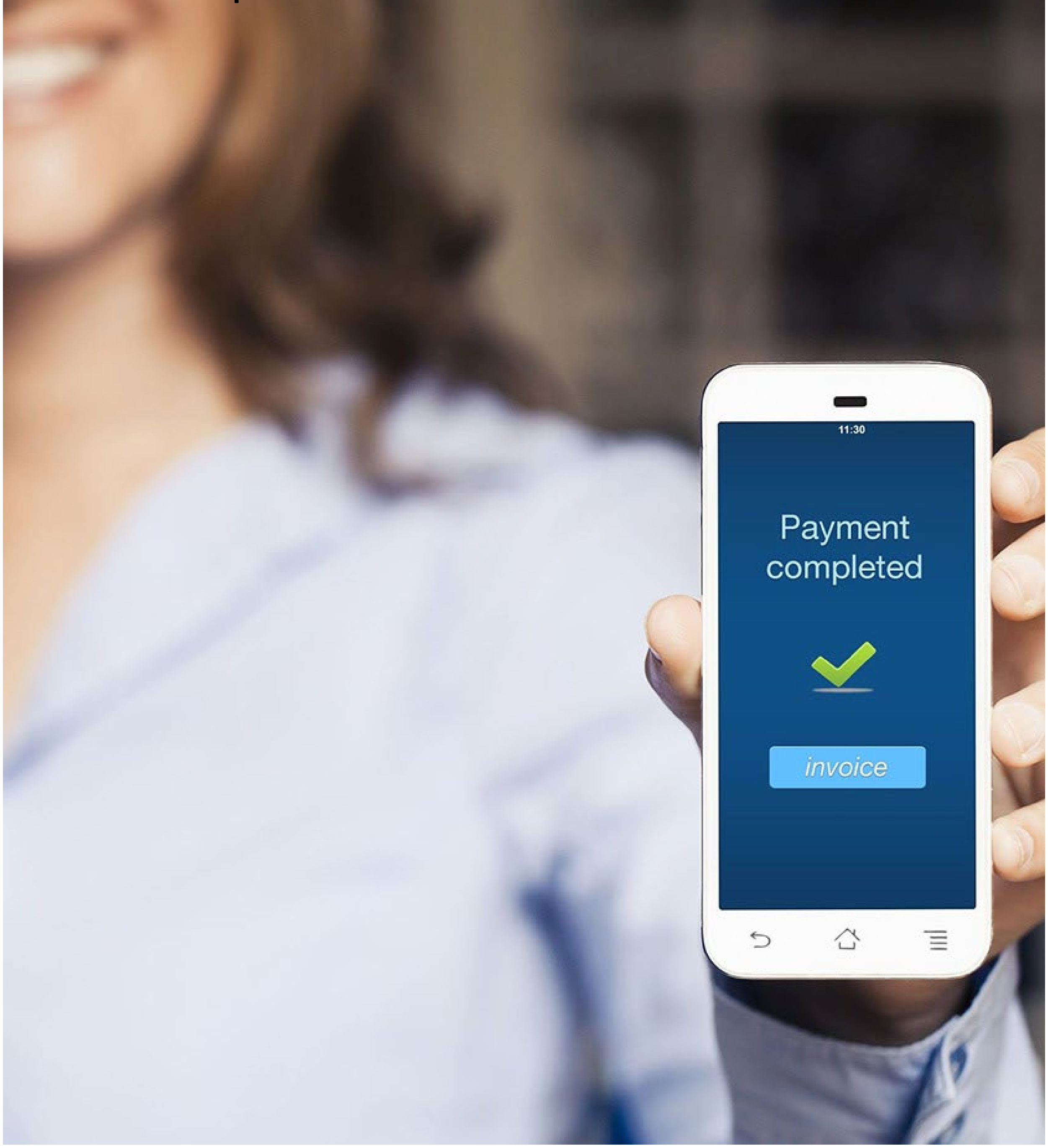

CREATING CONSUMER CENTRIC AND COMPLIANT PAYMENT SOLUTIONS IN THE TEXT CHANNEL

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PaymentVision®

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Overview

Consumer behavior has shifted significantly. Consumers are increasingly conducting much of their activities digitally and on mobile devices. In a recent CFPB survey, over the last 3 years, the use of mobile devices to conduct financial transactions have more than doubled. 60% of consumers use their mobile device to accomplish financial transactions. This trend will continue to increase, as consumers under the age of 25 use their mobile device for over 80% of financial transactions.[1]

Ultimately, consumers value choice, convenience and control over their communications preferences. The mobile device meets this need and text messaging gives the consumer the ultimate control over when and how to communicate. Consumers user their mobile phone to accomplish more text messages than phone calls. With this shift in consumer behavior, it is important to understand the intricacies with communicating in a consumer centric and compliant manner within this text channel.

Regulatory Consideration

When evaluating a company's decision to a offer payment solution in the text channel, compliance should be a foremost consideration. Once compliance is understood, the company needs to ensure that it has a clear picture of the process in place. The Federal Communications Commission (FCC), Federal Trade Commission (FTC) and Bureau of Consumer Financial Protection (CFPB) have a large regulatory influence on how to effectively deliver text communication solutions.

	FCC	FTC	CFPB
Applicable Regulations	TCPA	FDCPA	FDCPA & New Rule Making **STILL PENDING**
Text	Allowed, Treat as Voice Call	Allowed, with proper notification of source and purpose	Allowed, Treat as "Limited Content Messages"
Consent Capture and Considerations	1) Express Prior Consent 2) Capture Consent During Application	1) Mini Miranda for Debt Collection 2) Disclose if Sent by Debt Collector (DC) 3) "Reasonably Adopted" Procedures for Mobile Number Accuracy 4) Prohibit Existence of Debt to 3d Party	1) Safe Harbor Rules: - Recent Telephone Number Consumer Used to Contact (DC) - Non-Work Related Number - Provide Reasonable Opt-Out Opportunity

[1] Bureau of Consumer Financial Protection, "The Consumer Credit Card Market" https://files.consumerfinance.gov/f/documents/cfpb_consumer-credit-card-market-report_2019.pdf (August 2019)

The FCC has affirmed that **text messages are considered calls** and therefore are subject to the same consumer protections under the TCPA as voice calls[2]. As such, texts must comply with the requirements of the Telephone Consumer Protection Act (TCPA). The TCPA requires **the "calling" party to obtain the express prior consent** of the consumer associated with the mobile phone number. The FCC provides that "calls" are made with the consumer's "prior express consent" if the consumer has given the cell phone number to the creditor for use in normal business communications, such as in a credit application[3]. If you don't have the prior written consent, any type of marketing or solicitation in a text message is not recommended, and **texts should be limited to operational or payment information only.**

Next, if a company is proposing the use of text to pay to collect a debt, the current position of the FTC and the CFPB must be understood and considered. The FTC has confirmed that while the **FDCPA does not prohibit text messaging**, it is still subject to the FDCPA[4]. The FDCPA does provide a debt collector no civil liability for a violation IF the debt collector shows, by preponderance of the evidence, that the violation was not intentional and resulted from a bona fide error, notwithstanding the **collector's maintenance of procedures "reasonably adapted"** to avoid such an error.[5]

Therefore when implementing a text to pay option, procedures should be put in place to cover the requirements of the FDCPA. Section 807 (11) and 805 (b) are important areas to focus.

Section 807(11) covers the **mini-Miranda that will apply to text messages**[6]. In an initial communication with a consumer, even if the communication is via text, the company must disclose that he or she is attempting to collect a debt and that any information obtained will be used for that purpose[7]. All communications that follow will then have to **disclose that they're coming from debt collectors**[8].

Under Section 805(b) of the FDCPA, a text message is **prohibited from revealing the existence of a debt to a third party**[9]. Mobile numbers are often reassigned, so consider the source of the number you're using and the currency of the information to gauge the risk of third-party disclosure. If a consumer provides you with a work email address or mobile number, additional consideration must be given. These channels may not be fully under the consumer's control. If the consumer ends his or her employment, he or she could miss important communications. If a current or previous employer monitors text messages, you run the risk of third-party disclosure.

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[2] Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Report and Order, 18 FCC Rcd 14014, 14115, para. 165 (2003)
[3] 47 C.F.R. § 64.1200(a)(4).
[4] Colin Hector, "Debt collectors: You may "like" social media and test, but are you complying with the law?" https://www.ftc.gov/news-events/blogs/business-blog/2016/03/debt-collectors-you-may-social-media-texts-are-you-complying (March 28, 2016)
[5] 15 U.S.C. § 1692k(c).
[6] Lesley Fair, "3 dos, 3 don'ts, and 1 don't-even-think-about-it" https://www.ftc.gov/news-events/blogs/business-blog/2015/05/3-dos-3-donts-1-dont-even-think-about-it (May 12, 2015).
[7] Id.
[8] Id.
[9] Id.

To understand the CFPB's position, we can look to a CFPB proposed rule that is still pending with an unknown effective date[10]. This proposed rule has a direct mention to a debt collector's ability to text message debtors. The proposed rule is still pending, so should only be reviewed at this time and not relied on for compliance[11]. The proposed rule provides debt collectors with protection from the unauthorized disclosure of a debt to a third party when engaging in text communications so long as specific procedures are maintained regarding the selection and use of a mobile number. Under these safe harbor provisions, collectors could generally communicate with consumers using: (1) a telephone number that the consumer recently used to contact the collector; (2) a non-work phone number after the creditor or debt collector provided notice and a reasonable opportunity to opt-out; or (3) a non-work phone number that the creditor or a prior collector obtained from the consumer to communicate about the debt and used recently to communicate with the consumer[12]. **Please note the non-work number requirement.**

The proposed rules also provide what is referred to as **the use of "limited content messages,"** as defined in § 1006.2(j), which will fall outside the FDCPA's definition of "communications. [13] As a result, collectors who deliver a limited content message would neither trigger the FDCPA's self-identification requirements nor violate the law's prohibition against third-party disclosures if a third party saw or heard such a message[14].

Understanding these main compliance concerns is still just the first step.

Pay by Text & How Does It Work?

With these considerations in mind, the company must then fully understand and vet the pay by text service that it plans to offer. As an example, the following is the process developed by PaymentVision that has considered all the aforementioned compliance needs.

Pay by Text offers merchants the ability to provide:

- Opt-in to Subscription
- Payment Reminders
- Past Due Alerts
- Text Payments (with weblink)
- Text Payments (within the Text)
- Payment Confirmation
- Help Messaging
- Device Verification
- Opt-Out to Unsubscribe

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[10] 84 Federal Register 23274, May 21, 2019

[11] While this is included in this overview, again this is a PENDING rule and not yet confirmed. No defense is applicable under the guidance until the confirmation of the rule

[12] Proposed § 1006.6(d)(3)(i).

[13] FDCPA § 803(2), 15 U.S.C. § 1692a(2) (defining "communication"); proposed § 1006.2(d) (defining "communication" to exclude limited content messages).

[14] Proposed § 1006.2(j)(1); see also § 1006.6(e) (describing requirements for opt-out disclosure in electronic communications)

The PaymentVision Pay by Text service is an easy 4 step process that provides the merchant and consumer choice, convenience and control.

PaymentVision's Pay by Text service provides the consumer control to set their preferences through the online PayWeb portal or with the assistance of the company's representative over the phone. The self-service channel provides the consumer the option to opt into text messaging payments and reminders type messages. The consumer has the ability to choose how many days before the bill is due to receive the text message and can designate the funding account to be used with text payments (debit card, credit card, or ACH). If a consumer does not want to pay by text they are able to further select the type of messages they would like to receive; reminders, notification, or account alerts. If a consumer would rather have the assistance of a company's customer service representatives, the company's representative can set up and view consumer preferences in the administration tool. Whether using the self service tool or the company's service representatives, the preference collection will include the appropriate legal disclaimers, like providing non-work related contact phone numbers.

Once the consumer has elected to activate the pay by text option. The text will be sent according to the consumer's preferences. Unless the consumer has opted for a simple payment reminder only, the consumer will have the ability to make their payment within the text message flow using simple key works like "PAY" and "CONFIRM". The consumer can confirm the prepopulated and tokenized payment information or chose to change or update this information. The message includes key information like amount due, the payment date, and the last four digits of the funding account the consumer chose when signing up for the text-to-pay service.

The debit card, credit card, and ACH account numbers stored will remain securely stored in PaymentVision's PCI level 1 data centers and will not be sent through text message.

At any time, a consumer will have the option to opt-out of the text reminder and payment options by replying "STOP," requesting the opt-out through a customer service representative or by opting out via the online portal.

Conclusion

Consumers are moving their financial transactions to their mobile devices. To continue to meet your customer's needs, having a compliant and consumer centric solution is a requirement. Knowing how to apply the FTC, FCC and CFPB guidance and regulatory requirements are critical to a successful text message solution.

To learn more, visit our website www.paymentvision.com or
contact us @ 1-800-345-7243 or Sales@paymentvision.com