
Final Debt Collection Rule: Part 1

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National
Consumer Law
Center
*Fighting Together
for Economic Justice*

Rulemaking Overview

- **Notice of Proposed Rulemaking** – Nov. 2013
- **Outline of Proposals for Small Business Review** – July 2016
- **Proposed Rule** ([84 FR 23274](#)) – May 21, 2019
- **Supplemental Proposed Rule** ([85 FR 12672](#)) – March 3, 2020
- **Final Rule Part 1** – October 2020 ([text](#))
- **Final Rule Part 2** – December 2020?
- **Effective Date** – November 2021



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PR Proposed Rule

METHODS OF COMMUNICATION

Limited Content Message

- “Attempt to communicate” not a “communication”
- Voicemail messages
- For a consumer
- Examples:
 - **Required Content:** “This is Robin Smith calling from ABC Inc. Please contact me or Jim Johnson at 1-800-555-1212.”
 - **Required and Optional Content:** “Hi, this is Robin Smith calling from ABC Inc. It is 4:15 p.m. on Wednesday, September 1. Please contact me or any of our representatives at 1-800-555-1212 today until 6:00 pm Eastern time, or any weekday from 8:00 a.m. to 6:00 pm Eastern time.”

Source: 1006.2(b), (d), and (j) + comments

More about Voicemails

- Can be “**communications**” if:
 - contain content other than required/optional LCM content
 - convey information directly or indirectly about a debt
- But if just contain Limited Content Message:
 - no third-party disclosure if overheard
 - no 1692e(11) “mini Miranda” disclosures needed
 - no 1692d(6) meaningful disclosure of caller identity
- Call frequency limits apply
 - even if call goes to voicemail without ringing
 - also applies to ringless voicemails

Source: 1006.2(d) and (j), 1006.14(b), 1006.18(e) + comments

Phone Calls

- Call frequency limits:
 - **7 attempts in 7 days** for a “particular debt”
 - “Particular debt” = each debt
 - Student loans = all loans serviced under a single account #
 - No more than **one conversation** in 7 days
- **Presumption** of compliance/violation
 - Lists factors that can rebut presumption
- Some calls don't count toward frequency limits
- Same frequency limits for **location information** calls

Source: 1006.10(c), 1006.14(b) + comments

Electronic Communications

- No numerical limit
 - But too many communications may be harassing, oppressive, or abusive conduct
- Can only be sent from 8:00 a.m. to 9:00 p.m.
- Opt-out not opt-in

Source: 1006.6(b), 1006.14(a) + comments

Emails

- Safe harbor for third party disclosure if collector uses an email address obtained via specific procedures:
 - From the consumer;
 - From a creditor; or
 - From a prior debt collector.

Source: 1006.6(d) + comments

Work Emails

- Collector cannot use an email address it **knows** is provided by a consumer's employer
 - When does a debt collector know?
 - actual knowledge
 - Email address obtained from creditor for safe harbor: must be from domain name provided to general public
 - Exceptions:
 - Consumer used email to contact collector
 - Prior consent by consumer to use email

Source: 1006.6(b), 1006.6(d), 1006.22(e) + comments

Texts

- Safe harbor for third party disclosure if collector use a phone number to send a text obtained via specific procedures:
 - From the consumer and
 - Verified that phone number was not reassigned if received from consumer more than 60 days ago.

Source: 1006.6(d) + comments

Social Media

- Social media communication viewable to general public or other social media contacts prohibited
 - Can send a direct message but no safe harbor for third-party disclosures if message wrong person
- When sending consumer a “friend” request:
 - must disclose that he or she is a debt collector
- When sending direct message to obtain location information
 - must identify self individually by name (or alias) and otherwise comply with rules for location communications

Source: 1006.18(d), 1006.22(e) + comments

Stopping Communication

- Consumers still can cease all collection communications per 1692c(c) / 1006.6(c)
 - Written notice ok via electronic communication used by collector to accept consumer communication
- Consumers can “turn off” a particular type of communication
 - **Example:** Oral request to “stop calling” request
 - Some exceptions
- Electronic communications must include “opt out”
 - must be a “reasonable and simple method”

OTHER TOPICS

Debt Buyer Coverage

- In the comments, the CFPB says that a debt buyer is **NOT** a debt collector if:
 - it does not collect debts **owed or due to another** AND
 - it does not have a business the **principal purpose** of which is the collection of debts
- In other words, a debt buyer can be a debt collector if it **regularly collects** debts owed or due another or the **principal purpose** of its business is debt collection.

Decedent Debt

Definition of “Consumer” for
Communications (1692c(c)) expanded:

- **Spouse** includes **surviving spouse** of deceased consumer
- **Parent** includes **parent of a deceased minor** consumer
- **Executor or administrator** includes **personal representative: *authorized to act on behalf of deceased consumer's estate***

Examples of How One Can Become a “Personal Representative”

- informal probate and summary administration procedures,
- appointed as universal successors,
- sign declarations or affidavits to effectuate transfer of estate assets, or
- dispose of the deceased consumer’s financial monetary assets extrajudicially.

“Consumer” also includes

Confirmed successor in interest (Regs X and Z)

- could be as a result of a transfer of an ownership in a home resulting from the death of a borrower
- could include unrelated joint tenant, child, friend who borrower left the home to

Locating Authorized Person for Decedent Debt

Debt collector can state they are seeking to identify and locate the person who is:

- authorized to act on behalf of the deceased consumer's estate or
- handling the financial affairs of the deceased consumer

Source: 1006.10(b)(2) + comments

Prohibited Practice

Debt collector must not **sell, transfer for consideration, or place for collection a debt** if knows or should know that the debt has been:

- paid,
- settled, or
- discharged in bankruptcy.

Source: 1006.30(b)(1) + comments

Bankruptcy Exception

May sell, transfer for consideration, or place for collection debt discharged in bankruptcy if:

- Secured by an enforceable lien **AND**
- Collector notifies the transferee that the consumer's personal liability for the debt was discharged in bankruptcy

“Transfer for Consideration”

- A “transfer for consideration”
 - collector receives or expects to receive compensation for the transfer of the debt
- **Not when:**
 - Sending information about a debt
 - Reporting to a Credit Reporting Agency that debt was paid, settled, or discharged in bankruptcy

Source: 1006.30(b)(1) + comments

Sending Certain Required Disclosures

- Which required disclosures?
 - Validation notice;
 - Response to request for original creditor information; and
 - Responding to a dispute with verification of the debt or judgment
- If sent in writing or electronically must be:
 - sent in a manner reasonably expected to provide actual notice and
 - in a form that the consumer may keep and access later
 - must comply with the E-SIGN Act if sent electronically
 - BUT see p. 440 re: electronic delivery of the validation notice in an initial communication

Source: 1006.42 + comments

Duplicative Disputes

Duplicative if:

- **substantially the same** as a prior dispute:
does not have to be verbatim
- submitted **within validation period (30 days)**
- for which debt collector has **already sent verification** of the debt or a judgment to consumer

Not duplicative if:

- consumer provides **new** and **material** information to support the dispute

New: not provided with earlier dispute

Material: likely to change the verification the debt collector provided or would have provided in response to the earlier dispute

Eg: consumer sends cancelled check with second dispute

Collector's Duties if Duplicative Dispute

Must **cease collection** until:

- Notifies consumer that:
 - dispute is duplicative
 - provides reasons why and
 - refers to earlier response **or**
- Provides a copy of the verification of the debt or judgment

Translated Disclosures

Initial disclosures that “*the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose*” **and**

Subsequent disclosures that “*the communication is from a debt collector*” must be made in the same language(s) used for the rest of that communication

Sources: 1006.18(e)(4) + comments

Multiple Languages

Eg: If consumer uses **Spanish** is initial communication and then **Spanish and English** in second communication, the disclosures for second communication must be in **both English and Spanish**

- ★ Translations must be **complete** and **accurate**

Sources: 1006.42(e)(4) + comments

Record Retention

- must retain records that are evidence of compliance/noncompliance with the FDCPA and Rule
 - starting on the date that the debt collector begins collection activity on a debt
 - until **3 years** after the debt collector's last collection activity on the debt.
 - If records calls, retain for 3 years after call

- ★ No requirement to create and maintain additional records, for the sole purpose of evidencing compliance, that the debt collector would not have created in the ordinary course of its business in the absence of the record retention requirement
- ★ Only applies to records already maintained

Sources: 1006.100 + comments

Advisory Procedure & Additional Commentary

- Provides process for requesting advisory opinions
- Anyone may request that an **official interpretation** of the regulation be added to this commentary.

Sources: Appdx C to Part 1006; Supplement I, Introduction