



LEGAL UPDATE

Legal Update: Providing a Guiding Light

This presentation will begin at 11:00am Pacific Time

Presented by:

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June D. Coleman

June D. Coleman, Managing Attorney for the California Office of Messer Strickler, Ltd., is a defense litigator with more than 23 years of experience. Her areas of emphasis include defense of consumer rights actions involving the FDCPA, TCPA, and FCRA. She has a deep understanding of permissible debt collection conduct and how best to defend claims and minimize liability in the collection industry. She also defends collection attorneys before the California State Bar. Since 2008, Ms. Coleman has been voted by her peers as one of the top lawyers practicing in Northern California and Sacramento. Ms. Coleman has also been recognized by Accounts Recovery as one of the leading attorneys in the collections field for her defense work. Ms. Coleman is a Martindale Hubbell AV Preeminent rated attorney.

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AGENDA

- Licensing
- Student Loan Collections Legislation
- Reg F
- Identity Theft



Licensing





States Are Passing Legislation for Licensing

- Fees
- Fingerprinting?
- Letters
- Policies and Procedures

A photograph of a lecture hall with several students sitting in green seats. The students are engaged in various activities: reading papers, listening to music, and talking. The text 'STUDENT LOAN COLLECTIONS' is overlaid in large white letters across the center of the image.

STUDENT LOAN COLLECTIONS

LEGISLATIVE EFFORTS

- Withholding transcripts
- Provide certain information
- Document settlement in writing or in court
- Provided additional information after accepting “payment in full”



New California Legislation

Provided in 1st communication after default and 12 months of default:

- 4) The amount due at default.
- 5) An itemization of interest, if any, that has accrued on the private education loan.
- 6) An itemization of fees, if any, claimed to be owed on the private education loan and whether those fees were imposed by the original creditor or any subsequent owners of the private education loan.
- 7) The date that the private education loan was incurred.
- 8) The date of the first partial payment or the first day that a payment was missed, whichever is earlier, that precipitated default.
- 9) The date and amount of the last payment, if applicable.
- 10) Any payments paid to the creditor by a guarantor or surety.

New California Legislation

- 10) The names of all persons or entities that owned the private education loan after the time of default, if applicable, and the date of each sale or transfer.
- 11) A copy of the self-certification form and any other “needs analysis” conducted by the original creditor prior to origination of the loan.
- 12) Documentation establishing an unbroken chain of ownership, beginning with the original creditor to the first subsequent creditor and each additional creditor. Each writing evidencing transfer of ownership or the right to collect shall contain the original creditor’s account number (redacted to show only the last four digits) of the private education loan, the date of purchase and assignment, and the borrower’s correct name associated with the original account number.

New California Legislation

- 14) A copy of all pages of the contract, application, or other documents evidencing the debtor's liability for the private education loan, stating all terms and conditions applicable to the private education loan.
- 15) A list of all collection attempts made in the last 12 months, including date and time of all calls and written communications.
- 16) A statement as to whether the creditor is willing to renegotiate the terms of the private student loan.
- 17) Copies of all written settlement communications made in the last 12 months, or, in the alternative, a statement that the creditor has not attempted to settle or otherwise renegotiate the debt prior to suit.
- 18) A statement as to whether the private education loan is eligible for an income-based repayment plan.

Reg F



Reg F Highlights

Initial Validation Notice

Email and Text Messaging

Credit Reporting Wait Time – “Deb Parking”

Time Barred Debts

Call Frequency Limitations

Limited Context Messages

Contacting at Inconvenient Times or Channels

Disputes

Initial Validation Notice

North South Group
P.O. Box 123456
Pasadena, CA 91111-2222
(800) 123-4567 from 8am to 8pm EST, Monday to Saturday,
www.example.com

To: Person A
2323 Park Street
Apartment 342
Bethesda, MD 20815
Reference: 584-345

North South Group is a debt collector. We are trying to collect a debt that you owe to Bank of Rockville. We will use any information you give us to help collect the debt.

Our information shows:

You had a Main Street Department Store credit card from Bank of Rockville with account number 123-456-789.

As of January 2, 2017, you owed:	\$ 2,234.56
Between January 2, 2017 and today:	
You were charged this amount in interest:	+ \$ 75.00
You were charged this amount in fees:	+ \$ 25.00
You paid or were credited this amount toward the debt:	- \$ 50.00
Total amount of the debt now:	\$ 2,284.56

How can you dispute the debt?

- Call or write to us by August 28, 2020, to dispute all or part of the debt. If you do not, we will assume that our information is correct.
- If you write to us by August 28, 2020, we must stop collection on any amount you dispute until we send you information that shows you owe the debt. You may use the form below or write to us without the form. You may also include supporting documents. We accept disputes electronically at www.example.com/dispute.

What else can you do?

- Write to ask for the name and address of the original creditor, if different from the current creditor. If you write by August 28, 2020, we must stop collection until we send you that information. You may use the form below or write to us without the form. We accept such requests electronically at www.example.com/request.
- Go to www.cfpb.gov/debt-collection to learn more about your rights under federal law. For instance, you have the right to stop or limit how we contact you.
- Contact us about your payment options.
- ~~Énégase en contacto con nosotros para solicitar una copia de este formulario en espaol.~~

Notice: See reverse side for important information.

✂
Mail this form to:
North South Group
P.O. Box 123456
Pasadena, CA 91111-2222

Person A
2323 Park Street
Apartment 342
Bethesda, MD 20815

How do you want to respond?

Check all that apply:

- I want to dispute the debt because I think:
- This is not my debt.
 - The amount is wrong.
 - Other (please describe on reverse or attach additional information).
- I want you to send me the name and address of the original creditor.
- I enclosed this amount: \$

Make your check payable to *North South Group*. Include the reference number 584-345.

- ~~Quiero este formulario en espaol.~~

Itemization Date and Itemization of Debt

- Itemization date can be one of 5 dates:
 - Last statement date
 - Charge-off date
 - Last payment date
 - Transaction date
 - Judgment Date
- Itemization of current amount of debt
 - Must reflect interest, fees, payments and credits since itemization date
 - Fields must be included even if nothing assessed for the items
 - If another applicable law requires itemization, collector can ze under that law provided it is “substantially similar”

Optional Disclosures

- Collector telephone contact info (Phone number & available times)
- Reference code (Ex: reference number)
- Debt Collector Website and/or email address
- “Póngase en contacto con nosotros para solicitar una copia de este formulario en español.”
- Either or both of the following (or substantially similar phrases):
 - “Contact us about your payment options.”
 - “I enclosed this amount” + Payment instructions + Prompt – placed below Consumer Response Info Section



Email and Text Messaging

- Detailed email consent requirements relating to establishing a safe harbor for a third-party disclosure.
 - Direct Consent
 - Pass-through creditor consent
 - Pass-through immediately prior debt collector consent
- Emails to work email address
- Text message consent requirements
- Opt-Out



Credit Reporting Wait Time

- Prohibits credit reporting prior to speaking with or sending letter to consumer
- Reasonable “wait time” required after letter sent
- Intended to prevent “debt parking”
- Returned mail can further delay credit reporting if received within 14 day wait time
- Verbal communication “about the debt”





Time-Barred Debts

- Prohibits threatening or bringing legal action
- Allows time-barred debt disclosures on validation notices
- Recommends time-barred debt disclosures even where not required by state law

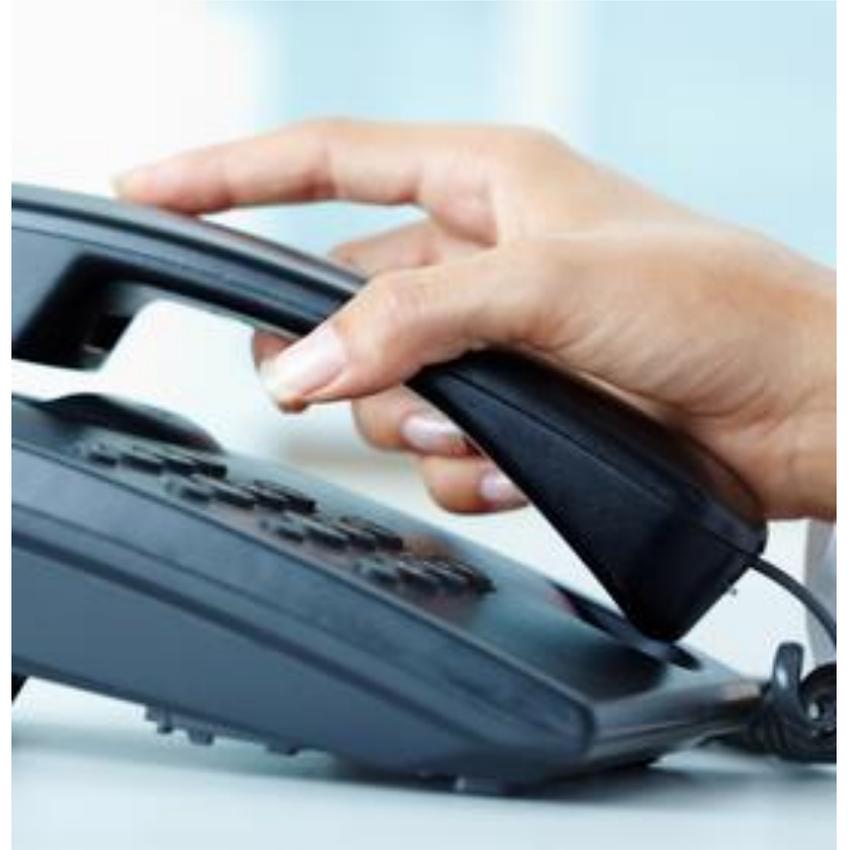
Call Frequency Limitations

- 7 call attempts within 7 days maximum
- Pause calls for 7 days after speaking with the consumer about the debt
- Unless direct consent
- What counts toward frequency?



Limited Content Messages

- Applies only to voicemails
- Do not count as communications but DO count toward call frequency
- Specific information required
 - Business Name (can't indicate debt collector)
 - Request for consumer to reply to the message
 - Name of one or more natural person to contact **and**
 - Telephone number or numbers
- No other content



Consumer Contact Times



- Must contact at convenient times as indicated by consumer
- Time must be based on borrower's location/time zone
- Need to capture preferred/convenient time information and schedule contact accordingly
- Area code vs actual address conflicts

Disputes – Written and Duplicative

- Options for responding to duplicative disputes
 - Provide verification again or
 - Provide statement of reasons why dispute is duplicative + refer consumer to prior dispute response + provide date of prior response
- Must respond if subsequent dispute contains “new and material information to support the dispute”
- Response may be sent via mail or electronically



Identity Theft



Did someone say “identity theft”?

- “I don’t owe that debt.”
- “Are you sure you have the right person?”
- “I wasn’t in the state (country) when this bill was opened.”
- “My Dad has never lived at the address you list in the complaint.”
- “I am going to file a lawsuit against you for misrepresentation and fraud.”
- “I’ve never received any bills on this matter.”
- “I don’t recognize the creditor.”
- “That’s not my SSN.”
- “It’s Not Mine.”
- “This is wrong.”
- “I don’t remember this bill.”
- “I didn’t make those charges.”



What Do I Do After Hearing “Identity Theft”?

- No express requirements regarding “identity theft” under the FDCPA.
- Cease collection
- Verify the debt
 - Verification of debt may vary depending on information you receive about dispute/identity theft claim
- Provide written confirmation of verification
- Credit reporting – must conduct reasonable investigation

Identity Theft Investigation

- Plausibility?
- Payments? Identity thieves don't make payments, probably. Can you get copies of payments and subpoena bank records?
- Check to make sure police report is filed.
- Has identity theft been reported to FTC? Do you have an identity theft affidavit?
- If claim is student was not here, investigate rental applications? Check passports for location information.
- Is there evidence of notice of debt and delay in claiming identity theft?
- Compare addresses where you sent letters.
- Review notes of conversations.

Presented by:
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Q & A
You have
Questions
We have
Answers

