

CFPB PROPOSES DEBT COLLECTION RULE

The Consumer Financial Protection Bureau (“CFPB” or “Bureau”) proposes to amend Regulation F, 12 CFR part 1006, which implements the Fair Debt Collection Practices Act (“FDCPA”). At this time, the Bureau’s proposal only covers third-party debt collectors. It would, among other things:

1. Address communications in connection with debt collection;
2. Interpret and apply prohibitions on harassment or abuse, false or misleading representations, and unfair practices in debt collection; and
3. Clarify requirements for certain consumer-facing debt collection disclosures.

The Bureau’s proposed rule is based primarily on its authority to issue rules to implement the FDCPA. Certain parts of the proposal also rely on the Bureau’s authority under the Dodd-Frank Act, which generally address the unfair, deceptive, or abusive conduct of those who collect debt related to a consumer financial product or service.

APPLICABILITY TO COMMUNITY BANKS

This rule only applies to and covers third-party debt collectors, and not community banks or other creditors. However, it is likely that certain provisions of this rule will eventually be extended to cover community banks.

BACKGROUND

The FDCPA is designed to eliminate abusive debt collection practices by debt collectors, to ensure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent state action to protect consumers against debt collection abuses. Until the creation of the Bureau, no federal agency was authorized to issue regulations to implement the substantive provisions of the FDCPA. Courts have issued opinions providing differing interpretations of various FDCPA provisions, and there is considerable uncertainty with respect to how the FDCPA applies to communication technologies that did not exist in 1977.

Given that the FDCPA was passed in 1977, before current technology, the Bureau is proposing how debt collectors may employ such newer communication technologies in compliance with the FDCPA, and to address other communications-related practices that may pose a risk of harm to consumers and create legal uncertainty for the industry. The Bureau is also using this opportunity to interpret the FDCPA’s consumer disclosure requirements.

Although the Bureau notes that the FDCPA typically does not cover initial, first-party collection efforts, the proposal discusses how the Dodd-Frank Act includes many creditors and their servicers, who are collecting debt related to a consumer financial product or service, as “covered persons.” While creditors are not “covered persons” for the purposes of this proposal, portions of this proposal may eventually cover community banks and other creditors.

DEFINITIONS

ATTEMPT TO COMMUNICATE

“Attempt to communicate” covers a broader range of activity than a “communication,” and is defined as any act to initiate a communication or other contact with any person through any medium, including by soliciting a response from such person.

COMMUNICATE OR COMMUNICATION

“Communicate” or “communication” means the conveying of information regarding a debt directly or indirectly to any person through any medium. A debt collector does not convey information regarding a debt directly or indirectly to any person if the debt collector provides only a limited-content message.

CREDITOR

“Creditor” means any person who offers or extends credit creating a debt or to whom a debt is owed. The term creditor does not, however, include any person to the extent that such person receives an assignment or transfer of a debt in default solely to facilitate collection of the debt for another.

DEBT

“Debt” means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services that are the subject of the transaction are primarily for personal, family, or household purposes.

DEBT COLLECTOR

“Debt collector” means any person who regularly collects or attempts to collect, directly or indirectly, debts owed or due, or asserted to be owed or due, to another. *Though the term does not generally include “creditors,” it can cover any creditor that uses any name other than its own that would indicate that a third person is collecting.*

LIMITED-CONTENT MESSAGE

“Limited-content message” means a message for a consumer that only contains (1) the consumer’s name; (2) A request that the consumer reply to the message; (3) The name or names of one or more natural persons whom the consumer can contact to reply to the debt collector; (4) A telephone number that the consumer can use to reply to the debt collector; and (5) Certain other disclosures required with electronic communications. In addition, a limited-content message may include a salutation, the date and time of the message, a generic statement that the message relates to an account, or suggested dates and times for the consumer to reply to the message.

COMMUNICATIONS IN CONNECTION WITH DEBT COLLECTION

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The proposed rule clarifies the times and places at which a debt collector may

communicate with a consumer and clarifies that a consumer may restrict the media through which a debt collector communicates by designating a particular medium.

The proposal prohibits debt collectors from communicating with consumers at unusual or inconvenient times or places, where an unusual/inconvenient time/place generally means a time before 8:00 a.m. and after 9:00 p.m. local time, or any place that the debt collector should reasonably know is inconvenient to the consumer. The proposal also prohibits debt collectors from communicating with consumers at their place of work or if they are represented by an attorney, generally.

CESSATION OF COMMUNICATIONS

The proposed rule prohibits a debt collector from communicating or attempting to communicate further with a consumer with respect to a debt if the consumer notifies the debt collector in writing that the consumer refuses to pay the debt and the consumer wants the debt collector to cease further communication with the consumer.

COMMUNICATIONS WITH THIRD PARTIES

In general, the proposal states that debt collectors must not communicate, in connection with the collection of any debt, with any person other than the consumer or his/her attorney, a consumer reporting agency, the creditor or its attorney, or the debt collector's attorney.

REASONABLE MEASURES FOR EMAIL AND TEXT MESSAGE COMMUNICATIONS

The proposal requires debt collectors to use reasonable measures when communicating via text message or email. Such reasonable measures include using an email address or telephone number that the consumer recently used to contact the debt collector. Each text or email must contain a disclosure, informing the consumer of the ability to opt out of that contact method.

Additionally, a reasonable measure is the use of a non-work email address or telephone number, so long as the creditor or the debt collector notified the consumer clearly and conspicuously of the intent to use that number within 30 days prior to the communication. Or, alternatively, the debt collector's use of a non-work email address or telephone number is reasonable if the creditor or a prior debt collector obtained consent to use that email or number before the debt was placed with the debt collector.

PROHIBITIONS ON HARASSMENT, ABUSE, FALSE OR MISLEADING REPRESENTATIONS, AND UNFAIR PRACTICES

PROHIBITION ON HARASSING

The proposal stipulates that a debt collector must not engage in any conduct that would harass, oppress, or abuse any person in connection with the collection of any debt. This includes repeated or continuous telephone calls, or by placing a telephone call to a particular person in connection with the collection of a particular debt either:

1. More than seven times within seven consecutive days; or
 2. Within a period of seven consecutive days after having had a telephone conversation with the person in connection with the collection of such debt.
- However, the proposal does allow debt collectors to respond to a request for

information from such person, made with such person's prior consent given directly to the debt collector.

FALSE, DECEPTIVE, MISLEADING REPRESENTATIONS

Among other prohibitions against making false or misleading statements, a debt collector must not threaten to take any action that cannot legally be taken. Nor may the debt collector threaten to take an action without any intention to do so, or threaten to communicate information that the debt collector should know is false, including the failure to communicate that a disputed debt is disputed.

UNFAIR OR UNCONSCIONABLE ACTS

A debt collector must not collect any amount unless such amount is expressly authorized by the agreement creating the debt or permitted by law. Additionally, a debt collector generally must not accept a check postdated by more than five days, unless such person is notified in writing of the debt collector's intent to deposit such check within a certain timeframe. The rule also prohibits a debt collector from soliciting any postdated check for the purpose of threatening criminal prosecution. Finally, a debt collector must not furnish to a consumer reporting agency information regarding a debt before communicating with the consumer about the debt.

PROHIBITION ON SALE, TRANSFER, OR COLLECTION OF CERTAIN DEBT

A debt collector must not sell, transfer, or place for collection a debt if known that the debt has been paid or settled, that the debt has been discharged in bankruptcy, or that an identity theft report has been filed.

TIME-BARRED DEBTS

A debt collector must not bring or threaten to bring a legal action against a consumer to collect a debt that the debt collector knows or should know is a time-barred debt.

FURNISHING INFORMATION

The proposal prohibits a debt collector from furnishing information about a debt to a consumer reporting agency before communicating with the consumer about the debt.

CONSUMER-FACING DEBT COLLECTION DISCLOSURES AND RECORD RETENTION REQUIREMENTS

VALIDATION OF DEBTS

A debt collector must provide the debt collector's name and mailing address, the consumer's name and mailing address, as well as other identifying information, such as the name of the original creditor and amount of debt.

DISPUTES AND REQUESTS FOR ORIGINAL-CREDITOR INFORMATION

Upon receipt of a request for the name and address of the original creditor submitted by the consumer in writing within the validation period, a debt collector must cease collection of the debt until the debt collector provides the name and address of the original creditor to the consumer.

Upon receipt of a dispute submitted by the consumer in writing within the validation period, a debt collector must cease collection of the debt, or any disputed portion of the debt, until the debt collector provides a copy either of verification of the debt or of a judgment to the consumer in writing or electronically.

REQUIRED DISCLOSURES

A debt collector must disclose in its initial communication with a consumer that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose. In each subsequent communication, the debt collector must disclose that the communication is from a debt collector.

RECORD RETENTION

A debt collector must retain evidence of compliance with this rule starting on the date that the debt collector begins collection activity on a debt until three years after the debt collector's last communication or after the debt is settled, discharged, or transferred.