

**BEFORE THE
BUREAU OF CONSUMER FINANCIAL PROTECTION**

**In the Matter of
Proposed Rule with Request for Public Comment
Debt Collection Practices (Regulation F)
Docket No. CFPB–2019–0022; RIN 3170–AA41**

**Comment of the Staff of the Federal Trade Commission’s
Bureau of Consumer Protection**

September 18, 2019

I. Introduction

Federal Trade Commission (FTC or Commission) staff¹ appreciates the opportunity to comment on the Bureau of Consumer Financial Protection's (CFPB's) proposal to amend Regulation F, 12 C.F.R. part 1006, to implement the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. §§ 1692-1692p, and address other consumer protection issues in debt collection.² As detailed below, the Commission has extensive, longstanding experience with these issues as a result of its wide body of consumer protection work in this area. The FTC has also advocated for amendments and clarifications to existing consumer protection laws to account for changes in the debt collection marketplace since the original enactment of the FDCPA, and appreciates the CFPB's efforts to implement and clarify the Act.

In our comment below, FTC staff first provides an overview of our legal authority in the debt collection marketplace (Section II of this comment); second, describes our relevant law enforcement, policy, and educational efforts to protect consumers (Section III); and, third, provides comments on several provisions of the proposed rule (Section IV).

II. FTC Legal Authority

The FTC protects consumers across a broad range of sectors in the U.S. economy, including those related to financial products and services. Importantly, the Commission enforces laws that protect consumers from deceptive, unfair, or abusive practices in connection with debt

¹ This comment expresses the views of staff of the FTC's Bureau of Consumer Protection. It does not necessarily represent the views of the Federal Trade Commission or of any individual Commissioner. The Commission has, however, voted to authorize the submission of this comment.

² Proposed Rule with Request for Public Comment, 84 Fed. Reg. 23274 (May 21, 2019).

collection, including the FDCPA³ and Section 5(a) of the Federal Trade Commission Act (FTC Act), 15 U.S.C. § 45(a).⁴ With respect to entities within the FTC’s jurisdiction, the agency has authority to enforce rules promulgated by the CFPB, including the proposed rules that are the subject of this Notice of Proposed Rulemaking (NPRM).⁵

III. The FTC’s Efforts to Protect Consumers from Unlawful Debt Collection Practices

The Commission has a long history—spanning over five decades—of protecting consumers from unlawful debt collection practices. This effort remains one of the agency’s highest priorities, particularly given the persistence of deceptive, unfair, and abusive conduct by some debt collectors. The FTC fields millions of complaints annually, and debt collection continues to be a top consumer complaint category year after year.⁶ In response, the agency has employed a multi-pronged approach, consisting of robust law enforcement, research and policy initiatives, and consumer and business education. Below is a brief summary of some of the FTC’s recent efforts using each of these tools.

³ From 1977 until 2011, the FTC was the federal agency empowered to administer the FDCPA, and was also the agency primarily responsible for enforcing it. In July 2011, pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act), Congress transferred to the CFPB the FTC’s role of administering the FDCPA. *See* Dodd-Frank Act § 1089; FDCPA § 814, 15 U.S.C. § 1692l. Both the FTC and the CFPB enforce the FDCPA.

⁴ The Commission also enforces other statutes that are relevant to the debt collection industry. *See, e.g.*, Fair Credit Reporting Act (FCRA), 15 U.S.C. §§ 1681-1681x; Gramm-Leach-Bliley Act, 15 U.S.C. §§ 6801-6809; Electronic Fund Transfer Act (EFTA), 15 U.S.C. § 1693 et seq.

⁵ Dodd-Frank Act, Pub. L. 111-203, 124 Stat. 1376 (July 21, 2010), § 1061(b)(5)(C)(ii), 12 U.S.C. § 5581(b)(5)(C)(ii) (2010).

⁶ *See, e.g.*, Consumer Sentinel Network Data Book 2018 (Feb. 2019), *available at* <https://www.ftc.gov/reports/consumer-sentinel-network-data-book-2018>.

A. Law Enforcement

1. Legal Actions

The Commission is primarily a law enforcement agency, and investigations and litigation are at the heart of the FTC's efforts to curb deceptive, unfair, and abusive debt collection practices.⁷ Since 2010 alone, the FTC has sued more than 313 companies and individuals who engaged in unlawful collection practices, banning 184 from the industry⁸ and securing more than \$548 million in judgments.⁹

Some of our most recent enforcement actions have focused on:

Phantom debt collection. The FTC has waged an aggressive campaign to combat the fraudulent collection of “phantom” debts—*i.e.*, debts that either do not exist or are not owed to the collector.¹⁰ In some instances, these operations have deceived and intimidated consumers

⁷ To stop law violations, the Commission may file actions in federal court seeking injunctive and equitable monetary relief under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), or refer matters to the Department of Justice for civil penalties and injunctive relief under Section 5(m) of the FTC Act, 15 U.S.C. § 45(m). Where a collector's violations are ongoing or so egregious that a court order is necessary to halt the conduct immediately, or where consumer redress and disgorgement are more appropriate forms of monetary relief than civil penalties, the FTC generally files the action itself under Section 13(b) of the FTC Act.

⁸ In 2015, the FTC began publishing a list of every individual and company that the agency has sued that has been banned from the debt collection industry. This list is located at <https://www.ftc.gov/enforcement/cases-proceedings/banned-debt-collectors>.

⁹ See FTC Annual FDCPA Enforcement Report to CFPB (Feb. 19, 2019), at 2 n.4, available at https://www.ftc.gov/system/files/documents/reports/federal-trade-commission-enforcement-fair-debt-collection-practices-act-calendar-2018-report-bureau/p064803_ftc_report_to_cfpb_re_fdcpa_calendar_2018_3-20-19.pdf. Among our recent efforts, the FTC and 70 of our federal, state, and local partners launched Operation Collection Protection, a nationwide crackdown that included more than 165 actions against collectors who engaged in unlawful conduct. See, e.g., Press Release, FTC and Federal, State and Local Law Enforcement Partners Announce Nationwide Crackdown Against Abusive Debt Collectors (Nov. 4, 2015), available at <https://www.ftc.gov/news-events/press-releases/2015/11/ftc-federal-state-local-law-enforcement-partners-announce>; Press Release, FTC and State Law Enforcement Partners Announce More Actions and Results in Continuing Crackdown Against Abusive Debt Collectors (Jan. 7, 2016), available at <https://www.ftc.gov/news-events/press-releases/2016/01/ftc-state-law-enforcement-partners-announce-more-actions-results>.

¹⁰ See, e.g., *FTC v. Global Asset Fin. Servs. Group*, No. 3:19-cv-55 (W.D.N.C. filed Feb. 4, 2019); *FTC and State of New York v. Hylan Asset Mgmt. LLC et al.*, No. 1:18-cv-00710 (W.D.N.Y. filed June 26, 2018); *FTC v. Global Processing Solutions*, No. 1:17-cv-4192 (N.D. Ga. filed Oct. 23, 2017); *FTC v. Lombardo, Daniels & Moss*, No. 3:17-cv-00503 (W.D.N.C. filed Aug. 21, 2017); *FTC v. Hardco Holding Group LLC (Alliance Law Group)*, No.

into paying them millions of dollars in debts that were not owed.¹¹ We have pursued not only the debt collectors who collect on fictitious debt, but also the operations that unlawfully sell or distribute it to collectors.¹² Because these cases often involve particularly harmful conduct, we have sought to shut down these operations quickly through temporary restraining orders and, ultimately, to secure orders permanently banning them from the debt collection industry.

False threats and associated misrepresentations. In many of our recent actions, the Commission has charged that defendants used egregious false threats to pressure consumers into paying purported debts, including threats of lawsuits, wage garnishment, property seizures, and even criminal proceedings or arrest.¹³ In connection with these threats, defendants have often

6:17-cv-1257 (M.D. Fla. filed July 10, 2017); *FTC v. ACDI Group LLC*, No. 3:17-cv-00340 (W.D.N.C. filed June 22, 2017); *FTC and State of New York v. Brace*, No. 1:15-cv-00875-RJA (W.D.N.Y. Oct. 5, 2015); *FTC v. Unified Global Group, LLC*, No. 15-cv-422-W (W.D.N.Y. filed May 11, 2015); *FTC v. Nat'l Payment Processing LLC*, No. 1:15-cv-3811 (N.D. Ga. filed Oct. 30, 2015); *FTC and State of Illinois v. K.I.P., LLC*, No. 1:15-cv-02985 (N.D. Ill. filed Apr. 6, 2015); *FTC v. Williams, Scott & Associates, LLC*, No. 1:14-cv-01599-HLM (N.D. Ga. filed May 27, 2014).

¹¹ *See id.*

¹² *See FTC v. Global Asset Fin. Servs. Group*, No. 3:19-cv-55 (W.D.N.C. filed Feb. 4, 2019); *FTC v. Campbell Capital LLC et al.*, No. 1:18-cv-01163 (W.D.N.Y. filed Oct. 23, 2018); *FTC and State of New York v. Hylan Asset Mgmt. LLC et al.*, No. 1:18-cv-00710 (W.D.N.Y. filed June 26, 2018); *FTC v. Stark Law, LLC*, No. 1:16-cv-3463 (N.D. Ill. filed Mar. 21, 2016); *FTC v. Joel Jerome Tucker*, No. 2:16-cv-082816 (D. Kan. filed Dec. 16, 2016).

¹³ *See, e.g., FTC v. Global Asset Fin. Servs. Group*, No. 3:19-cv-55 (W.D.N.C. filed Feb. 4, 2019); *FTC v. Campbell Capital LLC et al.*, No. 1:18-cv-01163 (W.D.N.Y. filed Oct. 23, 2018); *FTC v. Global Processing Solutions*, No. 1:17-cv-4192 (N.D. Ga. filed Oct. 23, 2017); *FTC v. Lombardo, Daniels & Moss*, No. 3:17-cv-00503 (W.D.N.C. filed Aug. 21, 2017); *FTC v. Hardco Holding Group LLC (Alliance Law Group)*, No. 6:17-cv-1257 (M.D. Fla. filed July 10, 2017); *FTC v. Stark Law, LLC*, No. 1:16-cv-3463 (N.D. Ill. filed Mar. 21, 2016); *FTC v. Am. Mun. Servs.*, No. 17-cv-00168 (E.D. Tex. filed Dec. 24, 2015); *FTC v. BAM Fin'l, LLC*, No. 8:15-cv-01672-JVS-DFM (C.D. Cal. filed Oct. 19, 2015); *FTC and State of New York v. Brace*, No. 1:15-cv-00875-RJA (W.D.N.Y. filed Oct. 5, 2015); *FTC v. Unified Global Group, LLC*, No. 15-cv-422-W (W.D.N.Y. filed May 11, 2015); *FTC & CFPB v. Green Tree Servicing LLC*, No. 0:15-cv-02064 (D. Minn. filed Apr. 21, 2015); *see also FTC v. Premier Debt Acquisitions LLC*, No. 1:15-cv-00421-FPG (W.D.N.Y. filed May 11, 2015) (alleging that, in text messages, collectors threatened to sue consumers and seize their possessions unless they paid); *FTC v. The Primary Group*, No. 1:15-cv-1645 (N.D. Ga. filed May 11, 2015) (alleging that collectors sent text messages falsely threatening consumers with legal action).

misrepresented their identities or affiliations—for example, posing as attorneys, governmental entities, court employees, or law enforcement.¹⁴

Prohibited communications to third parties, abuse, and harassment. In our recent actions, the Commission has also frequently charged defendants with unlawfully disclosing debts to third parties, including friends, family, neighbors, co-workers, and employers.¹⁵ Additionally, the agency has stopped debt collectors engaged in other abusive or harassing conduct, such as calling consumers at times or places known to be inconvenient (*e.g.*, at work when prohibited by employers);¹⁶ harassing consumers with repeated or continuous calls;¹⁷ or using obscene or profane language.¹⁸

¹⁴ See, *e.g.*, *FTC v. Global Asset Fin. Servs. Group*, No. 3:19-cv-55 (W.D.N.C. filed Feb. 4, 2019); *FTC v. Campbell Capital LLC et al.*, No. 1:18-cv-01163 (W.D.N.Y. filed Oct. 23, 2018); *FTC v. Hardco Holding Group LLC (Alliance Law Group)*, No. 6:17-cv-1257 (M.D. Fla. filed July 10, 2017); *FTC v. Stark Law, LLC*, No. 1:16-cv-3463 (N.D. Ill. filed Mar. 21, 2016); *FTC v. Nat'l Payment Processing LLC*, No. 1:15-cv-3811 (N.D. Ga. filed Oct. 30, 2015); *U.S. v. Commercial Recovery Sys., Inc.*, No. 4:15-cv-36 (E.D. Tex. filed Apr. 7, 2016); *FTC v. BAM Fin'l, LLC*, No. 8:15-cv-01672-JVS-DFM (C.D. Cal. filed Oct. 19, 2015); *FTC v. Premier Debt Acquisitions LLC*, No. 1:15-cv-00421-FPG (W.D.N.Y. filed May 11, 2015); *Centro Natural Corp.*, No. 14-cv-23879 CMA (S.D. Fla. filed Oct. 20, 2014); *FTC v. Williams, Scott & Associates, LLC*, No. 1:14-cv-01599-HLM (N.D. Ga. filed May 27, 2014); *FTC v. Fed. Check Processing, Inc.*, No. 1:14-cv-00122 (W.D.N.Y. filed Feb. 24, 2014).

¹⁵ See, *e.g.*, *FTC v. Global Asset Fin. Servs. Group*, No. 3:19-cv-55 (W.D.N.C. filed Feb. 4, 2019); *FTC v. Campbell Capital LLC et al.*, No. 1:18-cv-01163 (W.D.N.Y. filed Oct. 23, 2018); *FTC and State of New York v. Hylan Asset Mgmt. LLC et al.*, No. 1:18-cv-00710 (W.D.N.Y. filed June 26, 2018); *FTC v. Global Processing Solutions*, No. 1:17-cv-4192 (N.D. Ga. filed Oct. 23, 2017); *FTC v. Lombardo, Daniels & Moss*, No. 3:17-cv-00503 (W.D.N.C. filed Aug. 21, 2017); *FTC v. Hardco Holding Group LLC (Alliance Law Group)*, No. 6:17-cv-1257 (M.D. Fla. filed July 10, 2017); *U.S. v. GC Servs. Ltd.*, No. 17-cv-00461 (S.D. Tex. filed Feb. 14, 2017); *FTC v. Stark Law, LLC*, No. 1:16-cv-3463 (N.D. Ill. filed Mar. 21, 2016); *FTC v. Nat'l Payment Processing LLC*, No. 1:15-cv-3811 (N.D. Ga. filed Oct. 30, 2015); *FTC v. BAM Fin'l, LLC*, No. 8:15-cv-01672-JVS-DFM (C.D. Cal. filed Oct. 19, 2015); *FTC and State of New York v. Brace*, No. 1:15-cv-00875-RJA (W.D.N.Y. filed Oct. 5, 2015); *FTC v. Unified Global Group, LLC*, No. 15-cv-422-W (W.D.N.Y. filed May 11, 2015); *FTC v. The Primary Group*, No. 1:15-cv-1645 (N.D. Ga. filed May 11, 2015); *FTC v. Premier Debt Acquisitions LLC*, No. 1:15-cv-00421-FPG (W.D.N.Y. filed May 11, 2015).

¹⁶ See, *e.g.*, *FTC v. Lombardo, Daniels & Moss*, No. 3:17-cv-00503 (W.D.N.C. filed Aug. 21, 2017); *FTC & State of Illinois v. Stark Law, LLC*, No. 16-cv-3463 (N.D. Ill. filed Mar. 21, 2016); *FTC v. Nat'l Payment Processing*, No. 1:15-cv-3811 (N.D. Ga. filed Oct. 30, 2015); *FTC & CFPB v. Green Tree Servicing LLC*, No. 0:15-cv-02064 (D. Minn. filed Apr. 21, 2015); *U.S. v. Reg'l Adjustment Bureau, Inc.*, No. 2:14-cv-02522 (W.D. Tenn. filed July 8, 2014); *U.S. v. Consumer Portfolio Servs.*, No. 14-00819 (C.D. Cal. filed May 28, 2014); *FTC v. Williams, Scott & Associates, LLC*, No. 14-cv-1599-HLM (N.D. Ga. filed May 27, 2014).

¹⁷ See, *e.g.*, *FTC v. Lombardo, Daniels & Moss*, No. 3:17-cv-00503 (W.D.N.C. filed Aug. 21, 2017) (alleging that defendants called consumers multiple times per day or frequently over an extended period of time – for example,

Unlawful conduct regarding required debt information. In recent enforcement actions, the Commission has also worked to ensure that debt collectors provide consumers with required information about their purported debts and that collectors have substantiation for the debts they collect. For example, the FTC has charged defendants for failing to provide validation notices required by the FDCPA¹⁹ and attempting to collect debts without a reasonable basis for doing so.²⁰

calling some consumers three or more times per day); *FTC & State of Illinois v. Stark Law, LLC*, No. 16-cv-3463 (N.D. Ill. filed Mar. 21, 2016) (alleging that defendants called consumers multiple times per day over an extended period of time and left multiple voicemail messages in the same day); *FTC v. Nat'l Payment Processing*, No. 15-CV-3811 (N.D. Ga. filed Oct. 30, 2015) (alleging defendants contacted consumers repeatedly on their home, cell and work numbers, including multiple times per day); *United States v. Reg'l Adjustment Bureau, Inc.*, No. 2:14-cv-02522 (W.D. Tenn. filed July 8, 2014) (alleging defendant called multiple times per day or frequently over an extended period of time – for example, calling consumers 5 to 6 times per day or more); *FTC v. Goldman Schwartz, Inc.*, No. 13-cv-00106 (S.D. Tex. filed Jan. 14, 2013) (alleging that defendants sometimes called consumers repeatedly with the intent to annoy, abuse or harass, such as immediately calling consumers back after they ended the previous call).

¹⁸ See, e.g., *FTC v. Lombardo, Daniels & Moss*, No. 3:17-cv-00503 (W.D.N.C. filed Aug. 21, 2017); *FTC and State of Illinois v. K.I.P., LLC*, No. 1:15-cv-02985 (N.D. Ill. filed Apr. 6, 2015); *FTC & CFPB v. Green Tree Servicing LLC*, No. 0:15-cv-02064 (D. Minn. filed Apr. 21, 2015); *FTC v. 4 Star Resolution LLC et al.*, 1:15-cv-00112 (W.D.N.Y. filed Feb. 9, 2015); *FTC v. Williams, Scott & Associates, LLC*, No. 1:14-cv-01599-HLM (N.D. Ga. filed May 27, 2014); *FTC v. Rincon Mgmt. Servs., LLC*, No. 11-cv-01623 (C.D. Cal. filed Oct. 11, 2011); *FTC v. Forensic Case Mgmt. Servs., Inc.*, No. 2:11-cv-07484 (C.D. Cal. filed May 12, 2011).

¹⁹ See, e.g., *FTC v. Global Asset Fin. Servs. Group*, No. 3:19-cv-55 (W.D.N.C. filed Feb. 4, 2019); *FTC v. Campbell Capital LLC et al.*, No. 1:18-cv-01163 (W.D.N.Y. filed Oct. 23, 2018); *FTC and State of New York v. Hylan Asset Mgmt. LLC et al.*, No. 1:18-cv-00710 (W.D.N.Y. filed June 26, 2018); *FTC v. Global Processing Solutions*, No. 1:17-CV-4192 (N.D. Ga. filed Oct. 23, 2017); *FTC v. Lombardo, Daniels*, No. 3:17-cv-00503 (W.D.N.C. filed Aug. 21, 2017); *FTC v. Hardco Holding Group LLC (Alliance Law Group)*, No. 6:17-cv-1257 (M.D. Fla. filed July 10, 2017); *FTC v. Stark Law, LLC*, No. 1:16-cv-3463 (N.D. Ill. filed Mar. 21, 2016); *FTC v. Am. Mun. Servs.*, No. 17-cv-00168 (E.D. Tex. filed Dec. 24, 2015); *FTC v. Nat'l Payment Processing LLC*, No. 1:15-cv-3811 (N.D. Ga. filed Oct. 30, 2015); *FTC v. BAM Fin'l, LLC*, No. 8:15-cv-01672-JVS-DFM (C.D. Cal. filed Oct. 19, 2015); *FTC and State of New York v. Brace*, No. 1:15-cv-00875-RJA (W.D.N.Y. filed Oct. 5, 2015); *FTC v. The Primary Group*, No. 1:15-cv-1645 (N.D. Ga. filed May 11, 2015); *FTC v. Premier Debt Acquisitions LLC*, No. 1:15-cv-00421-FPG (W.D.N.Y. filed May 11, 2015); *FTC v. Unified Global Group, LLC*, No. 15-cv-422-W (W.D.N.Y. filed May 11, 2015).

²⁰ See, e.g., *U.S. v. Credit Smart, LLC*, No. 2:14-cv-04650-LDW-GRB (E.D.N.Y. filed Aug. 5, 2014) (alleging that defendants collected on debts without a reasonable basis for doing so and told consumers they owed interest on debts when they did not); *FTC v. Fed. Check Processing, Inc.*, No. 1:14-cv-00122 (W.D.N.Y. filed Feb. 24, 2014) (alleging defendants continued to collect debts even after consumers told them the debt was paid in full or discharged); *U.S. v. Reg'l Adjustment Bureau, Inc.*, No. 2:14-cv-02522 (W.D. Tenn. filed July 8, 2014) (alleging that operation repeatedly called consumers and accused them of owing debts that they did not owe); *FTC v. Pinnacle Payment Services, LLC*, No. 1:13-CV-3455 (N.D. Ga. Dec. 16, 2013) (alleging that defendants attempted to collect debts that consumers had already paid); *U.S. v. Expert Global Solutions, Inc.*, No. 3:13-cv-2611 (N.D. Tex. filed

2. Amicus Briefs

In addition to bringing enforcement actions in federal court, the FTC has also filed numerous amicus briefs (including some jointly with the CFPB) in U.S. Courts of Appeals considering important legal principles under the FDCPA and other statutes. These briefs have tackled a wide range of important issues, including: the meaning of the FDCPA’s phrase “initial communication” and the associated obligation to provide validation notices;²¹ false communications in legal pleadings;²² arbitration clauses requiring collection dispute resolution on a distant tribal reservation;²³ the treatment of parking fees and associated nonpayment fees as “debts” under the FDCPA;²⁴ the application of the FDCPA to debt collection law firms that mass-file collection lawsuits;²⁵ and the application of the FDCPA to entities that acquire and collect on defaulted debts.²⁶ Further, as noted below, the FTC has filed amicus briefs regarding

July 8, 2013); *U.S. v. Asset Acceptance, LLC*, No. 8:12-cv-182 (M.D. Fla. filed Jan. 30, 2012); *U.S. v. Allied Interstate, Inc.*, No. 10-cv-04295-PJS-AJB (D. Minn. filed Oct. 21, 2010).

²¹ Brief of Amici Curiae, *Hernandez v. Williams, Zinman & Parham*, No. 14-15672 (9th Cir. Aug. 20, 2014), available at https://www.ftc.gov/system/files/documents/amicus_briefs/hernandez-v.williams-zinman-parham-p.c./140821briefhernandez1.pdf; *Hernandez v. Williams, Zinman & Parham*, 829 F.3d 1068 (9th Cir. 2016).

²² Brief of Amici Curiae, *Sykes v. Mel S. Harris & Assocs. LLC*, No. 13-2742 (2d Cir. Nov. 13, 2013), available at https://www.ftc.gov/sites/default/files/documents/amicus_briefs/sykes-v.mel-s.harris-associates-llc/131113sykesharrisbrief.pdf; *Sykes v. Mel S. Harris & Assocs. LLC*, 780 F.3d 70 (2d Cir. 2015).

²³ Brief of Amicus Curiae, *Jackson v. Payday Fin., LLC*, No. 12-2617 (7th Cir. Sept. 13, 2013), available at https://www.ftc.gov/sites/default/files/documents/amicus_briefs/deborah-jackson-v.payday-financial-llc/130913paydayfinancialbrief.pdf; *Jackson v. Payday Financial, LLC*, 764 F.3d 765 (7th Cir. 2014).

²⁴ Brief of Amici Curiae, *Franklin et al. v. Parking Revenue Recovery Servs., Inc.*, No. 13-02578 (7th Cir. Dec. 11, 2015), available at https://www.ftc.gov/system/files/documents/amicus_briefs/franklin-et-al-v.parking-revenue-recovery-services-inc.p082105_parking_revenue_amicus_brief_7th_cir_14-3774.pdf; *Franklin et al. v. Parking Revenue Recovery Servs., Inc.*, 832 F.3d 741 (7th Cir. 2016).

²⁵ Brief of Amici Curiae, *Bock v. Pressler & Pressler, LLP*, No. 15-1056 (3d Cir. Aug. 13, 2015), available at https://www.ftc.gov/system/files/documents/amicus_briefs/daniel-bock-jr.plaintiff-appellee-v.pressler-pressler-llp-defendant-appellant/150813bock-amicusbrief.pdf; *Bock v. Pressler & Pressler, LLP*, 658 F. App’x 63 (3d Cir. 2016).

²⁶ Brief of Amicus Curiae, *Keith Davidson v. Capital One Bank (USA), N.A.*, No. 14-14200 (11th Cir. Sept. 21, 2015), available at https://www.ftc.gov/system/files/documents/amicus_briefs/keith-davidson-v.capital-one-bank-

the deceptive collection of time-barred debt, arguing that suits and threats to sue to collect such debts are unlawful.²⁷

B. Research and Policy Initiatives

1. Commission Reports

The FTC has also issued key reports on developments in the debt collection industry and the agency's associated recommendations for legal reform—which the CFPB has frequently cited in this rulemaking proceeding. For example, in 2009, the FTC issued “Collecting Consumer Debts: The Challenges of Change,” which recommended that the debt collection legal system be reformed and modernized to reflect changes in consumer debt, the debt collection industry, and newer technologies.²⁸ In 2010, the FTC's “Repairing A Broken System: Protecting Consumers in Debt Collection Litigation and Arbitration” report focused on improving consumer protections in debt collection litigation and arbitration proceedings.²⁹ Additionally, the FTC's 2013 report, “The Structure and Practices of the Debt Buying Industry,” discusses the findings of the agency's large-scale empirical study of the debt buying industry and

usa-n.a./150921davidsonamicusbrief.pdf; *Keith Davidson v. Capital One Bank (USA), N.A.*, 797 F.3d 1309 (11th Cir. 2016).

²⁷ Brief of Amici Curiae, *Buchanan v. Northland Group, Inc.*, No. 13-2523 (6th Cir. Mar. 5, 2014), available at http://www.ftc.gov/system/files/documents/amicus_briefs/esther-buchanan-v.northland-group-inc.no.13-2523-6th-cir./1403105buchanan6cir-amicus.pdf; *Buchanan v. Northland Group, Inc.*, 776 F.3d 393 (6th Cir. 2015); Brief of Amici Curiae, *Delgado v. Capital Mgmt. Servs., LP*, No. 13-2030 (7th Cir. Aug. 14, 2013), available at <http://www.ftc.gov/policy/advocacy/amicus-briefs/2013/08/juanita-delgado-v-capital-management-services-lp>; *Delgado v. Capital Mgmt. Servs., LP*, 744 F.3d 1010 (7th Cir. 2014).

²⁸ *Collecting Consumer Debts: The Challenges of Change* (Feb. 2009), available at <https://www.ftc.gov/sites/default/files/documents/reports/collecting-consumer-debts-challenges-change-federal-trade-commission-workshop-report/dcwr.pdf> (hereinafter Modernization Report).

²⁹ *Repairing A Broken System: Protecting Consumers in Debt Collection Litigation and Arbitration* (July 2010), available at <https://www.ftc.gov/sites/default/files/documents/reports/federal-trade-commission-bureau-consumer-protection-staff-report-repairing-broken-system-protecting/debtcollectionreport.pdf> (hereinafter Repairing a Broken System).

associated consumer protection issues.³⁰ As discussed in more detail in Section IV of this comment, some of the rule proposals relate to issues discussed in these reports.³¹

2. Roundtables and Workshops

The FTC has also held numerous roundtables and workshops examining consumer protection issues in debt collection. For example, the Commission recently hosted events focusing on the protection of military consumers where it examined debt collection issues.³² Commission staff also regularly meets with legal service providers, consumer advocates, and others who work with older, low-income, immigrant, Native American, Latino, Asian, and African American communities to discuss consumer protection issues, including the FTC’s work in the debt collection arena.³³ Additionally, in 2015, the FTC hosted a series of “Debt Collection Dialogues” across the country, at which the FTC, other federal and state law enforcement agencies, and industry representatives discussed enforcement actions, consumer complaints, compliance issues, and industry best practices.³⁴ In 2013 and 2014, the FTC and CFPB hosted

³⁰ The Structure and Practices of the Debt Buying Industry (Jan. 2013), *available at* <https://www.ftc.gov/sites/default/files/documents/reports/structure-and-practices-debt-buying-industry/debtbuyingreport.pdf> (hereinafter Debt Buyer Report).

³¹ *See infra* §§ IV.A – B & IV.G.

³² *See e.g.*, FTC, “Military Consumer Financial Workshop” (July 19, 2017), *available at* <https://www.ftc.gov/news-events/events-calendar/military-consumer-workshop>; Press Release, FTC Staff Perspective Examines Key Financial Issues That Affect Military Consumers (Feb. 2, 2018) (noting that debts in collection can endanger a servicemember’s security clearance, and that collectors may sometimes threaten to tell a servicemember’s commanding officer about a debt), *available at* <https://www.ftc.gov/news-events/press-releases/2018/02/ftc-staff-perspective-examines-key-financial-issues-affect>; *see also* FTC, “Protecting Military Consumers: A Common Ground Conference” (Sept. 7, 2017), *available at* <https://www.ftc.gov/news-events/events-calendar/2017/09/protecting-military-consumers-common-ground-conference>.

³³ For example, since January 2018, the FTC has hosted seven Ethnic Media Roundtables around the country, bringing together law enforcement, community organizations, consumer advocates and members of the ethnic media to discuss how consumer protection issues—including debt collection—affect their communities.

³⁴ *See* Press Release, FTC Will Host Second and Third ‘Debt Collection Dialogues’ with Collection Industry in Dallas and Atlanta (July 17, 2015), *available at* <https://www.ftc.gov/news-events/press-releases/2015/07/ftc-will-host-second-third-debt-collection-dialogues-collection>; *see also* Press Release, FTC Announces Panels for Debt

roundtables examining the flow of consumer data throughout the debt collection process³⁵ and also how collection and credit reporting issues affect Latino consumers (especially those with limited English proficiency).³⁶

C. Education and Public Outreach

The FTC uses multiple formats and channels to inform consumers about their rights under the FDCPA and the FTC Act, and debt collectors about their obligations under the law. The Commission reaches tens of millions of consumers through English and Spanish print³⁷ and online materials,³⁸ blog posts,³⁹ speeches and presentations. It also educates industry members by developing and distributing business education materials,⁴⁰ delivering speeches, blogging,

Collection Dialogue in Dallas on September 29, 2015 (Aug. 6, 2015), available at <https://www.ftc.gov/news-events/press-releases/2015/08/ftc-announces-panels-debt-collection-dialogue-dallas-september-29>; Press Release, FTC to Co-Host Third Debt Collection Dialogue in Atlanta on November 18 with Office of the Georgia Attorney General (Oct. 20, 2015), available at <https://www.ftc.gov/news-events/press-releases/2015/10/ftc-co-host-third-debt-collection-dialogue-atlanta-november-18>.

³⁵ See FTC-CFPB Workshop, “Life of a Debt: Data Integrity in Debt Collection” (June 6, 2013), available at <https://www.ftc.gov/news-events/events-calendar/2013/06/life-debt-data-integrity-debt-collection>.

³⁶ See FTC-CFPB Roundtable, “Debt Collection & the Latino Community” (Oct. 23, 2014), available at <https://www.ftc.gov/news-events/events-calendar/2014/10/debt-collection-latino-community-roundtable>. The FTC has engaged in significant additional law enforcement, outreach, and educational efforts to protect Spanish-speaking consumers from unlawful debt collection practices. See, e.g., *Centro Natural*, No. 14-cv-23879 (S.D. Fla. filed Oct. 20, 2014); *FTC v. RTB Enterprises*, No. 4:14-cv-01691 (S.D. Tex. filed June 17, 2014); *FTC v. Rincon Mgmt. Servs.*, No. 11-01623 (C.D. Cal. filed Oct. 11, 2011); FTC, “Cobranza de deudas” (consumer education pieces in Spanish), available at <https://www.consumidor.ftc.gov/temas/lidiar-con-las-deudas>.

³⁷ From January 2018 to July 2019, the FTC distributed 21 million print publications, including 1.8 million in Spanish, to libraries, police departments, schools, non-profit organizations, banks, credit unions, other businesses, and government agencies.

³⁸ Since January 2018, the FTC has logged more than 82 million page views of its business and bi-lingual consumer education websites. Information for consumers about their rights under the FDCPA is available at <https://www.consumer.ftc.gov/topics/dealing-debt>. The FTC’s channel at YouTube.com/FTCvideos houses 232 business and consumer videos in English and Spanish, which were viewed more than 592,000 times in 2018.

³⁹ See FTC, Consumer Information Blog, available at <http://www.consumer.ftc.gov/blog>.

⁴⁰ The FTC’s business education resources can be found in its online Business Center, available at <http://business.ftc.gov/>.

participating in panel discussions at industry conferences, and providing interviews to general media and trade publications.

IV. FTC Staff Comments on Provisions of the Proposed Rule

The Commission has long advocated for amendments and clarifications to the FDCPA, including to account for significant changes in the debt collection marketplace and modern technologies since the law's enactment in 1977.⁴¹ For example, the FTC has concluded that “[d]ebt collectors generally should be allowed to use all communication technologies, including new and emerging technologies, to contact consumers. The law, however, must be carefully crafted and applied to avoid collectors’ use of communication technologies in a manner that . . . subjects [consumers] to unfair, deceptive, or abusive acts and practices.”⁴² The Commission has also recommended amendments and clarifications to consumer protection laws regarding other aspects of the collections process detailed further below, like validation notices and collectors’ use of voicemail messages.⁴³ Therefore, Commission staff supports efforts to address these important issues in the debt collection marketplace.

Below, we offer FTC staff comments on several topics covered by the proposed rule—namely: (1) improvements to required validation notices (Section IV.A.); (2) restrictions related to time-barred debts (Section IV.B.); (3) passive debt collection (Section IV.C.); (4) prohibitions on the sale, transfer, or placement of certain debts (Section IV.D.); (5) decedent debt (Section IV.E.); (6) restrictions on the times, places, and communications media for collector contacts

⁴¹ See, e.g., Modernization Report, *supra* note 28, Executive Summary at i-vii; *id.* at 26, 49-50; Debt Buyer Report, *supra* note 30, at 30-31; Repairing a Broken System, *supra* note 29, at 30.

⁴² Modernization Report, *supra* note 28, Executive Summary at i.

⁴³ See, e.g., Modernization Report, *supra* note 28, at 26 & 49-50.

(Section IV.F.); (7) restrictions on disclosures to third parties (Section IV.G.); and (8) telephone call frequency limits (Section IV.H.).

A. Improved Validation Notices

Section 809(a) of the FDCPA generally requires that debt collectors provide consumers with “validation notices” within five days after initially contacting them. The validation notices must set forth the amount of the debt and the name of the creditor to whom it is owed, and they must inform consumers of their rights to dispute the debt and to request the name and address of the original creditor.⁴⁴ Validation notices can be vital in helping consumers to recognize a debt, determine whether the debt is valid and accurate, and understand their rights under the FDCPA. Recognizing the importance of these notices, the Commission routinely alleges FDCPA violations against collectors who fail to provide them to consumers.⁴⁵

The Commission has long recommended that Section 809(a) be amended to require that debt collectors provide more information in validation notices to improve consumers’ understanding of debts and their FDCPA rights.⁴⁶ Specifically, the FTC has recommended that notices be enhanced to include the name of the original creditor and an itemization of the principal, total interest, and total fees that make up the debt.⁴⁷ The FTC has also recommended that validation notices be improved to include the disclosure of additional, key protections under the FDCPA—namely, consumers’ right to stop collectors from contacting them (under FDCPA

⁴⁴ 15 U.S.C. § 1692g(a).

⁴⁵ *See supra* note 19.

⁴⁶ *See, e.g.*, Modernization Report, *supra* note 28, at 26.

⁴⁷ *Id.* The Commission’s Debt Buyer Report also observed that debt buyers typically received information that would make validation notices more useful to consumers, including the name of the original creditor and the original creditor’s account number. *See* Debt Buyer Report, *supra* note 30, Executive Summary at ii; *id.* at 36.

Section 805(c)), and collectors' obligation to suspend collection efforts between the time they receive a timely written dispute and the time they provide verification to consumers (Section 809(b)).⁴⁸

Consistent with these recommendations, Commission staff supports the CFPB's goal to improve the information included in validation notices. Section 1006.34 of the proposed rule would generally require that validation notices include a variety of additional pieces of information about a debt,⁴⁹ including the debt collector's name and address; consumers' name and address; merchant brand (if any) associated with a credit card debt; "itemization date" (one of four options defined elsewhere in the proposed rule);⁵⁰ name of the creditor to whom the debt was owed on the itemization date; account number (if any) or a truncated version, at the itemization date; amount of the debt on the itemization date; and an itemization of the interest, fees, payments, and credits since the itemization date.

Proposed § 1006.34 would also require that validation notices inform consumers about some additional rights they have under the FDCPA, including that the collector will suspend collection of the debt in response to a timely written dispute until the collector sends verification of the debt.⁵¹ The proposal would also require validation notices to include prompts that the consumer could use to dispute the debt, request original creditor information, or take other

⁴⁸ Modernization Report, *supra* note 28, at 26 ("Consumers would benefit from knowing about these rights, and including information about them in the validation notices collectors already are required to provide would seem to impose small marginal costs on debt collectors.").

⁴⁹ *See* proposed § 1006.34(c).

⁵⁰ Proposed § 1006.34(b)(3) defines the "itemization date" to be any one of four reference dates, which the debt collector may choose (but must then use consistently): (1) the last statement date; (2) the charge-off date; (3) the last payment date, or (4) the transaction date that gave rise to the debt. *See* proposed § 1006.34(b)(3); comment 34(b)(3)-1. The NPRM states that these are notable dates in the history of a debt that consumers would be likely to recall. *See* 84 Fed. Reg. at 23336.

⁵¹ *See* proposed § 1006.34(c)(3).

actions.⁵² Further, it would allow collectors the option of including certain additional pieces of information in the notices,⁵³ such as disclosures in Spanish stating that consumers can request a Spanish-language validation notice.⁵⁴

FTC staff believes that improved validation notices would aid consumers' ability to recognize debts and exercise their rights. Thus, we support the goals of this proposal, and also note that it is important to weigh the effectiveness and sufficiency of each disclosure required in the proposed rule. For instance, FTC staff encourages continuing to weigh whether consumers would recognize the "itemization date" required in the proposed rule and whether consumers would benefit from additional disclosures identifying which of the four potential itemization dates the collector is providing (as well as the meaning of that date).⁵⁵ Further, consistent with the Commission's previous recommendations above, FTC staff would encourage considering whether to require, or allow,⁵⁶ validation notices to disclose the name of the original creditor (to the extent it is not identical to the creditor at the itemization date).⁵⁷ Additionally, consistent with past FTC recommendations, staff would encourage the consideration of whether to add a

⁵² Proposed § 1006.34(c)(4).

⁵³ Proposed § 1006.34(d)(3). The proposed rule also includes a model form validation notice, which collectors may use to comply with the requirements in this section. *See* proposed § 1006.34(d)(2); Model Form B-3.

⁵⁴ *See* proposed § 1006.34(d)(3)(vi). *See also supra* note 36.

⁵⁵ *See supra* note 50 and accompanying text. For example, we believe that consumers may not be likely to recall or recognize the charge-off date, which is an internal date established by the creditor for account management purposes.

⁵⁶ *See* proposed § 1006.34(d)(3) (listing optional information validation notices may provide).

⁵⁷ *See supra* note 47; Modernization Report, *supra* note 28, at 28 ("Identifying the original creditor seems likely to benefit consumers and collectors by making it easier to determine whether the collector is seeking the correct amount from the right consumer.").

disclosure to the validation notice apprising consumers of their right to stop collectors from contacting them under FDCPA Section 805(c).⁵⁸

Beyond the contents of validation notices, the proposed rule would clarify the methods that debt collectors may employ to electronically deliver them. Proposed § 1006.42(e)(2) provides a special safe harbor that would allow collectors to provide validation notices in the body of an email that is the initial communication—if the consumer’s email address is selected using the proposed safe harbor procedures for emails found in § 1006.6(d)(3) (and described further below in § IV.G.3 of this comment).⁵⁹ FTC staff would encourage continuing to weigh the benefits and risks of this safe harbor for emailed validation notices in initial communications. Given the particular importance of these notices for apprising consumers of debts and their associated rights, it is important that collectors (to the extent they are allowed to email validation notices) use email addresses that are current and that consumers are likely to check.⁶⁰ Additionally, in light of the personal and potentially sensitive information validation notices may contain under the proposed rule, like account numbers,⁶¹ it is important that collectors ensure that the consumer who owes the debt receives the email and not an unauthorized third party.

⁵⁸ 15 U.S.C. § 1692c(c). *See supra* note 48 & accompanying text. The Commission has also filed numerous actions against collectors alleging that they violated § 805(c) by refusing to honor consumers’ requests to cease communications. *See, e.g., U.S. v. Regional Adjustment Bureau*, No. 14-02522 (W.D. Tenn. filed July 8, 2014); *FTC v. Expert Global Solutions, Inc.*, No. 13-2611 (N.D. Tex. filed July 8, 2013); *U.S. v. West Asset Mgmt., Inc.*, 11-cv-00746 (N.D. Ga. filed March 10, 2011).

⁵⁹ *See also* 84 Fed. Reg. at 23366.

⁶⁰ *See infra* note 111 & accompanying text.

⁶¹ *See* proposed § 1006.34(c)(2)(v).

B. Restrictions Related to Time-Barred Debts

The Commission has stated that “it is a violation of the FDCPA for a debt collector . . . to file an action in court to collect on a time-barred debt,” and that it “likewise is a clear violation of the FDCPA to threaten to file such an action.”⁶²

The proposed rule, in § 1006.26(b), would prohibit collectors from bringing or threatening to bring a legal action against consumers to collect on debts that the collectors know or should know is time-barred.

Commission staff supports efforts to stop collectors from threatening or bringing suits to obtain payments on time-barred debts. As noted above, the Commission has stated that such conduct violates the FDCPA. Thus, FTC staff encourages further consideration and additional research as to whether requiring a showing that the debt collector knew or should have known the debt was time-barred places unnecessary additional burdens on law enforcement agencies. Notably, the agency’s study on the debt buying industry found that debt buyers “usually are

⁶² See Debt Buyer Report, *supra* note 30, at 45-46; see also Repairing a Broken System, *supra* note 29, at 23; Modernization Report, *supra* note 28, at 63-64; Brief of Amici Curiae, *Buchanan v. Northland Group, Inc.*, No. 13-2523 (6th Cir. Mar. 5, 2014), available at http://www.ftc.gov/system/files/documents/amicus_briefs/esther-buchanan-v.northland-group-inc.no.13-2523-6th-cir./1403105buchanan6cir-amicus.pdf; *Buchanan v. Northland Group, Inc.*, 776 F.3d 393 (6th Cir. 2015); Brief of Amici Curiae, *Delgado v. Capital Mgmt. Servs., LP*, No. 13-2030 (7th Cir. Aug. 14, 2013), available at <http://www.ftc.gov/policy/advocacy/amicus-briefs/2013/08/juanita-delgado-v-capital-management-services-lp>; *Delgado v. Capital Mgmt. Servs., LP*, 744 F.3d 1010 (7th Cir. 2014); Repairing a Broken System, *supra* note 29, at 29-30 (also noting that “[a] significant consumer protection problem related to suits on time-barred debt appears to arise from the combination of collectors filing them and consumers not defending them”); *FTC v. Capital Acquisitions and Mgmt. Corp.*, No. 04C50147 (N.D. Ill. Apr. 11, 2005) (alleging that collector violated FTC Act by misrepresenting that it would sue consumers to collect time-barred debt); *cf. U.S. v. Asset Acceptance*, No. 12-cv-182 (M.D. Fla. Jan. 20, 2012) (alleging collector violated FTC Act by demanding that consumers pay time-barred debts while failing to disclose that it could not sue to obtain payments, and that partial payments could revive the debts). The Commission has concluded that threats to sue (and actual lawsuits) in this context violate, among other provisions, FDCPA § 807’s prohibition against false or misleading representations.

likely to know or be able to determine whether the debts on which they are collecting are beyond the statute of limitations.”⁶³

C. Passive Collections

FTC staff supports efforts to protect consumers from the potential harms associated with “passive collections” or “debt parking”—*i.e.*, when collectors furnish information to consumer reporting agencies for use in consumer reports without first communicating with consumers about the debt. As the NPRM notes, this practice often leaves consumers unaware that they have a debt in collections until they apply for credit, housing, or employment. As a result, these consumers may suffer negative consequences in connection with these applications, or, alternatively, feel pressure to simply pay the debts—even if they are inaccurate or not owed at all.⁶⁴

Therefore, FTC staff supports proposed § 1006.30(a), which would prohibit a debt collector from furnishing a consumer’s debt information to a consumer reporting agency before communicating with the consumer about the debt.⁶⁵

⁶³ See Debt Buyer Report, *supra* note 30, at 35 (noting that, for data made available by some of the largest debt buyers in the U.S., 90% of accounts revealed the date the consumer made his or her last payment and 83% stated the date the original creditor charged off the debt); *id.* at 49 (“[T]he information debt buyers receive as part of the process of bidding on debts and the information they receive when purchasing debts usually indicates the date of last payment or the charge-off dates for debts. In most circumstances, this information should allow debt buyers to readily determine if debt is time-barred.”); see also 84 Fed. Reg. at 23329 (requesting comment on the “know or should have known” standard).

⁶⁴ See 84 Fed. Reg. at 23330; see also *U.S. v. Asset Acceptance, LLC*, No. 12-cv-182 (M.D. Fla filed Jan. 30, 2012) (complaint detailing the harms suffered by consumers who did not receive FCRA-required notice from debt collector that negative information would be furnished to their credit reporting agencies).

⁶⁵ See proposed § 1006.30(a) (also adopting the definition of consumer reporting agency from § 603(f) of the FCRA).

D. Prohibition on the Sale, Transfer, or Placement of Certain Debts

Commission staff supports efforts to curb the sale, transfer, or placement of debts that consumers do not owe. The Commission has filed lawsuits against debt sellers who sold or distributed counterfeit debt portfolios to collectors.⁶⁶ The Commission has pursued this unlawful conduct as part of its larger, aggressive efforts to stop the fraudulent collection of “phantom debts” that either do not exist or are not owed to the collector.⁶⁷ Additionally, the FCRA currently prohibits a person from selling, transferring, or placing for collection any debt after being notified that the debt resulted from identity theft.⁶⁸

Proposed § 1006.30(b)(1) would generally prohibit a collector from selling, transferring, or placing for collection a debt that the collector knows or should know has been paid or settled, discharged in bankruptcy, or has been the subject of an identity theft report.⁶⁹ FTC staff supports the goals of this proposal. Additionally, we would encourage the CFPB to specifically prohibit the sale, transfer, or placement of additional categories of debt more squarely associated with phantom debt collection, including, for example, debts that are counterfeit or fictitious.

⁶⁶ See *supra* note 12. In these cases, the Commission alleged that this practice was both deceptive and unfair in violation of Section 5 of the FTC Act. *Id.*

⁶⁷ See *supra* note 10. The FTC has also expressed concern about the collection of debts that have been discharged in bankruptcy. See Modernization Report, *supra* note 28, at 64-65 (“The Commission believes that a debt collector who states or implies that a consumer has an obligation to pay a debt that has been discharged in bankruptcy is making a deceptive claim in violation of Section 807 of the FDCPA, and the law should be amended to clarify that such conduct may be challenged as a violation of the FDCPA.”).

⁶⁸ See 15 U.S.C. § 1681m(f).

⁶⁹ Proposed § 1006.30(b)(2) provides for some exemptions to this prohibition. First, collectors are permitted to transfer debt to the debt’s owner. Second, proposed § 1006.30(b)(2) adopts exemptions similar to those in Section 615(f)(3) of the FCRA (which apply to debts associated with identity theft reports) more broadly to allow collectors to: transfer debts to a previous owner if transfer is authorized by contract; securitize the debt or pledge a portfolio of debt as collateral in connection with a borrowing; or transfer the debt as a result of a merger, acquisition, purchase and assumption transaction, or transfer of substantially all of the debt collector’s assets. See proposed § 1006.30(b)(2); 15 U.S.C. § 1681(m)(f)(3).

E. Decedent Debt

Commission staff supports efforts to clarify both the obligations of collectors that collect debts associated with deceased consumers and the important consumer protections that apply in this context. In 2011, the Commission issued a Statement of Policy Regarding Communications in Connection with the Collection of Decedents' Debts (hereinafter FTC Policy Statement on Decedent Debt).⁷⁰ It addresses a few important issues: First, the Commission stated that the agency would forebear from taking enforcement actions against collectors for communicating about a deceased consumer's debts with individuals permitted under Section 805(b) and (d) of the FDCPA (*i.e.*, the consumer's spouse, parent [if a minor], guardian, executor, or administrator) or any individual with the authority to pay the debts from the decedent's estate.⁷¹ Second, the Commission clarified its views on the legal responsibilities of collectors engaging in calls to obtain the location information for individuals authorized to pay these debts.⁷² Third, the Commission discussed how the FDCPA and FTC Act apply to prohibit deceptive conduct during communications between collectors and individuals with whom they can lawfully discuss a deceased consumer's debts.⁷³

⁷⁰ See 76 Fed. Reg. 44915 (July 27, 2011).

⁷¹ See *id.* at 44918-19 ("The Commission believes that this enforcement policy best ensures the protection of consumers while allowing collectors to engage in legitimate collection practices. If collectors are unable to communicate about a decedent's debts with individuals responsible for paying the estate's bills, because those individuals were not court-appointed 'executors' or 'administrators,' collectors would have an incentive to force many estates into the probate process to collect on the debts").

⁷² See *id.* at 44919-20 (stating that, on location calls, a collector "can state that the collector is seeking to identify and locate the person who has the authority to pay any outstanding bills of the decedent out of the decedent's estate, but cannot make any other references to the decedent's debts or provide any information about the specific debts at issue.")

⁷³ See *id.* at 44291-23 (cautioning collectors against making misleading claims to persons authorized to pay decedent's debts that they are personally liable for these debts).

The proposed rule, in several provisions,⁷⁴ clarifies the obligations of collectors in the decedent debt context in a variety of important ways. It largely mirrors the substance of the FTC Policy Statement on Decedent Debt regarding the individuals with whom a collector may communicate, as well as collectors' obligations in connection with location information calls.⁷⁵ Additionally, the proposed rule clarifies that a collector who knows or should know that a consumer is deceased must afford the deceased consumer's representative key rights under the FDCPA, like the right to receive a validation notice, dispute the debt, or request original creditor information.⁷⁶ Accordingly, FTC staff supports the goals of this proposal.

F. Restrictions on Times, Places, and Communications Media

1. Times & Places

Section 805(a) of the FDCPA generally prohibits debt collectors from communicating with consumers at certain times and places, including “at any unusual time or place or a time or place known or which should be known to be inconvenient to the consumer.”⁷⁷ The FTC has frequently taken law enforcement actions against collectors that violate this prohibition and

⁷⁴ See, e.g., proposed §§ 1006.2(e); 1006.6(a) & comment 6(a)(4)-1; 1006.10 & comment 10(a)-1 & 10(b)(2)-1; 1006.18; 100.34(a)(1) & comment 34(a)(1)-1; 1006.38 & comment 38-1; 1006.42 & comment 42-1.

⁷⁵ See, e.g., proposed § 1006.2(e) (defining “consumer” to include persons who are “living or deceased”); comment 6(a)(4)-1 (clarifying that the terms “executor” or “administrator” used in FDCPA § 805 and corresponding provision of proposed rule include “the personal representative” of the deceased consumer’s estate—*i.e.*, any person authorized to act on behalf of the estate); comments 10(a)-1 & 10(b)(2)-1 (clarifying collectors’ obligations when making calls to obtain location information); 84 Fed. Reg. at 23323 (discussing the application of FDCPA’s prohibition against false, deceptive, or misleading representations to misrepresentations that a personal representative is liable for the deceased consumer’s debts).

⁷⁶ See, e.g., proposed comment 34(a)(1)-1 (clarifying the circumstances and manner in which collector must provide validation notice to a person authorized to act on behalf of deceased consumer’s estate); comment 38-1 (clarifying collector’s obligations with respect to consumer disputes and requests for original creditor information).

⁷⁷ See 15 U.S.C. 1692c(a)(1) (also stating that “[i]n the absence of knowledge of circumstances to the contrary, a debt collector shall assume that the convenient time for communicating with a consumer is after 8 o’clock antemeridian and before 9 o’clock postmeridian, local time at the consumer’s location”). Congress also recognized the harm of being unable to stop collection calls in Section 805(c) of the FDCPA, where it embedded a right for consumers to cease communications from debt collectors. See 15 U.S.C. § 1692c(c).

related requirements of the FTC Act.⁷⁸ FTC staff thus supports efforts to enhance these protections.

The proposed rule would interpret Section 805(a) and other related provisions of the FDCPA in a manner that could protect consumers from potentially abusive contact practices. For example, proposed § 1006.6(b)(1) would clarify that the FDCPA's time and place restrictions apply not only to collectors' "communications," but also to their "attempts to communicate"—prohibiting, for example, collectors from making repeated unanswered calls to consumers late at night.⁷⁹ Additionally, proposed comment 6(b)(1)-1 would clarify that a consumer does not need to use special legal or technical terms to inform a collector that a time or place is inconvenient, but instead can rely on common sense statements to do so (*e.g.*, saying she "is busy" or "cannot talk" on certain days or hours of the day).⁸⁰ FTC staff supports the goals of these proposals.

⁷⁸ See *supra* note 16.

⁷⁹ See proposed § 1006.6(b)(1); see also § 1006.2(b) (defining an "attempt to communicate" as "any act to initiate a communication or other contact with any person through any medium, including by soliciting a response from such person" or providing a "limited content message"). The proposed rule would also extend the coverage of several other FDCPA protections to "attempts to communicate." See, *e.g.*, proposed § 1006.2(c) (interpreting FDCPA § 805(c) to prohibit collector attempts to communicate after consumer notifies collector in writing that he or she refuses to pay debt or wants the collector to cease further communication); § 1006.14(h) (prohibiting collectors from attempting to communicate through any media that consumers have requested not be used); § 1006.22(f) (restrictions on attempts to communicate via social media and workplace email).

⁸⁰ See proposed comment 6(b)(1)-1; 84 Fed. Reg. at 23296. Additionally, proposed § 1006.6(b)(1)(i) interprets the time restrictions in FDCPA § 805(a)(1) to mean that collectors must generally assume that it is inconvenient to communicate with a consumer before 8:00am and after 9:00pm *local time at the consumer's location*. See Proposed § 1006.6(b)(1)(i); see also proposed comment 6(b)(1)(i)-2 ("If a debt collector is unable to determine a consumer's location, then. . . the debt collector complies with § 1006.6(b)(1)(i) if the debt collector communicates or attempts to communicate with the consumer at a time that would be convenient in all of the locations at which the debt collector's information indicates the consumer might be located."). This is generally consistent with the Commission's recommended approach in its Modernization Report. See Modernization Report, *supra* note 28, at 42 (noting that a collector cannot determine permissible hours to contact a consumer based on a mobile phone number, because the consumer may not be located within the area code).

2. Communications Media and Opt-Out Requirements

Proposed § 1006.14(h)(1) generally prohibits collectors from communicating or attempting to communicate with a consumer through any medium (*e.g.*, email or text messaging) that the consumer has requested not be used. Further, proposed comment 14(h)(1)-2 would clarify that, even within a specific medium, a consumer can request that collectors stop using specific channels (*e.g.*, specific email addresses or phone numbers). FTC staff supports the goals of these proposed prohibitions.

Proposed § 1006.6(e) would require that, in any electronic communication (or communication attempt), collectors must provide a clear and conspicuous statement describing ways the consumer can opt out of receiving further messages at the address or phone number used for the communication.⁸¹ It would also prohibit the collector from requiring, as a condition to opt out, that the consumer pay any fee or provide information other than the email address or phone number subject to the opt out.

FTC staff believes these opt-out requirements could mitigate some consumer protection risks that could arise in connection with other provisions of the rule.⁸² For example, if collectors use limited content messages (*see* Section IV.G.1. of this comment) or the proposed safe harbor procedures for email and text messages (*see* Section IV.G.3. of this comment) to send unwanted

⁸¹ *See* proposed § 1006.6(e).

⁸² *See id.* Requiring an opt-out notice in electronic communications from collectors also appears to be consistent with some goals of the Controlling the Assault of Non-Solicited Pornography and Marketing (CAN-SPAM) Act, 15 U.S.C. § 7701 et seq. The CAN-SPAM Act and implementing regulations generally require commercial email messages to contain a clearly and conspicuously displayed opt-out mechanism, and they also prohibit senders from charging a fee or requiring recipients to provide any personal information beyond an email address and opt-out preferences as a condition for opting out. *See* 15 U.S.C. 7704(a)(3); 16 C.F.R. § 316.5. The Commission has filed numerous actions against marketers for CAN-SPAM Act violations, including cases against marketers for failing to provide required opt-out notices and failing to honor consumer's opt-out requests. *See, e.g., FTC v. Montano*, No. 17-2203 (M.D. Fla. filed Dec. 28, 2017).

or intrusive electronic communications to consumers, the opt-out requirement may offer consumers the ability to correct such problems. Additionally, given that the call frequency limits in proposed § 1006.14(b)(2) do not apply to electronic messages (*see* Section IV.H. of this comment),⁸³ the opt-out requirement may help consumers to curb electronic communications that they find harassing or excessive.

Accordingly, FTC staff supports giving consumers the ability to opt out of electronic collection communications. Further, consistent with our past advocacy on these issues,⁸⁴ we would encourage the CFPB to consider requiring that collectors provide consumers a direct and simple electronic mechanism to quickly exercise their opt-out rights. For example, the commentary for § 1006.6(e) notes that collectors *may* comply with this proposed provision by providing a text message notice that states, “Reply STOP to stop texts to this telephone number,” or instructions in an email message that consumers may opt out by replying with the word “stop” in the subject line.⁸⁵ FTC staff would encourage the CFPB to consider clarifications that explicitly *require* these types of simple mechanisms to opt out of future communications through a communications channel.⁸⁶ Additionally, we would encourage the CFPB to consider clarifying § 1006.6(e) to ensure that its prohibition against requiring consumers to provide any additional

⁸³ *See* proposed comment 14(b)(1)-1; 84 Fed. Reg. at 23308-09.

⁸⁴ *See, e.g.*, FTC Staff Comment to FCC, *In re Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278 (June 6, 2016), available at https://www.ftc.gov/system/files/documents/advocacy_documents/comment-staff-ftc-bureau-consumer-protection-federal-communications-commission-rules-regulations/160616robocallscomment.pdf (supporting the FCC’s proposal to require that a voice- and/or key press-activated opt-out mechanism be included in robocalls).

⁸⁵ *See* proposed comments 6(e)-1(i)-(ii).

⁸⁶ For example, the CAN-SPAM Act, 15 U.S.C. § 7704(a)(3), requires that commercial email messages include a “return electronic mail address or other Internet-based mechanism, clearly and conspicuously displayed, that . . . a recipient may use to submit, in a manner specified in the message, a reply electronic mail message or other form of Internet-based communication requesting not to receive future commercial electronic mail messages.” 15 U.S.C. § 7704(a)(3).

information beyond an email address or phone number does not inadvertently prohibit consumers from also sharing their opt-out preferences (for example, by replying “stop” to an email or text message—as envisioned in the commentary).⁸⁷

G. Restrictions on Disclosures to Third Parties

The Commission has brought numerous enforcement actions to curb the unlawful disclosure of debt information to third parties in violation of the FDCPA⁸⁸ and the FTC Act.⁸⁹ FTC staff supports efforts to protect consumers from such conduct, and to clarify collectors’ obligations while ensuring that they do not subject consumers to unfair, deceptive, or otherwise unlawful practices.

1. Limited Content Messages

Among the FTC’s broader efforts to stop the unlawful disclosure of debt information to third parties, the agency has filed actions to curb debt collectors from doing so in voicemail messages.⁹⁰ The Commission and its staff have also cautioned that both the FDCPA and FTC

⁸⁷ See proposed comments 6(e)-1(i)-(ii).

⁸⁸ Section 805(b) of the FDCPA generally prohibits collectors from revealing the existence of a debt to third parties. 15 U.S.C. § 1692c(b); see also § 1692b(2) (prohibiting collector from stating that a consumer owes a debt if communicating with third parties for certain permitted purposes). See, e.g., *FTC and State of NY vs. Campbell Capital*, No. 1:18-cv-01163 (W.D.N.Y. filed Oct. 23, 2018); *FTC and State of New York v. Hylan Asset Mgmt.*, No. 18-cv-00710 (W.D.N.Y. filed June 26, 2018); *FTC v. Global Processing Solutions*, No. 1:17-CV-4192 (N.D. Ga. filed Oct. 23, 2017); *FTC v. Hardco Holding Group LLC (Alliance Law Group)*, No. 6:17-cv-1257 (M.D. Fla. filed July 10, 2017); *U.S. v GC Servs.*, No. 17-cv-00461 (S.D. Tex. filed Feb. 14, 2017).

⁸⁹ The Commission has alleged that making unauthorized disclosures regarding debts to third parties is an unfair act or practice under Section 5 the FTC Act. See, e.g., *FTC & CFPB v. Green Tree Servicing LLC*, No. 0:15-cv-02064 (D. Minn. filed Apr. 21, 2015); *U.S. v. Consumer Portfolio Servs.*, No. 14-00819 (C.D. Cal. filed May 28, 2014).

⁹⁰ See, e.g., *U.S. v GC Servs. Ltd.*, No. 17-cv-00461 (S.D. Tex. filed Feb. 14, 2017) (alleging that, in violation of FDCPA, collectors left phone messages that illegally disclosed purported debts to third parties without consumers’ permission); *FTC v. Expert Global Solutions, Inc.*, No. 13-cv-2611 (N.D. Tex. filed July 2013) (alleging that unauthorized third-party disclosures in voicemail messages violated both FDCPA and FTC Act).

Act apply to collections communications left in voicemail messages or through other communication technologies, like text messages.⁹¹

At the same time, the Commission has recognized that relevant provisions of the FDCPA may require collectors who leave messages to identify themselves and their purpose,⁹² while also prohibiting those collectors from disclosing information about debts to third parties.⁹³ As noted in the NPRM, courts interpreting the interplay between these provisions of the FDCPA have reached conflicting results regarding the responsibilities of collectors in these circumstances.⁹⁴ In light of this uncertainty, the Commission has long taken the position that it would be useful to clarify collectors' obligations with respect to voicemail messages.⁹⁵ Commission staff thus supports efforts to offer such a clarification in the proposed rule.

The proposed rule would clarify that certain "limited content messages," as defined in § 1006.2(j), fall outside the FDCPA's definition of "communications."⁹⁶ As a result, collectors

⁹¹ See Modernization Report, *supra* note 28, at 50-51 ("the Commission emphasizes that if a debt collector reveals the existence of a debt to a third party through any method, including email and instant messaging, the collector is and should be liable for violating Section 805(b) of the FDCPA"); see also FTC, Business Blog, "Debt collectors: You may 'like' social media and texts, but are you complying with the law?" (Mar. 28, 2016), available at <https://www.ftc.gov/news-events/blogs/business-blog/2016/03/debt-collectors-you-may-social-media-texts-are-you-complying>.

⁹² See Modernization Report, *supra* note 28, at 47-48; § 806(6), 15 U.S.C. § 1692d(6) (prohibiting placing telephone calls without meaningful disclosure of identity); § 807(11), 15 U.S.C. § 1692e(11) (requiring, among other things, that collectors disclose in initial communications with consumers that they are trying to collect a debt and that any information they obtain will be used for that purpose). The Commission has filed actions against debt collectors for using text messages to communicate with consumers that failed to identify themselves as collectors in violation of FDCPA § 807(11). See *FTC v. The Primary Group*, No. 15-CV-1645 (N.D. Ga. filed May 11, 2015); *FTC v. Unified Global Group, LLC*, No. 15-cv-422-W (W.D.N.Y. filed May 11, 2015).

⁹³ See *supra* note 88.

⁹⁴ See 84 Fed. Reg. at 23290, nn.171-73 & accompanying text.

⁹⁵ See Modernization Report, *supra* note 28, at 48-49.

⁹⁶ See FDCPA § 803(2), 15 U.S.C. § 1692a(2) (defining "communication"); proposed § 1006.2(d) (defining "communication" to exclude limited content messages).

who deliver a limited content message would neither trigger the FDCPA's self-identification requirements nor violate the law's prohibition against third-party disclosures if a third party saw or heard such a message.⁹⁷ Under the proposal, a limited content message must include the consumer's name; a request that the consumer reply to the message; the name of a natural person the consumer can contact; a telephone number the consumer can use to reply; and, if delivered electronically, an opt-out disclosure.⁹⁸ Additionally, the proposal would allow collectors the option of including a salutation; the date and time of the message; a generic statement that the message relates to an account; and suggested dates and times for the consumer to reply.⁹⁹ The proposal would allow collectors to provide limited content messages in a voicemail or text message, or orally during a live call with a third party who answers the consumer's telephone.¹⁰⁰

Commission staff supports efforts to clarify collectors' responsibilities and consumers' rights with respect to voicemail and other recorded messages. We would encourage continued consideration of the risks of specific measures, including ways to minimize the likelihood that third parties would recognize limited content messages as being associated with debt collection.¹⁰¹ Similarly, we would encourage considering whether allowing limited content messages during live calls poses heightened risks for disclosure of the debt to third parties given

⁹⁷ *See id.* Additionally, proposed comment 2(j)-4 clarifies that a collector who places a telephone call and leaves only a limited-content message does not violate FDCPA § 806(6)'s prohibition on the placement of telephone calls without meaningful disclosure of the caller's identity.

⁹⁸ *See* proposed § 1006.2(j)(1); *see also* § 1006.6(e) (describing requirements for opt-out disclosure in electronic communications). The NPRM indicates that the content required in proposed § 1006.2(j)(1) "often is included in a voicemail or other message for a person in a wide variety of non-debt collection circumstances, so a third party hearing or observing the message may not infer from its content that the consumer owes a debt." 84 Fed. Reg. at 23292.

⁹⁹ *See* proposed § 1006.2(j)(2).

¹⁰⁰ *See* proposed comment 2(j)-3; 84 Fed. Reg. at 23291.

¹⁰¹ *See supra* note 98.

the interactive nature of live calls (for example, the fact that third parties may ask questions of the collector), and the possibility that collectors under the proposed rule could potentially make multiple live calls answered by the same third party to deliver the same limited content message.¹⁰²

2. Restrictions on Workplace Email and Social Media

With respect to communications to a consumer's place of employment, the FDCPA recognizes the heightened risk of harm to consumers: In addition to the Act's general prohibition against third-party disclosures,¹⁰³ Section 805(a)(3) prohibits a collector from communicating with consumers at work if the collector knows or has reason to know that the employer prohibits such communications.¹⁰⁴ The FTC has filed numerous cases against debt collectors for violating the FDCPA and FTC Act by making unlawful communications to consumers' workplaces and, relatedly, disclosing debts to third parties (like employers and co-workers).¹⁰⁵ Commission staff therefore generally supports efforts, in proposed § 1006.22(f)(3), to prohibit collectors from communicating or attempting to communicate with consumers using an email address that they know or should know is provided by the consumer's employer.¹⁰⁶

Commission staff also supports efforts, in proposed § 1006.22(f)(4), to prohibit communications (or communication attempts) using social media platforms that are viewable by

¹⁰² Compare FDCPA § 804(3), 15 U.S.C. § 1692b(3) (generally prohibiting collectors from communicating with any person more than once in order to acquire location information).

¹⁰³ See FDCPA § 805(b), 15 U.S.C. § 1692c(b).

¹⁰⁴ 15 U.S.C. § 1692e(a)(3).

¹⁰⁵ See, e.g., *FTC v. Nat'l Payment Processing*, No. 1:15-CV-3811 (N.D. Ga. filed Oct. 30, 2015); *FTC & CFPB v. Green Tree Servicing*, No. 0:15-cv-02064 (D. Minn. filed Apr. 21, 2015); *U.S. v. Reg'l Adjustment Bureau* No. 14-cv-02522 (W.D. Tenn. filed July 8, 2014); *supra* notes 88 & 89.

¹⁰⁶ See proposed § 1006.22(f)(3).

third parties.¹⁰⁷ The clear risks of harmful, unauthorized third-party disclosures and other law violations of such conduct warrant this type of prohibition.¹⁰⁸

3. Safe Harbor for Certain Email & Text Message Communications

Proposed § 1006.6(d)(3) would introduce a safe harbor from liability under FDCPA Section 805(b)'s third-party disclosure prohibition for email and text message communications that follow certain procedures identified as reasonably adapted to avoid violations of this prohibition. Under these safe harbor provisions, collectors could generally communicate with consumers using: (1) an email address or telephone number (for text messages) that the consumer recently used to contact the collector; (2) a non-work email address or phone number after the creditor or debt collector provided notice and a reasonable opportunity to opt-out; or (3) a non-work email address or phone number that the creditor or a prior collector obtained from the consumer to communicate about the debt and used recently to communicate with the consumer.¹⁰⁹

As noted above, the Commission has stated that, consistent with the original FDCPA, collectors should generally be allowed to use all modern communication technologies to contact consumers as long as those contacts do not result in unfair, deceptive, or abusive acts or

¹⁰⁷ See proposed § 1006.22(f)(4).

¹⁰⁸ See, e.g., FTC Staff Closing Letter to Charity A. Olsen (Mar. 11, 2011), available at https://www.ftc.gov/sites/default/files/documents/closing_letters/gary-d.nitzkin-p.c.and-gary-d.nitzkin/110310nitzkinletter.pdf (“Because information on a social media site may be public once the user of the site has granted access to it, communications by debt collectors on such sites raise possible concerns under the FDCPA and FTC Act, including improper disclosure of information to third parties.”); see also FTC, Business Blog, “Debt collectors: You may ‘like’ social media and texts, but are you complying with the law?” (Mar. 28, 2016), available at <https://www.ftc.gov/news-events/blogs/business-blog/2016/03/debt-collectors-you-may-social-media-texts-are-you-complying>.

¹⁰⁹ See proposed § 1006.6(d)(3)(i). Collectors utilizing these procedures would also be required to provide the opt-out notice in proposed § 1006.6(e) in their email and text messages. Further, collectors employing these procedures would be required to take additional steps to avoid using email addresses or phone numbers that the collector knows have led to unlawful third-party disclosures. See proposed § 1006(d)(3)(ii).

practices, including unauthorized third-party disclosures.¹¹⁰ Commission staff supports efforts to clarify how collectors can use modern communication methods in a manner that safeguards fundamental consumer protections. We would also encourage the CFPB to continue to develop its record on the potential consequences of this safe harbor, and to weigh whether any clarifications may mitigate potential risks to consumers. For example, two of the procedures set forth in § 1006.6(d)(3) would allow collector communications to an email address or phone number based, in part, on the creditor's, prior collector's, or consumer's "recent" use of that email address or phone number.¹¹¹ FTC staff encourages the CFPB's continued consideration on how, in connection with these procedures, to reduce the risk of collectors disclosing debt information to third parties by using email addresses or phone numbers that are outdated or otherwise no longer private.

H. Telephone Call Frequency Limits

For decades, the Commission has worked to stop debt collectors from unlawfully harassing consumers with excessive phone calls or other contacts. Among these efforts, the agency has filed numerous lawsuits against collectors who violated the FDCPA's prohibition¹¹² on calling consumers repeatedly or continuously in a manner that annoys, abuses, or harasses them.¹¹³ Unfortunately, the problem has persisted: As the NPRM notes, the FTC and CFPB

¹¹⁰ See, e.g., Modernization Report, *supra* note 28, Executive Summary at i; *id.* at 36.

¹¹¹ See proposed § 1006.6(d)(3)(i)(A) & (C); see also 84 Fed. Reg. at 23302 (requesting comment on the concept of "recent" use).

¹¹² See FDCPA § 806, 15 U.S.C. § 1692d (prohibiting conduct "the natural consequence of which is to harass, oppress, or abuse" consumers in connection with collection of debt); § 806(5), 15 U.S.C. § 1692d(5) (prohibiting "[c]ausing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, harass any person at the called number").

¹¹³ See *supra* note 17.

continue to receive a large number of consumer complaints regarding potentially excessive telephone calls to consumers.¹¹⁴

Accordingly, FTC staff believes it is important to address this problem. FTC staff supports ensuring that any protections from excessive contacts apply to calls that “may not cause a traditional ring,” including ringless voicemail messages and calls that only cause phones to vibrate or provide visual alerts.¹¹⁵ Staff also supports the application of these protections to limited content messages and location information calls to third parties.¹¹⁶

V. Conclusion

In conclusion, FTC staff supports efforts to implement and clarify provisions of the FDCPA, ensure consumer protections, and address the important issues in the debt collection marketplace we detail above. The Commission has worked for decades to protect consumers from unlawful debt collection practices. The FTC has also long advocated for changes and clarifications to the FDCPA to reflect the significant evolution of communications technologies and other practices in this marketplace since the original enactment of the FDCPA. We appreciate your consideration of the agency’s large body of work on these issues, and of staff views regarding key aspects of the proposed rule detailed above.

¹¹⁴ See 84 Fed. Reg. at 23310, n.287 & accompanying text.

¹¹⁵ See 84 Fed. Reg. at 23308; proposed comment 14(b)(1)-1; see also *FTC v. Jason Cardiff*, No. 18-cv-02104-SJO (C.D. Cal. filed Oct. 3, 2018) (alleging that telemarketing campaign contracted to use 1,500,000 ringless voicemail robocalls as part of unlawful conduct).

¹¹⁶ See proposed comment 14(b)(2)-1.