

Debt Collection Rules Summary

Regulatory Updates and Industry Best Practices for the Modern Collection Agency in Maryland

October 26, 2021



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Background & Key Events

1977:

Fair Debt
Collection
Practices Act
(FDCPA)

2013:

The Bureau
starts the
rulemaking
process
(ANPRM)

**Oct.
2020:**

The first Debt
Collection
Final Rule is
released.

2010:

Dodd-Frank Act
gives the Bureau
authority to write
rules under the
FDCPA

2019:

The Bureau
publishes a
notice of
proposed
rulemaking

**Dec.
2020:**

The second
Debt
Collection
Final Rule is
released.



Consumer Financial
Protection Bureau

High-level Topics list: October Rule

1. Presumption on call frequency
2. Limited-content message
3. Time, place, and manner of communications
4. Electronic communications
5. Prohibition on sale, transfer, or placement of certain debts
6. Disputes
7. Sending required disclosures
8. Record retention

High-Level Topics List: December Rule

1. Time-barred debt
2. Passive collections
3. Validation notice
 - Required validation information
 - Optional disclosures
 - Model form/Safe harbor
4. Decedent debt

Final Rule: Scope

- Applies to debt collectors who are covered by the FDCPA
- October rule focuses on debt collection communications and December rule focuses on the validation notice, among other things
- Is primarily an FDCPA-based rule; does not use Dodd-Frank Act UDAAP authority
- Restates the language and interprets certain sections of the FDCPA

Harassing, Oppressive, or Abusive Conduct & Call Frequency

The Rule restates the FDCPA's prohibition against harassing, oppressive, or abusive conduct, and

- Clarifies that this applies to all communication media (e.g., email, text, phone)
- Clarifies that collector conduct must be evaluated as a whole

Telephone Call Frequency Rebuttable Presumption

A collector is presumed to violate the FDCPA if:

- It places > 7 calls about a debt to a person within 7 consecutive days
- It calls again within 7 days of a phone conversation

A collector is presumed to comply with the FDCPA if:

- It places <= 7 calls about a debt to a person within 7 consecutive days
- It does not call again within 7 days of phone conversation

Several factors may rebut a presumption of compliance or a presumption of violation.
Certain calls do not count toward the limit.

Limited-Content Message

A **voicemail** message for a consumer that may only include the required and some optional information.

REQUIRED INFORMATION	OPTIONAL INFORMATION
Business name;	Salutation;
Request to reply;	Date and time;
Contact person; and	Suggested dates and times for reply; and
Phone number	Statement that consumer may speak to any of the company's representatives or associates

EXAMPLE: *“This is Robin Smith calling from ABC Inc. Please contact me or Jim Johnson at 1-800-555-1212.”*

Communication – Prohibitions

- Generally restates FDCPA prohibitions, including prohibition on communications:
 - at unusual times or places
 - at times or places that a debt collector knows or has reason to know are inconvenient
 - at the consumer’s place of employment if the collector knows or should know that the employer prohibits such communications
 - if a debt collector knows or should know that the consumer is represented by an attorney
- Clarifies that:
 - Consumers do not have to use the word “inconvenient”
 - Collectors may ask clarifying questions

Communication – Prohibitions

The Rule generally:

- ❑ Prohibits communication via any medium a consumer has asked the collector not to use
- ❑ Prohibits using an email address known to be employer-provided
- ❑ Requires that an opt-out method be included in every electronic communication
- ❑ Restates FDCPA requirement that collectors cease communicating with a consumer regarding a debt after the consumer notifies the collector in writing that the consumer refuses to pay that debt or wishes the collector to cease further communication
- ❑ Restates & clarifies FDCPA's prohibition on communications with 3rd parties
- ❑ Restates FDCPA's limitations & requirements on communications to acquire location information

Communication – Safe Harbors

- Sending emails and text messages could risk third-party disclosures prohibited by the FDCPA and the Rule.
- The Rule identifies procedures that a debt collector can use to limit the risk of third-party disclosures when sending an email or text message.
 - Debt collectors are not required to use these procedures
 - But those who do will obtain a **bona fide error defense** to civil liability against third-party disclosure risk.
- The Rule explains these procedures in detail.

Communication – Social Media

- Prohibits collectors from posting messages in connection with the collection of a debt on the public part of a person's social media page
- Requires that collectors who message a consumer seeking to be added as a contact on social media disclose that they are debt collectors
- Clarifies that communication via social media with a 3rd party, including unintentional communication, violates the FDCPA and the Rule
- There are no safe harbors for social media communications

Prohibition on Sale, Transfer, or Placement

- Prohibits collectors from selling, transferring for consideration, or placing for collection a debt if the debt collector **knows or should know** that the debt was **paid, settled, or discharged in bankruptcy**, except for:
 1. Transfers to the debt's owner or to a previous owner (if authorized under the original contract);
 2. Transfers as a result of a merger, acquisition, purchase and assumption, or transfer of substantially all of the debt collector's assets;
 3. Sales, transfers, or placements of secured debt discharged in bankruptcy if certain conditions in the Rule are met;
 4. Securitization of debt or pledging of a portfolio of debt as collateral.

Duplicative Dispute

- “Duplicative dispute” = written dispute that is substantially the same as one previously submitted within the 30-day validation period, when the debt collector has already responded to the previous dispute.
 - Unless the consumer provides new & material information, a debt collector may respond:
 - (1) as to a non-duplicative dispute; or
 - (2) by notifying the consumer that the dispute is duplicative, providing the reasons for the determination, and referring the consumer to the debt collector’s earlier response.

Disclosures – Electronic Delivery

- Debt collectors who send required disclosures in writing or electronically must do so in a manner that is:
 - reasonably expected to provide actual notice; and
 - in a form that the consumer may keep and access later
- When sending disclosures required to be in writing (e.g., a validation notice sent within five days of initial communication), a debt collector must comply with the E-SIGN Act's consumer consent requirements
- Provides a safe harbor for collectors who mail a printed copy of the required disclosures to the consumer's last known address
 - Unless the collector knows/should know the consumer no longer resides there or doesn't receive mail there

Record Retention

- Most records must be retained from the time the collector begins collection activity on a debt until **not less than three years after**:
 - the collector's last collection activity on the debt
 - An event such as the debt collector transferring the debt for consideration to another party would start the running of the debt collector's three-year record retention clock with respect to the debt, provided that the transfer of the debt represents the debt collector's last collection activity on the debt.
 - Phone call recordings must be retained for three years after the recording date

Time-Barred Debt

- Time-barred debts = debts for which the applicable statute of limitations has expired
 - Statute of limitations = period during which a person can bring a legal action to collect the debt
- The Rule prohibits collectors from bringing/threatening to bring a legal action against a consumer to collect a time-barred debt.
 - Proofs of claim filed in connection with a bankruptcy proceeding are allowed

Furnishing Information to CRAs

- Bans “debt parking” or “passive collections,” i.e., furnishing information about a debt to a CRA before taking certain steps.
- Before furnishing to a CRA, collectors must either:
 - Speak with the consumer about the debt in person or by phone; or
 - Send the consumer a letter or electronic message about the debt and wait a reasonable period;
 - Safe harbor provision: 14 or more days is considered a reasonable period
 - During the reasonable period, the collector must permit receipt of, and monitor for, notifications of undeliverability
 - If the debt collector receives such a notification during the reasonable period, the debt collector must not furnish information about the debt to a consumer reporting agency until the debt collector otherwise satisfies the requirements



Debt Validation Notice: Overview

- The Rule requires validation information to be provided:
 - In the initial communication; or
 - Within five days of the initial communication (unless the consumer has paid the debt).
- The Rule identifies required validation information and optional disclosures.
- Collectors using the model validation notice, or a substantially similar notice, receive a **safe harbor** for compliance with the information and form requirements.

Debt Validation Notice: Required Information

- Information about the Debt
 - Debt collector communication disclosure
 - Name and mailing information
 - Account number
 - Itemization-related information:
 - Itemization date may be: 1) the last statement date; 2) the charge-off date; 3) the last payment date; 4) the transaction date; or 5) the judgment date
 - Current amount of the debt
- Information about consumer protections
- Consumer-response information

Debt Validation Notice: Optional Disclosures

- Debt collector's telephone contact information
- Reference code for the debt
- Payment request disclosures
- Electronic communication information, such the debt collector's website or email address
- Spanish-language translation disclosures
- The merchant brand, affinity brand, or facility name (if any)
- Disclosures under other applicable law

North South Group
P.O. Box 123456
Pasadena, CA 91111-2222
(800) 123-4567 from 8am to 8pm EST, Monday to Saturday
www.example.com

To: Person A
2323 Park Street
Apartment 342
Bethesda, MD 20815

Reference: 584-345

North South Group is a debt collector. We are trying to collect a debt that you owe to Bank of Rockville. We will use any information you give us to help collect the debt.

Our information shows:

You had a Main Street Department Store credit card from Bank of Rockville with account number 123-456-789.

As of January 2, 2017, you owed:	\$ 2,234.56
Between January 2, 2017 and today:	
You were charged this amount in interest:	+ \$ 75.00
You were charged this amount in fees:	+ \$ 25.00
You paid or were credited this amount toward the debt:	- \$ 50.00
Total amount of the debt now:	\$ 2,284.56

How can you dispute the debt?

- **Call or write to us by August 28, 2020, to dispute all or part of the debt.** If you do not, we will assume that our information is correct.
- **If you write to us by August 28, 2020,** we must stop collection on any amount you dispute until we send you information that shows you owe the debt. You may use the form below or write to us without the form. You may also include supporting documents. We accept disputes electronically at www.example.com/dispute.

What else can you do?

- **Write to ask for the name and address of the original creditor, if different from the current creditor.** If you write by August 28, 2020, we must stop collection until we send you that information. You may use the form below or write to us without the form. We accept such requests electronically at www.example.com/request.
- **Go to www.cfpb.gov/debt-collection to learn more about your rights under federal law.** For instance, you have the right to stop or limit how we contact you.
- Contact us about your payment options.
- Póngase en contacto con nosotros para solicitar una copia de este formulario en español.

Notice: See reverse side for important information.

Model Validation Notice

Mail this form to:
North South Group
P.O. Box 123456
Pasadena, CA 91111-2222

Person A
2323 Park Street
Apartment 342
Bethesda, MD 20815

How do you want to respond?

Check all that apply:

- I want to dispute the debt because I think:
- This is not my debt.
 - The amount is wrong.
 - Other (please describe on reverse or attach additional information).

I want you to send me the name and address of the original creditor.

I enclosed this amount: \$

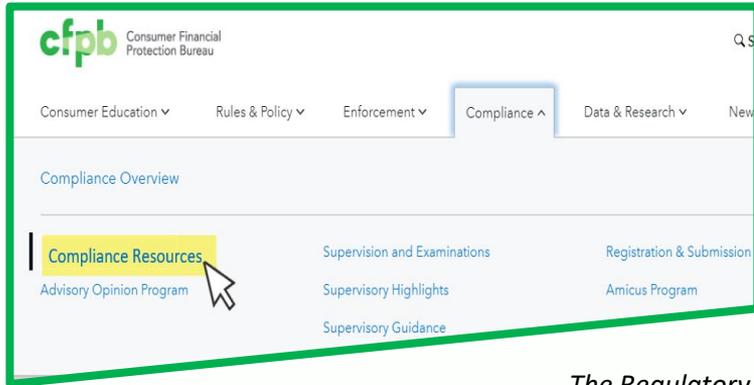
Make your check payable to *North South Group*. Include the reference number 584-345.

Quiero este formulario en español.

Regulatory Implementation Guidance

And CFPB Compliance Resources

Regulatory Implementation Guidance



The Regulatory Implementation and Guidance (RIG) team provides plain language materials to support understanding and implementation of the CFPB's rules. Access the RIG team's compliance resources and materials at: www.consumerfinance.gov/compliance/compliance-resources/.

What resources are available?

- Executive Summaries
- Compliance Guides
- FAQs
- Webinars
- Fact Sheets
- Coverage Charts

Can I get updates?

Visit www.consumerfinance.gov/compliance/sign-up to sign-up to receive emails announcing new materials.

Can I ask regulatory questions?

For questions about the CFPB's rules, submit an inquiry here: reginquiries.consumerfinance.gov. CFPB staff provide informal guidance in response to inquiries.

Compliance Resources

Regulations

The Bureau's Interactive Regulations make the Bureau's regulations easier to read, navigate, and understand.

Guides

The Debt Collection Small Entity Compliance Guide provides an easy-to-use summary of Regulation F to highlight information that industry may find helpful when implementing the Debt Collection Rule.

Tables of Contents

The Bureau has created tables of contents to help navigate the Debt Collection Rule.



Consumer Financial
Protection Bureau

Executive Summaries

The Bureau has quick reference materials to help navigate the Debt Collection Rule's requirements and changes to Regulation F, including executive summaries of final rules.

Proposed Rule Changes

The Bureau has resources to help navigate the Bureau's proposed changes to Regulation F, including Fast Facts summaries.

Examination Procedures

The Bureau publishes Examination Procedures on how it will supervise and examine entities under its jurisdiction for compliance with the FDCPA.

Access these materials and sign-up for notification of new materials at:

<https://www.consumerfinance.gov/compliance/compliance-resources/other-applicable-requirements/debt-collection/>