

## CFPB publishes debt collection proposed rule

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The CFPB has published its long-awaited [notice of proposed rulemaking](#) under the Fair Debt Collection Practices Act (FDCPA). The proposed rule would apply only to debt collectors covered by the FDCPA, although creditors and servicers acquiring debts before default will feel its impact as well.

The proposed rule would do the following:

- Prohibit a collector from calling a consumer about a particular “consumer financial product or service” debt more than seven times within a seven-day period and, after a telephone conversation occurs between the collector and consumer, prohibit the collector from calling the consumer again within seven days. The limit is debt-specific, so that calls made with respect to one debt do not count towards the limit on calls made with respect to a different debt, with one exception. All student loans that are serviced under a single account or packet number are treated as one debt. The CFPB proposes to issue the cap under its UDAAP rulemaking authority, meaning that the cap would only apply to debts that relate to a “consumer financial product or service” as defined in Title X of the Dodd-Frank Act.
- Require validation notices to include the consumer’s account number, an itemization of the debt, plain language information about how a consumer may respond to a collection attempt (including by disputing the debt), and a “tear-off” that consumers could send back to respond to the collection attempt. The proposal includes a model validation notice as well as clarification around the provision of non-English language validation notices. There are some differences between the model validation notice accompanying the proposed rule and the version that was included in the CFPB’s July 28, 2016 [SBREFA Outline](#), such as a requirement to state expressly that the consumer has the right to stop or limit how he or she may be contacted and a reference to state disclosures, which may appear on the reverse side of the notice.
- Require collectors to include opt-out instructions in every email, text message, and other electronic communication to consumers. Such instructions must not require the consumer to

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pay a fee or provide any information other than their email address, cell phone number, or other electronic-medium address in order to unsubscribe. The proposal also clarifies that a collector may only reply once to confirm an opt-out request and it restricts collectors' responses to consumer communications initiated from an address or number that was the subject of an earlier unsubscribe request.

- Provide an alternative to the E-SIGN Act for sending three disclosures electronically: the validation notice, original-creditor disclosure, and validation-information disclosure. The alternative process for electronic delivery is summarized in the CFPB's [Electronic Disclosure Options Flowchart for the Debt Collection Proposed Rule](#).
- Define a "limited-content message," which, when such message is left for the consumer by voicemail, text message, or orally (including leaving a message with a third-party who answers the consumer's home or cell number), does not constitute a third-party disclosure of the debt or trigger disclosure of the collector's identity under the FDCPA, although it does count for purposes of the frequency limits noted above. A limited-content message must include the consumer's name, a request that the consumer reply to the message, the name(s) of natural person(s) the consumer may contact to reply to the debt collector, a call-back telephone number, and instructions for unsubscribing from electronic communications (if applicable). A limited-content message may not include any other information apart from a salutation, the date and time of the message, a generic statement that the message relates to an account, and suggested dates and times for the consumer to reply to the message.
- Prohibit suits and threats of suit on time-barred debts. The CFPB has indicated that it will proceed with its [previously postponed web survey](#) of 8,000 consumers to test disclosures related to time-barred debt and, depending on the results, may require a collector collecting a time-barred debt to disclose that it cannot sue to collect the debt because of its age.
- Prohibit collectors from furnishing information about a debt to a consumer reporting agency unless the collector has communicated about the debt to the consumer beforehand, such as by sending the consumer a letter.
- Clarify that an executor, administrator, and personal representative of a decedent's estate is a "consumer" for purposes of the FDCPA, such that debt collection protections extend to those representatives.
- Prohibit the sale, transfer, or placement for collection of a debt if the collector knows or should know that the debt has been paid or settled; has been discharged in bankruptcy; or an identity theft report has been filed with respect to the debt.
- Provide safe harbor procedures for debt collectors who unintentionally communicate with an unauthorized third party about a consumer's debt when trying to communicate with the consumer by email or text message. In practice, the safe harbor procedures may be difficult to operationalize because they will require complicated systems programming and recordkeeping.
- Prohibit collectors from contacting consumers through a social media platform other than through a private messaging function. Such contacts may be prohibited, however, if the consumer has told the debt collector not to use the social media platform for communications.
- Clarify that calls to cell phones, text messages, and emails are subject to the FDCPA's prohibition on communicating at unusual and inconvenient times and places. Communications are prohibited if the consumer specifically says that a time or place is "inconvenient" or if the debt collector should know that it is from the facts and circumstances even if the consumer does not use that word.
- Prohibit emails to the consumer's work email address, unless the collector has received prior consent from the consumer to do so or an email from that email address. The consumer could later opt out, however, or tell the collector not to use that email address.
- Provide a safe harbor for meaningful attorney involvement in debt collection litigation

submissions.

- Require collectors to retain evidence of compliance with the rule for three years from the later of the date of the collector's last debt collection communication or attempted communication or the date that the debt is settled, discharged, or transferred to the debt owner or another collector. Records may be maintained electronically, as long as they can be reproduced accurately, or stored with a third party, as long as they can be accessed easily.

Comments must be submitted within 90 days of the date the proposed rule is published in the Federal Register. The rule would take effect one year from the date the final rule is published in the Federal Register.

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