

Debt Collection on Deck: CFPB Outlines Proposals Under Consideration to Ramp Up Regulation of Debt Collectors

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The [CFPB recently released an outline of proposals](#) that it is currently considering to overhaul the debt collection market. The proposals under consideration would significantly expand current regulations governing debt collection, including by requiring collectors to maintain specified information to substantiate a debt before contacting consumers, limiting the number of times that a collector can contact a consumer in a certain period, and requiring collectors to facilitate disputes by providing a “tear-off” sheet in initial collection notices.

The announcement follows the Bureau’s November 2013 [Advanced Notice of Proposed Rulemaking \(ANPR\)](#) seeking comment on debt collection practices. Notably, while the ANPR suggested that the CFPB was considering proposing regulations covering both third-party debt collectors and first-party collectors and creditors (*i.e.*, entities attempting to directly collect debts owed to them), the Bureau now plans to address the entities separately. The Bureau explained that it “expects to convene a second proceeding in the next several months for creditors and others engaged in collection activity who are covered persons under the Dodd-Frank Act but who may not be ‘debt collectors’ under the FDCPA [Fair Debt Collection Practices Act].

The Bureau indicated that the “outline of the proposals under consideration is in preparation for convening a Small Business Review Panel to gather feedback from small industry players, which is the next step in the rulemaking process.” The Bureau would then need to issue a proposed rule, review comments submitted on the proposed rule and issue a finalized rule, with likely additional public meetings and other steps along the way.

We outline some of the most notable proposals below.

I. Information Integrity Concerns

The Bureau noted that the largest category of debt collection complaints it receives relates to collectors seeking to recover from the wrong consumer or in the wrong amount. The Bureau offered two explanations for these issues: (1) deficiencies and differences in the quality and quantity of information collectors receive and use; and (2) a lack of information in initial notices provided to consumers under the FDCPA.

The Bureau outlined three major proposals to combat information integrity concerns.

- [Prohibition against unsubstantiated claims of indebtedness](#). The Bureau indicated that it may

expressly require debt collectors to have documentation providing a reasonable basis for making collection attempts. In addition to an overarching debt substantiation requirement, the Bureau is considering specifying certain information that would establish a reasonable basis to support a debt collection attempt, which would vary depending on context and whether the consumer has disputed the debt. The Bureau is also considering requiring collectors to look for warning signs that the debt may be inaccurate, such as whether information is not in a clearly understandable form, whether it is facially implausible or contradictory, or whether a significant percentage of debt in a particular portfolio has a high proportion of issues or unresolved disputes. [Table 1 of the Bureau's outline](#) summarizes the substantiation requirements under consideration based on when the debt claim is being made and whether a dispute has occurred.

- [Required review and transfer of certain information](#). The Bureau noted that information provided by a consumer to a collector may not always be reviewed and transferred when that debt is sold or placed with a new collector. Therefore, the Bureau is considering requiring collectors to transfer or forward information provided by consumers to subsequent collectors, even if the collector receives the information after they had returned the debt to the debt owner or sold it to a subsequent debt buyer.
- [Validation notice and statement of rights](#). The Bureau posited that a major factor driving complaints is that the initial notices currently sent to consumers lack certain basic information that would help consumers recognize past obligations. While the FDCPA generally requires a written notice with specified information within five days of the initial attempt to collect the debt, the Bureau believes such notices are currently insufficient to help consumers validate debts. To address this, the Bureau is considering requiring validation notices “to contain enhanced and clarified information about the debt and the consumer’s rights, along with an action-item ‘tear-off’ to facilitate exercise of the dispute and original-creditor-information rights.”¹ The Bureau is also considering prohibiting debt collectors from furnishing information about a debt to a consumer reporting agency unless the collector has communicated directly to the consumer about the debt in order to prevent consumer harm caused by so-called “passive collection” efforts.

II. Additional Disclosures to Enhance Consumer Understanding

The Bureau also outlined two proposals to address issues “that the Bureau believes many consumers may not understand,” specifically risks related to litigation and time-barred and obsolete debt.

- [Litigation disclosures](#). The Bureau is considering requiring debt collectors to provide a brief “litigation disclosure” in all written and oral communications in which collectors expressly or impliedly represent an intent to sue. The disclosure would inform the consumer that the collector intends to sue; that a court could rule against the consumer; and refer the consumer to the Bureau’s website and/or the Bureau’s toll-free telephone number for more information about debt collection litigation, including legal services programs.
- [Time-barred debt and obsolete debt](#). The Bureau is also considering expressly prohibiting suits and threats of suit on debt barred by the statute of limitations. More controversially, the Bureau also expressed concern about attempts to collect a time-barred or obsolete² debt even when the collector does not threaten suit. The Bureau is considering requiring specified disclosures whenever a debt collector seeks payment on time-barred or obsolete debt. The proposal leaves open whether collectors would be required to provide the disclosure only if they

knew or should have known that the debt was time-barred or obsolete, or whether they would be held strictly liable for the failure to make such disclosures regardless of knowledge of the status of the debt. According to the report, the Bureau considered banning the sale of and collection of time-barred debt entirely but is not presently planning to propose a ban because it believes other alternatives may adequately address risks to consumers. However, the Bureau *is* considering whether to prohibit collectors from attempting to collect on time-barred debt when state laws separately provide that the debt can be revived when a consumer makes a payment or acknowledges that the debt is theirs.

III. Collector Communication Practices

The Bureau highlighted that consumer complaints about communication practices comprise the second largest category of complaints and form the basis for many FDCPA lawsuits. The Bureau acknowledged that certain existing regulations operate inconsistently and cause confusion and frustration among industry. For example, because regulations both require collectors to identify themselves in certain cases and prohibit collectors from doing so in others, collectors may be left without viable alternatives to reach consumers. The Bureau outlined three major proposals to improve communication practices.

- Contact frequency and leaving messages. The Bureau is considering a proposal that would, in effect, provide a safe-harbor permitting a collector to leave a message with a consumer if only specified information is disclosed. The goal is to allow collectors to leave limited-content messages without triggering the requirement that a collector provide FDCPA warnings that would pose consumer privacy issues and arguably violate other FDCPA provisions. The Bureau is also considering imposing both successful and attempted contact limits on collectors. As summarized in the table provided by the Bureau below, the proposal would separately limit: (1) attempts per unique address and phone number, (2) total contact attempts, and (3) live communications, depending on whether the collector has confirmed consumer contact.

Collector Activity	Collector Does Not Have Confirmed Consumer Contact	Collector Has Confirmed Consumer Contact
Attempts per unique address or phone number	3	2
Total contact attempts	6	3
Live communications	N/A	1

- General time, place and manner restrictions. While the FDCPA limits the times and places at which collectors may communicate with consumers, the Bureau indicated that consumers continue to complain that collectors contact them at inconvenient times and places. The Bureau is considering various clarifications, such as specifying how a collector should determine a consumer’s location for time zone purposes, adding presumptively inconvenient locations to contact consumers, and generally prohibiting collectors from using work email addresses for consumers.
- Decedent debt. The Bureau highlighted current ambiguities related to how collectors can communicate with surviving spouses, parents and personal representatives when the person owing a debt dies. In order to address some of these issues, the Bureau is considering adopting

a 30-day pause after the consumer's death before such contacts can begin but permitting such contacts after that period.

IV. Recordkeeping

The Bureau is also considering requiring collectors to retain records documenting the actions it took with respect to a debt for three years after its last communication or attempted communication. The records required to be kept would include all records relied upon to support claims of indebtedness and all records related to the collector's interactions with the consumer. The Bureau noted that while the recordkeeping requirements would apply to recorded calls, entities that do not record calls would not be required to begin doing so.

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[1] Outline at 16. Appendix F contains a list of information that the Bureau is considering requiring. Appendix G contains a list of information that the Bureau is considering requiring as part of the Statement of Rights.

[2] An obsolete debt is one that is generally barred from appearing on credit reports under the Fair Credit Reporting Act, which typically occurs seven years after the delinquency begins.