

Potential Impact on Employers and Businesses of CFPB Proposed Debt Collection Rule

July 2019

The Consumer Financial Protection Bureau has [proposed](#) a rule governing communications and lawsuits by debt collectors. That proposal will have both direct and indirect impacts on employers. The proposed rules could **zap employee productivity** by unleashing a considerable volume of emails, texts, and social media messages, many of which will reach employees while they are working. Encouragement of hyperlinks in emails could **expose work computers to viruses and malware**, and messages left with employers could **tie up work phones**.

Employers may comment on the proposal by the September 18, 2019 deadline. Here are few of the potential impacts on employers and businesses. Details about how to comment and the National Consumer Law Center's [recommendations](#) are summarized at the end of this issue brief.

1. Distractions at work and impacts on productivity and performance

A. New permission for debt collector emails, texts, direct social media messages without consent.

The proposal will, for the first time, give debt collectors explicit permission to contact consumers by email, text, and direct private messages through social media. Public social media messages will be prohibited. There will be no direct limits on the number of such contacts, and collectors who follow minimal procedures will be protected from liability even if those communications are seen by third parties, violating consumer privacy. Collectors will be allowed to deliver important, legally required notices about debts in collection and consumers' rights through email and text instead of by mail without complying with the consumer consent requirements of the federal E-Sign Act. **At a minimum, these messages could be a distraction; in many cases, they will be very disturbing and will have profound impacts on workers' productivity and performance.**

The proposal also may increase employee usage of their work computers for personal business. While the proposal would prohibit emails to addresses that the collector knows or should know is a work email, it may nonetheless increase work usage of computers to access personal emails, particularly for workers who do not have computers at home. The proposal exempts debt collectors from the federal E-Sign Act -- which would otherwise require the consumer's consent and confirmation that the consumer is able to access information electronically. This will enable debt collectors to email people with limited internet access, including those whose only internet access is through a smartphone, which may have limited data or



functionality and does not easily allow information to be seen, saved, or printed. Thus, these employees may have more need to use work computers to deal with their debts than they would if they got notices by mail at home.

Consumers may opt out of emails, texts and social media messages, but doing so may be difficult. The proposal requires collectors to give consumers the ability to opt out of emails, texts, or social media direct messages. However, the proposal does not explicitly require collectors to allow consumers to simply reply with a “stop” message or through other convenient methods.

B. Sanctioning a high volume of phone calls

The proposal limits phone calls to consumers to 7 attempted calls and one actual conversation per consumer per debt per week. While this is an improvement over the lack of any set limits under current law, it will have the effect of legitimizing a large volume of calls. For example, a consumer with 8 medical debts in collection (which is not unusual) could receive 56 attempted calls every week. Many of these calls will go to cell phones that will ring when consumers are at work. The same limits apply to calls to an employer or co-worker seeking the employee’s (or former employee’s) contact information.

The proposal gives consumers the right to direct the collector to stop calling, but it is ambiguous whether collectors must honor a request made orally or whether the consumer must put the request in writing.

2. Viruses and malware on work computers and phones.

The proposal allows collectors to deliver “validation notices” required under the Fair Debt Collection Practices Act through hyperlinks embedded in emails and text messages. The proposal exempts collectors from the consent requirements of the E-Sign Act for these notices.

The validation notice is an important piece of information that gives the consumer notice that a debt has been placed in collection and details the consumer’s right to dispute the debt. Consumers who do not see or respond to the notice could find themselves subject to collection of, and potentially a lawsuit over, a debt that they do not owe, whether because the collector has the wrong person, the wrong amount, or a debt that was already paid. Problematic debts have increased with the growth of the debt buyer industry and old debts in circulation with poor records substantiating the actual debtor and the amount due.

A federal regulation promoting use of hyperlinks from unknown parties to provide critical information will undermine government and employer warnings about the dangers of clicking on hyperlinks and could be exploited by criminals. Consumers often will not recognize the name of collectors who are contacting them by email with these hyperlinks. Yet people may feel compelled to click on the hyperlinks to find out what debt is being pursued against them and to get information about how to dispute it. Criminals may take advantage of the new regulation and send emails impersonating debt collectors with links to viruses, malware, or phishing sites that capture information for identity theft.

To the extent that a worker is using a work smartphone, viruses and malware sent through email or texts could also impact that work phone.

3. Increasing direct contact with employers and coworkers, interfering with business activities.

Beyond contacts aimed at workers who have debts in collection, employers and co-workers may also be contacted directly by debt collectors. The proposed rule may increase these contacts in ways that interfere with business.

The rule might allow collectors to call employers and leave “limited content messages,” a potential invasion of privacy. The proposed rule would for the first time allow debt collectors to leave messages for the debtor with third parties despite the privacy concerns. Collectors could not disclose details of the debt, but people are likely to know that a message asking an employee to call back “to discuss an account” is likely from a debt collector. It is not clear if collectors could deliberately leave these messages with employers or only on a phone number associated with the consumer. But if permitted, collectors can be expected to make ample use of messages left with employers in order to harass and pressure consumers with corresponding impacts on employers.

4. Time off work requests to deal with potential increase in meritless lawsuits.

The proposal could potentially increase the volume of lawsuits filed against employees that they must take time off from work to deal with when collectors have the wrong person, wrong amount, or old time-barred debt. Instead of holding attorneys responsible for knowing the deadline to sue, as courts have done, the proposed rule prohibits lawsuits only if the collector “knows or should know” that the statute of limitations has expired. The proposal also protects debt collection attorneys from liability for making false, misleading, or inaccurate statements in lawsuits as long as the attorney reviews unspecified “information” and “determines” that the lawsuit is justified.

5. How to Comment by September 18, 2019

Employers or any other interested party may submit a comment to the CFPB on the proposed rule by Sept. 18, 2019. **Be sure to include Docket No. CFPB-2019-0022 in the subject line.** Comments may be submitted:

- Via [Regulations.gov](https://www.regulations.gov).
- By email: 2019-NPRM-DebtCollection@cfpb.gov
- By mail: Comment Intake-CFPB, 1700 G Street, NW, Washington, DC 20552

6. Recommendations of the National Consumer Law Center (NCLC)

NCLC recommends that the CFPB amend the proposed debt collection rule as follows. .

- **Phone calls to debtors and to employers**
 - Limit collectors to one conversation and *three* attempts per week *per consumer*. These limits would apply both to calls directly to the debtor and to calls to employers or co-workers seeking the employee’s contact information.
 - 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.
- **Emails, texts, and social media direct messages**
 - Require consumer consent before contacting consumers via electronic communications and comply with the E-Sign Act before sending key notices electronically.

- Prohibit use of hyperlinks in emails or texts unless the consumer consents and knows the email or text is coming.
- Allow consumers to opt-out of electronic communications via any convenient method including any communication channel used by the collector.
- **Limited content messages left with employers and coworkers**
 - Do not exempt limited content messages or any other form of communication from fair debt collection rules, and require collectors to respect privacy in all communications.
 - Do not allow limited content messages to be sent to or left with third parties, such as through phone messages, emails, or texts to employers or coworkers.
- **False, deceptive, or misleading lawsuits or statements by debt collection attorneys**
 - 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.
 - Eliminate any “safe harbor” for attorney misconduct.
 - Prohibit the sale of disputed and time-barred debts.
- **Old, time-barred debt:**
 - 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.
 - Hold debt collectors responsible for knowing if the time limit has expired before they threaten or file lawsuits.

In addition, NCLC has made recommendations to improve proposed model validation notices that are provided to consumers with information about the debt and their rights. Our initial recommendations are described in this three-page issue brief: [CFPB Debt Collection Rule Must Protect Consumers, Not Abusive Collectors](#).

For more information on the proposed debt collection rule and NCLC’s recommendations, contact National Consumer Law Center Associate Director Lauren Saunders, lsaunders@nclc.org or (202) 595-7845.



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