

# Collection Phone Calls, UDAAP's and the FDCPA

This Presentation will begin at

1:00pm Pacific

**Presented by Scott Holmquist President,  
Second Alliance, Inc.**

# CFPB, 1<sup>st</sup> Parties and UDAAP's

The CFPB is **addressing first-party debt collection practices** through its authority under the Consumer Financial Protection Act to prevent unlawful, deceptive and abusive acts and practices.

# CFPB, 1<sup>st</sup> Parties and UDAAP's

The CFPB's **growing reliance on its vague** Unfair, Deceptive and Abusive Acts or Practices authority continues to cause concern in the credit and collection industry as the CFPB considers proposed rules for debt collection.

Enforcement of Unfair, Deceptive and Abusive Acts or Practices in the credit and collection industry is on the rise, and the Consumer Financial Protection Bureau is increasing its focus on this broad and vague enforcement mechanism.

# CFPB, 1<sup>st</sup> Parties and UDAAP's

In fact, of the more than 40 enforcement matters that the CFPB has made public so far, half have alleged violations of the UDAAP provision of the Dodd-Frank Act. These actions resulted in restitution to consumers totaling more than \$1.7 billion, as well as civil money penalties totaling more than \$142 billion.

# CFPB, 1<sup>st</sup> Parties and UDAAP's

Since 2013, the CFPB has published two bulletins on UDAAP that provide statutory definitions, non-exhaustive examples of UDAAPs and remind entities that are not subject to the Fair Debt Collection Practices Act, such as first party collectors, that they are nevertheless subject to the CFPB's UDAAP authority.

# CFPB, 1<sup>st</sup> Parties and UDAAP's

As a result, a company must do its best to decipher how to avoid violations by examining the applicable standards for UDAAPs found in the Dodd-Frank Act, evaluating limited CFPB UDAAP guidance and analyzing the ever-growing number of enforcement actions in which UDAAP violations are the centerpiece.

# CFPB, 1<sup>st</sup> Parties and UDAAP's

This lack of clarity creates an enormous amount of angst among CFPB-regulated entities who **have no assurance that they themselves might one day be the subject of a very public and hugely expensive enforcement action** for activity that unbeknownst to them has been deemed a UDAAP by the CFPB.

# CFPB, 1<sup>st</sup> Parties and UDAAP's

Adding to this concern, penalties for a UDAAP violation can be severe, up to \$1 million per day for a knowing violation. Further, because there is also no safe harbor for UDAAP violations, collectors are left to defend themselves by pointing to what they did to try to avoid the UDAAP in the first place.



# CFPB Enforcements

## Bridgepoint Education

The CFPB today took action against for-profit college chain Bridgepoint Education, Inc. for deceiving students into taking out private student loans that cost more than advertised. The Bureau is ordering Bridgepoint to discharge all outstanding private loans the institution made to its students and to refund loan payments already made by borrowers. Loan forgiveness and refunds will total over \$23.5 million in automatic consumer relief. Bridgepoint must also pay an \$8 million civil penalty to the Bureau.

# CFPB Enforcements

## Bridgepoint Education

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# CFPB Enforcements

Discover Bank, the Student Loan Corporation, and Discover Products, Inc.

The Consumer Financial Protection Bureau (Bureau) has reviewed certain student-loan-servicing activities of Discover Bank, The Student Loan Corporation, and Discover Products, Inc. The Bureau has identified the following violations of law: (1) **unfair and deceptive acts and practices** relating to Respondent's **failure to furnish clear information regarding the student-loan interest consumers paid**, (2) **unfair acts and practices** relating to Respondent **initiating collection calls to consumers at inconvenient times**, **deceptive acts and practices** relating to Respondent **overstating the minimum amount due in student-loan billing statements**, (4) violations of the **Fair Debt Collection Practices Act**, 15 U.S.C. § 1692, et seq., in Respondent's **collection activities regarding defaulted student loans it acquired**. Under §§ 1053 and 1055 of the CFPB, 12 U.S.C. §§ 5563, 5565, the Bureau issues this Consent Order (Consent Order).

# CFPB Enforcements

Discover Bank, the Student Loan Corporation, and Discover Products, Inc.

CFPB Orders Discover Bank to Pay \$18.5 Million for Illegal Student Loan Servicing Practices

# CFPB Enforcements

## Navient - Ongoing

U.S. District Judge Robert D. Mariani, a 2011 former-President Obama appointee, denied Navient's motion to dismiss the CFPB's case against it, saying the CFPB had authority to sue without first engaging in rulemaking to declare specific practices unfair, deceptive or abusive. The district court found that "the plain language of the CFP [Consumer Financial Protection] Act does not impose a requirement on the Bureau to engage in rulemaking before bringing an enforcement action." In so ruling, the district court rejected Navient's argument that the CFPB cannot impose penalties on industry actors for alleged UDAAP [Unfair, Deceptive, or Abusive Acts or Practices] violations by engaging in rulemaking through enforcement, "or that Navient lacked fair notice of what the CFP Act proscribes."

# CFPB Enforcements

## Navient - Ongoing

In addition, the district court took issue with Navient's argument that the law does not impose an affirmative duty on it to "provide individualized financial counseling to borrowers" since it is a loan servicer and not a fiduciary. But based on Navient's previous public statements on its website to the contrary, the district court held that "Navient's active conduct created a duty to act in accordance with their own statements."

# CFPB, 1<sup>st</sup> Parties and UDAAP's

**UDAAPs are not an entirely new concept** in the collection industry. The Federal Trade Commission Act, enforced by the Federal Trade Commission for many years, includes a section prohibiting “unfair or deceptive acts or practices.” The CFPB, which is part of the Dodd-Frank Wall Street Reform and Consumer Protection Act and which created the CFPB, incorporated the FTC Act’s concept of unfair or deceptive acts and practices, and added the term “abusive” to the previously existing standards.

# CFPB, 1<sup>st</sup> Parties and UDAAP's

By design, UDAAP laws can cover a broad range of conduct. The open-ended nature of these laws means that many practices that might not be specifically addressed in other areas of the law could be prohibited if they are deemed to be “unfair, deceptive or abusive.” Conversely, the broad scope of UDAAP laws also means that conduct specifically prohibited under an existing law such as the Fair Debt Collection Practices Act may also be considered a UDAAP.



# UDAAP's

## Unfair, Deceptive, or Abusive Acts or Practices

The Act also provides CFPB with rule-making authority and, with respect to entities within its jurisdiction, enforcement authority to prevent unfair, deceptive, or abusive acts or practices in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service. In addition, CFPB has supervisory authority for detecting and assessing risks to consumers and to markets for consumer financial products and services.

# UDAAP's

## Unfair, Deceptive, or Abusive Acts or Practices

Unfair, deceptive, or abusive acts and practices (UDAAPs) can cause significant financial injury to consumers, erode consumer confidence, and undermine the financial marketplace. **Under the Dodd-Frank Act, it is unlawful for any provider of consumer financial products or services or a service provider to engage in any unfair, deceptive or abusive act or practice.**

# UDAAP's

## Unfair Acts or Practices

### AN ACT OR PRACTICE IS **UNFAIR** WHEN:

- It causes or is likely to **cause substantial injury** to consumers;
- The injury is **not reasonably avoidable** by consumers; and
- The injury is **not outweighed by countervailing benefits** to consumers or to competition.

# UDAAP's

## Unfair Acts or Practices

A “substantial injury” typically takes the form of monetary harm, such as fees or costs paid by consumers because of the unfair act or practice. However, **the injury does not have to be monetary**. Although emotional impact and other subjective types of harm will not ordinarily amount to substantial injury, **in certain circumstances emotional impacts may amount to or contribute to substantial injury**. **In addition, actual injury is not required; a significant risk of concrete harm is sufficient.**

# UDAAP's

## Unfair Acts or Practices

An injury is not reasonably avoidable by consumers when an act or practice interferes with or hinders a consumer's ability to make informed decisions or take action to avoid that injury. Injury caused by transactions that occur without a consumer's knowledge or consent is not reasonably avoidable. Injuries that can only be avoided by spending large amounts of money or other significant resources also may not be reasonably avoidable. Finally, an act or practice is not unfair if the injury it causes or is likely to cause is outweighed by its consumer or competitive benefits.

# UDAAP's

## AN ACT OR PRACTICE IS **DECEPTIVE** WHEN:

- The act or practice **misleads or is likely to mislead** the consumer;
- The **consumer's interpretation is reasonable** under the circumstances; and
- **The misleading act or practice is material.**

# UDAAP's

## AN ACT OR PRACTICE IS DECEPTIVE WHEN:

- There must be a representation, **omission**, act, or practice that misleads or is likely to mislead the consumer.
- **The representation, omission, act, or practice must be considered from the perspective of the reasonable consumer.**
-

# UDAAP's

## AN ACT OR PRACTICE IS DECEPTIVE WHEN:

To determine whether an act or practice has actually misled or is likely to mislead a consumer, the totality of the circumstances is considered. Deceptive acts or practices can take the form of a representation or omission. The Bureau also looks at implied representations, including any implications that statements about the consumer's debt can be supported. Ensuring that claims are supported before they are made will minimize the risk of omitting material information and/or making false statements that could mislead consumers.



# UDAAP's

## AN ACT OR PRACTICE IS **ABUSIVE** WHEN IT:

- Materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service; or
- Takes unreasonable advantage of:
  - A consumer's lack of understanding of the material risks, costs, or conditions of the product or service;
  - A consumer's inability to protect his or her interests in selecting or using a consumer financial product or service; or
  - A consumer's reasonable reliance on a covered person to act in his or her interests.

# UDAAP's

## **AN ACT OR PRACTICE IS ABUSIVE WHEN IT:**

It is important to note that, although abusive acts or practices may also be unfair or deceptive, each of these prohibitions are separate and distinct, and are governed by separate legal standards.

# UDAAP's

## Examples of Unfair, Deceptive and/or Abusive Acts or Practices

Depending on the facts and circumstances, the following non-exhaustive list of examples of conduct related to the collection of consumer debt could constitute UDAAPs. Accordingly, the Bureau will be watching these practices closely.

# UDAAP's

## Examples of Unfair, Deceptive and/or Abusive Acts or Practices

- Collecting or assessing a debt and/or any additional amounts in connection with a debt (including interest, fees, and charges) not expressly authorized by the agreement creating the debt or permitted by law.
- Failing to post payments timely or properly or to credit a consumer's account with payments that the consumer submitted on time and then charging late fees to that consumer.
- Taking possession of property without the legal right to do so.

# UDAAP's

## Examples of Unfair, Deceptive and/or Abusive Acts or Practices

- Revealing the consumer's debt, without the consumer's consent, to the consumer's employer and/or co-workers.
- Falsely representing the character, amount, or legal status of the debt.
- Misrepresenting that a debt collection communication is from an attorney.
- Misrepresenting that a communication is from a government source or that the source of the communication is affiliated with the government.

# UDAAP's

Through regulatory guidance and enforcement actions, **the CFPB and FTC are demonstrating that first-party debt collection practices will be held to many of the standards contained in the FDCPA. First-party debt collectors should review and update their policies** and procedures to consider conduct prohibited by the FDCPA—paying **special attention to oral and written communications** with consumers, third-party communications, representations regarding consumer reports, handling of payments, settlement offers and threats or litigation.

# UDAAP's

When drafting policies, **companies can rely on the CFPB's exam manual and UDAAPs bulletin for guidance.** Aside from UDAAP concerns, creditors should also be aware that many state debt collection practices laws specifically apply to creditors. By taking steps now, companies can protect themselves from unwanted UDAAP claims associated with first-party debt collection efforts.

# UDAAP's

Next, according to the CFPB's examination manual (page 34), all supervised entities must develop and maintain a compliance management system (CMS) that is integrated into the entity's framework for product design, delivery, and administration. Starting from the top, the CFPB expects a company's board and management to exercise oversight over the company's operations and to ensure that sufficient financial and staff resources are allocated to compliance efforts.



# UDAAP's and the FDCPA

Recent enforcement actions by the CFPB and FTC have used the regulators' UDAAP authority to prohibit certain debt collection practices used by creditors. Many of these UDAAP claims involved conduct specifically prohibited by the FDCPA.

Though first-party debt collectors may not be directly subject to the FDCPA, if a first party's debt collection practice would violate the FDCPA, such a practice may constitute a UDAAP.

# FDCPA

## § 802. Congressional findings and declarations of **purpose**

### **(a) Abusive practices**

There is abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors. Abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy.

# FDCPA

## § 804. Acquisition of location information

Any debt collector communicating with any person other than the consumer for the purpose of acquiring location information about the consumer shall --

- (1) identify himself, state that he is confirming or correcting location information concerning the consumer, and, only if expressly requested, identify his employer;
- (2) not state that such consumer owes any debt;
- (3) not communicate with any such person more than once unless requested to do so by such person or unless the debt collector reasonably believes that the earlier response of such person is erroneous or incomplete and that such person now has correct or complete location information;

# FDCPA

## § 804. Acquisition of location information

- (4) not communicate by post card;
- (5) not use any language or symbol on any envelope or in the contents of any communication effected by the mails or telegram that indicates that the debt collector is in the debt collection business or that the communication relates to the collection of a debt; and
- (6) after the debt collector knows the consumer is represented by an attorney with regard to the subject debt and has knowledge of, or can readily ascertain, such attorney's name and address, not communicate with any person other than that attorney, unless the attorney fails to respond within a reasonable period of time to communication from the debt collector.

# FDCPA

## § 805. Communication in connection with debt collection

### **(a) Communication with the consumer generally**

Without the prior consent of the consumer given directly to the debt collector or the express permission of a court of competent jurisdiction, a debt collector may not communicate with a consumer in connection with the collection of any debt --

- (1) **at any unusual time or place or a time or place known or which should be known to be inconvenient to the consumer.** In 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;

# FDCPA

## § 805. Communication in connection with debt collection

- (2) if the debt collector knows the consumer is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address, unless the attorney fails to respond within a reasonable period of time to a communication from the debt collector or unless the attorney consents to direct communication with the consumer; or
- (3) at the consumer's place of employment if the debt collector knows or has reason to know that the consumer's employer prohibits the consumer from receiving such communication.

# FDCPA

## § 805. Communication in connection with debt collection

### (b) Communication with third parties

Except as provided in section 1692b of this title, without the prior consent of the consumer given directly to the debt collector, or the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a postjudgment judicial remedy, a debt collector may not communicate, in connection with the collection of any debt, with any person other than the consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector.

# FDCPA

## § 805. Communication in connection with debt collection

### (c) Ceasing communication

If a consumer notifies a debt collector in writing that the consumer refuses to pay a debt or that the consumer wishes the debt collector to cease further communication with the consumer, the debt collector shall not communicate further with the consumer with respect to such debt, except --

- (1) to advise the consumer that the debt collector's further efforts are being terminated;



# FDCPA

## § 805. Communication in connection with debt collection

- (2) to notify the consumer that the debt collector or creditor may invoke specified remedies which are ordinarily invoked by such debt collector or creditor; or
- (3) where applicable, to notify the consumer that the debt collector or creditor intends to invoke a specified remedy.

If such notice from the consumer is made by mail, notification shall be complete upon receipt.

### (d) “Consumer” defined

For the purpose of this section, the term "consumer" includes the consumer's spouse, parent (if the consumer is a minor), guardian, executor, or administrator.

# FDCPA

## § 806. Harassment or abuse

A debt collector may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

- (1) The use or threat of use of violence or other criminal means to harm the physical person, reputation, or property of any person.
- (2) The use of obscene or profane language or language the natural consequence of which is to abuse the hearer or reader.
- (3) The publication of a list of consumers who allegedly refuse to pay debts, except to a consumer reporting agency or to persons meeting the requirements of section 1681a(f) or 1681b(3)1 of this title.

# FDCPA

## § 806. Harassment or abuse

- (4) The advertisement for sale of any debt to coerce payment of the debt.
- (5) Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number.
- (6) Except as provided in section 1692b of this title, the placement of telephone calls without meaningful disclosure of the caller's identity.

# FDCPA

## § 807. False or misleading representations

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

- (1) The false representation or implication that the debt collector is vouched for, bonded by, or affiliated with the United States or any State, including the use of any badge, uniform, or facsimile thereof.
- (2) **The false representation of --**
  - (A) **the character, amount, or legal status of any debt; or**
  - (B) any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt.

# FDCPA

## § 807. False or misleading representations

- (3) The false representation or implication that any individual is an attorney or that any communication is from an attorney.
- (4) The representation or implication that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages of any person unless such action is lawful and the debt collector or creditor intends to take such action.
- (5) The threat to take any action that cannot legally be taken or that is not intended to be taken.

# FDCPA

## § 807. False or misleading representations

- 6) The false representation or implication that a sale, referral, or other transfer of any interest in a debt shall cause the consumer to --
  - (A) lose any claim or defense to payment of the debt; or
  - (B) become subject to any practice prohibited by this subchapter.
  
- (7) The false representation or implication that the consumer committed any crime or other conduct in order to disgrace the consumer.
  
- (8) Communicating or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed.

# FDCPA

## § 807. False or misleading representations

- (9) The use or distribution of any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by any court, official, or agency of the United States or any State, or which creates a false impression as to its source, authorization, or approval.
- (10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.
- (11) The failure to disclose in the initial written communication with the consumer and, in addition, if the initial communication with the consumer is oral, in that initial oral communication, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose, and the failure to disclose in subsequent communications that the communication is from a debt collector, except that this paragraph shall not apply to a formal pleading made in connection with a legal action.

# FDCPA

## § 807. False or misleading representations

- 12) The false representation or implication that accounts have been turned over to innocent purchasers for value.
- (13) The false representation or implication that documents are legal process.
- (14) The use of any business, company, or organization name other than the true name of the debt collector's business, company, or organization.
- (15) The false representation or implication that documents are not legal process forms or do not require action by the consumer.
- (16) The false representation or implication that a debt collector operates or is employed by a consumer reporting agency as defined by section 1681a(f) of this title.



# FDCPA

## § 808. Unfair practices

A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

- (1) The collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.
- (2) The acceptance by a debt collector from any person of a check or other payment instrument postdated by more than five days unless such person is notified in writing of the debt collector's intent to deposit such check or instrument not more than ten nor less than three business days prior to such deposit.

# FDCPA

## § 808. Unfair practices

- (3) The solicitation by a debt collector of any postdated check or other postdated payment instrument for the purpose of threatening or instituting criminal prosecution.
- (4) Depositing or threatening to deposit any postdated check or other postdated payment instrument prior to the date on such check or instrument.
- (5) Causing charges to be made to any person for communications by concealment of the true purpose of the communication. Such charges include, but are not limited to, collect telephone calls and telegram fees.

# FDCPA

## § 808. Unfair practices

- (6) Taking or threatening to take any nonjudicial action to effect dispossession or disablement of property if --
  - (A) there is no present right to possession of the property claimed as collateral through an enforceable security interest;
  - (B) there is no present intention to take possession of the property; or
  - (C) the property is exempt by law from such dispossession or disablement.
  
- (7) **Communicating with a consumer regarding a debt by post card.**
  
- (8) Using any language or symbol, other than the debt collector's address, on any envelope when communicating with a consumer by use of the mails or by telegram, except that a debt collector may use his business name if such name does not indicate that he is in the debt collection business.

# FDCPA

## § 809. Validation of debts

### (a) Notice of debt; contents

Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing --

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

# FDCPA

## § 809. Validation of debts

### (b) Disputed debts

If the consumer notifies the debt collector in writing within the thirty-day period described in subsection (a) of this section that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, **the debt collector shall cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt or a copy of a judgment, or the name and address of the original creditor, and a copy of such verification or judgment, or name and address of the original creditor, is mailed to the consumer by the debt collector.** Collection activities and communications that do not otherwise violate this subchapter may continue during the 30-day period referred to in subsection (a) unless the consumer has notified the debt collector in writing that the debt, or any portion of the debt, is disputed or that the consumer requests the name and address of the original creditor. **Any collection activities and communication during the 30-day period may not overshadow or be inconsistent with the disclosure of the consumer's right to dispute the debt or request the name and address of the original creditor.**

# FDCPA

## § 809. Validation of debts

### (c) Admission of liability

The failure of a consumer to dispute the validity of a debt under this section may not be construed by any court as an admission of liability by the consumer.

### (d) Legal pleadings

A communication in the form of a formal pleading in a civil action shall not be treated as an initial communication for purposes of subsection (a).

### (e) Notice provisions

The sending or delivery of any form or notice which does not relate to the collection of a debt and is expressly required by title 26, title V of Gramm-Leach-Bliley Act [15 U.S.C. 6801 et seq.], or any provision of Federal or State law relating to notice of data security breach or privacy, or any regulation prescribed under any such provision of law, shall not be treated as an initial communication in connection with debt collection for purposes of this section.

# FDCPA

## § 810. Multiple debts

If any consumer owes multiple debts and makes any single payment to any debt collector with respect to such debts, such debt collector may not apply such payment to any debt which is disputed by the consumer and, where applicable, shall apply such payment in accordance with the consumer's directions.

# Preventing Violations

## Billing Servicer Letters

### Past Due Notice

A RECOMMENDATION MAY BE MADE FOR ACTION BY A COLLECTION AGENCY. AVOID THIS BY BRINGING YOUR ACCOUNT CURRENT. ACT NOW.



# Preventing Violations

## Billing Servicer Letters

### Demand Notice

YOU ARE HEREBY GIVEN NOTICE THAT THE ABOVE REFERENCED ACCOUNT IS PAST DUE IN THE AMOUNT OF \$2,571.50. THIS ACCOUNT MAY BE REFERRED FOR **COLLECTION OR LITIGATION** UNLESS APPROPRIATE ACTION IS TAKEN WITHIN 30 DAYS OF THIS LETTER.

# Preventing Violations

## Billing Servicer Letters

### Demand Notice

ADDITIONALLY, AT THE OPTION OF YOUR INSTITUTION/LENDER, THE ENTIRE PRINCIPAL BALANCE OF \$8,312.25 PLUS ACCRUED INTEREST, ANY APPLICABLE LATE CHARGES AND \***COLLECTION COSTS** MAY BECOME IMMEDIATELY DUE AND PAYABLE AT THE TIME OF THE REFERRAL. THIS ACTION CAN BE AVOIDED BY IMMEDIATELY PAYING THE FOLLOWING AMOUNTS DUE:

\*non-federal loan

# Preventing Violations

## Institutional Letters

### Notice One

Dear \_\_\_\_\_

Federal Regulations governing your loan account allows \_\_\_\_\_ College -  
NdsI/Perkins to refer accounts to collection agencies if they become 90 days or  
more past due.

Our records indicate that the above referenced loan has reached at least 60 days  
past due, and you have not taken any action to bring your account current.  
Therefore, if a payment of \$510.74 is not received, or if arrangements are not  
made with us within the next 15 days, your account may be referred for collection.  
This could result in the total unpaid balance being due immediately, as agreed to  
when you signed your promissory note.

Please contact me immediately at \_\_\_\_\_ to discuss this debt.

# Preventing Violations

## Institutional Letters

### Notice Two

Previous attempts to resolve your loan delinquency have failed. Please consider this letter official notice that your account may be referred to your lending institution's designated outside collection agency in 30 days.

Accelerating your account means that the ENTIRE loan balance will be due and payable immediately. Accelerated loans lose all options for deferment or other entitlement benefits.

The collection agency is authorized to litigate accounts on behalf of College - NdsI/Perkins and all expenses, including attorney fees and court costs, may also be charged to you.

Avoid this drastic action! Send your payment of \$510.74 today, or contact us at to make payment arrangements.

If you always send this letter then Notice 1 is always not true

# Preventing Violations

## Possible Violations

Telling a person that a Federal Perkins loan is non-dischargeable through bankruptcy

Your billing servicers letter tells your borrower their account is going to go to a collection agency or faces litigation and you withhold that action regularly or do not litigate regularly

# Preventing Violations

## Possible Violations

Your billing service final demand Perkins letter states their loan is in default but you follow with a letter stating that their loan is delinquent

You tell your borrower in haste “I may just have to send your account to collection agency” to encourage them to pay

# Preventing Violations

## Possible Violations

You call of a third-party and give a misleading reason as to the purpose of your call such as "oh it's nothing I just need to speak with him"

If calling a consumers parent and the parent divulges to you sensitive information about the account and you intimate to that parent that the borrower is not doing themselves any favors by not calling and that you can help them

# Preventing Violations

## Possible Violations

You tell a consumer that an account referred to a collection agency could damage their credit

Do you speak with your borrower about their account at your window?



Conclusion

Discussion / Questions