

The CFPB's Notice
of Proposed
Rulemaking

Communicating & Locating

tcn



**research
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POWERED BY 

Today's Panel



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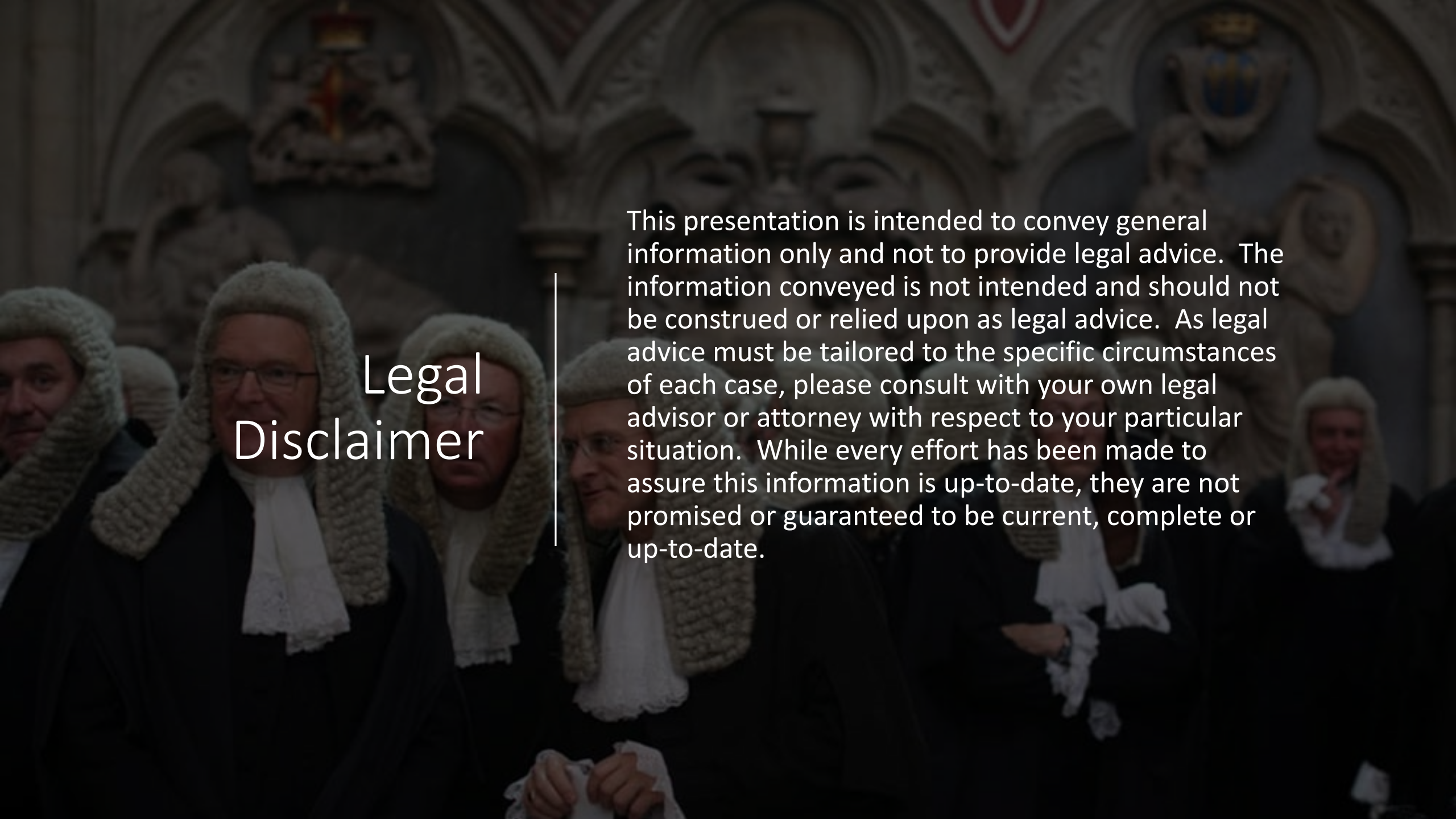
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Agenda

Definitions

Limited Content Messages

Inconvenient Time/Place

Consumer Has an Attorney

Place of Employment

Exceptions

Communications After a C&D

Communications with a 3rd Party

Email & Text

Acquisition of Location Information



1006.6, .10 –
Communicating/
Locating

1006.6 – Communications in Connection with Debt Collection: Definitions

- Rule says same as statute except the rule adds “a confirmed successor in interest, as defined by Regulation X, 12 CFR 1024.31, and Regulation Z, 12 CFR 1026.2(a)(27)(ii)” to the definition of “consumer.”
 - Does the CFPB have the authority to expand the statutory definition?
 - How is a debt collector supposed to become aware of such a person?
 - When a title company calls for a payoff request?
 - Does that mean that the debt collector has to send a validation notice to the “confirmed successor in interest” and wait 30 days before taking any steps to collect the debt?
 - Title companies won’t be happy about that!
 - How do we communicate with personal representatives?

1006.2 –
Communications
in Connection
with Debt
Collection:

Limited Content
Messages

- Provides a solution to the *Foti* problem.
- Required content
- Optional content

1006.6 –
Communications
in Connection
with Debt
Collection:

Communications
with a Consumer

- Inconvenient time or place:
 - Rule is the same as the statute
 - No changes to business practices are likely to be necessary
 - No additional stresses on business
 - The risks to the business remain the same
 - Watch to see if CFPB provides any clarity in the comments regarding when a debt collector “should have known” that a particular time or place was inconvenient.
- Choose the times where the zip code & area code overlap (if not in the same time zone).

1006.6 –
Communications
in Connection
with Debt
Collection:

Communications
with a Consumer

- Consumer has an attorney:
 - The rule says that it requires the consent of the attorney, not of the consumer, to speak with the consumer.
 - Any businesses that rely on the interpretation that they can speak with the consumer if the consumer contacts the business & tells them that the consumer no longer employs the attorney will need to consider changing that practice.
 - For those businesses that have relied on the prior opposing interpretation, it will create the stress of teaching personnel a new procedure and will likely lead to some consumers who are dissatisfied with the answer that they get from the business.

1006.6 – Communications in Connection with Debt Collection:

Communications with a Consumer

- Consumer has an attorney:
 - The risks will arise from learning the new procedure or from not changing the procedure.
 - Open questions: content of letter to attorney about this issue & warning of result of no response. What is a reasonable period of time. And look for clarification about who can grant permission to communicate with a represented consumer.
 - Stop relying on the consumer's statement that the consumer terminated the attorney as permission to speak with the consumer, if they are doing that.

1006.6 –
Communications
in Connection
with Debt
Collection:

Communications
with a Consumer

- Place of employment:
 - In practical terms, the rule seems to say the same thing as the statute, but it is worded negatively. That may or may not have some significance, but it seems likely to have some. In addition, CFPB is considering whether to ban the use of work email to communicate with those defined as consumers in 1006.6(a).
 - Businesses may need to make their methods of capturing the information that they may not communicate with the consumer at work more robust. Businesses also need to consider methods of determining whether an email address is a work email address and implement procedures in line with those methods.

1006.6 –
Communications
in Connection
with Debt
Collection:

Communications
with a Consumer

- Place of employment:
 - Businesses will suffer stress based on the changes needed to adequately capture this information.
 - Risk is that same as currently, although there may be a heightened emphasis based on negative phrasing. Plus new risk of work email addresses.
 - We would advise agencies to make their method of capturing the information that they may not contact the consumer at work more robust. And develop procedures around identifying and prohibiting the use of work email addresses.

1006.6 – Communications in Connection with Debt Collection:

Communications with a Consumer

- Exceptions:
 - The rule says that debt collectors can overcome the prohibitions of (b)(1) through (b)(3) if the consumer consents during a communication that does not violate (b)(1) through (3).
 - In other words, if the debt collector calls the consumer and finds out that it is an inconvenient time, for example, then the debt collector can get permission to call at an inconvenient time on another occasion, but the debt collector may not continue the call in which it obtained permission. In a case where the consumer wants to communicate, that would seem to inconvenience the consumer to have to say, yes, I called you, but since you said it was inconvenient, I cannot continue the conversation even though you say you want to.

1006.6 –
Communications
in Connection
with Debt
Collection:

Communications
with a Consumer

- Communicating after a cease & desist:
 - Prohibitions:
 - Retains requirements of refusal or request in writing.
 - Exceptions – retains the 3 exceptions from the statute:
 - The rule repeats the statute without change—a consumer can request a C&D in writing by either refusing to pay or by requesting it. Must accept the C&D request via website or email. The only subsequent communication that the debt collector can have is via the 3 exceptions.
 - No changes to business practices are likely to be required. (Does anyone actually send any of the three exception communications?)
 - Open question: If a consumer imposes a C&D before the debt collector can send a statutorily required communication, such as the initial validation notice or a response to a validation request, which section takes precedence?
 - We would advise businesses to continue to comply as they have been (unless they have not been sending the initial validation notice or a response to a request for validation).

1006.6 – Communications in Connection with Debt Collection:

Communications with a Consumer

- Communications with third parties:
 - Prohibitions – may not communicate with third parties other than those listed.
 - Exceptions – straight from the statute:
 - The rule repeats the statute without change—a debt collector may not communicate about the debt with third parties (other than the listed persons & entities) except to obtain location information, unless the consumer gives prior permission directly to the debt collector, unless a court gives permission, or as part of a judicial post-judgment remedy.
 - No changes to business practices are likely necessary other than adding safe-harbor procedures from § 1006.6(d)(3) for email & text.
 - Open questions: What about Debt Management Companies sending signed permission to communicate to the debt collector?
 - No changes to compliance advised.

1006.6 – Communications in Connection with Debt Collection:

Communications with a Consumer

- Procedures for email & text messaging:
 - The rule is new. In practical terms, it suggests that a debt collector can email a consumer if the consumer emails the debt collector first. It also permits a debt collector to email a consumer if the debt collector first informs the consumer that it intends to do so & offers the consumer the ability to opt out. (Opt out must appear on all such communications.) Developing procedures will entail starting from zero.
 - This is starting from scratch.
 - Cost of development of procedures, setting up system to accommodate procedures, training staff to follow procedures, test the procedures, etc. Must capture disclosures, permissions, opt-outs, etc.
 - Risks involve unanswered questions. Further risk attached to identifying work email & phone numbers.

1006.10 –
Acquisition of
location
information:

- Restates the statute; frequency restrictions apply to communications with others; can attempt to locate person authorized to act on behalf of decedent's estate. Follows FTC statement on decedent's debt.
- Open questions: What constitutes a "reasonable belief" that the person called has complete or correct information? How would a collector know?