

## [Banking and Finance Law Daily Wrap Up, TOP STORY—CFPB finalizes consumer disclosures related to debt collection, \(Dec. 18, 2020\)](#)

Banking and Finance Law Daily Wrap Up

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CFPB has issued a final rule to implement the FDCPA's requirements regarding certain consumer disclosures connected with debt collection activities.

The Consumer Financial Protection Bureau has issued a final rule amending Regulation F 12 CFR Part 1006), which implements the Fair Debt Collection Practices Act. The [final rule](#) provides additional requirements regarding validation information and disclosures provided at the outset of debt collection communications, prohibits suits and threats of suits regarding time-barred debt, and identifies actions that must be taken before a debt collector may report information about a debt to consumer reporting agencies (CRAs).

The final rule, which becomes effective on Nov. 30, 2021, is the cumulation of a 2019 [notice of proposed rulemaking](#), which sought to prescribe federal rules governing the activities of debt collectors, and a 2020 [supplemental notice of proposed rulemaking](#) that would have established disclosure requirements related to the collection of time-barred debt (see [Banking and Finance Law Daily](#), May 7, 2019 and [Feb. 24, 2020](#)).

It should be noted that in October 2020, the CFPB issued a final rule amending Regulation F to address most of the provisions in the 2019 proposal, including communications in connection with debt collection and the interpretation and application of the FDCPA's prohibitions on harassment or abuse, false or misleading representations, and unfair practices in debt collection (see [Banking and Finance Law Daily](#), Nov. 2, 2020).

**Validation requirements and disclosures.** The final rule implements the FDCPA's requirement that a debt collector provide the consumer with certain information when the debt collector first communicates with the consumer to collect the debt.

Specifically, the final rule's validation notice requirements provide that a debt collector must provide certain validation information to a consumer that is "clear and conspicuous" or "readily understandable."

The validation notice must include the following information

- statement that indicates the communication is from a debt collector;
- debt collector's name and mailing information;
- account number;
- an itemization of the current amount of the debt reflecting interest, fees, payments, and credits since the itemization date;
- current amount of the debt;
- information about consumer protections; and
- consumer-response information.

The validation requirements also permit a debt collector to include certain optional content in the validation notice, provided that the optional content is no more prominent than the required content. Optional content includes, among other things, the debt collector's telephone contact information; a reference code the debt collector uses to identify the consumer or the particular debt; and certain payment disclosures.

The final rule also provides that a validation notice must be provided either in the debt collector's initial communication to the consumer or within five calendar days after the initial communication. For purposes of the validation information, "initial communication" means the first time the debt collector conveys information to the consumer about the debt, directly or indirectly.

**Validation period.** Once a validation notice is sent to a consumer, a debt collector must allow the consumer 30 calendar days from the date the consumer receives, or is assumed to have received, the validation notice, to dispute the debt or request original-creditor information about the debt. This 30-day period is identified in the rule as the "validation period." During the validation period, the debt collector must not engage in collection activities or communications that overshadow, are inconsistent with, or would interfere with the consumer's rights to dispute the debt or request original-creditor information.

**Safe harbor.** In order to comply with the validation notice requirements, the final rule provides debt collectors with a safe harbor. A debt collector who uses the [model validation notice](#) complies with the final rule's content requirements, including that the notice be clear and conspicuous. Use of the model validation notice also would not constitute a violation of the October 2020 final rule's prohibition on conduct that "overshadows" a consumer's rights during the validation period.

**Passive collection prohibited.** The final rule also prohibits "passive collection" which is the practice of furnishing collection information about a debt to a CRA without first taking an action to notify the consumer about the debt.

Under the final rule, a debt collector must take one of the following steps before it furnishes information to a CRA:

- speak with the consumer in person about the debt;
- speak with the consumer by telephone about the debt;
- mail the consumer a letter about the debt and wait a reasonable period of time to receive a notice of undeliverability; or
- send the consumer a message about the debt by electronic communication and wait a reasonable period of time to receive a notice of undeliverability.

In taking any of the four actions, a debt collector must comply with the requirements and prohibitions in the October 2020 final rule, including, for example, the prohibition on communications at inconvenient or unusual times or places.

**Time-barred debt.** Finally, the final rule prohibits a debt collector from bringing or threatening to bring a legal action against a consumer to collect a time-barred debt. Proofs of claim filed in connection with a bankruptcy proceeding are not included in this prohibition.

It should be noted that the time-barred debt disclosures proposed in the 2020 supplemental notice of proposed rulemaking were included as finalized in the final rule. However, the CFPB noted that the FDCPA and the October 2020 final rule requirements still apply to communications about time-barred debt. For example, a debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of a time-barred debt. Additionally, a debt collector may not use unfair or unconscionable means to collect or attempt to collect a time-barred debt.

Commenting on the final rule's release, CFPB Director Kathleen L. Kraninger [noted](#), "Our final rule reflects our commitment to ensuring that consumers are better informed; informed consumers are empowered consumers."

The National Consumer Law Center, on behalf of its low-income clients, along with Americans for Financial Reform Education Fund, Consumer Federation of America, and the National Association of Consumer Advocates, [expressed disappointment](#) that the final rule does not go far enough to provide needed consumer protections on key issues. These advocacy groups urged the Biden Administration to revisit the rule and strengthen protections for consumers and give emergency relief on COVID-related debt collection issues to help struggling families.

Companies: Americans for Financial Reform Education Fund; Consumer Federation of America; National Association of Consumer Advocates; National Consumer Law Center

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