

CFPB Debt Collection Rule Takes Effect November 30: Is Your Team Ready?

Part 2: Disclosures, Validation, Credit Reporting, Record Keeping, and More

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Today's Presentation

Recap of Part I

Disclosures

Disputes

Credit Reporting

Ban on Certain
Debt Sales

Record
Retention

Key Takeaways

Recap of Part I of Webinar Series

Recap of How Rule Impacts Collection Communications

- **Debt Collectors** - The Debt Collection Rule applies only to “debt collectors,” as defined by the FDCPA, and does not extend to “first party” creditors.
- **Time and Place Restriction** - The Debt Collection Rule restricts the times and places at which a debt collector may communicate or attempt to communicate with a consumer, including by clarifying that a consumer need not use specific words to assert that a time or place is inconvenient for debt collection communications.
- **Call Frequency** - Debt collectors are presumed to violate the FDCPA’s prohibition on repeated or continuous telephone calls if the debt collector places a telephone call to a person more than seven times within a seven-day period or within seven days after engaging in a telephone conversation with the person.
- **Limited-Content Message** - The Debt Collection Rule defines a new term related to debt collection communications: “limited-content message.” If a message meets this definition, then it is not a “communication” under the FDCPA. Limited-content messages are limited to voice mails left with a debtor, and the Debt Collection Rule identifies what information a debt collector must and may include in such messages.

Recap Cont'd.

- **Email and Text** - Debt collectors may use communication technologies such as emails and text messages in debt collection, and the Debt Collection Rule provides a safe harbor for collectors when they use these communications with consumers, provided that the Debt Collection Rule's procedural framework is followed. In addition, these communications must include instructions for a reasonable and simple method that consumers can use to opt out.
- **Opt Out** - Consumers may restrict the media through which a debt collector communicates or attempts to communicate by designating a particular medium, such as email or telephone, as one that cannot be used for debt collection communications.
- **Social Media** - A debt collector is prohibited from communicating or attempting to communicate with a person, in connection with the collection of a debt, through a social media platform if the communication or attempt to communicate is viewable by the general public or the person's social media contacts.



Disclosures

Disclosures

- The Rule generally restates the FDCPA’s requirement that a debt collector disclose in their initial, and in each subsequent, communication with the consumer that the communication is from a debt collector (i.e., the “mini-Miranda” disclosure).
- The Rule requires a debt collector to make any required disclosures in the same language used for the rest of the communication in which the disclosures are conveyed.
- The Rule clarifies that all required disclosures must be sent in a manner that is reasonably expected to provide *actual notice*; required *written* disclosures must be sent in a form that the consumer may keep and access later.
 - To meet the general standard when sending required written disclosures electronically, a debt collector must send the disclosures in accordance with the Electronic Signatures in Global and National Commerce Act (E-SIGN Act)’s consumer-consent requirements.
 - The Rule creates a safe harbor for sending required disclosures if the debt collector mails a printed copy of the disclosure to the consumer’s last known address. This safe harbor applies unless the debt collector, at the time of mailing, knows or should know that the consumer does not currently reside at, or receive mail in, that location.

Validation Notices – Required Information

VENABLE LLP

North South Group
P.O. Box 123456
Pasadena, CA 91111-2222
(800) 123-4567 from 8am to 8pm EST, Monday to Saturday
www.example.com

To: Person A
2323 Park Street
Apartment 342
Bethesda, MD 20815
Reference: 584-345

North South Group is a debt collector. We are trying to collect a debt that you owe to Bank of Rockville. We will use any information you give us to help collect the debt.

Our information shows:

You had a Main Street Department Store credit card from Bank of Rockville with account number 123-456-789.

As of January 2, 2017, you owed:	\$ 2,234.56
Between January 2, 2017 and today:	
You were charged this amount in interest:	+ \$ 75.00
You were charged this amount in fees:	+ \$ 25.00
You paid or were credited this amount toward the debt:	– \$ 50.00
Total amount of the debt now:	\$ 2,284.56

How can you dispute the debt?

- **Call or write to us by August 28, 2020, to dispute all or part of the debt.** If you do not, we will assume that our information is correct.
- **If you write to us by August 28, 2020,** we must stop collection on any amount you dispute until we send you information that shows you owe the debt. You may use the form below or write to us without the form. You may also include supporting documents. We accept disputes electronically at www.example.com/dispute.

What else can you do?

- **Write to ask for the name and address of the original creditor, if different from the current creditor.** If you write by August 28, 2020, we must stop collection until we send you that information. You may use the form below or write to us without the form. We accept such requests electronically at www.example.com/request.
- **Go to www.cfpb.gov/debt-collection to learn more about your rights under federal law.** For instance, you have the right to stop or limit how we contact you.
- Contact us about your payment options.
- Póngase en contacto con nosotros para solicitar una copia de este formulario en español.

Notice: See reverse side for important information.



Mail this form to:
North South Group
P.O. Box 123456
Pasadena, CA 91111-2222

Person A
2323 Park Street
Apartment 342
Bethesda, MD 20815

How do you want to respond?

Check all that apply:

- I want to dispute the debt because I think:**
 - This is not my debt.
 - The amount is wrong.
 - Other (please describe on reverse or attach additional information).
- I want you to send me the name and address of the original creditor.**
- I enclosed this amount:** \$

Make your check payable to *North South Group*. Include the reference number 584-345.

- Quiero este formulario en español.**



Disputes

Disputes

- Rule restates FDCPA's requirement that a debt collector must cease collection of a debt, or any disputed portion of a debt, when a debt collector receives a written dispute.
- A debt collector may not resume collection of that debt until the debt collector responds to the consumer's dispute in writing or electronically. If the consumer has submitted a dispute, a debt collector must provide a verification of the debt or of a judgment to the consumer.
- If a debt collector determines that the consumer's dispute is duplicative of an earlier dispute, as defined in the Rule, a debt collector must either:
 - 1) provide the consumer with a brief statement of the reasons for the determination and refer the consumer to the debt collector's response to the earlier dispute; or
 - 2) send a verification of the debt or of a judgment to the consumer.

Credit Reporting – New Prerequisites

Credit Reporting – New Prerequisites

- Cannot furnish to a CRA information about a debt *unless and until* debt collector:
 - Speaks to the consumer about the debt in person or by phone; **or**
 - Places letter in the mail or sends e-message to the consumer about the debt and waits “reasonable period of time” to receive notice of undeliverability.

Ban on Certain Debt Transfers

Limits on Selling, Transferring, or Placing Debts that Have been Paid, Settled, or Discharged in BK

- Rule prohibits a debt collector from selling, transferring for consideration, or placing a debt for collection **if** a debt collector *knows or should know* that the debt has been paid, settled, or discharged in bankruptcy.
- The Rule provides exceptions to this general ban for:
 - 1) transfers to the debt's owner or to a previous owner (if authorized under the original contract between the debt collector and the previous owner);
 - 2) transfers as a result of a merger, acquisition, purchase and assumption transaction, or a transfer of substantially all the debt collector's assets;
 - 3) sales, transfers, or placements of secured debt discharged in bankruptcy if certain conditions in the Rule are met; and
 - 4) securitization of debt or pledging of a portfolio of debt as collateral.



Record Retention

Record Retention

- Debt collector required to maintain records evidencing compliance with the FDCPA and Regulation F on a *per debt basis*.
- Required to maintain records starting on the date that the debt collector begins collection activity on a debt until *3 years* after the last collection activity on the debt
 - In the case of *telephone call recordings*, must maintain them until three years after the dates of the telephone calls.
- A debt collector need not create and maintain additional records, for the sole purpose of evidencing compliance that the debt collector would not have created in the ordinary course of its business in the absence of the record retention requirement.
 - Does not require a debt collector to record telephone calls, but if calls are recorded, the recordings are considered evidence of compliance or noncompliance with the FDCPA, and the recording must be retained for 3 years after the date of the call.



Key Takeaways

Checklist for Key New Requirements

- Is your dialer ready for call frequency limits?
- If you plan to text or email consumers, do you know how you got the phone number and/or email address?
- Is your collections system capable of capturing:
 - Consumer preferences on when and how to communicate with them?
 - Opt-outs and opt-ins?
 - Direct prior consent?
- Is your collection staff trained on:
 - Recording consumer preferences into the collections system?
 - Call frequency limits?
 - How to leave a “limited-content message”?
 - The “Do’s and Don’t’s” of communicating with consumers via social media?
 - How to determine whether a consumer is designating a time or place as inconvenient?
- Do your validation notices include all required information (and in the correct language)?
- Has your record retention policy been updated to ensure records are not deleted before 3-year requirement?
- Is there a control in place to ensure credit reporting does not begin until communication with consumer is made?
- Is there a control in place to ensure paid, settled, or discharged debts are not sold or re-placed?

Questions & Answers



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Jonathan Pompan, partner and co-chair of Venable's Consumer Financial Services Practice Group, is based in Venable's Washington, DC office. Jonathan has extensive experience representing financial services companies, including some of the largest debt buyers and collectors and advertisers of financial services in the country, other consumer financial services providers, and their service providers. This work gives him considerable insight into successful strategies for satisfying new and evolving regulatory expectations.

Jonathan has assisted clients in bet-the-company government investigations and litigation pursued by federal agencies such as the CFPB and the FTC, as well as in-state enforcement proceedings involving state attorneys general. His experience includes several CFPB investigations and examination preparation and appeals. In addition, he provides ongoing compliance and general counseling advice to several clients in the FinTech, debt collection and credit services, lenders, and advertising and marketing sectors.

Jonathan is a frequent speaker, organizer, and moderator of conference panels, and author on legal and regulatory issues of significance to financial services companies. Recent speaking engagements include, PerformLine's COMPLY! Conference, OLA Compliance University, Lend360, LeadsCon, Education Finance Council, ACA International Annual Convention, and the Receivables Management Association International (RMAI) Annual Conference.



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Alex Megaris focuses on complex regulatory investigations and government enforcement matters involving state attorneys general, the Federal Trade Commission (FTC), the Consumer Financial Protection Bureau (CFPB), state regulatory agencies, and the U.S. Congress. Alex also works closely with Venable's government affairs team in advocating for clients before these agencies. She has extensive experience with consumer protection laws, such as state unfair, deceptive and abusive practices (UDAAP) laws, the FTC Act, the Consumer Financial Protection Act, the FTC's Telemarketing Sales Rule, and product-specific regulations, including those regulating credit reporting, loan servicing, and debt collection.

Alex has recent experience providing strategic advice and counsel to high-profile political ventures, including a high-net-worth individual exploring federal office and a presidential campaign. Through these experiences and her government litigation and investigations work, Alex brings a legal, business, and crisis-management sensibility to her clients, their management, and boards, offering thoughtful, creative, and pragmatic solutions to often thorny issues to help them manage their legal and reputational risks.

Alex is the hiring partner in Venable's New York office.



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