

Hot Topics: Facing the Collection of Higher Education Debt



A man in a dark suit and white shirt is seen from the back, gesturing with his right hand towards a large, blurred audience seated at tables in a conference room. The room is dimly lit with warm, orange-toned lights. A semi-transparent white box is overlaid on the right side of the image, containing the text.

Welcome to the 2018 PacWest SFS Conference

Disclaimer

This presentation should be construed as an overview of the issues discussed. The presentation is not legal advice to anyone attending the conference or reviewing the materials. Specific legal questions regarding the concepts and any application to your business or school should be directed to your attorney.

NOTICE: Comments made during this presentation and the presentation itself are not for use on the public record and should not be utilized by any member of the media without the express written consent of the presenter.

Partnership

- If you have information about a student that will be helpful to an agency, please identify the information at placement (i.e. bankruptcy, issues with prior agency, and/or issues with the school);
- Make sure your records support the amount **you place** for collection;
- Ask questions of your vendor partners and seek to find out the best most compliant policy for the school.
- If your financial services department is not evolving, then you should be asking more questions and difficult questions addressing why you're not evolving.
- Remember - The school determines the amount the student owes and the agency tries to collect that amount.

This Approach Is Not Reasonable



Trends Impacting the Collection of Student Debt

Money / Student Loan Debt Crisis

The Student Debt Crisis

LIVES ON HOLD

Millions of Americans who went to college seeking a better future now face crushing debt from student loans—while the industry makes a handsome profit. How a broken system landed so many in this mess.

From Reveal from the Center for Investigative Reporting

[Read More](#)

<https://www.consumerreports.org/student-loan-debt-crisis/>



Increased Scrutiny

“With one out of four student loan borrowers struggling to repay their loans or already in default, cleaning up the servicing market is critical,” said CFPB Director Richard Cordray. “Today’s report underscores the need for market-wide student loan servicing reforms to halt harmful practices and boost assistance for distressed borrowers.”

The report can be found at: http://www.consumerfinance.gov/f/201509_cfpb_student-loan-servicing-report.pdf 

The Student Loan Lawyer

THE STUDENT LOAN LAWYER

Joshua R. I. Cohen...
*THE Student Loan Lawyer
for all of your student loan issues.*

Home Workshop Graduates Services Student Loan Basics Media Cases About Blog Contact

Welcome...

...to the Law Office of Joshua R.I. Cohen. This site is dedicated to the firm's practice of student loan law.

What is student loan law? It is anything that has to do with student loans although the firm's focus is on borrower rights during repayment.

Wondering if you should **contact us**? Ask yourself the following questions:

- Are you receiving calls from debt collectors?
- Being threatened with wage garnishment, social security offset, or tax refund offset?
- Being sued for a student loan?
- In default but not sure how to get out?

Get Help With Your Student Loan NOW!

CLICK HERE

...A brief history

Like many students attending college, part of Josh's financial aid package included work study - a program which funds a job for a student to help provide money for the student to live off of while attending college. Josh's job landed him in the financial aid office of Brandeis University. There, he was exposed to financial aid in a way most college students are

<http://thestudentloanlawyer.com/>


The Student Loan Lawyer



Student Loan Law
WORKSHOP

September 8 - 9, 2017
Baltimore, MD

[REGISTER NOW!](#)



Millions of people are struggling with student loan problems -
isn't it time you learned how to profitably and effectively help
them?

**MAKE MORE MONEY BY LEARNING HOW TO HELP
PEOPLE WITH STUDENT LOAN DEBTS**

Hot Topics

Current legal status of the industry;
Assessing fees;
TCPA;
FDCPA;
CFPB; and
State law changes

The Elephant in the Room - Collection Fees



Bradley v. Franklin Collection Services, Inc.

- This is the case that initially indicated these claims might increase and the liability of assessing fees on students would be subjected to increased scrutiny.
- The core of the *Bradley* opinion is about contract language.
- The case involved the collection of medical accounts, but the contract issues in the case apply to tuition, institutional loans, and other receivables owed to colleges and universities.
- It would be a mistake to assert that *Bradley* is not applicable to higher education because the debt originated as a medical account. The medical/education issue is a distinction without a difference. The issue is contract law

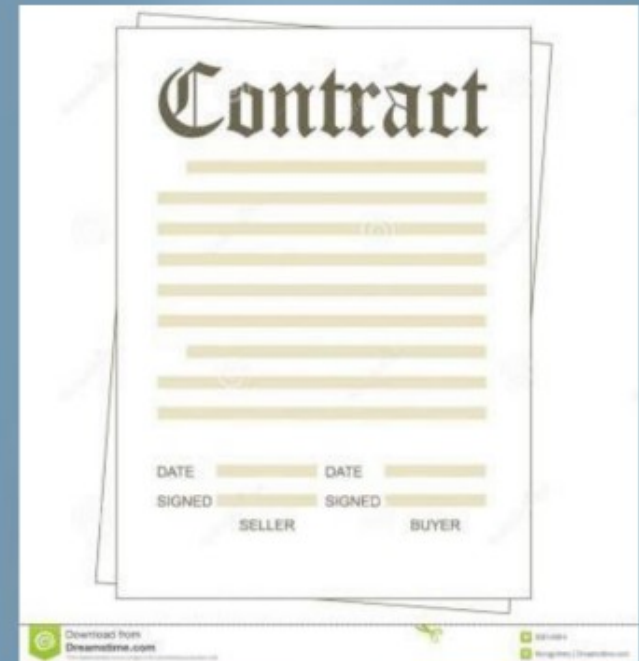
Contract Language

- The contract language discussed in the Bradley case was as follows:
 - “**costs** of collection” (ruled problematic);
 - “reasonable collection agency **fees**” (not specifically addressed because the applicable plaintiff did not appeal the issue); and
 - “[y]ou agree to reimburse us the fees of any collection agency, **which may be based on a percentage at a maximum of 33% of the debt**, and all costs and expenses, including reasonable attorney’s fees, we incur in such collection efforts.” (court suggests this may be appropriate)

(terms highlighted for emphasis)

Fees vs. Costs

- The common use of the term “collection costs” along with the term “attorney’s fees” creates a contractual distinction on the face of the document.
- If the intent in both circumstances is to assess a “fee,” then the term should be used in both places.



Contract Issues

- Schools have contractual relationships with students whereby the institution agrees to provide services and the student agrees to pay for those services. The open question is what are the terms of that contractual relationship?
- Agencies have contractual relationships with colleges and universities to collect outstanding receivables and student loans for a fee.
- Any amount the student owes the college or university is wholly determined by state and federal law OR the contract terms between the student and the school.
- Schools determine what students owe them - agencies only collect the amount they are instructed by the creditor to collect.
- The principal, interest, late fees, and/or collection fees are determined and assessed by the school. The consumer does not owe money to a collection agency. The consumer owes money to a creditor and the creditor then owes a fee to the agency for the collection of any or all of the debt.

The Three C's of the Account Balance

- It is the college or university's sole responsibility to make certain all three "C's" regarding the debt amount are reviewed for each student's account ahead of placement with an agency.
- Is the account balance:
 - CORRECT;
 - COMPLETE; and
 - COMPLIANT.
- If you cannot answer all three in the affirmative, then the account should not be placed until you are certain.

Fee Litigation

- Please be aware the theory of liability associated with the assessment and collection of any fee over and above the principal amount of the debt is now **clearly on the consumer bar's radar**.
- There are a myriad of threats and **filed cases** involving both **schools** and agencies.
- Many of these cases will seek to recover any fee determined inappropriate during the relevant period.
- These cases can be brought as **class action cases**.
- **No process for assessing collection fees on non-federal student accounts is insulated from litigation. Cases may be defensible, but assessing these fees exposes an institution to consumer litigation.**

New Fee Litigation

207 F.Supp.3d 249
United States District Court,
E.D. New York.

David ANNUNZIATO, Plaintiff,

v.

COLLECTO, INC., doing business as EOS CCA, Defendant.

12-CV-3609 (ADS)(AKT)
Signed September 19, 2016

*There are various cases on this issue pending against both agencies and colleges/universities.
This is a growth area for consumer attorneys.

Important Language from *Annuziato v. Collecto, Inc.*

It is also undisputed that the \$1,382.79 for “fees and collection costs” listed in the May 16, 2012 letter does not represent the actual costs incurred by the Defendant in attempting to collect the debt owed by the Plaintiff to NYIT. (See *id.* at ¶ 11.) Rather, the Defendant asserts that it came up with the \$1,382.79 figure by applying a method it refers to as the “**Make Whole** Method” of collection. (See the Def.’s 56.1 Statement at ¶ 10; see also Burns Decl. at ¶ 14.) Under that method, the Defendant arrives at a number for collection costs that will permit the creditor—as in, NYIT—to obtain the full amount of its principal after subtracting the Defendant’s contingency fee, which in this case was 30 percent. (See *id.* at ¶ 10.) Applying this method to the Plaintiff’s account with NYIT, the total debt listed in the May 16, 2012 letter is \$4609.29; the fees and collections costs are \$1382.79, which is 30 percent of that total amount; and the principal balance on the loan \$3226.50. (See *id.*) Thus, if the Plaintiff paid back the total amount listed in this letter, then NYIT would be “made **whole**” because it would receive the full principal amount on the Plaintiff’s debt, even after it pays the Defendant its 30% contingency fee.

*This is the first case that I am aware of where the industry term “make whole” is discussed by a court.

Breckenbridge v. Vargo and Jason, P.C.

2016 WL 7157486

Only the Westlaw citation is currently available.

United States District Court,
D. Colorado.

Erin M. BRECKENRIDGE, on behalf of herself and all others similarly situated, Plaintiff,

v.

VARGO AND JANSON, P.C., Defendant.

Civil Action No. 16-cv-1176-WJM-MEH

Signed 12/07/2016

Synopsis

Background: Debtor brought action against debt collector under Fair Debt Collection Practices Act (FDCPA), alleging that debt collector, in attempting to collect student loan debt, included a collection fee that exceeded the amount allowed under Perkins Loan Program regulations. Debt collector filed motion to dismiss for failure to state a claim.

Holdings: The District Court, William J. Martínez, J., held that:

- 1 great deference would be afforded to interpretation, in Department of Education's (DOE) Student Financial Aid Handbook, of Department's regulation for Perkins Loan Program, which limits collection costs, and
- 2 debtor stated a claim under FDCPA.

If You Still Believe You Are Going To Recover Every Dime In Default.....

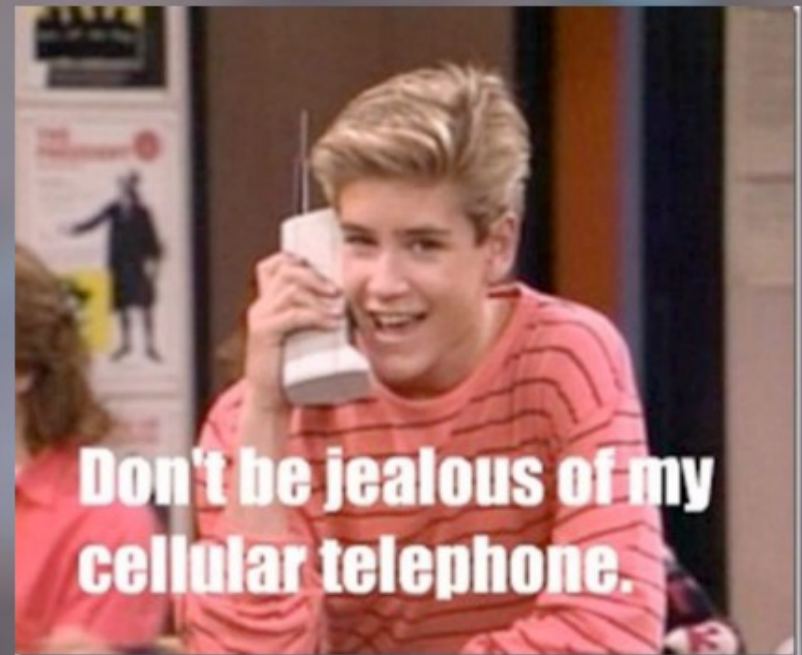


Debt Collection Litigation & CFPB Complaint Statistics

Comparisons:	Current Period:	Previous Period:		Previous Year Comp:	
	<i>May 01, 2017</i>	<i>Apr 01, 2017</i>		<i>May 01, 2016</i>	
	<i>May 31, 2017</i>	<i>Apr 30, 2017</i>		<i>May 31, 2016</i>	
CFPB Complaints	4012	4164	-3.7%	3107	29.1%
FDCPA lawsuits	967	801	20.7%	850	13.8%
FCRA lawsuits	377	266	41.7%	308	22.4%
TCPA lawsuits	505	352	43.5%	360	40.3%
YTD CFPB Complaints	20565			16207	26.9%
YTD FDCPA lawsuits	4360			4461	-2.3%
YTD FCRA lawsuits	1731			1578	9.7%
YTD TCPA lawsuits	2065			2034	1.5%

TCPA

- The Telephone Consumer Protection Act, 47 U.S.C. § 227, et seq.;
- 1991 – think about cell phones in 1991;
- First & third party liability; and
- Significant penalties.



TCPA

- Per violation liability;
- No class cap;
- Defense strategies:
 - Land-line;
 - Definition of dialer;
 - Legislative fix;
 - Scrubbing;
 - Etc..
- Insurance issues;
- CONSENT – your help!!
- Proposed FCC Regs



TCPA

Both creditors (schools) and collection agencies can be liable under the TCPA. Also, per the FCC, creditors can be liable for telephone contact of their collection agencies. It is important to be aware of a creditors telephone communication practices and the actions of its agency partners as it relates to the use of dialing technology.



TCPA

- **“AUTHORIZATION:** - I authorize the School, the Department, and their respective agents and contractors to contact me regarding my loan request or my loan(s), including repayment of my loan(s), at the current or any future number that I provide for my cellular phone or other wireless device using automated telephone dialing equipment or artificial or pre-recorded voice or text messages.”
- The above-stated language was taken directly from the 2012 Perkins loan master promissory note. The language is an example (from DOE) of language implemented because of the TCPA. The language is easily adaptable for other creditors.

TCPA

NEW CASES IMPACTING THE TCPA:

Spokeo, Inc. v. Robins, 136 S. Ct. 1540, 1549, 194 L. Ed. 2d 635 (2016), as revised (May 24, 2016)

Romero v. Dep't Stores Nat'l Bank, No. 15-CV-193-CAB-MDD, 2016 WL 4184099 (S.D. Cal. Aug. 5, 2016) (Plaintiff has filed a notice of appeal.)

Stoops v. Wells Fargo Bank, N.A., No. CV 3:15-83, 2016 WL 3566266 (W.D. Pa. June 24, 2016)

ACA International et al v. Federal Communications Commission and United States of America

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

Argued October 19, 2016

Decided March 16, 2018

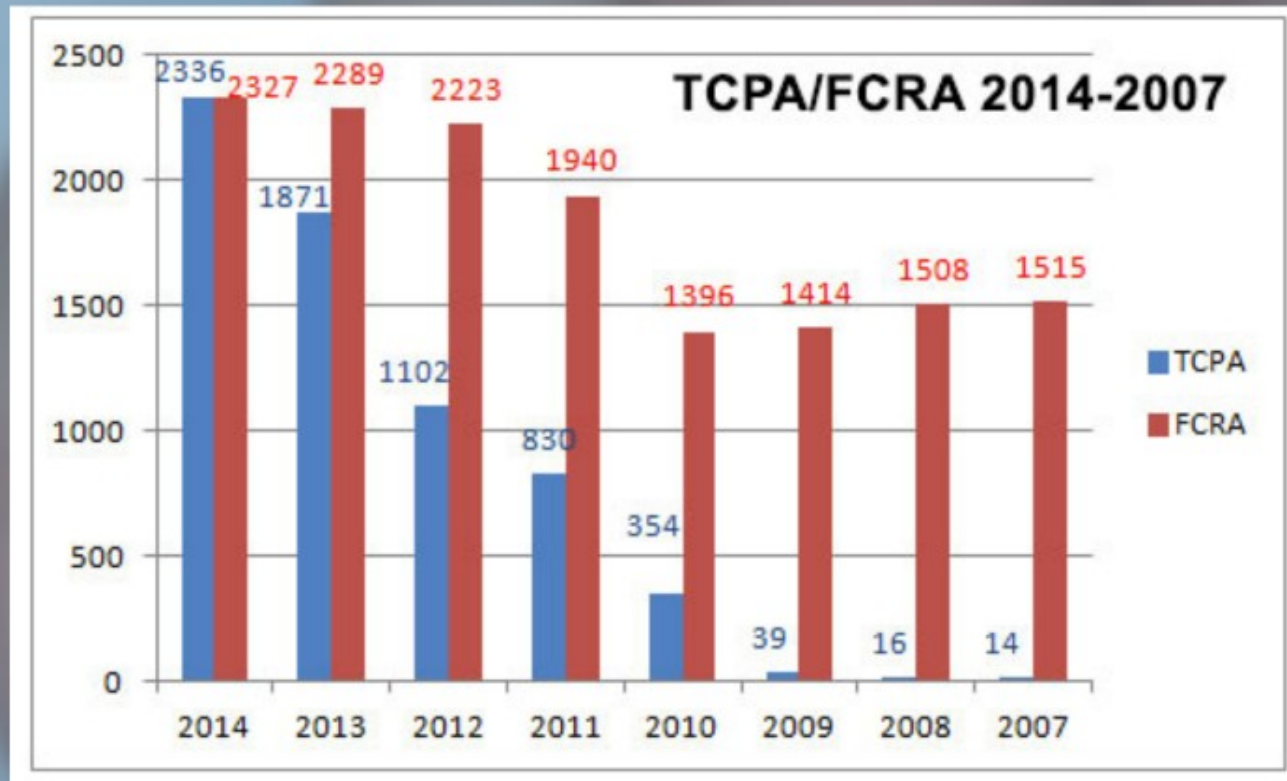
No. 15-1211

ACA INTERNATIONAL, ET AL.,
PETITIONERS

v.

FEDERAL COMMUNICATIONS COMMISSION AND UNITED
STATES OF AMERICA,
RESPONDENTS

FCRA & TCPA Litigation Statistics



FCRA

- Furnishing accounts to credit reporting agencies remains a key tool for; (1) providing an accurate picture of a consumer's credit worthiness to other potential creditors, and (2) promoting the collection of accounts.
- We continue to see an increase in FCRA cases (both threatened and filed).
- Accuracy is king! If you want to furnish accounts, please have accurate dates of delinquency, quality follow up with agencies if an ACDV is received, and be certain the reported amounts are correct.

FDCPA

- Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.*
- Letters;
- Email;
- Call volume;
- Voicemail; and
- Any other theory consumer attorneys can come up with!



FDCPA & New Technology

- Round peg in a square hole – how does legislation from 1978 address the issues of technology in 2018?

- Cell phones;
- Smart phones;
- Email;
- Apps;
- Voice mail;
- Texting;
- Etc....



CFPB

- The Consumer Financial Protection Bureau;
- www.consumerfinance.gov;
- The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 established the CFPB; and
- The CFPB has some very unique structural and funding aspects that are concerning to the collection industry and others.

N.C. Dept. of Insurance

- As an example of recent regulatory positions impacting the industry you can easily locate the N.C. Dept. of Insurance June 12, 2014 memorandum to all licensed collection agencies regarding convenience fees.
- This is also a quality example of the collection industry being singled out and excluded from a common business practice.

The Lost Provision of the FDCPA

- (e) Purposes

It is the purpose of this subchapter to eliminate abusive debt collection practices by debt collectors, **to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses.**

15 U.S.C.A. § 1692

Suethcollector.com

SUE THE COLLECTOR

The Original and Best. Getting Illegal Calls From a Debt Collector? Sue Them!

Call: 1 888-433-9750



Being Harassed by A Debt Collector?

- ✓ Get up to \$1,000 for harassment, and paid up to \$1,500 for every single illegal robocall.
- ✓ If Your Consumer Rights Have Been Violated by a Collector, we can Help You.
- ✓ FREE Attorney For You.

Our Attorneys have Secured Millions Of Dollars in Awards from Debt Collectors & **WE CAN HELP YOU TOO!**

Illegal Debt Collector Help

[Examples of when a Debt Collector Breaks the Law](#)

- Calling you **BEFORE 8 AM**

Can You Answer These Questions About Debt Collector?

First Name *

Last Name

Telephone *

Email *

What State Do You Live In? *

Select a State

Which Collection Agency? *

Has The Collector Called You About a Debt?

- Yes
- No
- Not Sure

Did you tell the person calling you to stop calling?

- Yes
- No
- Not Sure

Suethcollector.com

- Calling you **BEFORE 8 AM**
- Calling you **AFTER 9 PM** at night
- Calling Your **Friends, Relatives and Neighbors** About Your Debt
- Threatening You With Arrest (Take A Warrant Out In Your Name, Etc;)
- Threatening You With Physical Harm
- "Robo-dialing" Your Cellphone Without Your Permission
- Falsely Threatening to Sue You
- Publishing a Collection to Your Credit Report and Not Sending You A Letter

Atlas Consumer Law - Lombard Illinois



The team at Atlas Consumer Law will help you Sue any debt collector, Telemarketing Company, or Credit Reporting Agency that violates the law.

No
 Not Sure

How Many Times Has This Company Called You?

Only 1 Time
 More Than Once
 Multiple times every day

Have You Been Threatened With a Lawsuit?

Yes
 No
 Not Sure

Did the caller ever call anyone else about this matter, such as a neighbor, relative or workplace?

Yes
 No
 Not Sure

Would You Like To Have the Debt Canceled?

Yes
 No
 Not Sure


Would You Rather The Debt Collector Pay You Money Instead?

Yes
 No
 Not Sure

Submit

Your information is kept 100% confidential.
We do not spam or sell your information. By submitting your complaint, you agree and give consent to allow our network of attorneys to contact you via automatic dialer, telephone, mobile, SMS (Text Message) or email.

Suethcollector.com




The team at Atlas Consumer Law will help you Sue any debt collector, Telemarketing Company, or Credit Reporting Agency that violates the law.

Your information is kept 100% confidential. We do not spam or sell your information. By submitting your complaint, you agree and give consent to allow our network of attorneys to contact you via automatic dialer, telephone, mobile, SMS (Text Message) or email.

OFFICE LOCATION
2500 South Highland Ave,
Suite 200
Lombard, IL 60148

Helpful Tips To Handle Debt Collectors: Don't Block Telephone Numbers



If you block telephone numbers, it's difficult to prove your claims under the Telephone Consumer Protection Act. Therefore, don't block calls from debt collectors.

Tell them to stop calling.

If you continue to get calls **AFTER** you've told them to stop calling you may have a case against the Debt Collector, Bank, Telemarketing companies or anyone calling using an Automated Dialing System.

Suethcollector.com

How We Work For You:

1. You fill out our simple questionnaire and submit your other evidence.
2. We review your situation for free to determine if your rights have been violated; **we will connect you to an award-winning attorney that will represent you at no cost.**
3. No matter what, **YOU WILL NOT PAY FOR ANY LEGAL SERVICES**

SUE THE COLLECTOR



Disclaimer/Attorney Advertising

OFFICE LOCATION

2500 South Highland Ave, Suite 200
Lombard, IL 60148

The information you obtain at this site is not, nor is it intended to be, legal advice. You should consult an attorney for advice regarding your individual situation. We invite you to contact us and welcome your calls, letters and electronic mail. Contacting us does not create an attorney-client relationship. Please do not send any confidential information to us until such time as an attorney-client relationship has been established.

California Civil Code 1788.18

Question: If a California school is issuing and collecting on loans, then is it presumed that the school, by definition, is a debt collector?

If yes, and the school receives a claim of "identity theft" from a loan recipient, does that mean the school will need to follow-up on the matter within ten days to avoid penalty?

(d) Within 10 business days of receiving the complete statement and information described in subdivision (a), the debt collector shall, if it furnished adverse information about the debtor to a consumer credit reporting agency, notify the consumer credit reporting agency that the account is disputed, and initiate a review considering all of the information provided by the debtor and other information available to the debt collector in its file or from the creditor. The debt collector shall send notice of its determination to the debtor no later than 10 business days after concluding the review. The debt collector may recommence debt collection activities only upon making a good faith determination that the information does not establish that the debtor is not responsible for the specific debt in question. The debt collector's determination shall be made in a manner consistent with the provisions of subsection (1) of Section 1692 of Title 15 of the United States Code, as incorporated by Section 1788.17 of this code. The debt collector shall notify the debtor in writing of that determination and the basis for that determination before proceeding with any further collection activities. The debt collector's determination shall be based on all of the information provided by the debtor and other information available to the debt collector in its file or from the creditor.

Exit Form Language

Question: Can you describe the proper wording to use on an Exit form for requesting a student to provide their non-university e-mail or cell phone/text to be used for the purpose of notifications after separation from the school?

Subpart D-May an Educational Agency or Institution disclose Personally Identifiable Information from Education Records?

§ 99.30 Under what conditions is prior consent required to disclose information?

(a) The parent or eligible student shall provide a signed and dated written consent before an educational agency or institution discloses personally identifiable information from the student's education records, except as provided in § 99.31.

(b) The written consent must:

(1) Specify the records that may be disclosed;

(2) State the purpose of the disclosure; and

(3) Identify the party or class of parties to whom the disclosure may be made.

(c) When a disclosure is made under paragraph (a) of this section:

(1) If a parent or eligible student so requests, the educational agency or institution shall provide him or her with a copy of the records disclosed; and

(2) If the parent of a student who is not an eligible student so requests, the agency or institution shall provide the student with a copy of the records disclosed.

(d) "Signed and dated written consent" under this part may include a record and signature in electronic form that-

(1) Identifies and authenticates a particular person as the source of the electronic consent; and

(2) Indicates such person's approval of the information contained in the electronic consent.

(Authority: 20 U.S.C. 1232g (b)(1) and (b)(2)(A))

Questions?

A red, rectangular stamp with a distressed, ink-like texture. The text "ANY QUESTIONS?" is written in a bold, sans-serif font, with "ANY" on the top line and "QUESTIONS?" on the bottom line. The stamp is tilted slightly to the right.

**ANY
QUESTIONS?**

Thank you very much for your attention today. I hope a better understanding of the topics discussed will assist your business in improving its overall approach to collections and assessing risk in the current environment. Please feel free to contact me with any additional questions or concerns.



Chad Echols
The Echols Firm, LLC
chad.echols@theecholsfirm.com
www.theecholsfirm.com
803.329.8970