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Understanding upcoming changes to the Fair Debt Collection Practices Act





Note: The intent of this paper is to familiarize its readers with the U.S. federal government's proposed changes to the Fair Debt Collection Practices Act. It is not legal guidance, nor should it take the place of legal guidance. The final rule will likely be different, and, as always, consult with your own legal and compliance team for their interpretation of the regulations in line with your organization's risks.

Many banks, credit card issuers and other first-party creditors find that keeping up with the regulatory twists and turns associated with debt collection is one of the most daunting and persistent challenges they face.

Now the regulatory landscape is about to change again. In May 2019, the Consumer Financial Protection Bureau (CFPB) issued a Notice of Proposed Rule-Making (NPRM). The notice seeks public comments regarding the bureau's proposal to amend the federal Fair Debt Collection Practices Act (FDCPA) and, in particular, rules governing the activities of debt collectors.

If this is not already on your organization's radar, it is time to consider its ramifications. Comments in response to the NPRM were due to the CFPB by September 18, 2019. The CFPB will consider all comments, and issue a final rule possibly in the first or second quarter 2020. The final rule will likely go into effect approximately one year later, possibly in the first or second quarter of 2021, which is fast approaching.

The proposed rule changes largely re-affirm sections of the current FDCPA and update it with clarifications on "modern" communications methods such as email and texting. The good news for CGI clients is that the latest CGI Collections360 release (July 2018) has the tools to help you comply with these proposed mandates:

- CGI already has made the product investments needed to keep its clients ahead of the curve with solutions like CGI Collections360 and CACS version 9.3.
- CGI Comply Consulting will help clients understand the CFPB changes and aid their compliance with the rule.
- For CGI clients using these industry-leading debt management solutions, implementing strategy changes in a compliant manner will become easier.

Let's consider briefly the most significant changes in the CFPB's proposed rule and how CGI has made the necessary adjustments to aid in regulatory compliance.



May 7, 2019: CFPB issues a Notice of Proposed Rule-Making (NPRM) seeking public comments regarding proposal to amend the federal Fair Debt Collection Practices Act (FDCPA) and, in particular, rules governing the activities of debt collectors.

September 18, 2019: Comments in response to NPRM due to CFPB

Q1/Q2 2020: Expected final rule



Definitions

First, there is the matter of definitions. Whom do the changes cover, and what can an organization convey as part of a collections contact with a customer without incurring third-party disclosure liability?

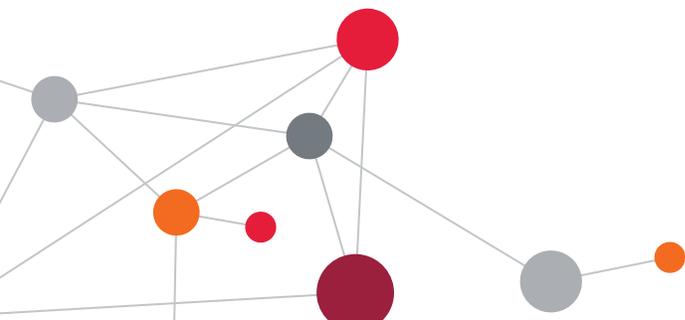
As noted earlier, the proposed rules apply to “debt collectors” —not debt collection agencies per se. Many first-party creditors who collect their own debts typically choose to comply with the FDCPA as a matter of best practice, and they will likely continue to do so going forward. The need for banks and other debt owners to meet FDCPA requirements is underscored by the fact that state laws are beginning to include “creditors” in their definitions of “debt collectors,” while portions of the FDCPA are based on the Dodd-Frank Act’s Unfair Deceptive and Abusive Practices (UDAAPs) provisions—provisions that could apply to first-party creditors.



Limited content message

In an increasingly digital world, an unintended third party collections disclosure is an easy mistake to make. Today, to avoid such disclosures, collectors making telephone calls to consumers may prefer to hang up rather than leave a callback message, which may be heard by a third party. As a result, the telephone process can be highly inefficient and error-prone. The proposed rule addresses the risk of wrongful disclosures by creating a communication attempt category called a Limited Content Message. The Limited Content Message applies to voicemail, email and text messages.

To avoid consideration as a communication (Right Party Contact), a Limited Content Message must (and with limited exceptions) only contain the following information: the consumer’s name, a request for a reply, name of person(s) to reply to, and a telephone number to call. At the sender’s option, the Limited Content Message also may include a salutation, the date and time of the message, a generic statement that “this relates to an account,” and suggested callback dates and times.





Multi-channel communications

Several of the changes in the proposed rule relate to the use of multi-channel communications in debt collection. Multi-channel communications include wireless phone calls, text messaging, website interaction (with or without chat), and email (work or personal addresses). The proposed rule stipulates that all collection communication attempts, regardless of channel used, are subject to the FDCPA's inconvenient time and place prohibitions. Inconvenient times are based on the time the text or the email is sent, or the phone call is attempted, and based on conservative time zones (comparing zip codes and phone area code numbers to identify a conservative time zone).

Other multi-channel communication restrictions include:

- Contact on a channel (such as text or email) specifically prohibited by the consumer
- Outreach to an email address where the debt collector knows or should know that said address has been provided by the consumer's employer
- Contact by social media platform without consumer consent

The proposed rule allows consumers to use multi-channel communications to send cease and desist letters to collectors. It also allows collectors to send required disclosures electronically to consumers, if the disclosures meet the following requirements:

- Are "reasonably expected to provide actual notice"
- Can be saved and accessed for subsequent viewing
- Have the appropriate consumer consent

Consumer disclosure consent must still comply with either the E-SIGN Act or a set of CFPB alternative procedures. The CFPB alternative procedures entail specific steps for providing disclosures, either by a secure website or within the body of an email message, as well as details for allowing the consumer to opt out of receiving disclosures in this manner. Debt collectors must include opt-out mechanisms in all digital communications with the consumer, as well as promptly handle consumer requests to opt out of electronic contacts.

The proposed rule also would provide certain protections to debt collectors attempting to communicate debt information to consumers electronically. For instance, the rule would protect debt collectors in making unintentional disclosures by email or text to unauthorized third parties as long as they make the communications with consumer consent and the communications include an opt-out mechanism.



In addition, the proposed rule recognizes that consent for electronic contact exists if the consumer contacts the debt collector by either text message or email. Consent also exists if a debt collector notifies the consumer within 30 days that a certain (non-work) email or text message number may be used, provides opt-out information, and the opt-out deadline expires.

Communications limits

In addition to the inconvenient time and place contact restrictions noted above, the proposed rule (under the CFPB's UDAAP authority) includes additional limits for collections phone calls. It would prevent debt collectors from attempting to call a consumer about a specific debt more than seven times within a seven-day period. If the debt collector is successful in reaching the debtor, it would then be prohibited from attempting to have a telephone conversation with that debtor about the same debt for a period of seven consecutive days. In addition, the proposed rule would limit to one the number of contacts a debt collector can make to a person (e.g., mother, brother, friend) in attempting to locate a debtor.

Importantly, the proposed rule places no limitations on the number of text messages or emails a debt collector may send. This apparent discrepancy in the treatment of telephone calling versus text and email messaging may not survive the final rule.





Validation notices

The proposed rule largely reflects validation notice requirements that already exist within the Small Business Regulatory Enforcement Fairness Act (SBREFA), although the proposed rule's provisions may change prior to finalization.

The FDPCA requires that debt collectors send a written debt validation letter to debtors within five days of initial communication. The proposed rule clarifies the information the debt collector must provide, as well as the consumer's rights regarding the debt.

Certain information would be required in the notice, including the account number and an itemization date for the debt. The itemization date could include last statement date, charge-off date, last payment date or transaction date. The proposed rule would require the debt collector to provide consumer protection information, including rights in disputing a debt and a response form to take certain actions. The proposed rule also clarifies the steps debt collectors can take to provide validation notices and other disclosures electronically.

CGI's debt collection solutions

CGI Collections360, powered by CACS, is an end-to-end, managed services solution that integrates the components of a high-performance default management operation to reduce costs, net bad debt and risk. CGI Comply is a comprehensive consulting service that works in conjunction with CGI Collections360 and related solutions to help clients manage and significantly reduce their compliance risk. Ongoing CGI investments in collections software and services mean clients have access to proven capabilities and compliance tools to help with the constantly changing constellation of state and federal government rules and regulations.

The latest release of CACS has many tools to help with FDPCA changes, including:

- Cell phone and email consent and convenient and inconvenient time tracking
- Compliance tracking controls
- Conservative time zone calculations (as outlined in the proposed rule)
- Contact attempt tracking covering all media channels to help limit compliance exposure
- Expanded tracking of all consumer communication channel preferences and permanent change history

Consumer contact channel preferences are paramount to collections success, and the proposed rule requires a "clear and conspicuous" opt-out statement within electronic communications. CACS features unsurpassed capabilities for the capture and retrieval of consumer contact preferences, including options for auto dialer consent and/or text message consent and email consent. This information also can be included in a file for sharing with systems and third parties, such as collection agencies and law firms.





A complete history and permanent audit trail to ensure strict regulatory compliance is essential. CACS provides this for all collection activities, significantly expanding contact and compliance tracking. Compliance tracker rules can be set to count contact attempts at the medium type, phone number, address and individual or account level.

As noted earlier, the proposed rule would impose different limits for contacts with consumers versus contacts with those who may be able to locate the consumer. As a result, keeping track of the type of outreach attempt will be another difficult compliance challenge. CACS allows clients to distinguish between contacts and, as a result, stay within specified limits.

Generating validation notices that are accurate, timely and efficient

CACS takes the management challenge out of generating accurate, timely and efficient validation notices, using business intelligence tools and a regulation supported model validation format for smooth integration with letter shops, as well as document image display within account files.



Final thoughts: An ounce of preparation...

Creditors need to think carefully about how rule changes to the FDCPA will affect their collections operations. For instance, new limits on calling may diminish the opportunity of creditors to intercede early in the repayment process and ultimately result in more aging loan delinquencies and defaults. The limits on telephone calling may result in greater use of text and email messaging in collections contacts, increasing the need for contact centers with these types of digital outreach competencies. At the same time, the safe harbor provisions of the proposed rule, used properly, may substantially mitigate regulatory collection risks, fines and reputational damage.

While the NPRM does not specifically address the definitional distinction of “creditors” versus “collectors,” state laws and UDAAP provisions are increasingly making this a distinction without a difference. Savvy banks and other companies involved in consumer credit will do well to follow the NPRM process closely to understand thoroughly the implications of any changes to the law and to assure that their collection practices rise to FDCPA mandates.



Why CGI

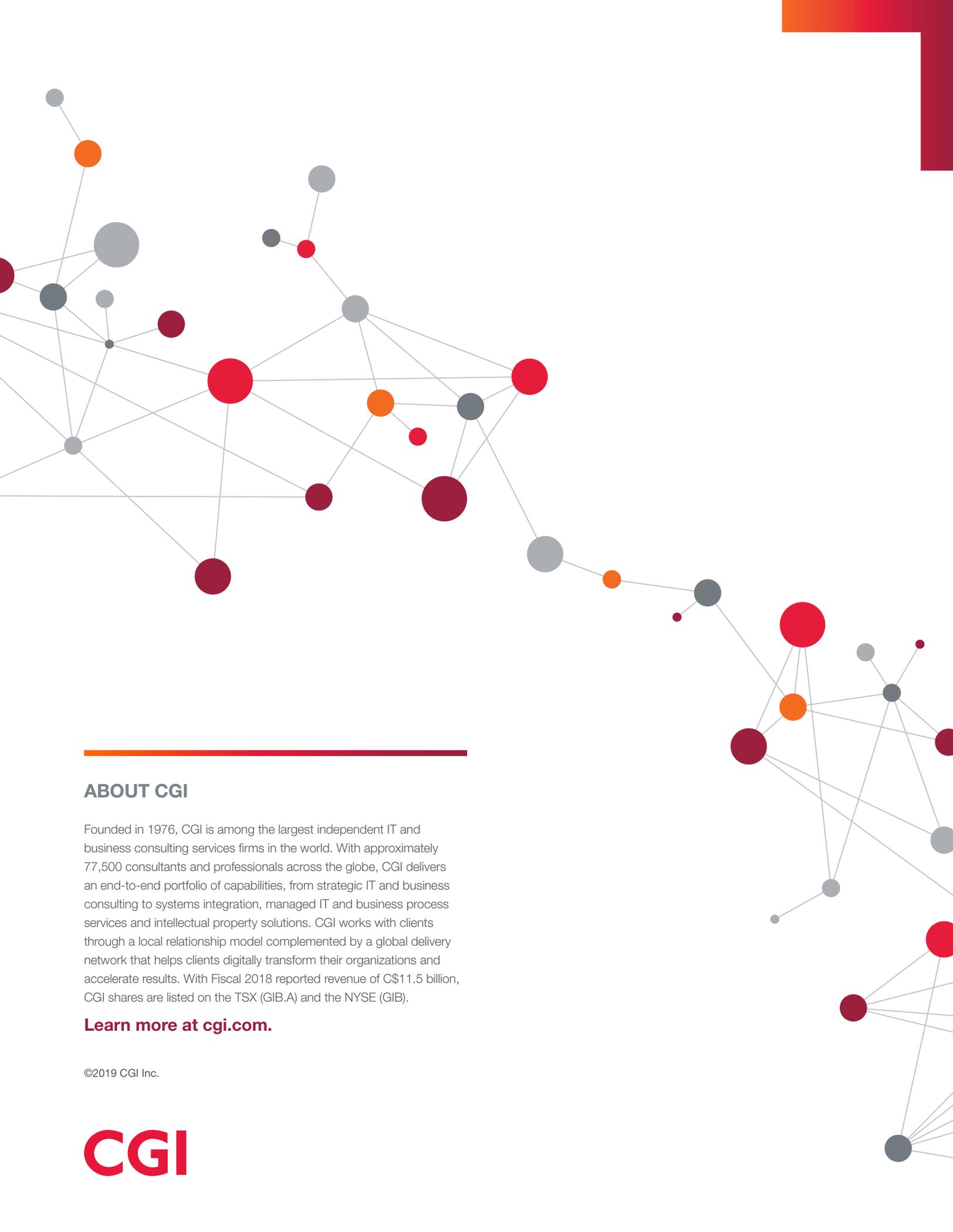
CGI offers leading organizations the strategic vision, seasoned experts and flexible solutions needed to transform today's accounts into tomorrow's loyal customers. In addition to consulting and systems integration services, CGI Collections360, an end-to-end default management solution, offers the following advantages:

- Combines the leading case management technology of CACS with workflow treatment capabilities, Strata Enterprise for decision support, and best practices to create a strategic view of the customer
- Supports fully functional and cost-efficient collection interactions, regardless of channel
- Includes capabilities for in-depth business rule design and experimentation, customer-level dashboards, scoring, segmentation, testing and decision support
- Provides customer level information to deliver effective treatment strategies

CGI's world-class credit management solutions have been implemented more than 350 times across leading financial services, telecom, utility and government organizations. When it comes to truly customer-centric default management, our proven approach combines the right people, processes and technology to deliver both short-term and long-term results.

Visit www.cgi.com/collections.





ABOUT CGI

Founded in 1976, CGI is among the largest independent IT and business consulting services firms in the world. With approximately 77,500 consultants and professionals across the globe, CGI delivers an end-to-end portfolio of capabilities, from strategic IT and business consulting to systems integration, managed IT and business process services and intellectual property solutions. CGI works with clients through a local relationship model complemented by a global delivery network that helps clients digitally transform their organizations and accelerate results. With Fiscal 2018 reported revenue of C\$11.5 billion, CGI shares are listed on the TSX (GIB.A) and the NYSE (GIB).

Learn more at [cgi.com](https://www.cgi.com).

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