

# THE DAILY RECORD

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## Civil LITIGATION

### New proposed rules for the Fair Debt Collection Practices Act could mean big changes for debt collectors and consumers

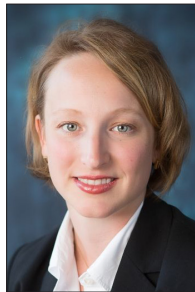
Last week the Consumer Financial Protection Bureau (CFPB) issued a Notice of Proposed Rulemaking to implement the Fair Debt Collection Practices Act (FDCPA). These proposed changes could have a dramatic effect on attorneys representing consumers and debt collectors. The FDCPA governs debt collectors' conduct and communication with consumers. Attorneys attempting to collect a debt incurred primarily for personal, family or household purposes are considered debt collectors under the FDCPA. Debt incurred for corporate, business or agricultural purposes is not entitled to the protections of the FDCPA.

The FDCPA was passed in 1977 to provide protection to consumers from abusive, deceptive and unfair collection practices. However, Congress did not delegate the authority to issue substantive rules to interpret the FDCPA until the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act.

The CFPB developed the proposed rules to modernize the legal regime and clarify how debt collectors may lawfully communicate with debtors using technologies — such as voicemail, email and text messaging — that have evolved since the 1970s.

The proposed rules are designed to provide consumers with well-defined options to dispute debts and debt collectors with clear rules regarding contact with consumers. Below is a list of several changes proposed by the CFPB:

**Decedents and their representatives are consumers:** The proposed rules



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clarify that the definition of a consumer includes deceased consumers and their executors, administrators and personal representatives. The rules also seek to clarify how a collector may communicate with the personal representative of a deceased consumer.

**Clear limits on call attempts and conversations:** The CFPB's proposal limits the number of attempts to contact consumers by telephone to seven calls per week. Once a debt collector reaches a consumer, the debt collector must wait at least one week before attempting to reach the consumer again.

**Additional consumer protections in verification notices:** In addition to the disclosures already required, debt collectors will be required to provide an itemization of the debt and plain-language information about how to dispute the debt. Under the proposed rules, demand letters must include a "tear-off" that consumers can return to the debt collector in response to the collection attempt.

**Updated communications with consumers:** The proposed rules attempt to clarify how debt collectors may use technologies developed since the FD-CPA's enactment. For example, it seeks to clarify a collector's ability to leave a limited content message on a consumer's voicemail with a third party who answers

the telephone or by text message without risking a FDCPA violation.

The proposed rules also clarify the requirements for communicating with consumers via email. This includes complying with the Electronic Signatures in Global and National Commerce Act (E-SIGN Act) and providing consumers with the ability to opt-out or unsubscribe from future electronic communications. Debt collectors are also prohibited from contacting a consumer using an email address provided by the consumer's employer or through social media, except through a private messaging function.

Debt collectors must refrain from communicating with a consumer in a way the consumer has requested not to be contacted. For example, if a consumer asks a debt collector not to contact him at a specific address or telephone number, the debt collector must refrain from using that address or telephone number.

**No threats on time-barred debt:** The proposed rules prohibit debt collectors from suing, or threatening to sue, on debt that is past the statute of limitations.

**Limitations of reporting debt to a consumer reporting agency:** The proposed rules prohibit debt collectors from providing debt information to a consumer reporting agency prior to communicating with the consumer about the debt. Here, communication includes sending a validation notice to the consumer, but not leaving the consumer a limited-content message.

**No transfer or sale of debt discharged in bankruptcy:** Under the proposed

rules, debt collectors are prohibited from selling, transferring, or placing debts for collection if the debt collector knows, or should know, that the debt has been discharged in bankruptcy, or is the subject of an identity theft report.

In addition to the clarifications set forth for both consumers and debt collectors, in the proposed rules, the CFPB has published a proposed model form Validation Notice, Model Form B-3. Use

of the Model Form complies with the disclosure requirements set forth in the FDCPA and proposed rules. The Model Form can be found at [https://files.consumerfinance.gov/f/documents/cfpb\\_debt-collection-validation-notice.pdf](https://files.consumerfinance.gov/f/documents/cfpb_debt-collection-validation-notice.pdf). The proposed rules can be found at:

[https://www.consumerfinance.gov/documents/7622/cfpb\\_debt-collection-NPRM.pdf](https://www.consumerfinance.gov/documents/7622/cfpb_debt-collection-NPRM.pdf).

Practitioners representing consumers

and creditors should review and provide comment to the CFPB on the proposed rules, as their implementation will have a lasting impact on future practice.

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