Quantrax CORPORATION | RMEx Receivables Management Expert

Compliance in Debt Collection

How your collection software *must* help

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Compliance can be a complex path and a slippery slope for the software companies that build systems for collection management.

Introduction

Today, the challenges of being "compliant" are numerous. The requirements are complex, and can change rapidly. Often, compliance requirements are not easily understood, resulting in ongoing battles between vendor and user. Compliance standards offer the collection industry a great opportunity to take more responsibility for their actions, and to conduct business more professionally in the interests of all the parties involved. For creditors, collection agencies and consumers it is a simple win-win-win.

How do we navigate this complex area?

This document attempts to explain compliance at a high level, and share Quantrax's strategy for its technology, as it relates to compliance. If you are evaluating your existing software or considering other systems, the items discussed will allow you to create your own checklist for understanding what to look for in the different areas of compliance management. Due to the nature of the requirements, you may conclude that many of the requirements can be economically and effectively addressed only with purpose built, integrated dialer technology. With an "integrated" dialer platform, the technology uses the collection system's database to make all of its calls, updating call results and dispositions in real-time.

There are three key areas that question the credibility and significant value of the debt collection industry in North America.

Credibility and value of the debt collection industry

Today, there are three key areas that question the credibility and significant value of the debt collection industry in North America.

1. The quality of data that is available to collect a debt
2. A small percentage of cases where there is a lack of professionalism and knowledge at the level of collection representative
3. A fairly significant percentage of the industry is responsible for avoidable mistakes that irritate and alienate the consumer

Let's explain these areas in a little more detail for those who may not be familiar with them.

If the original creditor or collection company is not aware of, or cannot back up the accuracy and history of the transaction that they are trying to recover, the consequences are obviously very serious. Creditors and collection companies can face lawsuits, while some unfortunate debtors have lost their homes as a result of poor data being unknowingly (or knowingly) being used to collect or sue on a debt.

Poor training and the sometimes unavoidable "rogue collector" will lead to complaints from consumers that they were threatened or misled with wrong information. This is a problem that is easily overcome with good training, as in other industries. Are we justified in calling this a small problem? Most certainly yes - the vast majority of the collection industry is extremely responsible, devoting a great deal of time and expense to training and monitoring its employees.

Most phone calls are recorded. Answering machines and letters offer undisputed proof of a violation, and with penalties per occurrence often exceeding tens of thousands of dollars, one has to be certifiably insane to support or encourage bad practices within their collection operation. This is an important fact that most critics of the collection industry consistently seem to ignore.

Finally, we have the existence of bad practices within the collection industry. Even if one has accurate data, the collection industry's "behavior" is often questioned. Calling outside the allowed calling periods or calling the same number numerous times during the same day is an example of the behavior that is criticized by consumers and often targeted by lawmakers. While this type of irresponsible behavior is rare (compared to an enormous number of attempts and contacts initiated by the industry), it is being used to distract us from the great value of the collection industry to states and businesses for whom their past due receivables may be the difference between a profit and a loss. It is this aspect of the industry that this article will focus on, as we consider the different types of "compliance" that are now being presented to the industry.

Software and computer technology can and must be used to help the collection industry set high standards for compliance.

The writer's central theory is that software and computer technology can and must be used to help the collection industry set high standards for compliance, which in turn will lower the number of "non data-related" complaints. This is turn will earn the industry more respect, benefiting creditors, collection agencies and consumers alike.

What is compliance?

There are many definitions of compliance. We would like to use the one that simply says "observance of official requirements". In collections, these requirements can be internal, defined by the state or federal government, or be rules that are made up by a creditor.

The *Fair Debt Collection Practices Act* (*FDCPA*) is a United States statute we are all familiar with. The *Telephone Consumer Protection Act* (*TCPA*) was passed by the United States Congress in 1991. The *TCPA* was implemented by The United States Federal Communications Commission (FCC). In 2003, the FCC revised its TCPA rules in coordination with the Federal Trade Commission (FTC). As expected, the breadth and complexity of the state and federal regulations have grown, as more interested parties have got involved in legislation and enforcement. In many cases, there is no consistent enforcement, and the best defense may be to show that you are trying to comply, and that any mistake was an oversight as opposed to a deliberate error! In the last few years, data security has added a new dimension to the compliance problem. Areas such as PCI compliance have become a part of most collection operations, and are usually handled internally, through the collection software.

Compliance, while designed to help make processes easier and protect different business and individual interests, usually succeeds in obstructing efficient workflows. Collection systems must therefore be carefully designed, to minimize the impact of compliance on efficiency and production targets. This is almost always not the case. As we present these ideas, keep in mind that there is often no middle ground when the person asking for compliance looks at a problem. Those who set the rules know that if there were a middle ground, it would be impossible to get results. We (and you) are often faced with significant expenses to get as close to perfection as we can!

Collection systems must be carefully designed to minimize the impact of compliance on efficiency and production targets.

Internal compliance

In collection operations, there are many internal standards that are designed to maintain efficiency and ensure that state, federal and creditor requirements are met. Usually, these requirements are interpreted and converted to manual or systemic controls that collection operations can understand and implement.

Some examples are:

☑ Limit access to data, based on a person's role in the company

☑ Prohibit collectors from sending certain letters on a specific creditor's accounts

☑ Prevent taking more than 2 promises without a payment, on a balance less than $250

☑ You cannot work accounts in Louisiana or Texas because you do not have a license to collect in those states

☑ Stop sending letters for 2 weeks to a weather-affected area, because of damage to personal property within the region

☑ Ensure sensitive financial information (e.g. credit card and checking account numbers) is encrypted and only viewed by authorized individuals. To place their computer systems outside the scope of compliance requirements, some companies will opt to store a consumer's financial information outside their collection system, relying on a third party to handle the processing of credit card and check payments.

These options can be a part of a commercially available collection platform that can be controlled and set up by your company to handle all of these circumstances. If the features are a part of the base system, no custom programming is needed, but you have to make decisions and set up a knowledge base accordingly.

NOTE: The "knowledge base" is an area of an "intelligent" software package where your expert's knowledge and your business rules are secured and stored; interacting with the collection software to make the right decisions as each account is worked. The number of internal rules you define depends on the type of creditors and your management style.

State and federal regulations can and must be handled through well-designed collection software, *without* the need for custom programming or increased compliance budgets.

State and federal regulations

State and federal regulations will usually take a very long time to change or implement. This is an area that does not change a great deal at short notice.

Some examples of state or federal regulations are:

- ☑ A validation notice must be sent out within 5 days of the initial communication with a consumer
- ☑ You cannot make phone calls before 8 AM or after 9 PM
- ☑ You must not work accounts or send letters if the debtor is in a state you do not have a license to work in
- ☑ You must warn a consumer if you are recording calls
- ☑ You must obtain a debtor's permission before you call their cell phone
- ☑ A consumer could request that you only call their cell phone during specific hours of the day (on week days or weekends). They may work at an office that does not allow them to take personal calls. The system must be able to manage this request.
- ☑ You must make an attempt at the home number and wait a certain number of days before you try a work number. This is quite a challenging requirement! Until a work number is eligible to be called, it means that any potential work number can not be placed in a campaign or displayed to a collector!
- ☑ You may need to have different rules for certain state holidays
- ☑ Some states specify that IVR calls (also referred to as unattended messaging or agentless campaigns) should only be placed during specified hours of the day.
- ☑ Some states may define the maximum number of times you could attempt or contact a phone number, a type of number (e.g. the work number) or the consumer in one day or in a given period. Some states may treat a letter as a phone call
- ☑ You many only be allowed to leave a certain number of messages a day or within a specified period of time.
- ☑ Disputed accounts must identified and credit reported accurately
- ☑ In the event of an audit, you must be able to provide a list of phone numbers you dialed, along with account number, date, time, method of dialing and the connection status
- ☑ Some cities now require that a notice be sent out on all payment arrangements, with the date the arrangement was set up, along with the due dates and amounts for all of the installments

These are also examples of situations that can easily be handled though well-designed collection software, without any custom programming.

Why are creditors (and states) setting the standards for operational behavior within the collection industry?

Creditor requirements

This is probably the area that will offer you the greatest internal and technical challenges. Because they give you their business, many creditors will feel that they can demand work standards and compliance rules that may be difficult to meet or even unrealistic. To be fair to the creditors, the fear of lawsuits has added to the pressure on them, and it is likely that in the short term, compliance will become a more important evaluation item than collection percentages!

One may ask, “Why is it that creditors (and states) are setting the standards for operational behavior within the collection industry”? Would IBM, Microsoft or Boeing ever permit us to tell them how they should build their software and airplanes, or run their businesses?

Why is the collection industry being told how it should conduct business? Is it because the collection industry, in spite of several warnings, has not come up with a responsible and published code of conduct for its membership? Would this have made a difference? Would they today be perceived as more professional, responsible and accountable? Of course! But they have not done that, and may now be paying the price for that inaction. Fortunately, it is not too late to correct the course that they are on. It will take some good minds, unity, determination, technology changes and a practical dialog with regulators and consumer groups.

What are some examples of creditor-mandated compliance that we are now seeing?

- ☑ There must be 4 attempts on an account within the first 40 days
- ☑ The first 3 calls on an account must be at different times in the day (morning, afternoon and evening)
- ☑ There cannot be more than a specified number of calls to a debtor on a single day, or during a given period. There are limits per phone number and type of number too (Home, work, cell or 3rd party)
- ☑ Cell phones cannot be dialed through an automated dialer, even if an agent is always available to handle a connected call
- ☑ Cell phones must be dialed manually, but accounted for in the maximum calls logic. Some clients are requiring that land lines are also dialed manually. How do you stop someone from calling a number that is displayed on an account screen? You can not! Your only option is to mask the phone numbers when they should not be called!
- ☑ If there are several possible numbers for a consumer, you can attempt those numbers a total of say 5 times in one day, but you can only leave a total of 3 messages on all of the numbers you call

It is our experience that creditor-mandated compliance is usually more complex than any other type of requirement. Rules can be changed quickly and you are not given much time to develop the changes. Creditors are usually not concerned about how much it will cost, or how difficult the changes will be for you to implement. They want it done, and they want it done now. If a collection agency cannot meet the requirements, they will probably be penalized or fired. They make it very simple, specially the larger creditors!

Our goal should be to create a "technology infrastructure" that will handle all of the known and likely circumstances that we may face in the future.

How do you address so many technically different and operationally complex compliance requirements?

Given different solutions, manually managing the requirements is not a viable option. The area of compliance will always be a moving target that can only be handled with a long-term systems approach and strategy. Rather than tackle every possible requirement that creditors and states could ask for, our goal should be to create a "technology infrastructure" that will handle all of the known and likely circumstances that we may face in the future. Depending on the requirements, users would simply turn on the required area of compliance and set up the parameters based on the specific state or creditor. We must be able to do this quickly *without* waiting for custom code to be developed.

Most of the challenges we face are likely to be in the area of creditor-level compliance. We believe that sophisticated collection operations dealing with top-tier creditors will need most if not all of the controls discussed below. It is logical to predict that creditors will have stricter controls than states. If we can meet creditor requirements, we will probably be satisfying the states too.

Some of the things you could do within a standard collection platform

With the many years of investment in collection technology, you should be able to do the following within your base collection platform (without the need for custom modifications).

- ☑ Restrict access to one creditor's accounts based on individuals, or groups of users (data security is vital to a creditor)
- ☑ Only link accounts within a single creditor
- ☑ If applicable, the system must ensure that accounts in states that require collector licensing are only viewed and worked by collectors licensed in those states
- ☑ Have real-time cell phone scrubbing incorporated into the system
  - Cell phone databases are available and cell phones can be immediately identified as phone numbers are changed or added by users
  - Permission obtained to call a cell number must be easily documented
- ☑ Update existing cell numbers and landlines from a ported numbers list obtained from a supplier of that data
- ☑ Define all phone numbers as being a home, work, cell or third party number. This will allow you to isolate and manage different types of numbers in a calling list
- ☑ Set a requirement to obtain and document a consumer's permission to call *any* number (land or cell) based on the client's request
- ☑ Identify a cell phone so you can stop these numbers from being called "predictively"
- ☑ Use your collection and dialer software to set up rules for limiting calls to a single phone number, a type of number (home, work or cell), a debtor or a third party (non-debtor numbers)
  - The limits can be by day or for a period

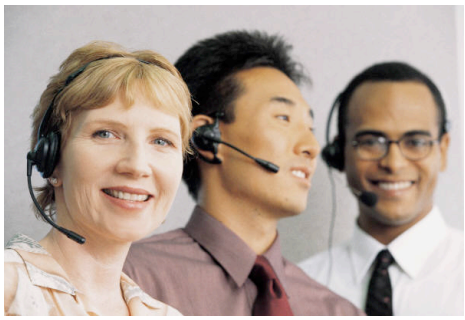
Today, compliance is not an option; it is standard operating procedure that *must* be a part of any collection platform.

- The rules should be flexible by creditor

☑ Count a cell phone call placed outside the dialer system using a desk phone. That information will need to be tracked by analyzing the collector's documentation within the account

☑ Control messages
- The dialer software will know when a message has been played, but collectors can also leave messages
- Track and count messages by analyzing the collector's documentation within the account

☑ Control the maximum number of calls, counting and tracking calls as soon as they are placed
- Before any call is launched, the history for the day (or period) and the calling rules must be checked
- When the maximum has been reached for a type of number or the debtor (or third party), the call must be stopped
- This logic will usually be a part of your collection software and must be integrated real-time with your dialer platform



☑ Manage the "allowable calling period", which is not as simple as making sure that you only make a phone call between 8 AM and 9 PM in the debtor's state
- What if different phone numbers for the consumer are in different states?
- What if there are toll free numbers?
- What if some parts of a state do not observe DST?
- Software must be flexible enough to handle this complex area by allowing you to decide how the the allowable calling period should be computed, or set that based on the different information on the account and the most conservative or restrictive approach.

With zero tolerance, we also face the need to virtually eliminate human error and negligence. What if the collector should not make a call to a certain number or consumer because of the number of calls allowed or a time zone restriction? Presenting the account to a collector with its associated phone numbers will allow a collector to make a call using a desk phone! In such as case the system will need to always mask the numbers that can not be called. This must be managed by the software.

The above is a fairly substantial body of work that will address most of today's more complex compliance needs. With the appropriate software, the users could quickly adapt to new rules, without the need for programming changes. We need a very "systems-oriented approach" to the area of compliance. There are many features at the state and creditor level that could offer even more flexibility. This type of collection platform (and dialer) arguably offer you some of the best options for managing compliance at all levels.

It may now be clearer why we say that today's compliance requirements demand that your collection technology needs to be very tightly integrated with your dialer platform. if you can not be certain that your technology will *never* allow that 5th call to a consumer, the only option you have is to manually control all outbound campaigns and hope that collectors will not selectively call consumers outside those standard dialer campaigns. Even in these instances, the collector could make "manual" calls to different phone numbers, violating the compliance requirements set by clients or states. As you can see, a systemic solution is required.

How will *your* collection technology manage compliance today and into the future?

Contacting Quantrax

If you are a collection operation, how will your collection technology manage compliance today and into the future? Massachusetts was one of the first states to pass legislation along the lines of preventing the "Initiating a communication with any debtor via telephone, either in person or via text messaging or recorded audio message, in excess of two such communications in each seven-day period". If your system does not have the flexibility to handle this requirement, your vendor will probably offer you custom code for a fairly substantial fee.

Tomorrow, it could be California, Bank of X or the ABC Hospital with their own parameters. That will mean even more expensive, time-consuming custom work. Standard collection technology has to get much stronger and smarter as we try to address and win the compliance war. Today, compliance is not optional; it is standard operating procedure that has to be a "standard feature" of any quality collection technology platform.

For more information about systemic compliance or Quantrax, please visit their website

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