



## COLLECTION PROTECTIONS: NEW CFPB DEBT COLLECTION RULES EFFECTIVE NOVEMBER 30, 2021

June 9, 2021

On December 18, 2020, the Consumer Financial Protection Bureau (CFPB) issued a [final rule](#) (the “Final Rule”) revising the Debt Collection Final Rule (Regulation F), which implements the Fair Debt Collection Practices Act (“FDCPA”), to address certain activities by debt collectors. The final rule clarifies requirements in three specific areas: 1) Validation information and disclosures which must be provided when a debt collector contacts consumers; 2) Required actions before a debt collector may report to consumer reporting agencies; and 3) Prohibitions on threatening legal action against a consumer for time-barred debt. These changes were summarized in an Executive Summary issued by the CFPB on December 18, 2020, available [here](#). Of note, the term “debt collector” is defined broadly under the FDCPA to include any person that “uses any instrumentality of interstate commerce [(e.g., phone, email, etc.)] or the mails in any business the principal purpose of which is the collection of any debt.” This would include agencies and other entities with which a provider may engage to assist in the collection of debts, whether or not such agencies or entities hold themselves out as a professional “debt collector” or “collection agency.” Consequently, providers are encouraged to review the below guidance and Final Rule closely.

### REQUIRED VALIDATION INFORMATION AND DISCLOSURES

Under the Final Rule, debt collectors are required to validate certain information upon contacting a consumer regarding a debt or within five calendar days after initiating such contact. Specifically, the consumer must be provided with: 1) Confirmation that the communication is from a debt collector; 2) The debt collector’s name and mailing information; 3) The account number of the associated debt; 4) The amount of the debt, with applicable charges itemized (including interest, fees, payments, credits, etc.); 5) Certain information relating to consumer protections; and 6) Information on how a consumer may properly respond. With respect to consumer protection information which must be provided, the debt collector must provide information on the consumer’s right to dispute the debt and obtain information concerning the original creditor. The consumer must also be informed of an applicable 30-day “validation period” within which the consumer may dispute the debt.

### REQUIRED ACTIONS BEFORE A DEBT COLLECTOR MAY REPORT TO CONSUMER REPORTING AGENCIES

In addition to being required to provide the above validations and disclosures, debt collectors must also take one of the following steps before reporting a consumer to a Consumer Reporting Agency (“CRA”):

1. Speak with the consumer about the debt, either in person or by phone; or

2. Send the consumer a letter or email regarding the debt and wait a reasonable period of time to receive a notice of undeliverability. In the event the debt collector receives a notice of undeliverability within such period, but before it has elapsed, it must send a second notice by mail or email, or otherwise discuss the debt with the consumer in person or by phone, before reporting the debt to a CRA.

In fulfilling the above requirements, debt collectors must observe other applicable requirements which apply to debt collection practices, including, for example, not contacting consumers at inconvenient times.

## PROHIBITION ON THREATENING LEGAL ACTIONS RELATING TO TIME-BARRED DEBT

Beyond requirements relating to contacting consumers and reporting debt to CRAs, debt collectors are also prohibited under the Final Rule from bringing or threatening to bring a legal action against a consumer to collect debt for which the statute of limitations for collection has expired. Proofs of a claim filed in connection with a bankruptcy proceeding are not included in this prohibition.

## WHAT THIS MEANS FOR PROVIDERS

Providers should ensure that any entity or individual they engage to assist with collecting outstanding debts acknowledges and understands the requirements of the Final Rule. More specifically, providers are encouraged to ensure that, in engaging third parties to provide debt collection services, such third parties provide adequate representations and warranties of their compliance with applicable debt collection rules, including the Final Rule. Additionally, a provider wishing to engage the assistance of a debt collector should consider including indemnity protections as part of the engagement which protect the provider in the event of the debt collector's non-compliance with the above requirements.

On a related note, providers may also wish to review and ensure compliance with [rules](#) previously adopted by the Federal Communications Commission implementing the Telephone Consumer Protection Act ("TCPA"), which 1) Require telemarketers to obtain prior express written consent from consumers before robocalling them; 2) Prohibit telemarketers from using an "established business relationship" to avoid getting consent from consumers when calling their home phones; and 3) Require telemarketers to provide an automated, interactive "opt-out" mechanism during each robocall so consumers can immediately tell the telemarketer to stop calling.

If you have any questions or need further guidance regarding the Debt Collection Final Rule (Regulation F) or the TCPA, please contact a member of Hancock Daniel's [Compliance](#) team.

*The information contained in this advisory is for general educational purposes only. It is presented with the understanding that neither the author nor Hancock, Daniel & Johnson, P.C., is offering any legal or other professional services. Since the law in many areas is complex and can change rapidly, this information may not apply to a given factual situation and can become outdated. Individuals desiring legal advice should consult legal counsel for up-to-date and fact-specific advice. Under no circumstances will the author or Hancock, Daniel & Johnson, P.C. be liable for any direct, indirect, or consequential damages resulting from the use of this material.*