

# OPERATIONS GUIDE

# CALL VOLUME



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This information is not intended to be legal advice and may not be used as legal advice. Legal advice must be tailored to the specific circumstances of each case. Every effort has been made to assure this information is up-to-date. It is not intended to be a full and exhaustive explanation of the law in any area, however, nor should it be used to replace the advice of your own legal counsel.

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## Contributors

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**Ron Canter** has 30 years of litigation experience, earning him an AV rating with Martindale-Hubbell. He is a member of the state bars of Maryland, Pennsylvania, Florida, and the District of Columbia. He is also admitted to practice in federal courts through the United States, including the Supreme Court and several courts of appeal. He is a recognized authority on creditors' rights and the regulation of collection practices, and has represented creditors, attorneys and production agencies in complex litigation in both federal and state courts.

The Fair Debt Collection Practices Act (FDCPA) regulates, in a sense, how often debt collectors can call consumers:

**15 U.S. Code § 1692d - Harassment or abuse**

A debt collector may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

- (1) The use or threat of use of violence or other criminal means to harm the physical person, reputation, or property of any person.
- (2) The use of obscene or profane language or language the natural consequence of which is to abuse the hearer or reader.
- (3) The publication of a list of consumers who allegedly refuse to pay debts, except to a consumer reporting agency or to persons meeting the requirements of section 1681a (f) or 1681b (3) of this title.
- (4) The advertisement for sale of any debt to coerce payment of the debt.
- (5) Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number.**
- (6) Except as provided in section 1692b of this title, the placement of telephone calls without meaningful disclosure of the caller's identity.

This Operations Guide, prepared with insight from the **insideOperations: Call Volume** webinar, looks at the challenges around Call Volume in the debt industry. While the FDCPA prohibits debt collectors from calling with excessive frequency, or at any unusual time or place that is known or should be known to be inconvenient, it stops short of mandating any particular practice.

It's one thing to know what's wrong. It's your bottom line that's at risk, however, if you don't know what's right.

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## The Call Volume Landscape

When the Fair Debt Collection Practices Act was passed in 1978, there were no cell phones. Answering machines were in their infancy. Call ID was not a function or even a special feature on home telephones.

The purpose of d(5) (i.e., 15 U.S. Code § 1692d(5)) was to outlaw collectors ringing the phone with the intent to annoy, harass or abuse the debtor. And in fact, almost 40 years ago, when the law was enacted, that is a definite harm that was being addressed. In 1978, the consumer could either sit there and listen to the ring on the phone and not answer it, or he might be compelled to take it off the line and let the person hear a busy signal. Either way, consumers were aware that the call was being made at the time. “If they were out three times a day, morning, noon and night, walking their dog,” Ron Canter of The Law Offices of Ronald S. Canter, LLC, shared in a Call Volume webinar, “and if the collector called three times each day at the same time they were walking the dog, they would never have known back then that that the collector was making any calls. Now, they do.”

And it's this “knowing” that the FDCPA feels has the potential to be annoying, harassing, or abusive.