



BORROW SMART COMPLIANCE

A CFPB COMPLIANCE SYSTEM

THE BORROW SMART COMPLIANCE SYSTEM

Three major components make up the Borrow Smart Compliance System

1. **A CFPB policy manual prepared by Ballard Spahr.** Ballard Spahr is a top national law firm in consumer finance. Scroll down to view the table of contents of the policy manual.



2. **How To guides.** How To guides are prepared by key members of the Borrow Smart Compliance program in a collaborative program to address operational issues and to resolve questions that may arise in the implementation of the policies outlined in the manual. There is a How To guide for each topic area of the policy manual. Scroll down below to see an example of a How To guide on collections policy.

3. **An online, e-learning employee training, testing and tracking system.** The system delivers your custom designed training on each key area in the manual to each employee in your company – whether you have two employees or 1002 employees. Those who wish to preview a course can drop us an email at:

info@borrowsmartcompliance.com

A COMPLIANCE MANAGEMENT SYSTEM

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THIS IS A SAMPLE ONLY OF A HOW TO GUIDE (this document is not to be used for development of CFPB compliance policy without the companion Ballard Spahr compliance manual).

How To guides are designed to be a companion piece to the Ballard Spahr compliance manual and system. The purpose of the guide is to provide operational support to compliment the written policy from Ballard. Most importantly, it provides a platform for submitting questions to Ballard for clarification of issues that may arise from their written policy. It is an important element in assisting the operator in implementing CFPB compliance policy within their company.

The guide was compiled in a collaborative effort by a team that included key members of the Borrow Smart Compliance program with many years of operational experience. The team used the Ballard Spahr manual as their primary resource to create the guide. The Ballard Spahr compliance manual is the primary compliance material for CFPB compliance policy and should be the only resource to resolve any ambiguities that may exist between this document and the policy manual.

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I. OVERVIEW

This document covers a specific section of the Borrow Smart CFPB compliance manual. It was produced by a workgroup of professionals from the Borrow Smart Compliance member companies who have a high level of expertise in one or all of the following areas: legal, compliance, auditing and operations. It is designed to summarize the operational issues in our respective companies in implementing the policies that are outlined in our compliance manual and to serve as a companion to the manual. In many cases, there will be some level of duplication between what is detailed in the compliance manual and what you see here. Think of this document as addressing the operational issues while the

Ballard Spahr manual addresses the specific background of the topic along with the actual written policy for you to adopt (or modify as you see fit). This document will also serve as a platform for consolidating and submitting questions to Ballard Spahr for clarity. Their answers will become a part of this document to assist in implementation and to serve as a reference.

On a related note, many of the comments you read here will address training considerations. Please remember that we plan development of a web based training system that will cover most of these requirements.

II. TOPIC AREA: Collections

III. DESCRIPTION OF TOPIC

The Fair Debt Collection Practices Act (“FDCPA”) regulates the practices of a “debt collector.” In general, this Act applies primarily to third party debt collectors and not specifically to the creditor. However, it is expected that the CFPB will enforce the practices of the FDCPA using the provisions of Unfair Abusive Acts and Practices (UDAAP) directly to the creditor. Compliance with FDCPA is, therefore, an indirect requirement for the creditor.

IV. TEAM MEMBERS

V. STATEMENT OF IMPACT

From an operational standpoint, the impact is primarily front end employee training of allowable collection procedures within a company and periodic monitoring and refresher training with employees. It is recommended that collection letters be company approved and no extra information be written in, employee collection notes should be reviewed for content, and stringent policies be in place concerning company approved communications – cell phones, social media, field calls, etc... We must also take steps to ensure any third-parties involved in the collection process at minimum adhere to the FDCP Act provisions. We may, as a condition of our business relationship, require third-parties to adhere to advanced consumer protections as well.

The FDCPA is somewhat difficult for original creditor collections. Our industry is being inundated with customers sending Debt Validation letters (meant for 3rd party collectors) and Do Not Call notices. There has also been an influx of customers trying to revoke authorizations for electronic debits and threats of lawsuits. Inaccurate information is being given from online vendors “assisting” consumers with breaking the debt cycle. It is difficult to balance stern collection methods and at the same time work with the customers for viable account resolution with unclear collection regulations.

VI. IMPLEMENTATION EFFORT

Statement of Implementation:

Technically, the FDCPA does not apply to creditors that collect their own debts. The practices it prohibits, however, may independently violate the Dodd-Frank Act under its unfair, deceptive and abusive practices section. Therefore, the choice as to whether the company will choose to comply with the FDCPA is at the company's sole discretion.

Compiling a list of collection calls DOs and DON'Ts is fairly straightforward. The FDCPA sets out the rules pretty clearly in its text. Implementing those rules and procedures under the FDCPA will be a difficult and ongoing process, and will be achieved through constant training and monitoring. Each new hire should be trained on the FDCPA and receive periodic training at least annually and immediately following any violation of the rules. Scheduling such trainings will be fairly simple once the training materials are available. However, each company must decide how in-depth such trainings will be, including what materials to cover, and how the trainings will take place (e.g., online trainings, live trainings or some other form of training).

The main focus of collections implementation will undoubtedly be on monitoring for compliance. Even after all employees have been trained, the company must monitor employees to ensure compliance. This will be done through a variety of monitoring programs that each company will choose to employ. Examples of such programs are monitoring recorded collections calls and monitoring and following up on customer complaints. With re-training as a first measure, corrective action for repeated violations of policy may be necessary to communicate and demonstrate the company's dedication to upholding their collection policies.

VII. CONSIDERATIONS FOR IMPLEMENTATION

Primary Considerations:

- **Hard-copy policies and procedures:**
 - o Compile a list of rules and regulations pertaining to the DOs and DON'Ts of collections.
 - o Make said list available to all employees responsible for making collection calls and accepting payments.
- **Training:**
 - o How in-depth will the trainings be?
 - Each company must decide the extent of training needed to ensure maximum efficiency.
 - o How often will the trainings take place?
 - o What platform will the company use for training?
- **Monitoring:**

- How will each company monitor?
 - Record and assess callings?
 - Review customer complaints?
 - Other procedures?

VIII. ACTION REQUIRED –

Establish what approved methods of collection activity are permissible within company policies.

Train employees thoroughly based on approved policies and reinforce the severity of discipline for non-adherence.

Develop a process of monitoring employees to confirm adherence to policy. Ideas may include auditing the collection notes for FDCPA violations or reviewing customer complaints for allegations that may be FDCPA violations.

IX. FORMS NEEDED

If the company uses hard copies (written) collection notes, then a collection or ledger card could be created and utilized per customer that would contain all collection activity. ie, date of collection activity and type of activity such as phone calls and detailed conversation content, mailed letters, messages with references and whom spoken with, etc.

X. TRAINING REQUIREMENTS

Unless a company decides to diverge from the FDCPA in part, all employees should be trained and tested on FDCPA in its entirety.

XI. IT REQUIREMENTS

There are no specific IT requirements for compliance such as reporting or direct action in a customer relationship management (“CRM”) system. However, best practices of any CRM system should provide for extensive commenting and notes by employee for documenting all customer related contacts – including collections. In addition to notes relating to the oral conversations with customers the CRM system should also boldly show customer requests that we are required to comply with such as calls to place of employment, mobile phone, etc.

XII. QUESTIONS

Immediately below are the questions we have submitted to Ballard Spahr for clarification. After each question you will see “Ballard Q&A” followed by a number. You will need to scroll down the document or **click here** to the next section, **Borrow Smart Collections Q & A -- Ballard Spahr** Response, to

review the response from Ballard to the question that were submitted. So, to see Ballard's reply to our question 1. immediately below see their question 1 and their associated reply. At that section you also find many additional questions that were not included in our original request for further clarification.

1. If a customer directs us not to contact them at work (they are embarrassed, it reduces their productivity, they are afraid they will get in trouble for having "visitors", etc.) but communications to their home and cell are ignored, unless we know the employer prohibits such communications, must we or should we cease work contact? Same question for requests not to call at home or on cell.

[Ballard Q&A 1](#) (*Click here to see Ballard Spahr reply*)

2. Is it considered abusive or unfair to contact references, neighbors, employers, etc. to gain current contact information when we're unable to contact a delinquent customer? Can we consider the customer giving their information as contacts as implied consent? Is there a legal basis for this recommended prohibition beyond applying the FDCP Act to ourselves in general?

Ballard Q+A [3](#), [4](#), [18](#) (*Click here to see Ballard Spahr reply*)

3. Does identifying our self and company to a third party (for example a reference when we're trying to locate) equate disclosing the existence of the customer's debt? Can we simply say we are attempting to collect a debt (not explicitly say "the debt is past due" or "they've skipped on their obligation")? Is there a legal basis for this recommended prohibition beyond applying the FDCP Act to ourselves in general?

Ballard Q+A [5](#), [14](#), [18](#) (*Click here to see Ballard Spahr reply*)

4. Can we contact a reference once a week or once every two weeks to "see if they've heard from Customer" when our other contact information is fruitless?

[Ballard Q+A 6](#) (*Click here to see Ballard Spahr reply*)

5. Sometimes a customer will tell us they filed bankruptcy when they have not (to buy time). If there is no record of a filing (or no attorney information is given) how long should we wait before we resume collection activities (giving them time to actually file)?

[Ballard Q+A 7](#) (*Click here to see Ballard Spahr reply*)

6. If a state statute provides a criminal penalty for entering into a contract (loan) intending to default (for example when a customer takes out a loan

on Monday and files Bankruptcy on Thursday) may we cite that code section in the contract and point out that such action may constitute a crime?

[Ballard Q+A 8](#) (*Click here to see Ballard Spahr reply*)

7. While we may not publish a list of consumers who don't pay, suppose we attach a label to a customer in our database which advises us (internally only) not to lend to someone based on past dealings. Now suppose this label (only viewable when looking at this particular customer's account) can be seen by one affiliate. Is this publication? Is this a UDAAP violation?

[Ballard Q+A 9](#) (*Click here to see Ballard Spahr reply*)

8. Why can't calls be placed from cell phones? Will there always be the presumption we're trying to "fool" the customer into answering? Often when making a field call away from the office, a call from a cell phone is needed. Is there a legal basis for this recommended prohibition beyond applying the FDCP Act to ourselves in general?

Ballard Q+A [12](#), [18](#) (*Click here to see Ballard Spahr reply*)

9. Discussions about debt in a public place: If we make an effort to keep the conversation private, is the locale really a problem? Is there a legal basis for this recommended prohibition beyond applying the FDCP Act to ourselves in general?

[Ballard Q+A 10](#) (*Click here to see Ballard Spahr reply*)

10. If we record collection calls for monitoring compliance, what sort of disclosure must be made to consumers when they call or when we call them? When and how often must this disclosure be made?

[Ballard Q+A 11](#) (*Click here to see Ballard Spahr reply*)

**XIII. BORROW SMART COLLECTIONS Q&A – BALLARD SPAHR
RESPONSE**

[Click here](#) if you wish to return to questions

Q1: If a customer.....*[Ballard responses have been removed from this page]*