

CFPB Debt Collection Rule Must Protect Consumers, Not Abusive Collectors May 2019

The Consumer Financial Protection Bureau (CFPB) has [proposed a rule](#) governing third-party debt collectors. The proposal adds some consumer protections but also weakens the Fair Debt Collection Practices Act (FDCPA) by undermining its goals of stopping harassment, protecting consumer privacy, and preventing collection against the wrong person or in the wrong amount. [Public comments](#) are due **August 19, 2019**.

Concerns

[Allows too many calls.](#) Collectors could make up to seven attempted calls *per debt* per week, either to the consumer or to friends and family to ask for the consumer's contact information. A consumer with 8 medical debts could receive 56 attempted calls per week.

➔ **Recommendation:** *Limit collectors to one conversation and three attempts per week per consumer.*

[Allows texts, emails, and direct messages without consent.](#) Lack of consent creates problems, including:

- **Missing important information.** Collectors would not have to comply with the E-Sign Act before sending required notices electronically to ensure that consumers can actually access critical information sent by email or hyperlinks via email or text. People may have an email but no computer at home, and smartphone access may be insufficient for those with limited data plans, budget phones or spotty internet access. Emails may be sent to spam. Email addresses and phone numbers may change. Some consumers, especially older or disabled people, may have a cell phone but not know how to access texts.
- **Trouble reviewing, printing or saving legal notices on small smartphone screens.**
- **Clicking hyperlinks can leave consumers vulnerable to hackers,** yet collectors could send required notices through hyperlinks that people are reluctant to click.
- **Opt-out right may be inconvenient.** Emails, texts, or direct messages would have to include opt-out information, but collectors could require difficult methods, such as only permitting opt-outs through snail mail to a particular address.
- **Requiring consumers to access crucial information through texts or emails will impose costs for consumers** with Lifeline phones or phones with limited data plans.
- **No specified limits on the number of texts, emails, or direct messages.** Combined with high call limits, the total communications from collectors may be overwhelming.

➔ **Recommendation:** *Require consent before contacting consumers via electronic communications, allow opt-out via any communication channel used by the collector, and require full compliance with the E-Sign Act before collectors can send key notices electronically.*

[Protects false, deceptive, or misleading practices by collection attorneys.](#)

Some collection attorneys file thousands of collection lawsuits a year, often without adequate review of original account documentation. As a result, lawsuits may be filed against the wrong person or for the wrong amount.

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- **Collection attorney “safe harbor.”** The proposal protects attorneys from claims that the attorney violated rules against false, deceptive, or misleading representations as long as the attorney reviews unspecified “information,” without requiring the attorney to do an adequate review of admissible evidence before filing a lawsuit.
- ➔ **Recommendation:** *The CFPB should require collection attorneys to review original account-level documentation of alleged indebtedness and make independent determinations that they are filing a lawsuit against the right person, for the right amount, and that their client has the legal authority to do so.*

Fails to protect consumers against abusive collection of time-barred zombie debt.

- The proposal prohibits collectors from filing or threatening a lawsuit **only if** the collector “**knows or should know**” that the legal time limit to sue has expired. The CFPB should hold the collector responsible for knowing a debt is too old for a lawsuit as courts have done.
- **Does not prohibit tricking consumers into re-starting the lawsuit deadline.** In many states, a small payment will re-start the statute of limitations, allowing lawsuits on debt that was time-barred.
- **Confusing and ineffective disclosures will not protect consumers from abusive collectors.** The CFPB is testing possible disclosures about time-barred debts, but consumers pressured to pay old debts will not understand why they are being contacted if the debt is too old to sue on; that paying could actually harm them by reviving old debt; or that the debts may be too old to affect their credit report.
- ➔ **Recommendation:** *The CFPB should ban collection of time-barred debt in and out of court because these debts are so old that records are lost, the collector may have the wrong person or wrong amount, and the debt cannot be collected without mistakes or deception.*

Proposals related to required notices about the debt fall short. The FDCPA requires notice to consumers about alleged debts and the consumer’s rights.

- **Notice could be provided orally.** Despite increasing the amount of information that must be provided, collectors would not be required to provide anything to the consumer in writing for reference.
- **Model notice is confusing.** For example, consumers may think that they cannot dispute the debt after the date listed in the model notice or believe that they have to make a payment in order to submit a dispute.
- **Link to CFPB homepage replaces statement of rights** that the CFPB previously suggested should accompany the notice about the debt.
- **Language access is optional.** Collectors are not required to provide notice in Spanish or other languages, regardless of the language of the original transaction.
- ➔ **Recommendation:** *The CFPB should require validation notices to be provided by mail unless the consumer opts in to electronic delivery; improve the model notice; require collectors to include a statement of rights; and improve language access.*

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Permits violations of consumer privacy. Debt collectors could leave “limited content” messages like,

“Hi, this message is for Sam Jones. Sam, this is Robin Smith. I’m calling to discuss an account. It is 4:15 p.m. on Wednesday, September 1. You can reach me, or Jordan Johnson, at 1-800-555-1212 today until 6:00 p.m. eastern, or weekdays from 8:00 a.m. to 6:00 p.m. eastern.” These messages could be heard or seen by third parties via voicemails, texts, direct messages, or messages left with a third party who answers the phone.

- No specific information about the debt would be allowed in these messages, but people may know that a message urging a consumer to call back about an “account” relates to a debt.
- Exempting limited content messages from the definition of “communication” under the FDCPA would allow limited content text or direct messages to be sent at any time of the day or night and allow voicemail, text, and direct messages for consumers without basic disclosures.

➔ **Recommendation:** *The CFPB should not exempt any forms of communication from the FDCPA and must require collectors to respect privacy in all communications.*

Positive Aspects of the Proposals and Needed Improvements

Limits collectors to one conversation per week. *Recommendation:* Limit collectors to one conversation per week per consumer, *not per debt* as currently proposed.

Consumers can stop phone calls or other types of communication without stopping all communications. *Recommendation:* Clarify that “stop calling” requests can be made orally and should apply to all calls from the collector, unless the consumer asks to stop calls to one number only.

Prohibits parking debts on credit reports. Collectors could not report debts to credit bureaus without first informing a consumer that they are attempting to collect the debt. *Recommendation:* Unless consumers opt-in to electronic communications, require notice by mail before credit reporting.

Prohibits the sale of certain debts. Collectors could not sell accounts that were paid, discharged in bankruptcy, or where an identity theft report was filed. *Recommendation:* Prohibit the sale of time-barred or disputed debts as well.

Prohibits communications on public social media platforms. *Recommendation:* Only allow private direct message communications through social media platforms if the consumer gives the collector consent.