

WHITE PAPER

Collections Regulatory Minefield

Four Steps to Safety

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Executive Summary

The collection industry is operating in a minefield – a regulatory minefield. It is a landscape of new and ever-changing regulations coming from every direction.

Whether these regulations are well-conceived or knee-jerk, effective or impotent, palliative or punitive, needed or not, they are a powerful force that collection executives must handle with exquisite competence.

Thanks to the credit crisis, the collection industry is more exposed to regulatory volatility. Many of the new regulations target technology-driven interactions at a time when the collection industry relies heavily on technology.

The High Cost of Non-Compliance

Today as regulators step up their activity, all collectors are impacted by regulations written with the worst offenders in mind. All are at risk of stepping over the line, and the cost can be high. According to *Collections and Credit Risk*, just the first quarter of 2011 saw more than 2,200 lawsuits filed against collectors. *InsideARM* reports that in 2010, 10,914 lawsuits seeking relief under the Fair Debt Collection Practices Act (“FDCPA”) were filed by or on behalf of consumers, an increase of almost 20% over 2009. FDCPA lawsuits have increased almost 200% over the past five years.

Whether the suits have merit or are frivolous, they are costly to defend and settlements don’t come cheap. The Telephone Consumer Protection Act (“TCPA”) restricts the use of automatic dialing systems, artificial or prerecorded voice messages, SMS text messages received by cell phones and the use of fax machines. Violations of the TCPA can run fines of \$500 per errant call. Recent settlements for federal law violations have run to the millions of dollars, and the economic climate does not appear to favor collectors when they are taken to court.

Risking Reputation

Settlement costs and fines may simply be a cost of business for debt buyers, but for financial institutions bent on building trusted relationships with customers whose primary business involves selling more products to these customers, lawsuits are a frightening prospect. Their reputational risk far exceeds the risk of fines. Witness their alacrity in addressing the robo-signing scandal, security breaches and other matters that could diminish their reputation.

Regardless of how the secondary debt collectors view reputational risk, there is not a bank in the country that would willingly risk an adverse headline about unfair collection practices in exchange for an uptick in dollars collected.

However with the endless stream of new laws, changing regulations and more motivated attorney generals, they are hard-pressed to safeguard their high-volume collection operations from inadvertent non-compliance. A quick look at the regulatory complexity demonstrates the challenge.

Today's Regulatory Rundown

The federal FDCPA is the overarching set of rules that prohibit certain types of conduct when attempting to collect debts, and also requires certain conduct protective of debtors. It has been in place long enough that its requirements are largely known and integrated into the technology and processes of most financial institutions' collection operations.

Increasingly states are taking the lead in writing and enforcing their own laws, often creating differences that collection departments must manage assiduously or risk serious penalties.

- In Massachusetts for example, a proposed new law would provide only a five-day timeframe to provide validation documents, where most states allow for 30 days for documentation in civil proceedings.
- Massachusetts law would also accommodate new communication technologies that did not exist when the FCDPA was first written. It would for example, allow debt collectors to contact debtors via cell phone or text message if they received the contact information from the debtor and if the debtor is not charged for the text.
- But an attorney who is also president of the Massachusetts Creditors' Bar Association said, "I wouldn't text a consumer even if the consumer gave me permission to do so, because it's unclear under federal law if it's permissible." (*insideARM, March 18, 2011*)
- Oregon is an example of a state law that is more restrictive in some respects than FCDPA, allowing collectors to call the debtor's place of employment only if "good faith" efforts have failed to reach the debtor at home, and then only allowing calls to the place of employment once week and not at all if the debtor asks not to be called there.
- Even cities are issuing their own regulations, making the minefield harder to navigate. New York City for example, permits collectors to call the same number only twice a week, less frequently than federal law allows.
- A judge in Florida ruled recently in favor of a debtor, forbidding a collector from using Facebook and other social media to contact them or their friends and family.
- Arizona is considering legislation that would require lenders that did not originate a loan to produce the full chain of title for all prior beneficiaries or risk the foreclosure sale being voided and award of attorney fees and damages. Lawmakers in other states including New York, Oregon and Virginia have proposed legislation similar to the Arizona bill.
- Collectors in New Mexico must inform borrowers if the loan they are inquiring about has passed the statute of limitations (four years for most credit-card debt in that state), and the borrowers cannot be taken to court.
- Restrictions on when collectors can call can be complicated to implement. Is a debtor's time zone based on their address or their area code? Cell phone portability has made this a much larger issue. Sometimes different state laws might apply if the zip code is in one state and the area code in another.

- The Federal Communications Commission's ("FCC") proposed restrictions on calling cell phones are another source of concern. Collectors might be forbidden to use auto dialers to call cell phones unless the debtor has given prior written consent for collection calls at that number.
- Most recently, ACA International, the association of professional businesses and individuals involved in the credit and collection industry, announced its recommendations for modernizing America's collection system. Its recommendations include: modernizing FDCPA rules about using cell phone, email and text; clarifying FDCPA rules about leaving messages for debtors; validating and investigating disputes; providing a model validation notice; and mandating that creditors maintain accurate account information for seven years.

Still, more change is definitely in store as those recommendations are evaluated and acted upon. In addition, the recently formed Consumer Financial Protection Bureau ("CFPB") is actively seeking state attorney generals to work with the CFPB on updating federal debt collection rules, a process likely to yield iterative change from multiple sources.

Four Steps to Safety

So how can collection executives ready their operations to comply with these myriad and complicated rules?

1. **Approach compliance holistically.** Trying to solve for each new regulatory wrinkle in each state and all continuing permutations would take an army of compliance officers and software engineers, and their work would never end. If your technology infrastructure is designed to accommodate change, then any new regulation is no more onerous or intimidating than a change in strategy or policy. In today's regulatory climate, you don't want to find yourself with a fragmented solution, where every regulatory change requires manual intervention with uncertain results and possible exposure.
2. **Take a proactive stance.** Business may be especially volatile in the regulatory world today, but the prospect of change – growth, innovation, world events, economic cycles – has always been a fact of business. The key is to make sure you are never forced to react spontaneously but are ready for whatever change ensues.

Long before regulations began requiring collectors to manage interactions at the level of the cell phone number, ALI Solutions designed OnQ™ and CallTech™ to set call limits at the customer, account and phone levels. It can identify which records cannot be called after a certain hour, which phone numbers can only be called once a week, which calls can be eliminated because they are unlikely to be answered or have the ability to pay. Every call that doesn't have to be made is one less potential lawsuit.

3. **Enable real-time decisioning.** The high-volume, fast-pace of collections is not designed to tolerate down-time and idle agents. Inevitably, a need for change will occur during the calling day, and it won't wait for a scheduled implementation window.

Cell phone restrictions are a good example. ALI's OnQ solution enables collectors to dynamically manage the queuing of campaigns. As calls are launched, OnQ can determine if a number to be called is a cell phone or not and then direct the call to an appropriate campaign. It can move cell phone calls to preview mode and then let the agent dial it.

Collectors can react not only to the different rules out there but also to different interpretations of the rules and do so without taking down the campaign and leaving agents idle.

4. **Capture new and expanded customer data.** One clear trend in the flood of regulatory change is the expectation that collectors must be prepared to handle individual debtors differently for various reasons – where they live, where they work, where they assumed the debt, whether they gave consent to call their cell phone, how the cell phone number was obtained, how they responded to previous calls and so on. The list will likely get longer.

Collection operations that can smoothly access and quickly append customer data to their records will be in a superior position to comply readily, no matter what comes down the regulatory pike. Those that can access only limited information or out-of-date information will find themselves at risk of violating a statute or else reacting in overcautious ways that lower productivity and diminish results.

The collection regulatory environment will remain volatile for the foreseeable future. If you have built your collection infrastructure to accommodate change, regulatory or otherwise, when it happens and wherever it comes from you can adapt with a minimum expense, disruption and IT intervention.

About ALI Solutions

A leading provider of contact center solutions and the leading brand providing best-in-class analytics applications to the collections market. ALI's solutions empower business users to maximize agent productivity and optimize customer contacts through advanced contact analytics, automated decisioning and dynamic campaign management. Since 1992, many of the world's most successful companies throughout North America and the Asia Pacific region have chosen ALI because its solutions enable them to proactively communicate with their customers more effectively, thereby improving business performance and enhancing their customer relationships.

For more information, contact ALI Solutions at 512-328-8215 or visit www.ALIolutions.com.