

CFPB Long-Awaited Proposed Rule on Debt Collection Would Address Call Frequency, Texting, and More

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The CFPB [released](#) its proposed rule governing debt collection, which would impose new requirements for debt collectors related to when and how a consumer can be contacted, what can and must be said when a consumer is reached, and the procedures to validate and verify a debt. Industry and other stakeholders have long anticipated the proposed rule, which follows a July 2016 outline of proposals and November 2013 Advanced Notice of Proposed Rulemaking, previously discussed [here](#). The immediate response to the proposed rule has been mixed from both industry and consumer advocates – with provisions addressing call frequency and texting generating the most attention, as discussed more fully below.

The proposed rule generally applies only to “debt collectors,” as that term is defined under the Fair Debt Collection Practices Act (FDCPA), and thus would not apply to creditors or so-called “first-party” collectors seeking to collect a debt owed directly. Additionally, certain requirements would apply only to those who collect debt related to a consumer financial product or service, based on the Bureau’s interpretation of its authority to promulgate rules under the Dodd-Frank Act to implement the FDCPA. Notable substantive aspects of the proposal include:

- Call frequency limitations. The proposed rule would generally prohibit collectors from calling consumers more than seven times per week regarding a specific debt and require a collector to wait at least a week before calling the consumer once a conversation takes place. While consumer advocates have argued that this provision would effectively green light seven calls per week in connection with each consumer debt, debt collectors would continue to be subject to preexisting laws that already prescribe requirements for contacting consumers by phone generally, such as the Telephone Consumer Protection Act (TCPA). Some in industry, on the hand, have countered that an absolute call frequency limit would neither be workable nor practical, and have asserted that appropriate call frequency should instead be determined on a case-by-case basis.
- Text messages and emails as acceptable communication methods with new limitations. The proposed rule acknowledges that emails and text messages are regularly used for debt collection purposes and permits that use subject to certain restrictions, such as requiring instructions that permit the consumer to opt out from receiving messages. The rule would impose new limitations that would operate in addition to existing requirements under the TCPA and state laws, which are not preempted under the proposal. The proposed rule would also create a new category of messages called a “limited-content message,” which would only

contain certain information and not be deemed a “communication” for purposes of general limitations under the FDCPA.

- Disclosures and validation notices. The proposed rule provides more details regarding the information that must be included in written notices following an initial communication a debt, and requires collectors to provide prompts that a consumer could use to dispute a debt, request information about the original creditor, or take certain other actions. The proposal offers a model validation notice that could be used to comply with these requirements and creates a safe harbor if a collector complies with certain steps when delivering the validation notice.
- Recordkeeping. The proposed rule would also require collectors to retain evidence of compliance, including records evidencing that collectors perform the actions and made the disclosures required under the rule. The rule allows such records to be retained by any method that reproduces the records accurately (including electronically) and that ensures that the debt collector can easily access the records.

Interested parties should review the proposed rule closely to assess how the new requirements could impact current and future practices. Comments on the proposed rule are due 90 days from publication in the Federal Register, which should take place shortly.