of an appeal on a decision made by the Council as provided in the Remediation Procedures Manual (**see Appendix F**). The fee will be refunded only if the appeal is successful.

10.4 **Other Fees.** The Administration and Budget Committee may recommend to the Council the creation of other fees that are either associated with the Application or are charged at the point of an administrative action or request.

10.5 **Refunds.** Refunds, less an administrative processing fee of $100, shall be provided to any Applicant on biennial certification fees if the Application is withdrawn prior to the issuance of the certification or the rejection of the Application, whichever occurs first. No refunds shall be provided after the issuance of certification or the rejection of the Application.

10.6 **Currency.** All fees shall be based on the currency of the United States.

10.7 **Amending Fee Schedule.** The Administrative and Budget Committee shall follow the same process established in section 5.7 of this Governance Document for the review and approval of any new or updated fee schedules.

XI. Confidentiality, Records & Conflict of Interest

11.1 **Confidentiality of Information.** Information submitted as part of the Certification Program shall be kept confidential and used for the limited purpose of determining eligibility for certification, compliance with certification, or as provided in section 11.6 of this Article.

11.2 **Confidentiality of Investigations.** Investigations and deliberations of the Council or any Committee concerning a party's certification or potential certification shall be conducted in strict confidence, to the extent possible. Investigations by their very nature may require the disclosure of certain information to parties essential to the review and/or investigation of the alleged misconduct but should be limited, to the extent possible.

11.3 **Redaction of Proprietary Information.** The Applicant has the right to redact any proprietary information it deems necessary from all documentation and in compliance with required laws and regulations. However, the redaction of information should not be of such a magnitude to impair the Council's ability to utilize the documentation in determining eligibility for certification and/or compliance with certification. Documents which are overly redacted and deemed unusable by the Auditor and/or the Council may be rejected and may result in an adverse certification decision.

11.4 **Property of RMA.** All information submitted during the certification process shall become the property of RMA.

11.5 **Records Retention.** The Council shall maintain original or electronic copies of the following Certification Program records in accordance with RMAI's Records and Retention Schedule:

A. Applications;

B. Reports of Auditors;

C. Records of Certification including disciplinary actions;

D. Records of Appeals;

E. Prior versions of the Governance Document with their Effective Dates;

F. Minutes of Council Meetings;

G. Copies of Policies and Procedures; and

H. Council Reports to the Board.

11.6 **Release of Information.** The Council shall not provide any additional information, including privileged information, to a third party except for the publication of information authorized by sections 5.5 and 5.6 of this Governance Document and for purposes of investigation and remediation as authorized by Article IX of this Governance Document. The Council shall not confirm or deny that a specific party is involved in any phase of the certification process prior to achieving certification, except as may be required for a reference and/or background check. The Council shall release information if it receives a written request from the Applicant or Certified Party indicating who the information may be released to or if the Council is required to release information by a court order. In the event that the Council receives a subpoena or other form of compulsory process other than a court order, the Council will review before deciding whether to comply with the compulsory process to release the information. To the extent permitted by law, the Council will make commercially reasonable efforts to provide prior notice to the Applicant or Certified Party concerning the court order or subpoena so that they may have an opportunity to intervene in an effort to block the disclosures. Except in the case of private censure, the Council may communicate the fact, date, and general nature of a disciplinary action against a Certified Party. Additionally, the Council may communicate the fact, date, and nature of a Certified Party's voluntary withdrawal from Certification that occurred during an independent third party audit or during the remediation process to government agencies engaged in the administration of law or receivables management industry oversight.

11.7 **Confidentiality Agreement.** Council Members, Committee Members, staff, and vendors shall sign a confidentiality agreement where they agree to keep all information submitted as part of the Certification Program confidential. A violation of the confidentiality agreement may lead to dismissal from the Council, Committee, employment, or termination of a contractual relationship.

11.8 **Conflict of Interest.** Council Members, Committee Members, staff, and vendors shall recuse themselves from any discussion or actions associated with a party and/or issue

where there is a personal or professional affiliation or interest that might have an impact on the deliberations. A violation of this paragraph may lead to dismissal from the Council, Committee, or employment.

XII. Meetings

12.1 **Roberts Rules of Order.** Unless provided otherwise in this Governance Document, the Council and the Committees of the Council shall follow the most recent version of Roberts Rules of Order for voting procedures.

12.2 **Quorum.** A quorum for voting purposes shall be considered fifty percent (50%) plus one (1) of the positions filled.

12.3 **Public Meetings.** The meetings of the Council and the Committees of the Council are not open to the public unless stated otherwise in advance of the meeting.

XIII. Indemnification

13.1 **Indemnification.** All Audit Committee Members, Remediation Committee Members, Council Members, RMAI employees, RMAI Counsel, independent contractors, and other individuals engaged in investigations or decisions on behalf of the Certification Program and RMAI with respect to any allegation under the Certification Standards or an independent third party audit thereof shall be indemnified and held harmless and defended by RMAI against any liability arising from such activities to the extent permitted by law, provided such individuals acted in good faith and with reasonable care, without gross negligence or willful misconduct, and did not breach any fiduciary duty owed to RMAI or the Council.

APPENDIX A
CERTIFICATION STANDARDS & TESTING MANUAL FOR CERTIFIED COMPANIES

The following Certification Standards are required to be maintained by a Certified Company, unless stricter requirements are imposed by state or federal laws or regulations:

"Series A" Standards
[All Certified Companies]

(A1) **Laws & Regulations.** A Certified Company shall comply with the Fair Debt Collection Practices Act and, as applicable, the Fair Credit Reporting Act, the Telephone Consumer Protection Act, the Servicemembers Civil Relief Act, the United States Bankruptcy Code, section 5 of the Federal Trade Commission Act, sections 1031 and 1036 of the Dodd-Frank Act, and all other local, state, and federal laws and regulations concerning: (a) collection activity on consumer accounts, (b) the rights of consumers, (c) debt buying, and (d) financial services as they may apply to debt collection companies.

Audit Testing Procedures:

A1.1 The Auditor shall obtain from the Certified Company a list and a copy of all judicial decisions and any local, state, and federal regulatory orders, directives, and decrees from the CFPB, FTC, state consumer regulatory agencies, and state and federal attorneys general that were issued within the dates of the Audit Period where the ruling determined the Certified Company violated a law or regulation within the scope of the Certification Standard. The list shall include: case name, court, case number, a description of the violation, the holding of the court, and the judicial relief granted.

A1.2 The Auditor shall also independently conduct a search for reported local, state, and federal judicial decisions involving the Certified Company within the dates of the Audit Period; however, the Auditor shall not disregard other judicial cases should it come to their attention. The Auditor will reconcile their list with the list provided by the Certified Company and if there are discrepancies, the Auditor shall endeavor to reconcile the list with the Certified Company. The result of this reconciliation shall be attached to the report.

A1.3 If there were final judicial decisions and/or regulatory orders, directives, and decrees, the Auditor shall test against the court and regulatory agency's findings for those dates within the Audit Period that occurred after each judicial decision and regulatory order, directive, and decree to determine compliance with the court or such regulatory agency's decision and summarize those findings within the report.

A1.4 The Auditor shall not consider the following a violation of a Certification Standard for the purposes of the report: (a) judicial decisions that are under appeal, (b) regulatory orders, directives, and decrees that are under appeal, (c) settlements, or (d) news accounts of a settlement.

(A2) **Errors & Omissions Insurance.** A Certified Company shall maintain Errors & Omissions (E&O) insurance coverage in an amount of no less than:

(a) Two million U.S. dollars ($2,000,000) per event/occurrence if the Certified Company has more than $10 million in annual receipts resulting from consumer debt collection;

(b) One million U.S. dollars ($1,000,000) per event/occurrence if the Certified Company has $2 million to $10 million in annual receipts resulting from consumer debt collection; or

(c) Five hundred thousand U.S. dollars ($500,000) per event/occurrence if the Certified Company has less than $2 million in annual receipts resulting from consumer debt collection.

Audit Testing Procedures:

A2.1 The Auditor shall obtain a copy of the E & O insurance policies sufficient to demonstrate that the Certified Company had the required amount of E & O insurance in place within the dates of the Audit Period. A failure to provide a continuum of coverage shall be considered a Deficiency.

(A3) **Criminal Background Check.** Unless prohibited by state or federal law, a Certified Company shall perform a legally permissible criminal background check prior to employment on every prospective full or part time employee who will have access to Consumer Data to determine the following:

(a) Whether the prospective employee has been convicted of any criminal felony involving dishonesty, fraud, deceit, misrepresentation, or any misappropriation of confidential data or information; and

(b) Whether the prospective employee has been charged with any crime involving dishonesty, fraud, deceit, misrepresentation, or any misappropriation of confidential

data or information such that the facts alleged support a reasonable conclusion that the acts were committed and that the nature, timing, and circumstances of the acts may place consumers or clients in jeopardy.

A Certified Company shall maintain guidelines in a policy, procedure, or manual on how it will handle criminal background checks and the potential consequences on employment that may result from such background checks. The criminal background check is not a retroactive requirement for employees hired prior to certification.

Audit Testing Procedures:

A3.1 The Auditor shall determine whether the Certified Company has a written policy, procedure, or manual which requires all new employees (including rehires) who will have access to consumer financial data to have a criminal background check performed and the potential consequences on employment that may result from such background checks.

A3.2 The Auditor shall obtain from the Certified Company evidence that criminal background checks have been performed. Receipts or statements from a criminal background provider showing account activity shall be sufficient.

A3.3 The Auditor shall choose a random sample of employees that were hired by the Certified Company within the dates of the Audit Period to verify that the Certified Company conformed to its policy, procedure, or manual and document their findings in the report. This requirement shall be waived if the Certified Company can demonstrate the provision of this information would violate an applicable state law on employee confidentiality.

(A4) **Employee Training Programs.** A Certified Company shall establish and maintain annual employee training program(s). Based on their job responsibilities, employees should be trained on how to comply with applicable: (i) Certification Standards, (ii) corporate policies and procedures, (iii) laws and regulations, and (iv) purchase contract or client-mandated compliance requirements. These programs should also inform employees of the possible consequences for failing to comply with them.

Audit Testing Procedures:

A4.1 The Auditor shall review the Certified Company's employee training programs and determine whether they conform to the Certification Standard.

A4.2 The Auditor shall document in the report the Certification Standards, corporate policies and procedures, and laws and regulations for which the Certified Company is providing annual employee training.

A4.3 The Auditor shall obtain from the Certified Company evidence that the training has occurred and confirmation that attendance is being tracked.

(A5) **Consumer Complaint and Dispute Resolution Policies.** A Certified Company shall establish and maintain written Consumer Complaint and dispute resolution policies and procedures that instruct employees how to handle and process Consumer Complaints and disputes in compliance with the Certification Program and applicable laws and regulations, including but not limited to the Fair Debt Collection Practices Act and the Fair Credit Reporting Act.

Audit Testing Procedures:

A5.1 The Auditor shall obtain from the Certified Company copies of their Consumer Complaint and dispute resolution policies and procedures.

A5.2 The Auditor shall review the policies and procedures to determine whether they provide sufficient guidance to employees on how to handle Consumer Complaints, disputes, and requests for information, including but not limited to:

(a) Consumer requests for verification of the debt pursuant to 15 USC 1692g.

(b) Consumer claims of identity theft or fraud, including adequate procedures for investigating and determining the legitimacy of the claims.

A5.3 The Auditor shall confirm whether the Certified Company has a system in place to flag accounts (i) while the Certified Company complies with a FDCPA (15 USC 1692g) verification request and (ii) where the Certified Company determined that the debt was incurred as a result of identity theft or fraud. The ability to flag these accounts is necessary to prevent the unintentional sale of an account in compliance with Certification Standard B4.

A5.4 The Auditor shall choose a sample of Consumer Complaints, disputes, and requests for information that the Certified Company received within the dates of the Audit Period to verify that the employees conformed to the Certified Company's policies and procedures in the handling of the complaint, dispute, or request for information. The Auditor shall document their findings in the report.

(A6) **Consumer Notices.** A Certified Company shall establish and maintain a list of applicable local, state, and federal consumer collection notices/disclosures in the areas in which the Certified Company conducts business and maintain procedures to ensure that the appropriate notices/disclosures are added to consumer correspondence.

Audit Testing Procedures:

A6.1 The Auditor shall review and document the Certified Company's list of local, state, and federal consumer notices.

A6.2 The Auditor shall review and document the procedures the Certified Company has adopted to identify new or amended consumer notice requirements.

A6.3 The Auditor shall review and document the procedures the Certified Company has adopted to ensure that appropriate notices are added to the outgoing consumer correspondence. A random sample of consumer correspondence should be tested to verify the procedures are working as intended.

(A7) **Data Security Policy.** A Certified Company shall establish and maintain a reasonable and appropriate data security policy based on the type of Consumer Data being secured that meets or exceeds the requirements of applicable state and federal laws and regulations. The Certified Company shall ensure that an annual risk assessment is performed on the Certified Company's protection of Consumer Data from reasonably foreseeable internal and external risks. Based on the results of the annual risk assessment, the Certified Company shall make adjustments to their data security policy if warranted. A reasonable data security policy shall include, but not be limited to, measures taken to ensure:

(a) The safe and secure storage of physical and electronic Consumer Data;

(b) Computers and other electronic devices that have access to Consumer Data contain reasonable security measures such as updated antivirus software and firewalls;

(c) Receivables portfolios are not advertised or marketed in such a manner that would allow Consumer Data and Original Account Level Documentation to be available to or accessible by the public;

(d) Consumer Data that is transferred to a third party is transferred securely through the use of encryption or other secure transmission sources;

(e) The secure and timely disposal of Consumer Data that complies with applicable laws and contractual requirements; and

(f) An action plan has been developed and communicated with relevant employees on how to handle a data breach in accordance with applicable laws, which shall include any required disclosures of such breach.

Audit Testing Procedures:

NOTE: There are a number of differing standards in the field of data security depending on the nature of the underlying consumer debt portfolio and the type of Consumer Data associated with the asset class. Additionally, the standards in data security are constantly evolving so as to require constant vigilance. Consequently, each Certified Company shall adopt standards that are appropriate for their consumer debt portfolio and the Consumer Data contained therein and

review those standards annually. If the Certified Company has questions as to which data security standards to adopt they should consult the requirements contained in the original purchase agreement with the originating creditor and such other experts and sources of information on information security as they deem appropriate. Generally, Certified Companies should consider adopting provisions that are applicable to their circumstances, which might include but are not limited to provisions found in PCI DSS, BITS, ISO 27002, SAFE, and SSAE 16.

A7.1 The Auditor shall obtain from the Certified Company a copy of their data security policy.

A7.2 The Auditor shall document how the Certified Company determines what standards to adopt in their data security policy.

A7.3 The Auditor shall confirm that the Certified Company performs an annual review of its data security policy.

A7.4 The Auditor shall confirm that the six measures outlined in the Standard are included in the Certified Company's data security policy.

A7.5 The Auditor shall perform random tests to verify whether the Certified Company is conforming to its data security policy. If the Certified Company in the twelve (12) months prior to the Compliance Audit has passed a data security audit performed using PCI DSS, BITS, ISO 27002, SAFE, SSAE 16 or such other standards approved in writing by the Audit Committee, the Auditor shall accept the audit as conforming with this requirement.

A7.6 The Auditor shall confirm that the required annual risk assessments have been performed by the Certified Company within the dates of the Audit Period. The Auditor shall review the assessments and confirm that any risks that were identified have resulted in adjustments to the data security policy. Any year in which the Certified Company passes a data security audit performed using PCI DSS, BITS, ISO 27002, SAFE, SSAE 16 or such other standards approved in writing by the Audit Committee, the Auditor shall accept the audit as conforming with the annual risk assessment requirement for that year.

(A8) **CFPB Consumer Complaint System.** A Certified Company shall:

(a) Register with the CFPB for the receipt of Consumer Complaints, disputes, and inquiries filed with the bureau concerning the company and/or the company's consumer accounts; and

(b) Timely respond to all such complaints, disputes, or inquiries in accordance with the CFPB's prescribed guidelines.

Audit Testing Procedures:

A8.1 The Auditor shall review the publicly accessible information and data that is published on the CFPB website to verify whether the Certified Company is conforming to the standard and report their findings.

A8.2 The Auditor shall note the total number of Consumer Complaints, disputes, and inquiries that were filed against the Certified Company with the CFPB during the Audit Period and indicate how that compares to their last Audit Period.

(A9) **Payment Processing.** A Certified Company shall establish and maintain a Payment Processing Policy that requires taking payments consistent with consumer instructions that were made at the time the payment was accepted and prompt posting of all consumer payments. If a refund is due to a consumer and takes longer than 30 days to process, the Certified Company shall document the reason for the delay in processing the refund.

Audit Testing Procedures:

A9.1 The Auditor shall obtain from the Certified Company a copy of their payment processing policy.

A9.2 The Auditor shall choose a random sample of accounts to verify whether the Certified Company is conforming to its payment processing policy and report their findings.

(A10) **State Licensing Requirements.** A Certified Company shall comply with state and municipal collection licensing laws to the extent that they are applicable.

Audit Testing Procedures:

A10.1 The Auditor shall obtain from the Certified Company the list of states that correspond to the consumer account addresses where there is active collection activity by the company or an agent of the company at the time of the Compliance Audit.

A10.2 The Auditor shall obtain from the Certified Company the list of jurisdictions where the company is licensed as well as any jurisdictions where their license was suspended, revoked, or an application denied, including any jurisdictional license numbers.

A10.3 In jurisdictions where the Certified Company is not licensed, the Auditor shall make a reasonable effort to confirm whether the company should be licensed depending on the specific facts and circumstances. If in the opinion of the

Auditor, the Certified Company is not licensed in a particular jurisdiction where licensure may be required and collection activity is occurring, the company shall provide an explanation as to why they are not licensed.

(A11) **Credit Bureau Reporting**. If a Certified Company reports consumer account information to a credit bureau, the Certified Company shall:

(a) Notify the credit bureau of any inaccurately reported information that it identifies within thirty (30) days of its discovery;

(b) Notify the credit bureau when a consumer disputes the accuracy of an account within thirty (30) days of the dispute being made; and

(c) Notify the credit bureau within thirty (30) days if the Certified Company sells the account.

Audit Testing Procedures:

A11.1 The Auditor shall first determine whether the Certified Company reports any consumer account information to a credit bureau. If the Auditor verifies that the Certified Company has adopted a corporate policy that prohibits the reporting of consumer account information to credit bureaus and the company is in compliance with the policy, this Standard shall be waived.

A11.2 The Auditor shall select a random sample from consumer accounts that had been reported to a credit bureau within the dates of the Audit Period to determine whether the Certified Company conformed to the requirements of this standard.

(A12) **Statute of Limitations.** A Certified Company shall not knowingly bring or imply that it has the ability to bring a lawsuit on a debt that is beyond the applicable statute of limitations, even if state law revives the limitations period when a payment is received after the expiration of the statute. This standard shall not be interpreted to prevent a Certified Company from continuing to attempt collection beyond the expiration of the statute provided there are no laws and regulations to the contrary.

Audit Testing Procedures:

A12.1 The Auditor shall document and report how the Certified Company determines which accounts they own are past an applicable statute of limitations, including but not limited to whether the Certified Company:

(a) Has established a policy and procedure concerning how employees and agents are to handle accounts after the statute of limitation has expired.

(b) Has a standard in place that defines and identifies the applicable statute of limitations as applied to each account.

(c) Has a process for determining when a state changes their statute of limitations.

A12.2 The Auditor shall obtain from the Certified Company the states where the Certified Company has sought a judgment within the dates of the Audit Period and verify through a random sample of litigated accounts that:

(a) The statute of limitation was properly calculated.

(b) The litigation conformed to the Certification Standard.

A12.3 The Auditor shall obtain from the Certified Company a list of accounts in those states that prohibit collection activity after the statute of limitations has expired and through a random sample shall verify whether any attempts were made to collect on those accounts or whether those accounts were sold.

A12.4 If the Certified Company attempts to collect on accounts that are past the applicable statute of limitations, the Auditor shall review the communication template used for such accounts to confirm the company does not state or imply to the consumer that it has the ability to bring a lawsuit.

(A13) **Chief Compliance Officer.** A Certified Company shall create and maintain the position of "Chief Compliance Officer" with a direct or indirect reporting line to the president, CEO, board of directors, managing partner, or general counsel (unless the Chief Compliance Officer is the president, CEO, managing partner, or general counsel). The Chief Compliance Officer's documented job description shall include, at a minimum, the following responsibilities:

(a) Maintaining the Certified Company's official copy of the Certification Standards Manual;

(b) Identifying policies, procedures, or activities of the Certified Company that are out of conformity with the Certification Standards;

(c) Either directly or indirectly: (i) receiving Consumer Complaints, (ii) investigating the legitimacy of Consumer Complaints, and/or (iii) overseeing the complaint process, including complaint activity, root cause analysis, and timely response;

(d) Developing recommendations for corrective actions when the Certified Company is not conforming with the Certification Standards and providing them to his or her direct and indirect report(s);

(e) Interacting as the point of contact for the CFPB, FTC, state consumer regulatory agencies, and state and federal attorneys general regarding the oversight and accountability of the Certified Company's Consumer Complaint and Dispute Resolution Policy and the CFPB's Consumer Complaint System; and

(f) Maintain his or her status as a Certified Individual pursuant to section 5.5(A) of the Governance Document.

Audit Testing Procedures:

NOTE: The term Chief Compliance Officer is meant in terms of role and not necessarily in terms of title. The person who performs this role for the company can be an employee where the CCO is a part of their job responsibilities, an owner, or a corporate officer of the Certified Company or of a corporate affiliate of the Certified Company.

NOTE: The requirements set forth in this Certification Standard apply to all Certified Companies regardless of the volume of accounts they own, the number of individuals they employ, and how they seek to collect or recover on the debt they own. The Certified Company owns the debt and is therefore accountable for the debt. Consequently, the Certified Company should reflect how this is accomplished when work is being outsourced to third party servicers, such as collection agencies and legal collection firms.

A13.1 The Auditor shall document the name and title of the Chief Compliance Officer and the date that the individual started in that capacity.

A13.2 The Auditor shall confirm that the Chief Compliance Officer has an unexpired Individual Certification through the Certification Program. If the Chief Compliance Officer is not certified, the Auditor shall indicate whether the Chief Compliance Officer is actively working towards (re)certification and the anticipated Application date.

A13.3 The Auditor shall obtain a copy of the Chief Compliance Officer's job description from the Certified Company and confirm that it is in conformity to the Certification Standard.

A13.4 The Auditor shall obtain a copy of the management organizational chart from the Certified Company and document the name and title of the Chief Compliance Officer's direct and indirect supervisor.

A13.5 The Auditor shall obtain sufficient evidence from the Certified Company's Chief Compliance Officer on how he or she has complied with the requirements of his or her job description as enumerated in the Certification Standard.

(A14) **Website & Publication.** A Certified Company shall:

(a) Maintain a publicly accessible website that can be found by a simple web search using the corporate name provided in communications with consumers. "Family of companies" that share certification pursuant to section 7.4 of the Governance Document shall maintain a website under the name of the primary company the certification was issued and under the name of any company within the "family" that communicates with consumers;

(b) Publish on the home page of their website or on a single page directly accessible from the home page, the following information: (i) the Certified Company's name (along with the names of any companies that share the certification designation, if applicable), certification number, mailing address, and telephone number; (ii) the mailing address, email address, and telephone number where consumers can register a complaint with the Certified Company that is received by an employee who has the authority to research, evaluate, take corrective action if warranted, and respond to the complaint; and (iii) a hyperlink to the "Consumer Education" page on the RMAI website;

(c) Publish on their website their Chief Compliance Officer's name, title, certification number, and mailing address; and

(d) Authorize RMAI to publish the information contained in paragraphs (b) and (c) of this Certification Standard on a publicly accessible website maintained by RMA.

Audit Testing Procedures:

NOTE: The authorization from the Certified Company to publish their information pursuant to this Certification Standard is a condition which is accepted in the Application for Certification and is not a requirement that needs to be verified by the Auditor.

NOTE: In the case of a certification issued to a "family of companies" where the primary company on the application is a holding company, the requirement for the primary company to maintain a website is waived, provided that the primary company is not in the chain of title and has no communication with consumers.

A14.1 The Auditor shall perform a simple web search using the corporate name that the Certified Company provides in communications with consumers and document the results.

A14.2 The Auditor shall confirm that the individual who serves in the role of Chief Compliance Officer is the same individual identified on the RMAI and Certified Company's websites and the information required to be published is present and

correct.

A14.3 The Auditor shall confirm that the information required to be published by the Certified Company on its website is present and correct and is the same information that is published on the RMAI website.

A14.4 The Auditor shall confirm that there is a working hyperlink to RMAI's Consumer Education page on the Certified Company's website.

(A15) **Vendor Management.** In order to identify and retain qualified third party vendors and to assure appropriate oversight of such vendors, a Certified Company shall:

(a) Establish and maintain vendor management policies and procedures with defined due diligence and/or audit controls;

(b) Perform an annual assessment of its: (i) vendor management policies and procedures and provide recommendations for improvements, if warranted, and (ii) third party vendors to determine whether they continue to meet or exceed the requirements and expectations of the company. As part of the annual assessment, the Certified Company may need to perform additional due diligence, including by way of example rather than limitation, confirmation of certification status, vendor audits, review of policies and procedures maintained by vendors, and review of consumer complaints related to the vendor (including the data publicly available on the CFPB's consumer complaint system); and

(c) Obtain the certification number when contracting with a vendor claiming to be a RMAI Certified Company and confirm the vendor's certification status on RMAI's website.

Audit Testing Procedures:

A15.1 The Auditor shall obtain from the Certified Company a copy of their vendor management policies and procedures. The Auditor shall verify that the policies and procedures are in conformity with the Certification Standard and the company is in compliance with those policies and procedures.

A15.2 The Auditor shall confirm that the annual assessment of the vendor management policies and procedures has occurred and has been properly communicated to the executive management and/or board of directors of the company, including any recommendations for improvements.

A15.3 The Auditor shall document how the Certified Company determines and/or confirms that the third-party vendors (i.e. their agents) they use to communicate with consumers and/or their attorneys on the Certified Company's behalf are conforming with the applicable Certification Standards.

A15.4 If a Certified Company contracts exclusively with a third-party as its master servicer or servicer on the accounts owned by the Certified Company, the Auditor shall test Certification Standards A4, A5, A6, A9, and A17 exclusively through the Certified Company's conformity with Certification Standard A15. A violation of a Certification Standard by a third party vendor on the Certified Company's account may be considered a violation of such standard by the Certified Company. The Auditor shall document if the Certified Company became aware of a violation of one of the aforementioned standards within the dates of the Audit Period. If a violation was found, the Auditor shall list the violation and indicate how it was addressed.

(A16) **Affidavits**. A Certified Company shall establish and maintain an Affidavit Policy that requires and ensures that:

(a) An affiant shall only sign an affidavit that is true and accurate, and that no affiant shall sign an affidavit containing an untrue statement;

(b) An affiant either have personal knowledge or upon information and belief of the facts set forth in the affidavit or shall familiarize himself or herself with the business records applicable to the subject matter of the affidavit prior to signing an affidavit; and

(c) Each affidavit shall be signed by an affiant under oath and in the presence of a notary appointed by the state in which the affiant is signing the affidavit, in accordance with and to the extent required by applicable state law.

Audit Testing Procedures:

A16.1 The Auditor shall obtain from the Certified Company a copy of its Affidavit Policy and review it to confirm that it meets or exceeds the requirements of this Standard.

A16.2 The Auditor shall choose a random sample of affidavits that were signed within the dates of the Audit Period to determine compliance with the Affidavit Policy.

A16.3 The Auditor shall interview a random sample of the affiants who signed affidavits within the dates of the Audit Period to determine compliance with the Affidavit Policy.

A16.4 The Auditor shall interview a random sample of notaries who witnessed the signing of affidavits within the dates of the Audit Period to determine compliance with the Affidavit Policy.

(A17) **Commissions.** A Certified Company that provides commissions or bonuses based on collection activity shall have compliance-related criteria for the payment of such forms of compensation.

Audit Testing Procedures:

A17.1 The Auditor shall first determine whether the Certified Company provides commissions or bonuses based on collection activity. If the Auditor verifies that the Certified Company prohibits this form of compensation in its corporate policies and the company is in compliance with the policies, this Standard shall be waived.

A17.2 The Auditor shall confirm that the Certified Company either: (i) requires its employees to adhere to compliance-related criteria in order to be eligible for commissions and/or bonuses based on collection activity or (ii) has built compliance-related criteria into the commission and/or bonus formula.

A17.3 The Auditor shall confirm through a random sample of commission and/or bonus payments that the Certified Company is conforming to this Standard.

(A18) **State of Emergency**. A Certified Company shall refrain from initiating phone calls or electronic communications with consumers concerning the payment of a debt: (i) if the company knows there is an ongoing emergency that is impacting the community where the consumer resides and (ii) within the first 10 days after the declaration of a state of emergency, or similar proclamation, by the Federal Emergency Management Agency (FEMA). Based on the circumstances, a Certified Company should also consider extending grace periods for payments, suspending interest accumulation, or offering other forms of assistance. This standard shall not apply to communications required by law.

Audit Testing Procedures:

NOTE: Reaching out to inform a consumer of a Certified Company's decision to extend a payment deferral, extend a grace period for payment, suspend interest accumulation, or offer other forms of assistance because of an emergency shall not be deemed a violation of this standard.

A18.1 The Auditor shall obtain documentation from the Certified Company that describes the process established by the company to conform to this Standard, determine if the process is reasonable, verify the process was followed within the dates of the Audit Period, and document their findings in the report. For purposes of testing, the Auditor, using their best judgment, shall identify several major FEMA declared emergencies in the states where the Certified Company collects on consumer accounts.

A18.2 The Auditor shall notate whether the Certified Company extended grace periods

for payments, suspended interest accumulation, or offered other forms of assistance to those adversely impacted by a state of emergency. The response to this question is for informational purposes only and will not impact the company's conformity with the Standard.

"Series B" Standards

[Debt Buying Companies]

(B1) **Purchase & Sale Documentation Requirements.** A Certified Company shall comply with the following requirements:

(a) *Scope of Standard* – This standard shall apply to the purchase and sale of credit card receivables[6] by a Certified Company on or after August 1, 2016; the purchase and sale of judgments by a Certified Company on or after August 1, 2017; the purchase and sale of automobile receivables on or after August 1, 2018, the purchase and sale of bankruptcy claims and medical receivables on or after August 1, 2019, although reasonable efforts should be made to comply with this standard effective with its adoption. This standard may contain requirements that are greater than that mandated by state and federal laws and regulations – in such instances, a Certified Company shall comply with this standard unless doing so would be interpreted as a violation of such law or regulation. This standard does not prohibit: (i) putbacks to an originating creditor or prior owner based on terms of the contract; (ii) sales/transfers to subsidiaries or affiliates of the Certified Company; (iii) sales made part of a merger or acquisition transaction involving all or substantially all of the Certified Company's assets; and (iv) transfers to a creditor made in connection with the Certified Company's default on a loan or lending agreement.

(b) *Policies & Procedures* – A Certified Company shall establish and maintain policies and procedures that provide rules, processes, and procedures it follows in the purchase or sale of receivables and judgments to ensure accuracy and completeness of information.

(c) *Required Data & Documents* – When purchasing or selling receivables or judgments, a Certified Company shall obtain or provide (or use commercially reasonable efforts to obtain or provide if applicable and maintained by the seller) at the time of the transaction the following account related information[7] [*the purchase/sale agreement*

[6] Since a judgment serves as a court of law's final determination of the rights and obligations of parties to a contract (consistent with 15 USC 1692g), a judgment shall not be considered a receivable for purposes of this standard.

[7] NOTE: The items denoted by an asterisk (*) are required by the U.S. Office of the Comptroller of the Currency for financial institutions under its jurisdiction and items denoted by the number symbol (#) are consistent with the requirements contained in the CFPB consent decrees issued in 2015.

may authorize the use of secure document storage facilities maintained by the seller or a third party for the documents referenced below, provided that the purchaser has reviewed the portfolio pursuant to paragraph (d), has access to the documents, and can demand delivery of any or all of the documents upon request]:

ASSET CLASS	REQUIRED	COMMERCIALLY REASONABLE EFFORTS
Credit Cards & Asset Classes Not Listed	(i) The consumer's first and last name; (ii)* The consumer's Social Security number or other government issued identification number, if obtained by the creditor; (iii)*# The consumer's address at Charge-Off; (iv)*# The creditor's name at Charge-Off; (v)# The creditor's address at Charge-Off; (vi)*# A copy of the signed contract or other account level document(s) that were transmitted to the consumer while the account was active that provides evidence of the relevant consumer's liability for the debt in question. Other documents may include, but are not limited to, a copy of the most recent terms and conditions or a copy of the last activity statement showing a purchase transaction, service billed, payment, or balance transfer; (vii)*# The account number at Charge-Off; (viii)*# The unpaid balance due on the account, with a breakdown of the post-Charge-Off Balance, interest, fees, payments, and creditor/owner authorized credits or adjustments; (ix)*# The date and amount of the consumer's last payment, provided a payment was made; (x)* Sufficient information to calculate the dates of account delinquency and Default; (xi)# The date of Charge-Off; (xii)# The balance at Charge-Off; (xiii) A copy of a statement that reflects the Charge-Off Balance; (xiv)# A copy of each bill of sale or other document evidencing the transfer of ownership of the debt from the initial sale by the Charge-Off creditor to each successive owner that when reviewed in its totality provides a complete and unbroken chain of title documenting the name and dates of ownership of the creditor and each subsequent owner up to and including the Certified Company.	(i) If there was a legal change in the consumer's name during the life of the account, the prior name(s) used on the account; (ii) The consumer's date of birth; (iii) The consumer's last known telephone number; (iv) The consumer's last known email address; (v) The store or brand name associated with the account at Charge-Off if different from the Charge-Off creditor's name; (vi) The opening date of the account; (vii) Pre-Charge-Off account number(s) used by the creditor (and, if appropriate, its predecessors) to identify the consumer's account if different than the Charge-Off account number; and (viii) Such other information it deems necessary to substantiate in a court of law the legal obligation, the identity of the person owing the legal obligation, and an accurate balance owed on the legal obligation.

Auto [*Deficiencies*]	(i) Chain of title; (ii) Consumer's first & last name; (iii) Consumer's address at time of sale; (iv) Consumer's last known address; (v) Original sales contract (retail installment contract or promissory note); (vi) Last payment amount made by the consumer; (vii) Last payment date made by the consumer; (viii) Default notice; (ix) Right to cure notice (as applicable); (x) Intent to sell notice; (xi) Repossession expenses (itemized); (xii) Full financial transaction history (itemized); (xiii) Deficiency calculation; and (xiv) Deficiency notice reflecting sale proceeds.	(i) Driver license number; (ii) Driver license image; (iii) Certified mail return receipt of default notice and/or right to cure notice; and (iv) Repossession sale documents from auction.
Auto [*Secured*]	(i) Chain of title; (ii) Consumer's first & last name; (iii) Consumer's address at time of sale; (iv) Consumer's last known address; (v) Original sale contract (retail installment contract or promissory note); (vi) Last payment amount made by the consumer; (vii) Last payment date made by the consumer; (viii) Default notice; (ix) Right to cure notice (as applicable); (x) Full financial transaction history (itemized); (xi) Original title; (xii) Charge-off amount; and (xiii) Charge-off date.	(i) Driver license number; (ii) Driver license image; (iii) Certified mail return receipt of default notice and/or right to cure notice; and (iv) Charge-off policy of seller.
Bankruptcy [*Purchased Claims*]	In addition to the data and document requirements of the original asset class (i.e. credit cards, medical, etc.), accounts that are subject to bankruptcy filings shall also require the following data and documents: (i) Bankruptcy court; (ii) Case number; (iii) Bankruptcy chapter number; (iv) Filing date; (v) Name(s) of filing party or social security number; (vi) Name(s) of debtor on account; (vii) Claim balance on filing date or have the underlying data to determine the balance on the filing date; (viii) Amount of the debt owed at the time of the bankruptcy filing pursuant to	(i) Proof of claim filing deadline date; (ii) Copy of proof of claim, if filed; (iii) Date that notification of bankruptcy was received; (iv) Payments made within 90 days of the filing of the bankruptcy petition; (v) Transfer of claim form; (vi) Post filing/pre-disposition requests for return of funds; (vii) Attorney name & contact information; (viii) Trustee name & contact information; (ix) Information as to whether a notice of appearance had been filed by prior creditor or its counsel; and (x) In Chapter 13 cases, a copy of any Chapter 13 plan providing for treatment of claim.

	Rule 3001 (c)(2)(A); and (ix) Amount paid post-petition on proof of claim.	
Judgments	(i) A copy of the judgment, certificate of judgment, or such other court documentation evidencing the judgment; (ii) The name and address of the attorney and/or law firm of record for the judgment creditor, if applicable; (iii) A complete post-judgment financial transaction history, which shall include, but not limited to the post-judgment principal, interest, costs/fees, and payments/credits; (iv) The post-judgment interest rate that was awarded by the court; (v) The judgment debtor's Social Security number or other government issued identification number, if retained by the judgment holder; and (vi) The judgment debtor's address on record with the court and, if different, the last known address.	(i) Account number at Charge-Off; (ii) Suit date; (iii) Judgment date; (iv) Case number; (v) State, county, and district where the judgment was taken; (vi) Assignment of judgment; (vii) Substitution of attorney; (viii) Renewal date; (ix) Copy of renewal; (x) Lien date; (xi) Copy of lien, and (xii) Copy of garnishment.
Medical [*Patient Responsibility: Self-Pay and Balance After Insurance*]	(i) Patient's first and last name; (ii) Patient's date of birth; (iii) Patient's medical record number; (iv) Patient account identification number; (v) Guarantor's first and last name; (vi) Guarantor's date of birth; (vii) Guarantor's Social Security number or other government issued identification number, if obtained by the creditor; (viii) Guarantor's address; (ix) Guarantor's last known telephone number; (x) Date of service; (xi) Doctor's name; (xii) Provider's facility name; (xiii) Total charges; (xiv) Amount paid by insurance; (xv) Contractual adjustments; (xvi) Amount paid by patient/guarantor; (xvii) Current Amount Due; (xxiii) Last statement; (xix) Name of insured; (xx) Primary insurance company name; and (xxi) Secondary insurance company name.	(i) Patient's Social Security number or other government issued identification number, if obtained by the creditor; (ii) Patient's address; (iii) Patient's last known telephone number; (iv) Patient/guarantor relationship; (v) Date of discharge; (vi) Statement date; (vii) Insurance subscriber code; (viii) Insurance provider number; (ix) Insurance group number; (x) Insurance card number; (xi) Insurance card effective date; (xii) Insurance claim submission date; (xiii) Insurance claim; (xiv) Insurance claim approval date; (xv) Insurance claim denial date; and (xvi) Insurance claim denial reason.

(d) *Portfolio Review* – When purchasing receivables and judgments, a Certified Company shall allow adequate time to evaluate and review sufficient portfolio information for accuracy, completeness, and reasonableness and to discuss and resolve with the seller any questions or findings resulting from the review process prior to purchasing the portfolio.

Audit Testing Procedures:

B1.1 The Auditor shall review the purchase and sale agreements that were entered into within the dates of the Audit Period to determine what account related information was included. If any of the account related information described in the Certification Standard is missing in a purchase or sale agreement, the Auditor shall indicate: (i) the asset class of the debt, (ii) which account related information is missing, and (iii) the Certified Company's documented explanation for the lack of the account related information. In the case of data and documents subject to commercially reasonable efforts, if the Certified Company used commercially reasonable efforts to include the account related information in the purchase agreement and documented the reason for its absence, the failure to obtain the account related information in the purchase agreement shall not be a basis for a violation.

B1.2 The Auditor shall select a random sample of accounts associated with each purchase and sale agreement entered into within the dates of the Audit Period to verify whether the required account related information was in fact transmitted. The Certified Company can provide either a sampling of accounts from their system or from a file if the accounts are not on their system. The Auditor is not testing whether the information is correct but rather the availability and delivery of the account related information pursuant to the agreement.

B1.3 If a purchase or sale agreement entered into within the dates of the Audit Period authorizes the use of a secure document storage facility maintained by the seller or a third party for certain documents, the Certified Company shall: (i) demonstrate to the Auditor that it has [access/provided access] to the documents and can [demand delivery/provide delivery] of the documents upon request and (ii) provide the Auditor either a random sample of documents it [received/delivered] during the Audit Period from the secure document storage facility, or in the case of the purchaser, request a random sample of documents from the secure document storage facility for the purpose of evaluating conformity for the Audit.

B1.4 The Auditor shall select a random sample of accounts from each purchase and sale agreement entered into within the dates of the Audit Period to confirm that the documents reveal a complete and unbroken chain of title documenting the name, address, and dates of ownership of the creditor and each subsequent owner up to and including the Certified Company.

B1.5 The Auditor shall review the Certified Company's policies and procedures for the purchase and sale of receivables to determine whether it provides a process or procedure for the evaluation and review of portfolio information for accuracy, completeness, and reasonableness prior to the purchase of the portfolio and indicate in the report whether the Certified Company conformed to its policy.

(B2) **Representations & Warranties.** A Certified Company shall use its best efforts to negotiate the inclusion of the following or substantially similar representations and warranties in purchase agreements:

(a) Seller is lawful holder of the accounts;

(b) Accounts are valid, binding, and enforceable obligations;

(c) Accounts were originated[8] and serviced in accordance with law;

(d) Account data is materially accurate and complete; and

(e) Any account that was the subject of a consumer dispute while owned by the seller has been responded to or validated.

Audit Testing Procedures:

NOTE: While representations and warranties that are not qualified with either "to the best of seller's knowledge" or "to the best of seller's actual knowledge" are preferable, either of these knowledge qualifiers is acceptable in conforming to this Standard.

B2.1 The Auditor shall review the purchase and sale agreements that were entered into within the dates of the Audit Period to determine whether representations and warranties consistent with this Certification Standard were included. If the representations and warranties described in this Certification Standard are missing in the purchase or sale agreement, the Auditor shall note which representations and warranties are missing and the Certified Company's documented explanation for the lack of those representations and warranties. Provided that the Certified Company used best efforts to include the representations and warranties in the purchase or sale agreement and documented the reason for their absence, the failure to obtain representations and warranties in the agreement shall not be a basis for a violation of this Certification Standard.

(B3) **Due Diligence.** A Certified Company shall conduct reasonable due diligence on entities the company seeks to contract with for the purchase or sale of receivables prior to the transmission or receipt of any account level data. Reasonable due diligence shall include, but not be limited to, reviewing: (i) the entity's financial strength, (ii) the entity's reputation and experience, (iii) the data security measures the entity has adopted to preserve the integrity and privacy of Consumer Data, (iv) adverse information concerning the entity and the entity's principals, (v) adverse litigation and/or consent orders against

[8] Warranty on "originated . . . in accordance with law" is only applicable to sales transactions involving originating creditors.

the entity in the prior two years; and (vi) the volume and nature of consumer complaints filed with the CFPB's consumer complaint system and the Better Business Bureau against the entity in the prior two years.

Audit Testing Procedures:

NOTE: The presence of adverse information does not necessarily prevent a purchase/sale transaction from taking place but is designed to place the Certified Company on notice.

B3.1 The Auditor shall review the policies and procedures the Certified Company has established for conducting reasonable due diligence on the background of entities the company seeks to contract with for the purchase or sale of receivables to ensure the company conformed to the Standard.

(B4) **Sale Restrictions**. A Certified Company shall not sell any consumer accounts:

(a) When the company does not have access to Original Account Level Documentation on the accounts;

(b) When the consumer has communicated (written or verbal) to the company that he or she disputes the validity or accuracy of the debt or has requested verification of the debt pursuant to FDCPA 15 USC 1692g. However, this restriction may be lifted if, after receiving the communication, the company confirmed the validity of the debt through the use of Original Account Level Documentation and provided the consumer the results of such confirmation;

(c) When the account has been settled-in-full or paid-in-full;

(d) When the account has been identified as having been created as a result of identity theft or fraud; and

(e) To a non-Certified Company without terms and conditions contained in the sales agreement requiring the purchaser of the accounts to meet or exceed the standards of a Certified Company relating to licensing, litigation, data and documentation requirements, resale, and required policies and procedures.

Audit Testing Procedures:

B4.1 The Auditor shall first determine whether the Certified Company sells any consumer accounts on the secondary market. If the Auditor verifies that the Certified Company has adopted a corporate policy that prohibits the sale of consumer accounts and the company is in compliance with the policy, this Standard shall be waived.

B4.2 The Auditor shall select a random sample of accounts that the Certified Company sold within the dates of the Audit Period to verify if the accounts had the Original Account Level Documentation required by Certification Standard # B1.

B4.3 The Auditor shall select a random sample of accounts that the Certified Company sold within the dates of the Audit Period to verify that the sales transaction(s) conformed with the restrictions contained in paragraphs (b), (c), and (d) of the Standard.

B4.4 The Auditor shall review a Certified Company's sale agreements involving consumer accounts that were entered into within the dates of the Audit Period to verify that the agreements contain terms and conditions that conform to the Certification Standards.

"Series C" Standards

[Collection Law Firms]

(C1) **Bar Admission.** A collection law firm shall ensure that all practicing attorneys employed by the firm that are involved in collection-related matters:

(a) Are lawfully permitted to practice law in the states in which they are engaged in collection related matters;

(b) Remain in good standing with the bar or licensing entity in the states in which they are engaged in collection related matters; and

(c) Are in compliance with current Rules of Professional Conduct in the state(s) where they are licensed.

Audit Testing Procedures:

C1.1 The Auditor shall obtain documentation from the collection law firm that describes the process established by the firm to conform to this Standard and verify the process was followed within the dates of the Audit Period.

C1.2 The Auditor shall obtain from the collection law firm the full list of practicing attorneys employed by the firm along with a listing of the states that each attorney is currently or was previously admitted to the bar for the practice of law within the dates of the Audit Period. The Auditor shall cross reference those names on the publicly accessible attorney registration list maintained by each state and document their findings in the report.

(C2) **Legal Education.** A collection law firm shall ensure that all practicing attorneys employed by the firm that are involved in collection-related matters receive at least twenty (20) hours of biennial legal education in a subject matter related to collection law and/or collection litigation.

Audit Testing Procedures:

C2.1 The Auditor shall obtain documentation from the collection law firm that describes the process established by the firm to conform to this Standard and verify the process was followed within the dates of the Audit Period.

C2.2 If the collection law firm provides internal legal educational programming for its practicing attorneys, the Auditor shall obtain a list of the topics covered by such programming within the dates of the Audit Period and document them in its report.

(C3) **Legal Malpractice Insurance.** A collection law firm shall maintain legal malpractice insurance coverage in an amount of no less than one million U.S. dollars ($1,000,000) per event/occurrence. This shall be deemed to satisfy the requirements of Standard # A2.

Audit Testing Procedures:

C3.1 The Auditor shall obtain a copy of the collection law firm's legal malpractice insurance policy to verify that the firm had the required amount of legal malpractice insurance in place within the dates of the Audit Period. A failure to provide a continuum of coverage shall be considered a Deficiency.

(C4) **Trust Accounts.** A collection law firm shall maintain trust account(s) at a federally insured financial institution for the segregation of client funds following the rules for such accounts established by the state bar. There shall be sufficient funds in the trust account at all times to pay clients the amount due them. Trust accounts shall be reconciled on a monthly basis. The establishment of a trust account may be waived by a client in writing, provided that the state bar permits such waivers.

Audit Testing Procedures:

C4.1 The Auditor shall obtain from the collection law firm the rules governing the administration of client trust accounts established by the state bar. The Auditor shall select a random sample from a list of the firm's clients within the dates of the Audit Period to verify the firm's compliance with such rules and with this Standard and document their findings in the report.

(C5) **Meaningful Attorney Involvement.** A collection law firm shall establish policies and procedures to ensure meaningful attorney involvement prior to the filing of any collection-related lawsuit. A practicing attorney employed by the firm shall review (by way of example rather than limitation) documents, venue, applicable statute of limitations, court procedures, and applicable laws and regulations before suit is filed.

Audit Testing Procedures:

C5.1 The Auditor shall confirm that the collection law firm has established a meaningful attorney involvement policy and procedure by obtaining a copy of such policy and procedure.

C5.2 The Auditor shall determine if the attorneys at the collection law firm have been complying with the meaningful attorney involvement policy and procedure by interviewing a random sample of attorneys from the firm.

(C6) **Judgment Retention.** After becoming certified, a collection law firm shall keep electronically imaged copies of all collection-related judgments it obtains on behalf of its clients for a period of time equal to the statutorily authorized enforcement period. The firm shall transmit a copy of the judgment to the judgment holder within five (5) business days from the receipt of a written request or within such period of time as clearly defined pursuant to an agreement between the parties.

Audit Testing Procedures:

C6.1 The Auditor shall obtain documentation from the collection law firm that describes the process established by the firm to conform to this Standard, determine if the process is reasonable to ensure timely transmittal of the requested documents, verify the process was followed within the dates of the Audit Period, and document their findings in the report.

(C7) **Consumer & Regulatory Complaints.** A collection law firm shall transmit to a client within five (5) business days, or such shorter period agreed to between the parties, copies of any written complaints, subpoenas, or civil investigative demands (CIDs) received by the law firm on one of the client's accounts, including complaints filed with the CFPB, FTC, state consumer regulatory agencies, and state and federal attorneys general.

Audit Testing Procedures:

C7.1 The Auditor shall obtain documentation from the collection law firm that describes the process established by the firm to conform to this Standard, determine if the process is reasonable to ensure timely transmittal of the requested documents, verify the process was followed within the dates of the Audit Period through a random sample of Consumer Complaints, and document

their findings in the report.

C7.2 If the Auditor identifies Consumer Complaints as coming from the CFPB's consumer complaint system, the Auditor shall inquire if the firm generally responds to such complaints under the firm's name or if the complaints are transferred administratively in the CFPB's system to the client's name with the response being filed by the client. The response to this question is for informational purposes only.

"Series D" Standards

[Third Party Collection Agencies]

(D1) **Bonding.** A third party collection agency shall maintain a bond for the protection of client funds in all states where the company engages in collection activity in the amount mandated by state law.

Audit Testing Procedures:

D1.1 The Auditor shall obtain a copy of the third party collection agency's surety bonds, if required. The Auditor shall confirm compliance with any state statutory bonding requirement. A failure to provide a continuum of coverage shall be considered a Deficiency.

(D2) **Trust Accounts.** A third party collection agency shall maintain trust account(s) at a federally insured financial institution in which all monies received on claims shall be deposited, except that negotiable instruments received may be forwarded directly to the client if such procedure is provided for by a writing executed by the client. There shall be sufficient funds in the trust account at all times to pay clients the amount due them. Trust accounts shall be reconciled on a monthly basis.

Audit Testing Procedures:

D2.1 The Auditor shall select a random sample from a list of the third party collection agency's clients during the dates of the Audit Period to verify compliance with this Standard and document their findings in the report.

(D3) **Client Inquiries.** A third party collection agency shall ensure that its clients can reasonably communicate with the agency during business hours on any of their accounts being managed by the agency. An agency shall respond to client inquiries within five (5)

business days, or such shorter period agreed to between the parties, from receipt of the inquiry.

Audit Testing Procedures:

D3.1 The Auditor shall obtain documentation from the third party collection agency that describes the process established by the agency to conform to this Standard, determine if the process is reasonable to ensure a timely response, verify the process was followed within the dates of the Audit Period, and document their findings in the report.

D3.2 To determine if clients can reasonably communicate with the third party collection agency during business hours, the Auditor shall randomly select a different day and time to contact the agency's Chief Compliance Officer using the telephone number published on the RMAI website and the agency's client account manager using the telephone number provided to clients. If voice mail is available, the Auditor shall leave a message with the nature of the call and requesting an immediate response. The Auditor shall document their findings in the report.

(D4) **Consumer & Regulatory Complaints.** A third party collection agency shall transmit to a client within five (5) business days, or such shorter period agreed to between the parties, copies of any written complaints, subpoenas, or civil investigative demands (CIDs) received by the agency on one of the client's accounts, including complaints filed with the CFPB, FTC, state consumer regulatory agencies, and state and federal attorneys general.

Audit Testing Procedures:

D4.1 The Auditor shall obtain documentation from the third party collection agency that describes the process established by the agency to conform to this Standard, determine if the process is reasonable to ensure a timely response, verify the process was followed within the dates of the Audit Period, and document their findings in the report.

D4.2 If the Auditor identifies Consumer Complaints as coming from the CFPB's consumer complaint system, the Auditor shall inquire if the third party agency generally responds to such complaints under the agency's name or if the complaints are transferred administratively in the CFPB's system to the client's name with the response being filed by the client. The response to this question is for informational purposes only.

(D5) **Cessation of Collections.** A third party collection agency shall cease collection activity on any or all of a client's accounts upon written notice from the client, provided that this may be further defined pursuant to an agreement between the parties.

Audit Testing Procedures:

D5.1 The Auditor shall obtain documentation from the third party collection agency that describes the process established by the agency to conform to this Standard and determine if the process is reasonable.

D5.2 The Auditor shall select a random sample of accounts that were associated with a client's written notice to cease collection activity to confirm that: (i) the agency's documented process was followed, (ii) collection activity had ceased after receipt of the notice, and (iii) the accounts were segregated or otherwise removed from the active database of accounts in collection.

(D6) **Account Recalls.** A third party collection agency shall return all Consumer Data and/or accounts within fourteen (14) business days from receipt of a written request for their return or within such period of time as clearly defined pursuant to an agreement between the parties.

Audit Testing Procedures:

D6.1 The Auditor shall obtain documentation from the third party collection agency that describes the process established by the agency to conform to this Standard and determine if the process is reasonable.

D6.2 The Auditor shall select a random sample of client communications requesting accounts be recalled and confirm that: (i) the agency's documented process was followed, (ii) collection activity had ceased after receipt of the request, (iii) the account data was returned to the client, (iv) the accounts were segregated or otherwise removed from the active database of accounts in collection, and (v) if the agreement required the deletion or destruction of account data, the client's account data was in fact deleted or destroyed.

APPENDIX B

CERTIFICATION STANDARDS & TESTING MANUAL FOR CERTIFIED VENDORS

The following Certification Standards are required to be maintained by a Certified Vendor, unless stricter requirements are imposed by state or federal laws or regulations:

"Series 100" Standards
[All Certified Vendors]

(101) **Chief Compliance Officer.** A Vendor shall create and maintain the position of "Chief Compliance Officer" with a direct or indirect reporting line to the president, CEO, board of directors, managing partner, or general counsel (unless the Chief Compliance Officer is the president, CEO, managing partner, or general counsel). The Chief Compliance Officer's documented job description shall include, at a minimum, the following responsibilities:

(a) Maintaining the Vendor's official copy of the Certification Standards Manual;

(b) Identifying policies, procedures, or activities of the Vendor that are out of conformity with the Certification Standards;

(c) Either directly or indirectly: (i) receiving client complaints, (ii) investigating the legitimacy of client complaints, and/or (iii) overseeing the complaint process, including complaint activity, root cause analysis, and timely response;

(d) Developing recommendations for corrective actions when the Vendor is not conforming with the Certification Standards and providing them to his or her direct and indirect report(s); and

(e) Maintain his or her status as a Certified Individual pursuant to section 5.5(A) of the Governance Document.

Audit Testing Procedures:

101.1 The Auditor shall document the name and title of the Chief Compliance Officer

and the date that the individual started in that capacity.

101.2 The Auditor shall confirm that the Chief Compliance Officer has an unexpired Individual Certification through the Certification Program. If the Chief Compliance Officer is not certified, the Auditor shall indicate whether the Chief Compliance Officer is actively working towards (re)certification and the anticipated Application date.

101.3 The Auditor shall obtain a copy of the Chief Compliance Officer's job description from the Certified Company and confirm that it is in conformity to the Certification Standard.

101.4 The Auditor shall obtain a copy of the management organizational chart from the Certified Company and document the name and title of the Chief Compliance Officer's direct and indirect supervisor.

101.5 The Auditor shall obtain sufficient evidence from the Certified Company's Chief Compliance Officer on how he or she has complied with the requirements of his or her job description as enumerated in the Certification Standard.

(102) **Criminal Background Checks.** Unless prohibited by state or federal law, a Vendor shall perform a legally permissible criminal background check prior to employment on every prospective full or part time employee who will have access to Consumer Data to determine the following:

(a) Whether the prospective employee has been convicted of any criminal felony involving dishonesty, fraud, deceit, misrepresentation, or any misappropriation of confidential data or information; and

(b) Whether the prospective employee has been charged with any crime involving dishonesty, fraud, deceit, misrepresentation, or any misappropriation of confidential data or information such that the facts alleged support a reasonable conclusion that the acts were committed and that the nature, timing, and circumstances of the acts may place consumers or clients in jeopardy.

A Vendor shall maintain guidelines in a policy, procedure, or manual on how it will handle criminal background checks and the potential consequences on employment that may result from such background checks. The criminal background check is not a retroactive requirement for employees hired prior to certification.

Audit Testing Procedures:

102.1 The Auditor shall determine whether the Vendor has a written policy, procedure, or manual which requires all new employees (including rehires) who will have access to consumer financial data to have a criminal background check

performed and the potential consequences on employment that may result from such background checks.

102.2 The Auditor shall obtain from the Vendor evidence that criminal background checks have been performed. Receipts or statements from a criminal background provider showing account activity shall be sufficient.

102.3 The Auditor shall choose a random sample of employees that were hired by the Vendor within the dates of the Audit Period to verify that the Vendor conformed to its policy, procedure, or manual and document their findings in the report. This requirement shall be waived if the Vendor can demonstrate the provision of this information would violate an applicable state or federal law on employee confidentiality.

(103) **Employee Training Programs.** A Vendor shall establish and maintain annual employee training program(s). Based on their job responsibilities, employees should be trained on how to comply with applicable: (i) Certification Standards, (ii) corporate policies and procedures, (iii) laws and regulations, and (iv) client-mandated compliance requirements. These programs should also inform employees of the possible consequences for failing to comply with them.

Audit Testing Procedures:

103.1 The Auditor shall review the Vendor's employee training programs and determine whether they conform to the Certification Standard.

103.2 The Auditor shall document in the report the Certification Standards, corporate policies and procedures, and laws and regulations for which the Vendor is providing annual employee training.

103.3 The Auditor shall obtain from the Vendor evidence that the training has occurred and confirmation that attendance is being tracked.

(104) **Insurance.** A Vendor shall maintain Errors & Omissions (E&O) insurance coverage or comparable insurance coverage in an amount of no less than one million U.S. dollars ($1,000,000) per event/occurrence.

Audit Testing Procedures:

104.1 The Auditor shall obtain a copy of the insurance policies sufficient to demonstrate that the Vendor had the required insurance in place within the dates of the Audit Period. A failure to provide a continuum of coverage shall be considered a Deficiency.

(105) **Data Security.** A Vendor shall establish and maintain a reasonable and appropriate data security policy based on the type of Consumer Data being secured that meets or exceeds the requirements of applicable state and federal laws and regulations. A Vendor shall ensure that an annual risk assessment is performed on the methodology employed to protect Consumer Data from reasonably foreseeable internal and external risks. Based on the results of the annual risk assessment, a Vendor shall make adjustments to their data security policy if warranted. A reasonable data security policy shall include, but not be limited to, measures taken to ensure:

(a) The safe and secure storage of physical and electronic Consumer Data;

(b) Company computers that have access to Consumer Data contain reasonable security measures such as updated antivirus software and firewalls;

(c) Receivables portfolios are not advertised or marketed in such a manner that would allow Consumer Data and Original Account Level Documentation to be available to or accessible by the public;

(d) Consumer Data is transferred securely through the use of encryption or other secure transmission sources;

(e) The secure and timely disposal of Consumer Data that complies with applicable laws and contractual requirements; and

(f) An action plan is in place in case of a data breach in accordance with applicable laws, which shall include any required disclosures of such breach.

Audit Testing Procedures:

NOTE: There are a number of differing standards in the field of data security depending on the nature of the underlying consumer debt portfolio and the type of Consumer Data associated with the asset class. Additionally, the standards in data security are constantly evolving so as to require constant vigilance. Consequently, each Certified Company shall adopt standards that are appropriate for their consumer debt portfolio and the Consumer Data contained therein and review those standards annually. If the Certified Company has questions as to which data security standards to adopt they should consult the requirements contained in the original purchase agreement with the originating creditor and such other experts and sources of information on information security as they deem appropriate. Generally, Certified Companies should consider adopting provisions that are applicable to their circumstances, which might include but are not limited to provisions found in PCI DSS, BITS, ISO 27002, SAFE, and SSAE 16.

105.1 The Auditor shall obtain from the Vendor a copy of their data security policy.

105.2 The Auditor shall document how the Vendor determines what standards to adopt in their data security policy.

105.3 The Auditor shall confirm that the Vendor performs an annual review of its data security policy.

105.4 The Auditor shall confirm that the six measures outlined in the Standard are included in the Vendor's data security policy.

105.5 The Auditor shall perform random tests to verify whether the Vendor is conforming to its data security policy. If the Vendor in the twelve (12) months prior to the Compliance Audit has passed a data security audit performed using PCI DSS, BITS, ISO 27002, SAFE, SSAE 16 or such other standards approved in writing by the Audit Committee, the Auditor shall accept the audit as conforming with this requirement.

105.6 The Auditor shall confirm that the required annual risk assessments have been performed by the Vendor within the dates of the Audit Period. The Auditor shall review the assessments and confirm that any risks that were identified have resulted in adjustments to the data security policy. Any year in which the Vendor passes a data security audit performed using PCI DSS, BITS, ISO 27002, SAFE, SSAE 16 or such other standards approved in writing by the Audit Committee, the Auditor shall accept the audit as conforming with the annual risk assessment requirement for that year.

(106) **Website & Publication.** A Vendor shall:

(a) Maintain a publicly accessible website that can be found by a simple web search using the corporate name provided in communications with clients.

(b) Publish on the home page of their website or on a single page directly accessible from the home page, the following information: (i) the Vendor's name (along with the names of any companies that share the certification designation, if applicable), certification number, mailing address, and telephone number; (ii) the mailing address, email address, and telephone number where consumers can register a complaint with the Vendor that is received by an employee who has the authority to research, evaluate, take corrective action if warranted, and respond to the complaint; and

(c) Publish on their website their Chief Compliance Officer's name, title, certification number, and mailing address; and

(d) Authorize RMAI to publish the information contained in paragraphs (b) and (c) of this Certification Standard on a publicly accessible website maintained by RMA.

Audit Testing Procedures:

NOTE: The authorization from the Vendor to publish their information pursuant to this Certification Standard is a condition which is accepted in the Application for Certification and is not a requirement that needs to be verified by the Auditor.

NOTE: In the case of a certification issued to a "family of companies" where the primary company on the application is a holding company, the requirement for the primary company to maintain a website is waived, provided that the primary company is not in the chain of title and has no communication with consumers.

106.1 The Auditor shall perform a simple web search using the corporate name that the Vendor provides in communications with consumers and document the results.

106.2 The Auditor shall confirm that the individual who serves in the role of Chief Compliance Officer is the same individual identified on the RMAI and Vendor's websites and the information required to be published is present and correct.

106.3 The Auditor shall confirm that the information required to be published by the Vendor on its website is present and correct and is the same information that is published on the RMAI website.

106.4 The Auditor shall confirm that there is a working hyperlink to RMAI's Consumer Education page on the Vendor's website.

(107) **Vendor Management.** In order to identify and retain qualified third party vendors and to assure appropriate oversight of such vendors, a Vendor shall:

(a) Establish and maintain vendor management policies and procedures with defined due diligence and/or audit controls;

(b) Perform an annual assessment of its: (i) vendor management policies and procedures and provide recommendations for improvements, if warranted, and (ii) third party vendors to determine whether they continue to meet or exceed the requirements and expectations of the Vendor. As part of the annual assessment, the Vendor may need to perform additional due diligence, including by way of example rather than limitation, confirmation of certification status, vendor audits, review of policies and procedures maintained by vendors, and review of consumer complaints related to the vendor (including the data publicly available on the CFPB's consumer complaint system); and

(c) Obtain the certification number when contracting with a vendor claiming to be a RMAI Certified Company and confirm the vendor's certification status on RMAI's website.

Audit Testing Procedures:

107.1 The Auditor shall obtain from the Certified Company a copy of their vendor management policies and procedures. The Auditor shall verify that the policies and procedures are in conformity with the Certification Standard and the company is in compliance with those policies and procedures.

107.2 The Auditor shall confirm that the annual assessment of the vendor management policies and procedures has occurred and has been properly communicated to the executive management and/or board of directors of the company, including any recommendations for improvements.

107.3 The Auditor shall document how the Certified Company determines and/or confirms that the third party vendors (i.e. their agents) they use are conforming with the applicable Certification Standards.

107.4 A violation of a Certification Standard by a third party vendor on the Certified Company's account may be considered a violation of such standard by the Certified Company.

"Series 200" Standards

[Brokers[9]]

(201) **Broker Agreements.** A broker shall only market accounts that are subject to a broker agreement. A broker agreement shall clearly indicate who the client (i.e. buyer or seller) is for purposes of a sales transaction. A broker shall not represent both the buyer and the seller in the same sales transaction unless the broker has obtained, per transaction, a signed acknowledgement from both parties to the dual representation.

Audit Testing Procedures:

201.1 The Auditor shall request a list of broker agreements entered into during the Audit Period and based on a random sample of such agreements determine if it is clearly stated who the client is for purposes of the sales transaction and to confirm that the broker is not representing both parties.

[9] Brokers that take title are considered Debt Buying Companies – See "Series A & B" Standards of Appendix A.

(202) **Multiple Listings.** In order to increase data security and to prevent unintentional concurrent sales of accounts, a broker shall use commercially reasonable efforts to obtain an exclusivity clause in their broker agreements with sellers to prevent accounts from being simultaneously listed and marketed by multiple brokers.

Audit Testing Procedures:

202.1 The Auditor shall request a list of broker agreements entered into during the Audit Period in which the broker was representing the seller and based on a random sample of such agreements determine if there was an exclusivity clause for the brokering of the accounts.

202.2 If the broker used commercially reasonable efforts to obtain an exclusivity clause in the broker agreement and documented the reason for its absence, the failure to obtain the exclusivity clause shall not be a basis for a violation. However, the Auditor shall notate in the Audit Report how many instances this occurred in the sample.

(203) **Due Diligence.** A broker shall conduct reasonable due diligence, on behalf of their client, on all other signatory parties associated with a sales transaction prior to the transmission of any Consumer Data. Reasonable due diligence should include, but not be limited to, reviewing: (i) the reputation and experience of the parties; (ii) adverse information concerning the parties, including their principals, (iii) the volume and nature of consumer complaints filed with the CFPB's consumer complaint system and the Better Business Bureau against the parties in the prior two years; (iv) adverse litigation and/or consent orders against the parties in the prior two years; and (v) the data security measures the parties have adopted to preserve the integrity and privacy of Consumer Data. Any material adverse information the broker discovers shall be provided to the client.

Audit Testing Procedures:

203.1 The Auditor shall review the policies and procedures the broker has established for conducting reasonable due diligence, on behalf of their client, on all other parties associated with a sales transaction to ensure the broker conforms to the Standard.

203.2 The Auditor shall determine whether the broker informs clients of any adverse information discovered prior to the transmission of any account level data. The presence of adverse information does not necessarily prevent a sales transaction from taking place but is designed to place the client on notice.

(204) **Misrepresentation of Accounts.** A broker shall not knowingly allow a seller to: (1) misrepresent accounts or (2) sell accounts where the broker knew or reasonably should

have known the accounts had issues concerning title, accuracy or integrity of account information, fraud, or identity theft.

Audit Testing Procedures:

204.1 The Auditor shall confirm that the broker has established policies and procedures for tracking the volume and nature of returned accounts on prior sales transactions the broker facilitated and for flagging the seller's name where a significant number of accounts had to be returned to the seller for issues concerning title, accuracy or integrity of account information, fraud, or identity theft. While the broker does not have an affirmative responsibility to seek this information from the purchaser, it must have the capability of documenting it if informed.

204.2 The Auditor shall determine if the broker has been complying with the policy and procedure.

204.3 The Auditor shall determine if the broker facilitated a sales transaction for a seller within two years of being placed on notice of a significant number of accounts having to be returned to the seller on a prior transaction for issues concerning title, accuracy or integrity of account information, fraud, or identity theft.

204.4 While the standard does not define "significant," the Auditor shall inquire and document how the broker determines what a "significant" number of accounts that would cause the broker concern.

(205) **Purchase/Sale Agreement Requirement.** When the client is a Certified Company, a broker shall transmit to the client the representations and warranties contained in Standard B2 of Appendix A, encourage their inclusion in the purchase/sale agreement, remind them of their obligations to the Certification Program, and indicate the possible consequences associated with noncompliance.

Audit Testing Procedures:

205.1 The Auditor shall request a list of sales transactions that the broker facilitated on behalf of a certified Company during the Audit Period. From a random sample, the Auditor shall confirm whether the broker conformed to the Standard.

(206) **Title.** A broker shall not take title or have any ownership interest in the receivables it brokers.

Audit Testing Procedures:

206.1	The Auditor shall request a list of sales transactions that the broker facilitated during the Audit Period and based on a random sample shall review the related broker agreements to confirm they contain language that clearly indicates that the sale is directly between the seller and purchaser and that the broker does not fall into the chain of title on such accounts.

APPENDIX C
EDUCATIONAL REQUIREMENTS MANUAL

C.1 **Purpose.** The Educational Requirements Manual (hereinafter referred to in this Appendix as "Manual") provides additional information to supplement the content provided in the Governance Document. The Manual is designed to be updated on an annual basis provided that the changes do not decrease the base line requirements established in the Governance Document. The Manual will provide guidance and clarification on:

(1) Continuing education of Certified Individuals;

(2) Authorized providers of continuing education;

(3) Continuing education credit from non-authorized providers of continuing education; and

(4) Future specialty certifications or testing authorized by the Council.

C.2 **Failure to Meet Requirements.** Failure to meet the requirements contained in the Governance Document or this Manual can lead to the loss of certification or authorized provider status.

C.3 **Introductory Survey Course.** The Board's Education Committee shall work with staff and any contracted vendor(s) on the development and presentation of an "Introductory Survey Course on Debt Buying" based on the following guidance:

(1) The "Introductory Survey Course on Debt Buying" should be a high level presentation of the life cycle of a Charged-Off consumer account;

(2) The content should provide an overview of (i) applicable state and federal laws and regulations, (ii) RMAI Certification Standards, and (iii) best practices (which may go beyond that required by law, regulation, or Certification Standard) that commonly apply to Debt Buying Companies and Charged-Off consumer accounts;

(3) Given the nature of the course and the limited time available, an in-depth review of such subjects should be left for separate specialized continuing education courses;

(4) An audience member should leave the course not as an expert on the subject matter but with sufficient understanding to recognize an issue if and when he or she encounters it;

(5) The course shall provide at least four (4) credits of continuing education but may be increased by the Educational Requirements Committee if it is determined it is necessary to fulfill the goals of the course;

(6) The course shall be offered at each RMAI Annual Meeting and at any other time at the discretion of the Board's Education Committee; and

(7) An online version of the course may be made available online for a fee.

C.4 **Current Issues in Receivables Management Courses.** The Board's Education Committee shall work with staff and any contracted vendor(s) on the development and presentation of "Current Issues in Receivables Management" course(s) based on the following:

(1) The course(s) should provide a detailed presentation on a subject matter concerning new state and/or federal statutory, regulatory, and/or judicial developments of relevance to the receivables management industry and their vendors;

(2) The course(s) shall provide opportunities for at least four (4) credits of continuing education annually;

(3) The course(s) shall be offered at each RMAI Annual Meeting and at any other time at the discretion of the Board's Education Committee; and

(4) An online version of the course(s) may be made available online for a fee.

C.5 **Ethics Courses.** Ethics courses given by an authorized provider shall count towards continuing education credit if the subject matter is on the following list:

(1) RMAI Code of Ethics;

(2) ACA International, Commercial Law League of America (CLLA), or National Creditors Bar Association (NCBA) Ethical Codes of Conduct;

(3) Presentations by consumer groups and/or the Better Business Bureau;

(4) Financial accounting as it relates to trust accounts and commingling of assets;

(5) Real life accounts by consumers who were victims of fraud or identity theft and the resulting consequences to their life;

(6) Consequences of making a false or misleading statement;

(7) Inspirational lectures by prominent community, corporate, or governmental leaders designed to encourage behavior that promotes the betterment of the receivables management industry or society as a whole; and

(8) Other subjects approved by the Educational Requirements Committee.

C.6 **General Courses.** The Certification Program requires the completion of twenty-four (24) continuing education credits by Certified Individuals on a biennial basis by taking classes from authorized providers in any of the following qualified subjects:

1099c
Account Documentation (at point of sale)
Account Documentation (access to after sale)
Account level data requirements (min. standards)
Accounts – Closing
Accounts – Recalling
Advertising & Marketing of Portfolios
Affidavits (Account)
Affidavits (Portfolio)
Affidavits (State requirements)
Attorney General Interaction
Attorney Representation Issues
Audited Financial Statements
Audits
Automated and Predictive Dialers
Background Checks
Bankruptcy Code
Bankruptcy
Better Business Bureau
Bills of Sale
Broker Agreements
Brokers
Business Management Practices
Business Records Exception Rule
Call Monitoring
Call Recording and Retention Policies
Cease and Desist Issues
Cell-phone Communications
CFPB Portal
Chain of Title Issues & Requirements
Charge-Off Account Statements
Chief Compliance Officer – Role of
Cloud Based Systems
Collection Letters
Compliance Policies
Confidential Tip Lines
Confidentiality and Non-Disclosure Agreements
Consent to Sale Provisions
Consumer Bill of Rights
Consumer Communications
Consumer Complaint and Dispute Resolution Process
Consumer Disputes – Verbal & Written
Consumer Education on Financial Responsibility
Consumer Financial Protection Bureau (CFPB)
Consumer Notices
Consumer Support Services
Convenience Fees
Court Rulings Impacting Debt Buying Companies
Credit Bureaus – In General
Credit Bureaus – E-Oscar and FACT Act Disputes
Credit Bureaus – Reporting
Credit Bureau Updates
Data Access & Control
Data Accuracy and Integrity
Data Backup
Data Destruction
Data Reconciliation (conformity, integrity, system of record)
Data Security
Data Vendors
Deceased Debtors
Disaster Recovery
Disclaimers and "Negative" Representation and Warranties
Do-Not-Call Policies
Due Diligence (e.g. seller surveys, selection of vendors)
E-mail Communications
Employee Compensation & Commission Issues
Employee Manual
Employee Supervision & Oversight
Employment Policies
Encryption
Escrow Account Issues
Ethical Codes of Conduct (Employees)
Ethical Codes of Conduct (Industry – RMAI, ACA,

NCBA, and CLLA)
Fair Credit Reporting Act (FCRA)
Fair Debt Collection Practices Act (FDCPA)
FDCPA Complaints – How to handle them
Federal Communications Commission (FCC)
Federal Trade Commission (FTC)
Fraud
Gramm–Leach–Bliley (GLB) Act
Hardship Policies and Programs
Hiring Practices
Identity Theft
Indemnification
Ineligible Account Definitions (e.g. compliance, legally uncollectible, or unenforceable)
Insurance
Insurance – Errors & Omissions (E&O)
Insurance – Directors & Officers (D&O)
Insurance – Workers Compensation
Interest Application
Investigations – External
Investigations – Internal
Itemization of Interest and Fees
Laptop Security
Litigation
Location Requirements
Malware
Media Systems and Operations
Mini Miranda
Off-site Hosted Platforms
Original Data Overrides – Issues
Pass through Rights
Passwords
Payday Loans
Payment Application
Payment History
Policy Violations – How to Find & Handle
Privacy Laws – State & Federal
Process Servers
Publication of Contact Information
Purchase & Sale Agreements
Quality Assurance/Control Processes
Recalling Accounts
Records Management
Records Retention
Red Flag Rules
Representations and Warranties (standard language)
Resale Issues – In General
Resale Policies and Practices
Right Party Contact
Security Breaches
Service of Process
Servicing Agreements
Settlement Agreements
Skip Tracing
Social Media
Standards and Controls (e.g. SSAE 16, PCI, ISO 27001)
State Licensing Requirements
State Notice Requirements
Statute of Limitations – In General
Statute of Limitations – Out of Stat
Statute of Limitations – Rehabilitation
Supervisory Issues
Telephone Consumer Protection Act (TCPA)
Terms and Conditions
Theft
Third Party Issues
Third Party Penalties for Non-Compliance
Time-of-sale documentation standards (e.g. Bills of Sale, Portfolio Affidavits)
Training Programs
Transmitting Files
Trust Fund
Truth in Lending Act
Unfair, Deceptive or Abusive Acts and Practices (UDAAP)
Usurious Loans
Validation Notice Requirements
Vendor Management – In General
Vendor Management – Audits
Vendor Management – Oversight
Verification of Consumer Debt
Voicemail Messages
Wrong Numbers

C.7 **Authorized Providers.** RMAI is an authorized provider of continuing education credit for the Certification Program. The Educational Requirements Committee may designate additional authorized providers based on the following:

(1) Demonstrated excellence in providing educational instruction in the subject matter that is qualified for continuing education credit;

(2) Compliance with the provisions contained in paragraph C.8 of this Appendix; and

(3) Application requirements for participation, including but not limited to fees, length of authorization, and renewal criteria.

C.8 **Requirements of Authorized Providers.** All authorized providers shall conform to the following criteria when issuing Continuing Education Certificates:

(1) Be a member of RMAI in good standing, provided this requirement may be waived for national nonprofit trade associations within the receivables management industry;

(2) The subject matter of the class to be offered qualifies for continuing education credit pursuant to the provisions contained in paragraph C.6 of this Appendix.

(3) If the subject matter does not qualify, the authorized provider may request written pre-approval from the Educational Requirements Committee to provide continuing education credits for the class. Such requests must include a description of course, the course objectives, and demonstrate the relevance of the subject matter to the receivables management industry. The Educational Requirements Committee may, in its sole discretion, require copies of the proposed course materials, or request other relevant information;

(4) Provide written descriptions for all classes on a publicly accessible website prior to or contemporaneous to instruction, provided that classes may be subject to change;

(5) Indicate adjacent to the written description of a class either: (i) the number of continuing education credits that an individual will receive for the completion of the class or (ii) the length of the class so that the number of continuing education credits can be calculated;

(6) Provide individuals attending a class with a Continuing Education Certificate signed by a representative of the authorized provider that contains at a minimum the following:

(a) The name of the authorized provider;

(b) The name or a space for the name of the individual attending the class;

(c) The date and location that the continuing education class was held;

(d) The title of the class and either: (i) the number of continuing education credits associated with the class or (ii) the length of the class so that the number of continuing education credits can be calculated;

(e) A declaratory statement to be signed by the recipient of the continuing education that he or she has in fact attended the class for which he or she seeks continuing education credit, and that he or she acknowledges that providing false information may subject her or him to potential disciplinary action or the loss of certification;

(7) Provide RMAI with the name, title, and contact information for the employee overseeing the authorized provider's education programming;

(8) Ensure class content is content-rich and not deemed a "sales opportunity" for additional classes, products, or services provided by the authorized provider and/or presenter. Introductory classes designed to be the first step of a fee-based program will not generally be considered for continuing education credit; and

(9) Agree to assist the Educational Requirements Committee in the investigation of any complaint regarding an instructor or class content.

C.9 **Non-Authorized Providers.** A Certified Individual may make a written request to the Educational Requirements Committee to receive continuing education credit for a class taken from a non-authorized provider. The Educational Requirements Committee, in its sole discretion, may grant the request provided that:

(1) The request shall be in writing and contain the following information:

(a) The name of the entity providing the class;

(b) The date and location of the class;

(c) The length of the class in minutes;

(d) A copy of any handouts associated with the class, if available;

(e) A class description from an advertisement, website, or other documented source; and

(f) A brief statement of the relevance of the subject matter to the receivables management industry.

(2) RMAI receives a declaratory statement that is signed and dated by the recipient of the continuing education that she or he has in fact attended the class for which he or she seeks continuing education credit, and that he or she acknowledges that providing false information may subject her or him to potential disciplinary action or the loss of certification; and

(3) Proof of attendance is provided to RMAI along with any handouts associated with the class if they were not previously submitted.

C.10 **Evaluation, Review, and Complaint Process.** Classes offered by authorized providers may be subject to evaluation and review by the Educational Requirements Committee should RMAI receive a written complaint regarding the instructor or class content.

C.11 **Use of RMAI "Authorized Provider" Status.** Non-authorized providers are prohibited from stating or suggesting that they are a RMAI authorized provider either verbally or in writing. Violations of this provision shall prevent the Educational Requirements Committee from considering the acceptance of continuing education credit from the non-authorized provider pursuant to paragraph C.9 for one year from the date the violation is communicated to the non-authorized provider.

APPENDIX D
APPLICATION REQUIREMENTS MANUAL

D.1 **Applications.** The Administration & Budget Committee shall develop the Application forms required for Company and Individual certifications.

D.2 **Content.** The questions and information required in the Applications should be required and/or deemed necessary for programmatic and administrative support of the Certification Program.

D.3 **Acknowledgments.** Applicants shall acknowledge by signature and/or initials that they have read the Certification Program Governance Document and any other confirmatory statements regarding their application or key provisions of the Certification Program.

D.4 **Internal Self-Compliance Audits.** Applicant companies shall perform an internal self-compliance audit prior to submitting their application and indicate their conformity with each Certification Standard.

D.5 **Background Reports.** Applicant companies shall provide signed authorizations from each owner (inclusive of shareholders, partners, principals, members, etc.) with a five (5) percent or greater share of ownership and each corporate officer authorizing RMAI to obtain a civil and criminal background report on them as part of RMAI's due diligence.

D.6 **References.** Applicants may be required to provide professional references which may be contacted as part of RMAI's due diligence.

APPENDIX E
AUDIT REVIEW MANUAL

General Directions to the Auditor

The Compliance Audit that you are performing and that will be provided to RMAI is a requirement for a business to maintain its designation as a "Certified Professional Receivables Company" or a "Certified Receivables Broker" (i.e. Certified Company) in the RMAI Receivables Management Certification Program.

The Compliance Audit is considered confidential and shall not be shared with any party other than: (i) the Receivables Management Certification Council, (ii) the Certified Company, (iii) the Auditor, and (iv) any agents of such entities, unless provided otherwise in writing or as otherwise authorized in Article XI of the Governance Document. Any work product of an Auditor that is not required to be transmitted in the Audit Report pursuant to Article VIII or required for Remediation pursuant to Article IX, including the names and relationships of a Certified Company's clients, shall be confidential and governed by the contractual agreement between the Auditor and the Certified Company.

Scope

The Auditor shall validate the Certified Company's conformity with the Certification Standards for the Audit Period that is the subject of the Compliance Audit using a standardized audit report form provided by RMA. Demonstrating conformity with a Certification Standard or lack thereof may be achieved through a combination of interviews, documentation review, and control review.

Conformity with Certification Standards shall, wherever possible, be based upon objective findings only, but if interpretation is necessary due to the subjective nature of a Certification Standard, such subjective interpretation shall be noted on the audit report as such and any subjective interpretation shall be applied consistently to all Certified Companies.

Where control review is needed, it shall be based on a random sample. The Auditor shall indicate the size and scope of any random sample and may expand the random sample to determine whether a violation that is found in the first random sample is material. Except for a Pre-Certification Audit, the Auditor shall perform an onsite visit to see work in progress in order to verify conformity. A Certified Company with multiple locations must verify conformity at all locations; however, an Auditor shall use their professional judgment in determining whether this requires an onsite visit at each location or whether a random selection of locations would suffice.

If a Certified Company contracts exclusively with a third party as its master servicer or servicer on the accounts owned by the Certified Company, the Auditor shall audit the Certified Company for conformity on all Certification Standards but shall test Certification Standards A4, A5, A6, A9, and A17 exclusively through the Certified Company's conformity with Certification Standard A15.

Responsibilities of the Parties

Auditor: The Auditor's responsibility is to determine to the best of their ability whether or not the Certified Company is in material conformity with the Certification Standards. The Auditor is responsible for documenting findings of conformity and Deficiency.

Certified Company: The Certified Company must be forthright and accommodating to any reasonable request by the Auditor for the purposes of completing the Audit. If the Certified Company fails to meet this obligation it may be the basis for the Auditor to find a material Deficiency in each Certification Standard the Auditor cannot confirm.

Disputes: Should the Auditor and Certified Company have questions and/or disagreements about the interpretation of a Certification Standard or its applicability, the Auditor and/or Certified Company shall direct the inquiry to the Chair of the Audit Committee in writing, care of Receivables Management Association International, 1050 Fulton Avenue, Suite 120, Sacramento, CA 95825 or cert@rmaintl.org.

Plain Meaning

The Compliance Audit shall be based on the plain meaning of the words contained in each Certification Standard unless defined otherwise in Article II of the Governance Document.

Testing Procedures

The testing procedures to be used by the Auditor in determining whether a Certified Company is complying with the Certification Standards are provided in Appendices A and B.

Methodology

For each Certification Standard, the Auditor shall include in their review their observations, where appropriate, on: (a) policies, (b) processes, (c) controls, (d) training, and (e) verification.

Materiality

When the Auditor is determining a Certified Company's conformity with the Certification Standards, the Auditor shall only report material violations. All violations shall be considered material unless there was a good faith attempt to comply with the Certification Standard and the Auditor is satisfied that the evidence shows that the violation resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid such error and appropriate corrective steps were taken prior to the Audit taking place to ensure that the violation will not recur.

Conflicts with Laws & Regulations

Where a municipal, state, or federal law or regulation is in conflict with a RMAI Certification Standard so that complying with the RMAI Certification Standard would place the Certified

Company in violation of such law or regulation, the Certified Company shall conform to the governmental standard. For purposes of the Audit, conforming to the law or regulation is the same as adhering to the Certification Standard and should be noted as such in the report.

Findings

The findings of the Compliance Audit Report shall provide one of the following responses for each Certification Standard: (i) conforms to standard, (ii) deficiency discovered, or (iii) standard is not applicable.

Conforms to Standard: If the Auditor finds no material deficiencies in a Certified Company's conformity with a Certification Standard, the Auditor shall indicate "Conforms to Standard" in the Audit and no other commentary is required except for any documentation which may be required to be submitted with the report.

Deficiency Discovered: If the Auditor finds material deficiencies in a Certified Company's conformity with a Certification Standard, the Auditor shall indicate "Deficiency Discovered" and state and document only that which is required to be submitted with the report and to provide a recommendation for the remediation of the Deficiency. If the Deficiency was already identified and corrected by the Certified Company prior to the audit, then that should be stated in the report and no recommendation for remediation is required to be provided. The auditor should: (i) describe the deficiency and the number of instances it was identified within the sample, (ii) indicate if the deficiency has been remediated and the date of the remediation, and (iii) if the deficiency has not been remediated, provide a recommendation for remediation.

Standard is not Applicable. If the Auditor determines that a particular Standard is not applicable to the Certified Company being audited, the Auditor shall indicate "Standard is not Applicable" and describe the reason why the standard is not applicable.

Any additional work the Auditor does for the Certified Company outside of the scope of the Compliance Audit of the Certification Standards shall not be provided to RMA.

Management Representation Letter

A Certified Company may provide a management representation letter to RMAI to provide any explanations or state any disagreements concerning the findings in the Compliance Audit.

Questions Concerning the Interpretation of a Certification Standard

If at any time the Auditor has a question or requires clarification as to the intention or requirements of a Certification Standard, the Auditor shall direct the inquiry to the Chair of the Audit Committee in writing, care of Receivables Management Association International, 1050 Fulton Avenue, Suite 120, Sacramento, CA 95825 or cert@rmaintl.org.

APPENDIX F
REMEDIATION PROCEDURES MANUAL

F.1 **Purpose.** The Remediation Procedures Manual (hereinafter referred to in this Appendix as "Manual") provides the remedial authority granted to the Council by the Board when entering into Remediation Agreements with a Certified Party or in taking disciplinary action against a Certified Party.

F.2 **Remediation-Based Program.** The Certification Program's primary goal is for the Certified Party to take remedial action to conform to the Certification Standards when a Deficiency is identified through a Compliance Audit. However, when remedial action cannot be achieved, the Council shall consider disciplinary action against the Certified Party.

F.3 **Remediation Procedures.** The Remediation Committee (hereinafter referred to in this Appendix as "Committee") and Council shall comply with the following procedures when reviewing Deficiency findings contained in a Compliance Audit:

(1) The Committee shall perform an initial review of the Deficiency findings within fifteen (15) business days from the receipt of the Audit from the Audit Committee or Auditor;

(2) The Committee has the authority to dismiss the matter as either without merit or with a cautionary letter if the Committee determines there is no current basis to support the need of a Remediation Agreement due to: (a) the nature of the nonconformity, (b) extenuating circumstances leading to the nonconformity, (c) the nonconformity was minor in nature and is being resolved, (d) the nonconformity has already been remediated, or (e) a determination that there was insufficient grounds for the Auditor to conclude the existence of a nonconformity to a Certification Standard;

(3) If the Committee determines that remediation is necessary to achieve conformity with the Certification Standards, the Committee shall prepare a draft Remediation Agreement with the assistance of staff and submit it to the Council Chair no greater than thirty (30) business days from the receipt of the Audit. Alternatively, if the Committee determines that the Deficiency is minor in nature and can be easily rectified, the Committee may authorize the RMAI Executive Director or staff to contact the Certified Party and to request corrective action without a formal Remediation Agreement;

(4) Upon the Council Chair's approval, staff shall send the signed Remediation Agreement to the Certified Party;

(5) Upon receipt of the Remediation Agreement, the Certified Party may either:

(a) Accept the agreement as written by indicating their acceptance of the terms of the agreement by signing the agreement and returning it to RMA; or

(b) Suggest edits to the agreement pursuant to the process identified in an enclosure with the agreement.

(6) If within ninety (90) days of the initial transmittal of the Remediation Agreement a mutual agreement has not been reached and adopted, the Chair of the Remediation Committee in consultation with the Council Chair and the Executive Director shall submit to the Council at least two (2) options for their consideration, which may include:

(a) Requiring a new Compliance Audit;

(b) Adoption of the last edited version of the Remediation Agreement received from the Certified Party;

(c) Based upon further review, there is no current basis to support the need of a Remediation Agreement due to: (i) the nature of the nonconformity, (ii) extenuating circumstances leading to the nonconformity, (iii) the nonconformity was minor in nature and is being resolved, (iv) the nonconformity has already been remediated, or (v) a determination that there was insufficient grounds for the Auditor to conclude the existence of a nonconformity to a Certification Standard; or

(d) Disciplinary action as authorized in clause F.5 of this Appendix.

(7) If the Council chooses any option that would result in the temporary or permanent loss of certification, the Council shall notify the Certified Party in writing of such decision in a Deficiency Notice which shall take effect fifteen (15) business days from transmittal unless RMAI receives a written appeal from the Certified Party following the process and procedures identified on the RMAI website and enclosed with the Deficiency Notice. The Certified Party shall be deemed to have waived the right to respond to the terms and allegations contained in the Deficiency Notice and such terms and allegations shall be deemed admitted and/or accepted by the failure to appeal.

F.4 **Additional Grounds for a Finding a Deficiency.**

(1) In addition to failing to conform to the Certification Standards, the following acts or omissions, whether performed individually or in concert with others, may constitute grounds for the Committee or Council's request for a Compliance Audit or a finding by the Council that a Deficiency exists that is a basis for Disciplinary Action:

(a) Any act or omission involving dishonesty, theft, or misappropriation which violates the criminal laws of any State or of the United States or jurisdiction of any other country, provided however, that conviction thereof in a criminal proceeding shall not be a prerequisite to the institution of Deficiency proceedings, and provided further, that acquittal in a criminal proceeding shall not bar a Deficiency action;

(b) Failure to respond to a request by the Council, Board, or any committee, panel, or agent thereof, without good cause shown, or obstruction of such entities in the performance of their duties; or

(c) Any false or misleading statement made to the Board or Council.

(2) The enumeration of the foregoing acts and omissions constituting grounds for a finding by the Council that a Deficiency exists that is subject to disciplinary action by the Council is not exclusive and other acts or omissions amounting to unprofessional conduct may constitute grounds for discipline.

F.5 **Disciplinary Action.** Where grounds for discipline have been established by the Council, any of the following forms of discipline may be imposed upon a Certified Party:

(1) Private Censure. Private Censure shall be an unpublished written reproach;

(2) Public Letter of Admonition. A Public Letter of Admonition shall be a publishable written reproach of the Certified Party's behavior. In the event of a public letter of admonition, the Council may publish the Letter of Admonition in a press release or in such other form of publicity selected by the Council;

(3) Suspension of Certification. Suspension of Certification shall be for a specified period of time, not to exceed five (5) years, for those Certified Parties the Council deems can be rehabilitated. In the event of a suspension, the Council may publish the fact of the suspension together with identification of the Certified Party in a press release, or in such other form of publicity as is selected by the Council;

(4) Non-Renewal of Certification. Non-Renewal of Certification shall be a decision not to renew the certification upon the expiration of the Certified Party's biennial term; and

(5) Expulsion from the Certification Program. Expulsion from the Certification Program shall be a permanent loss of a Certified Party's certification which shall be for willful and egregious conduct. In the event of an expulsion, the Council may publish the fact of the expulsion together with identification of the Certified Party in a press release, or in such other form of publicity as is selected by the Council. Pursuant to section 7.6(F) of the Governance Document, Certified Parties that are expelled are not eligible for future certification.

F.6 **Reinstatement after Suspension.** Unless otherwise provided by the Council in its order of suspension, a Certified Party who has been suspended for a period of one (1) year or less shall be automatically reinstated upon the expiration of the period of suspension, provided the Certified Party provides the Council prior to the expiration of the period of suspension an affidavit stating that they have fully complied with the order of suspension and with all applicable provisions of these Certification Standards, unless such condition is waived by the Council in its discretion.

F.7 **Council Guidelines for Disciplinary Action.** The following scalable guidelines shall be considered by the Council prior to the issuance of a Disciplinary Action against a Certified Party and are by no means intended to limit their authority. Rather, the following guidelines are intended to ensure the Council takes into consideration such factors as the (i) frequency and persistence of the violation of Certification Standards, (ii) efforts of the Certified Party (or lack thereof) to maintain or obtain conformance with the Certification Standards, and (iii) efforts to comply with any Remediation Agreement:

(1) Private Censure: Should be considered in matters where the violation of the Certification Standards is minor and has been remediated yet a message is needed to convey Council concern.

(2) Public Letter of Admonition: Should be considered in cases where the violation may be minor but nonetheless pervasive or not remediated. Alternatively, if the violation is a serious legal or regulatory violation but that which has been remediated yet the Council desires to admonish the Certified Party to avoid repeat violations, a Public letter of Admonition may be issued.

(3) Suspension of Certification: Should be considered when a violation of a Certification Standard is a serious legal or regulatory violation and has not been remediated or the attempt to remediate is without merit.

(4) Non-renewal of Certification: Should be considered when the Certified Party has a history of violating the Certification Standards and the Council believes that no other form of disciplinary action will alter that behavior.

(5) Expulsion from Certification: Should be considered when egregious conduct is a willful violation of law or regulation or an egregious violation of the Certification Standards and no remediation efforts have been made. Also, if a suspension has lasted more than one year and has expired without a request for renewal and no other good cause exists for reinstatement, expulsion may be warranted.

F.8 **Appeals.** Any appeal of a disciplinary action taken by the Council shall be received by RMAI within fifteen (15) business days from the Council's transmittal of the Deficiency Notice to the Certified Party following the process and procedures identified on the RMAI website and enclosed with the Deficiency Notice. All appeals will be heard and decided by the Board within sixty (60) days of RMAI's receipt of the appeal and a

decision will be rendered within thirty (30) days after the conclusion of the Board hearing. The Board's decision will be final.

F.9 **Costs.** In all Deficiency matters, the Council shall assess against the Certified Party the costs of the investigations.

APPENDIX B

RMAI Code of Ethics

CODE OF ETHICS

PREFACE

Membership in the Receivables Management Association International (RMAI) is voluntary. By accepting membership, Members are agreeing to assume an obligation of self-discipline that goes above and beyond the requirements of laws and regulations.

RMAI's Code of Ethics is a written set of norms governing the professional conduct and behavior expected of its Members and their employees/agents. Failure to comply with the Code is a basis for invoking a disciplinary process. Compliance with the Code will be based on the totality of facts and circumstances as they existed at the time of the conduct in question, including but not limited to the willfulness and seriousness of the violation, extenuating factors, whether there have been previous violations, and general rules of reason.

The Code does not exist to presuppose a violation, to determine whether discipline should be imposed for a violation, or to determine the severity of a sanction. The Code is designed to provide guidance and to provide a structure for regulating conduct through a disciplinary process. The Code is not to be used by anyone other than RMAI and may not be used as a basis for civil liability as their sole purpose is to designate appropriate behavior within a membership organization. A violation of the Code is not a basis for a third party to have standing to seek enforcement or use as evidence of wrongdoing.

"Commentary" is provided for each Canon for purposes of guidance on the Canon. The commentary should not be treated as the Canon. The absence of a commentary for a particular fact pattern or scenario should not be interpreted to mean that the Canon does not apply. RMAI will add to the commentary from time-to-time when it determines that additional guidance on a Canon is warranted.

CANON 1 – INTEGRITY

An RMAI Member shall always demonstrate integrity with others which shall be revealed through honest and forthright interactions with others, honoring contractual obligations, compliance with laws and regulations governing the industry, and adhering to the RMAI Bylaws, RMAI Code of Ethics, and as applicable the RMAI Certification Program.

Commentary:

(1) A Member shall not make a materially false statement in, or deliberately fail to disclose a material fact requested in connection with, its application for membership with RMAI.

(2) A Member should only recommend companies for RMAI membership that the Member knows, through personal experience, have a good reputation within the business community. A Member shall not further the application of any company known by the Member to be unqualified.

(3) A Member shall not circumvent the Code through actions of another.

(4) A Member shall not engage in any conduct involving dishonesty, fraud, deceit, or misrepresentation.

(5) A Member should never encourage another to commit criminal acts or counsel another on how to violate the law in such a way to avoid punishment.

(6) A Member shall manage receivables in accordance with the contractual obligations of purchase and sale agreements.

(7) A Member and its employees and agents shall not engage in any illegal conduct. Obedience to the law exemplifies respect for the law. Respect for the law should be more than a platitude.

CANON 2 – COMPETENCE

An RMAI Member shall always demonstrate competence in their business operations which shall be revealed through the knowledge and integrity of the employees and vendors retained to manage the company as well as established corporate processes to ensure that such employees and vendors continue to receive education and training concerning best industry practices.

Commentary:

(1) The public should be protected from employees who are not qualified to perform their job responsibilities on behalf of a Member. To assure the maintenance of a high degree of competence, Members should only hire individuals with the requisite amount of education to reasonably perform their job responsibilities and affirmatively train, monitor, reward, and discipline their employees.

(2) A Member is aided in attaining and maintaining its competence by keeping abreast of current legal literature and developments, participating in education programs, understanding the uniqueness of issues found in particular asset classes, such as auto, medical, or utility.

(3) A Member should not purchase or manage receivables in any asset category for which it does not have adequate knowledge or capability to handle.

(4) A Member should act with competence and proper care in dealing with obligors and their obligations. It should strive to become and remain proficient in its field and be competent to properly address issues which arise in connection with the ownership or collection of debts.

CANON 3 – CONFIDENTIALITY

An RMAI Member shall always demonstrate their commitment to maintaining the confidentiality of consumer account data which shall be revealed through the development, implementation, monitoring, and annual review of security measures adopted for its protection, not only while having title to the receivable but also during transmission of the data occurring during the sale or purchase of the receivable.

Commentary:

(1) A Member shall strive to implement the highest standards of information security policies, safety, and security plans and guidelines which meet or exceed any state or federal statutory and regulatory requirements for the safeguarding consumer personally identifiable information and account data.

(2) A Member shall abide by all non-disclosure and confidentiality agreements with the parties with whom it has business dealings regarding the other parties' consumer accounts, proprietary business information, and trade secrets.

(3) The obligation to protect confidences does not preclude a Member from revealing information when consent is provided; as permitted in statute, regulation, or case law for the collection of a debt; or when required by law.

(4) It is not improper for a Member to give, as allowed by law, limited information from its files to an outside agency necessary for statistical, bookkeeping, accounting, data processing, banking, printing, or other legitimate purposes, provided it exercises due care in the selection of the agency and warns the agency that the information must be kept confidential along with the execution of proper confidentiality agreements.

CANON 4 – COMMUNICATIONS

An RMAI Member shall demonstrate caution in its verbal and written communications with others which shall be revealed through the absence of false, fraudulent, misleading, deceptive, or unfair statements.

Commentary:

(1) A Member shall accurately represent professional memberships, designations, credentials, capabilities, and experiences.

(2) The name under which a Member conducts its business should not mislead others concerning the identity, responsibility, and status of the Member, even if such name is permissible under the FDCPA or other state and federal statute.

(3) A Member shall not directly or indirectly compensate or give anything of value to representatives of the press, radio, television, or other communication medium in anticipation of, or in return for professional publicity in a news item unless such payment is disclosed in such news item. The terms “paid advertisement” must appear on each page of any printed advertisement, or “this is a paid advertisement” must be spoken during any verbal story.

(4) A Member in good standing who wishes to display or use the RMAI logo (inclusive of certification logos) to indicate that they are an RMAI Member may do so provided that they first execute an agreement with RMAI which: (i) grants the Member a nonexclusive license to affix the RMAI logo to certain promotional material, (ii) reserves the right for RMAI to terminate the nonexclusive license granted in the agreement and to prospectively change the terms and conditions of the Agreement from time to time in RMAI's own sole discretion, (iii) limits the use of the logo to the Member company’s website or other promotional materials, (iv)prohibits the transfer of property rights, trademark, or other intellectual property interests of RMAI to the Member, and (v) prohibits the Member from assigning the right or authority to use the RMAI logo to any other party.

(5) A Member shall not use the RMAI logo on company documents and/or letterhead to imply RMAI has approved or endorsed the content contained therein.

CANON 5 – REPUTATION OF THE INDUSTRY

An RMAI Member shall always demonstrate its desire to protect the reputation of the industry which shall be revealed through the avoidance of impropriety, including the appearance of impropriety.

Commentary:

(1) A Member shall not engage in any conduct that materially and adversely reflects on the receivables management industry.

(2) A Member should always be cognizant of the industry's perception to the public. Each contact a Member has with a consumer or others helps to mold that perception. Consequently, Members should always act in such a way that supports a positive reputation for the industry and avoids any conduct or activity that would reasonably result in lower public confidence in the profession.

(3) A Member shall assist, support, and respond to the needs of other credit and collection professionals and promote accountability by all participants in the credit and collection cycle.

(4) A Member shall maintain high standards of professional conduct and shall insist that fellow Members and business partners do likewise.

(5) A Member shall maintain a good reputation in the community.

(6) A Member acting under proper auspices should encourage and participate in educational and public relations programs concerning the receivables industry, including the operation of the legal system with particular reference to legal problems that frequently arise. Such educational programs should be motivated by a desire to benefit the public. Examples of permissible activities include the preparation professional scholarly articles for publication and participation in seminars, lectures, and civic programs.

(7) A Member who writes or speaks for the purpose of educating members of the public shall never imply that he or she is speaking on behalf of any other entity, including RMAI, unless specifically authorized to do so.

(8) A Member should report unethical behavior of others to the appropriate governing body.

CANON 6 – RESPECT FOR THE JUDICIAL SYSTEM

An RMAI Member shall always demonstrate respect for the judicial system which shall be revealed through the absence of litigation (or threat of litigation) that is intended to harass or maliciously injure another or knowingly violates local, state, or federal laws or court rules adopted for the bringing of an action before the judiciary.

Commentary:

(1) A Member may, where permissible under the bounds of the law, exercise its reasonable judgment in pursuing with ardor legally owed obligations.

(2) A Member may test the bounds of law when faced with issues that are new, uncertain, or have contradictory treatment by the courts, regulators, or in statute but shall not assert a position that is frivolous or for the purpose of harassing another.

(3) A Member may, in good faith and within the bounds of the law, take steps to test the correctness of a ruling of a tribunal or the validity of a statute or regulation, provided they proceed with caution, demonstrate respect for the judicial, executive, or legislative entity being challenged, and strive to comply with the existing ruling, regulation, or statute until such time that it is overturned or otherwise changed.

(4) A Member should treat proceedings that may occur in quasi-judicial or administrative systems with the same respect as they would with proceedings before the judicial system.

(5) A Member shall not give or lend anything of value to a judge, official, or employee of a tribunal before which it has business.

CANON 7 – RESPECT FOR THE ASSOCIATION

An RMAI Member shall always demonstrate respect for RMAI which shall be revealed through their cooperation in adhering to the RMAI Bylaws, RMAI Code of Ethics, and as applicable the RMAI Certification Program and through prompt responses to correspondence from RMAI staff, RMAI agents, the RMAI Ethics Committee, RMAI Certification Audit Committee, or RMAI Certification Remediation Committee concerning alleged, perceived, or actual violations of the Bylaws, Code of Ethics, or Certification Program.

Commentary:

(1) Membership in RMAI is a privilege and not a right. RMAI expends a large amount of time, energy, money, and resources to promote the interests of the industry. Members are ambassadors of RMAI and the industry and should conduct themselves accordingly so as to not damage their own reputation and that of RMAI.

(2) A Member shall aid, respond, and cooperate with requests made by the RMAI Ethics Committee and, as applicable, the RMAI Certification Audit Committee and RMAI Certification Remediation Committee in furtherance of their responsibilities as provided in the RMAI Bylaws, RMAI Code of Ethics, or the RMAI Certification Program.

(3) A Member should encourage individuals or companies that the Member is aware are attempting to benefit from an RMAI sponsored event to register for the event.

CANON 8 – DISCIPLINE

An RMAI Member recognizes that membership in RMAI is voluntary as well as a privilege and that such membership status is subject to disciplinary action or revocation for violations of the RMAI Code of Ethics based on the following:

(1) **Jurisdiction:** All RMAI Members, RMAI certified companies, and RMAI certified individuals are subject to the RMAI Code of Ethics and the authority granted therein.

(2) **RMAI Ethics Committee:** The Ethics Committee is charged with investigating violations or potential violations of the RMAI Code of Ethics. The RMAI Board of Directors shall appoint the Chair of the Ethics Committee, which at the Board's discretion may be a Board Member. The Ethics Committee Chair shall appoint no less than two (2) additional Members in good standing with voting rights (as described in the RMAI Bylaws) to serve on the Ethics Committee. The Ethics Committee may open investigations on its own accord when there are credible grounds for an investigation. The Ethics Committee may close investigations on its own accord if it determines there is insufficient evidence to substantiate a finding of a violation of the Code of Ethics. If the Ethics Committee finds credible evidence of a violation of the Code of Ethics, it shall provide a recommendation for disciplinary action to the RMAI Board of Directors. The RMAI Board of Directors shall make all final determinations on Member discipline. Ethics Committee members shall abstain from taking part in any proceeding in which there is a conflict of interest. In the event of an abstention, the President shall appoint necessary replacements to the Ethics Committee. The Ethics Committee may adopt procedural and administrative rules for its operation.

(3) **Complaints:** All complaints or reports relating to misconduct of a Member shall be filed with the Ethics Committee in writing by way of letter or electronic mail addressed to the RMAI Executive Director or RMAI President. For complaints to be valid, the complaint shall be in writing and identify the name and contact information for the person submitting the complaint, identify the name of the Member who the complaint is against, and contain sufficient amount of detail to determine the nature of the complaint so that an investigation can be conducted. The Ethics Committee shall within ten (10) days commence an investigation of all complaints or reports received, unless the complaint or report appears, on its face, to be frivolous or without merit, in which case the Ethics Committee may dismiss the complaint or report without having formally reviewed the same. Complaints may be made by RMAI Members and non-Members.

(4) **Investigations:** The following shall apply to Ethics Committee investigations:

(a) The Ethics Committee shall afford a Member a reasonable amount of time to respond to Ethics Committee inquiries and to indicate why disciplinary action is not warranted before any recommendation is made to the RMAI Board of Directors. In cases where there may be imminent harm to other Members or the public, the Ethics Committee may recommend action without first affording a Member an opportunity to respond, provided that after an action is taken the Member is still afforded an opportunity to be heard and have any action modified.

(b) All investigations, whether upon complaint or initiated by the Ethics Committee shall be conducted by the Chairman of the Ethics Committee or under his or her supervision. Complaint letters shall be sent to the Member to whom the complaint is directed for a response and the Member shall be given 30 days to respond.

(c) Upon the conclusion of an investigation, the Ethics Committee shall either close the case or make a recommendation for disciplinary or non-disciplinary action to the RMAI Board of Directors. The Ethics Committee shall transmit its determination and/or recommendation by certified mail to the Member under investigation. If certified mail cannot be delivered, an email to the primary representative on the Member's account shall be deemed sufficient. Prior to any action being taken by the RMAI Board of Directors, the affected Member may, within seven (7) days of receipt of the Ethics Committee recommendation, file an appeal with the Board through certified mail to the Executive Director. The Board in its sole discretion may either review the subject matter of the Member's appeal based on its own investigation or look solely to the findings of the Ethics Committee and any additional information brought to the attention of the Board via the Member's appeal. Disposition shall thereupon be made by a majority vote of the Board. The Board in its sole discretion may communicate the disposition of the matter to other Members and the public at large.

(5) **Types of Discipline:** Violations of the RMAI Code of Ethics can result in disciplinary actions commensurate with the severity of the violation, including but not limited to:

(a) Expulsion from RMAI;
(b) Suspension of Membership;
(c) Formal reprimand;
(d) Informal admonition; and
(e) Specified rehabilitative actions.

(6) **Precedence:** Disciplinary actions shall be determined on a case-by-case analysis. The Ethics Committee shall follow procedures to ensure fairness in the investigatory and determination process. The Ethics Committee shall independently investigate and review each case based on the individual facts and circumstances as they exist and shall not be compelled to take a certain

action or make a certain recommendation based exclusively on prior actions of the Ethics Committee.

(7) **Membership:** The following restrictions shall apply to an application for RMAI membership:

(a) Any former Member who has been expelled from RMAI may not reapply for membership for three (3) years from the date of expulsion, unless a shorter time was prescribed by the RMAI Board of Directors at the time of said expulsion. The Board in its sole discretion may accept or reject the application for membership as well as subject an approval to the satisfaction of conditions.

(b) Any individual who was in a leadership capacity in a company that was expelled from RMAI may not have a new entity in which they have a leadership role apply for membership for three (3) years. The Board in its sole discretion may accept or reject the application for membership as well as subject an approval to the satisfaction of conditions.

(c) The RMAI Board of Directors may in their sole discretion refer an application for RMAI membership to the Ethics and/or Membership Committee for investigation.

(d) Any applicant that was denied membership may not reapply for two (2) years from the date of denial.

(8) **Pending Civil or Criminal Litigation:** The processing of complaints by the Ethics Committee should not be deferred or abated because of substantial similarity to the material allegations of pending civil or criminal litigation, unless authorized by the RMAI Board of Directors. Pending litigation or criminal matters may be the basis for investigation by the Ethics Committee.

(9) **Confidentiality:** All proceedings, reports, and records of disciplinary investigations shall be maintained in confidence except to the extent necessary for investigation and consideration of the matter and shall not be divulged in whole or in part to the public unless the Ethics Committee recommends and the RMAI Board of Directors approves a formal Member reprimand or other discipline.