



# Compliance in the Collections Industry



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# Compliance in the Collections Industry

Let's begin by addressing a couple of the “facts of life” for lenders:

## **1. Lending inevitably leads to collections, and collections inevitably leads to compliance obligations.**

Whether lenders manage their collections completely in-house, outsource a portion, or outsource all of their collection work, maintaining compliance with the various federal and local legislations is critical in order to avoid legal action that could carry steep fines and a loss of reputation.

## **2. Compliance has become an even greater priority for lenders and collection agencies because consumer behavior has shifted.**

Consumers are digitally connected, more informed, less loyal, and more demanding. And, they're not afraid to voice their complaints in places like the Consumer Financial Protection Bureau (CFPB) online forums. These forums give consumers a quick and easy way to voice their complaints about things like debt collectors. According to [WebRecon](#), there were 3,279 CFPB consumer complaints filed against

debt collectors in 2015. Likewise, there were 5,931 total lawsuits filed in 2015 against organizations for violating the FDCPA, Fair Credit Reporting Act (FCRA), and Telephone Consumer Protection Act (TCPA).

“If you think compliance is expensive, try non-compliance.” –Brad Young, COO, SWBC Financial Institution Group

There are three specific regulations related to the compliance industry that we'll address in this ebook—the Fair Debt Collections Practices Act, the Telephone Consumer Protection Act, and Unfair, Deceptive, or Abusive Acts or Practices (UDAAP).

What does each of these acts entail, how can collection operations get and remain compliant, and where can lenders go for support? Keep reading to find out.

# Understanding Unfair, Deceptive, or Abusive Acts or Practices (UDAAPs)

Although federal and state laws regulating financial services and debt-collection industries have been around for more than a century, the most comprehensive of these reforms was signed into effect July 21, 2010, in response to the 2008 financial crisis.

In part, the legislation prohibits firms offering financial services from engaging in unfair, deceptive, or abusive acts or practices. This has been of particular concern in the collections business, where it is essentially the consumer who determines if they've been treated unfairly and can make public, one-sided complaints via CFPB online forums. Additionally, "unfair," "deceptive," and "abusive" are vague, undefined terms that collection operations must not violate, but the law is not necessarily clear about what actions fall into those categories.

## What constitutes an unfair act or practice?

According to the [CFPB](#), an unfair act or practice is one that:

- ✓ 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

Some examples of activity that have been identified as potential UDAAPs by the CFPB include: failing to post payments timely or properly, falsely representing the amount of a debt, and representing the furnishing of a debt to a credit reporting agency.

## The best line of defense against UDAAP violations is to be proactive.

The first step in preventing UDAAPs (while remaining compliant) is to ensure you have a well documented, formalized policies and procedures manual. A well-defined manual gives your collections staff a guide and reference for expectations and guidelines. It should be organized, repeatable, and easily accessible to all necessary personnel.

Your manual can serve as your verification to regulators—in the event that your operation ever gets audited—that you've implemented the appropriate policies to ensure your operation is following local, state, and federal regulations.

Monitoring your collections calls is not something that is mandated by

regulators. However, the burden falls on you to ensure your agents are abiding by your company procedures and policies, as well as state and federal guidelines, to keep your organization from unnecessary risk. To this end, call monitoring software can be a huge asset to your collection operation. A policies and procedures manual is only as effective as the amount of proof that you can provide that your staff is, in fact, following said procedures. Call monitoring provides you proof that your policies and procedures are being followed. Likewise, it allows you to recognize situations when employees are not properly following the guidelines, so that you can address and correct any issues or potential violations.

# Fair Debt Collections Practices Act (FDCPA) Defined

## The FDCPA Then and Now

The FDCPA was designed to eliminate abusive, deceptive, and unfair debt collection practices. Effective in 1978, the FDCPA pertains to consumer debt for personal, family, or household purposes. The act restricts the time and frequency of calls, as well as the tactics available to a collector. It also requires certain conduct of debt collectors, like providing verification of debt and giving the name and address of the original creditor.

The FDCPA was initially directed exclusively at third-party debt collection agencies and secondary debt; however,

with the emergence of the CFPB and associated regulatory legislation, compliance directives have broadened from an explicit list of “don’ts,” to a more ambiguous model. Basically, the CFPB is taking the stance that the same type of conduct prohibited by UDAAP is also prohibited under the FDCPA.

Recent bulletins issued by the CFPB even suggest that the bureau intends to impose FDCPA guidelines on original creditors, as much of the conduct addressed in the FDCPA could be considered unfair, deceptive, or abusive, and actionable under Dodd-Frank.



# Your Responsibilities Under the FDCPA

## How the FDCPA Affects Your Operation

Collection operations have one job when it comes to the FDCPA—make sure collectors are properly trained, certified, and operating under the rules for every borrower interaction. Proper training would cover the guidelines under which debt collectors may conduct business, define rights of consumers involved with debt collectors, and prescribe penalties and remedies for violations of the Act.

There are a number of training resources available to collection operations, most notably, the American Collectors Association (ACA). The ACA works to provide collection operations with best practices and guidance on how to operate under the FDCPA, as well as other relevant regulations and acts.



# Observing the Telephone Consumer Protection Act (TCPA)

**The TCPA was initially created to prevent excessive telemarketing calls to consumer's landline phones.**

The Act quickly became a major point of contention as the FCC/CFPB were applying the standards created for landline usage to modern telecommunications practices—while including debt collection in its scope—which was never the intention of the law. In 2012, after several rulings on the matter, the FCC issued a Report and Order to directly address this concern. Specifically, the order provided guidance on what constitutes consent for calls made to wireless lines. This is reviewed below, along with other elements of the act.

Companies found in violation of TCPA rules pay dearly. With fines of \$500 to \$1,500 per violation and class action settlements costing companies \$30–40 million, according to [Bloomberg BNA](#), collection operations cannot afford to ignore TCPA directives.

## THE KEY POINTS YOU NEED TO KNOW TO ENSURE COMPLIANCE WITH TCPA INCLUDE:

- ! The TCPA requires “prior express consent” from the consumer to contact their mobile phone via an autodialer
- ! Non-sales calls require prior consent, and calls for sales purposes require prior written consent
- ! A consumer who provides his/her wireless phone number in a loan application consents to receive calls about that loan from the creditor and others acting on the creditor's behalf; calls for other purposes are not allowed without separate consent
- ! During loan-related calls, if a representative asks permission to make future sales calls and records a positive answer, the recording serves as written consent; therefore, it's smart to add a request for future consent to all your loan-related calls
- ! Text messages must follow the same rules as calls—make sure customers have given prior written or recorded consent
- ! Customers may withdraw consent at any time, and companies are penalized and fined if they do not immediately end calls to customers who have withdrawn consent

# Preventing TCPA Violations

Minimizing TCPA violations requires thorough and ongoing employee training and technology. Having technology in place that scrubs cell phone numbers from calling lists can greatly reduce the chances of calling an unauthorized cell phone number.

The ACA is also a great resource regarding TCPA. In fact, this act is currently the main focus of the ACA for two reasons. First, this act was initially created for telemarketers, but debt collectors, although very different from telemarketers, were also classified under the act. Also, since it was passed in 1991, many provisions of this law no longer apply to today's technology. As you know, most consumers primarily use cell phones, and many don't even have landlines anymore. For these reasons, the ACA is currently attempting to amend this law for collections.



# Staying Ahead of the Curve of Regulatory and Legal Compliance

Since 1976, SWBC has been providing a wide range of insurance and financial products to lenders. Our founders, Charlie Amato and Gary Dudley, built the SWBC business model on a foundation of integrity and trust, with the mission of helping our clients realize success. As a part of this mission, we make it a top priority to remain compliant in every business venture in which we embark.

A vital component of our compliance effort is employing a dedicated compliance and legal team that monitors the external regulatory environment for changes to federal and state laws that may impact our operations. Our state-of-the-art call centers are equipped with the technology and resources to exceed strict industry and regulatory standards. In addition, our staff is highly trained and committed to SWBC's Mission, Vision, and Values of integrity, service, trust, commitment, accountability, excellence, and teamwork.

We obtain annual independent auditor reports and certifications to ensure that we have the necessary information to provide our clients and their auditors. In addition, we monitor for regulatory and legislative changes within the different industries that we serve, notify our clients of changes, and provide recommended solutions.

## THE PRIMARY LAWS AND REGULATIONS THAT GOVERN OUR COLLECTION OPERATIONS INCLUDE:

- ! Unfair, Deceptive, or Abusive Acts or Practices (UDAAP)
- ! Gramm-Leach-Bliley Act (GLBA)
- ! Telephone Consumer Protection Act
- ! Consumer Financial Protection Bureau (CFPB) Rules and Regulations
- ! Payment Card Industry Data Security Standard

## Learn more

Compliance is and will remain a top priority to us because when we're compliant, so are you.

If you'd like to learn how outsourcing some or all of your collections work to us could not only help you stay compliant, but also reduce costs, click below to schedule a demo today.



[CLICK HERE](#)