

May 19, 2021

Comment Intake
Bureau of Consumer Financial Protection
1700 G Street NW Washington, DC 20552

Re: Debt Collection Practices (Regulation F) Delay of Effective Date, 86 Fed. Reg. 20334, CFPB Docket CFPB-2021-0007, RIN 3170- AA41

The undersigned organizations submit these comments in support of the Consumer Financial Protection Bureau's proposed 60-day delay in the effective date of the final debt collection rules and call on the CFPB to use this period to revise the regulations to significantly strengthen consumer protections.

Many of the practices authorized by the current rules will harm consumers unless changes are made before the rules take effect. The list below highlights harmful conduct that will be permitted under the new rules and recommends revisions to protect consumers.

Phone Calls. Collectors can harass consumers by making up to seven attempted calls per week per debt, either to the consumer or to friends and family to ask for the consumer's contact information. A consumer with 5 medical accounts in collection could receive 35 attempted calls per week.

Recommendation: Limit collectors to three attempts per week per consumer, regardless of the number of debts they are attempting to collect. Make the limit of one conversation per week apply per consumer rather than per debt.

Consumer Consent to Electronic Communications. Collectors can use electronic communications to contact consumers unless the consumer opts out. Requiring an opt-out rather than requiring collectors to obtain consumer consent is more likely to result in missed messages, i.e., if collectors use old contact information or communications are sent to spam. Privacy may also be violated if messages are viewed by others, including employers. Procedures to reduce third-party disclosures are currently optional for debt collectors.

Recommendation: Require collectors to obtain consumer consent to use the specific type of electronic communication (e.g. text, email, direct messages). At a minimum, improve procedures to reduce third-party disclosures and make them mandatory instead of optional.

Replying to Electronic Messages. Collectors can use no-reply emails or one-way text messages, directing opt-outs or responses to portals that require consumer login and may be difficult to navigate on mobile phones.

Recommendation: Require collectors that use a particular channel of communications (e.g. email) to contact consumers to accept opt-outs and to receive messages via that same channel.

Time-Barred Debt Collection. Collectors can still pressure consumers to pay debts that are beyond the statute of limitations. They are prohibited from suing or threatening to sue on time-barred consumer debts, but they can still sue if a consumer inadvertently revives the statute of limitations through a partial payment or acknowledgment made after pressure from collectors.

Recommendation: Prohibit collectors from collecting time-barred debt in and out of court because these debts are so old that they cannot be collected without mistakes or deception. At a minimum, add prohibitions on lawsuits on revived debt and sale of time-barred debts.

Decedent Debt. Collectors can communicate with a wide variety of grieving people about debts owed by the deceased and, in most cases, won't have to provide validation notices or respond to disputes.

Recommendation: Limit collection contacts to estate administrators and executors as specified in the FDCPA. Require collectors to provide validation notices and accept disputes on decedent debt. Require a 60-day waiting period after the death of the consumer before attempting to collect decedent debt.

Oral Validation Notices. The CFPB has said that collectors can provide validation information orally despite the increased amount of information required in the validation notice under the regulations. This will make it difficult for consumers to understand or remember important disclosures about the alleged debts and their debt collection rights.

Recommendation: Require collectors to provide validation information in writing.

Electronic Validation Notice in Initial Communication. The CFPB has said that collectors can provide required validation notices electronically in initial communications without complying with the federal E-SIGN Act. This will make it more likely that consumers will not receive these notices and more difficult for those whose primary internet access is a smartphone to read, understand, print, and save notices if they do receive them.

Recommendation: Require collectors to obtain E-SIGN Act consent from consumers before providing validation notices electronically. At a minimum:

- Prohibit validation notices sent in an initial communication in the body of a text message, social media direct message, or message platforms like WhatsApp because they are not provided in a way that the “consumer may keep and access later;”
- Prohibit validation notices sent via hyperlink or as attachments to electronic communications because they would not be “reasonably expected to provide actual notice” due to the fact that consumers have been warned of the risks of clicking on links and will be unlikely to click through to receive the validation notice; and
- Require collectors to track whether electronic messages containing validation notices were actually opened and provide a paper copy of the validation notice by postal mail where there is no evidence that the message was opened.

Language Access. Collectors are not required to provide validation notices in Spanish or other languages.

Recommendation: Require collectors to include a description in Spanish of what the validation notice is and how to get a translation. The CFPB should, before the rule's effective date, translate the model validation notice into the top 8 languages used by consumers with limited English proficiency. Require collectors to track and transfer language preference information and to send translated validation notices in languages where the CFPB has already made translations available in certain circumstances, including:

- The debt collector has already communicated with the consumer in a non-English language before sending the validation notice;
- The debt collector has received information in the file from the creditor or a prior collector indicating the consumer's non-English language preference;
- The debt collector receives a request from the consumer seeking any information in the consumer's preferred language, including a request received via the tear-off portion of the validation notice; or
- The debt collector later communicates with the consumer in a non-English language, in which case the collector must send the translated validation notice at that time.

Consumer Confusion. Validation information in the model validation notice is likely to be unclear to many consumers.

Recommendation: Continue to test and refine the model validation notice to ensure comprehension by unsophisticated consumers.

While delaying the effective date would also postpone the implementation of some aspects of the rules that would provide greater protection to consumers, we believe that a delay that enables the CFPB to improve the consumer protections will provide long-term benefits to consumers that outweigh the temporary delay.

Finally, we do not support an early implementation date for the safe harbors in the regulations. As outlined above, we believe that the regulations should be revised significantly, which may change or eliminate current safe harbors.

Very truly yours,

Americans for Financial Reform Education Fund
California Low-Income Consumer Coalition (CLICC)
Center for Responsible Lending
Consumer Action
Consumer Federation of America
Equal Justice Under Law

Greater Boston Legal Services, on behalf of its low-income clients
Kentucky Resources Council
Legal Aid Chicago
Legal Aid Justice Center
Maryland Consumer Rights Coalition
National Association of Consumer Advocates
National Center for Law and Economic Justice
National Consumer Law Center (on behalf of its low-income clients)
New Economics for Women
Prosperity Now
Public Citizen
Public Justice Center
Public Law Center
RAISE Texas
South Carolina Appleseed Legal Justice Center
Texas Appleseed
Tzedek DC
Virginia Citizens Consumer Council
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