

Summary of Debt Collection Proposals Under Consideration¹

I. Executive Summary

On July 28, 2016, the Consumer Financial Protection Bureau (“CFPB” or “Bureau”) released its 117 page outline for debt collection proposals. The proposals cover four key areas: (1) information and integrity related concerns, (2) consumer understanding initiatives, (3) collector communication practices, and (4) debt transfers and recordkeeping.

The proposals are not binding, and the CFPB will almost certainly make significant edits and adjustments prior to issuing proposed rules. However, the proposals offer valuable insight into the standards that the CFPB will likely incorporate into a final rule. Additionally, and perhaps more importantly, the proposals suggest minimum standards in areas that were previously plagued with ambiguity and identify activities that might violate existing law or constitute an unfair, deceptive, or abusive practice. Therefore, debt collectors, debt buyers, and affected servicers should carefully review the proposals and consider reviewing and revising their own processes.

Although the CFPB explicitly stated that these proposals would only apply to third-party debt collectors subject to the Fair Debt Collection Practices Act (“FDCPA”), Director Cordray’s prepared remarks also addressed future rulemaking that would apply to first-party debt collectors (i.e., creditors collecting their own debt excluded from coverage of the FDCPA). Therefore, first-party debt collectors should, likewise, carefully consider their own business practices in light of the proposals.

Perhaps the biggest compliance challenge presented by the proposal concerns data integrity requirements both prior to commencing debt collection activity and during the debt collection lifecycle. While the CFPB previously signaled some of these requirements through prior consent orders and its Supervision and Examination Manual, the CFPB’s proposal greatly expands upon existing guidance. For instance, the CFPB’s proposal sets forth specific information that collectors must review prior to commencing debt collection activity. The proposal would also require debt collectors to identify, at an individual loan and portfolio level, warning signs that raise questions regarding the accuracy of its information both prior to commencing collection activity and during the collection lifecycle. The proposal would also require debt collectors to review certain categories of specific information in response to various types of disputes before continuing further collection activity for both verbal and written disputes. Under the proposal, collectors would also be required to send more robust debt validation notices and a new notice known as a statement of rights, which could significantly increase the number of disputes. In the loan transfer process, the proposal would require transferee debt collectors to (1) obtain representations regarding the accuracy of transferred information from transferor debt collectors and (2) obtain and review

¹ This summary does not provide legal advice. If you are interested in obtaining legal advice or additional information about the CFPB’s debt collection proposals please contact Bradley Arant Boult Cummings at 205-521-8000 and ask to speak with Brian O’Dell, Riley Key, Lee Gilley, or John Harrelson.

(and the transferor to provide) certain categories of information that affect the transferee debt collector's ability to comply with federal law. The proposal also essentially requires debt collectors, prior to filing litigation, to review accounts as though the consumer disputed every aspect of the loan. The proposal would also create new disclosure obligations for debt collectors seeking to collect on time-barred debt.

The proposal would also significantly alter the manner in which debt collectors communicate with consumers by (1) placing specific numerical limitations on communications with consumers, (2) requiring debt collectors to accurately determine whether the time, place, or manner of the communication is inconvenient during a telephone call, and (3), in the case of decedent debtors, requiring debt collectors to determine whether a person is considered a "personal representative" under state law before making a debt collection communication. The CFPB's communication related proposals would doubtless prove difficult to operationalize for many collectors.

II. Information and Integrity Related Concerns

a. Prohibition on Collecting on Unsubstantiated Debts

The CFPB's proposal would create an obligation to take substantial steps to verify that it has "reasonable support for its claim that the individual owes that debt or amount and that the collector is legally entitled to collect to debt."

- The proposal would require the collector to take the following steps prior to initiating collection activity²:
 - Review certain fundamental information including:
 - The full name, last known address, and last known telephone number of the consumer;
 - The account number of the consumer with the debt owner at the time the account went into default;
 - The date of default, the amount owed at default, and the date and amount of any payment or credit applied after default;
 - Each charge for interest or fees imposed after default and the contractual or statutory source for such interest or fees; and
 - The complete chain of title from the debt owner at the time of default to the collector.
 - Obtain a representation from the transferor that it has reasonable written policies and procedures to ensure that the transferred information is accurate and that the information is identical to the information in the transferor's records.
 - Review information obtained from transferor for warning signs such as:
 - Information for an individual debt is not in a clearly understandable form;
 - Information for an individual debt is facially implausible or contradictory;
 - A significant percentage of debt in the portfolio has missing or implausible information, either in absolute terms or relative to portfolios with comparable types of accounts; or

² While the proposal allows collectors to adopt alternative approaches, the collector would "bear the burden of justifying its alternative approach." As a result, adopting alternative approaches creates substantial risk for the collector.

- A significant percentage of debt in the portfolio has unresolved disputes, either in absolute terms or relative to the portfolios with comparable types of accounts
 - If the debt collector identifies or should have identified warning signs, the proposal would require the collector to take additional steps to verify the information, such as:
 - Review supplemental information from the original creditor or prior creditor;
 - Review information from other sources (*e.g.* skip trace results, etc.); or
 - Review documentation for a representative sample of the portfolio or the entire portfolio.
 - The proposal would also require the collector to take the following steps during collection activity:
 - Identify warning signs such as:
 - A dispute filed by a consumer with respect to an individual debt;
 - The inability to obtain underlying documents in response to a dispute; or
 - Receipt of disputes for a significant percentage of debt in the portfolio, either in absolute terms or relative to portfolios with comparable types of accounts.
 - If the debt collector identifies or should have identified warning signs, the proposal would require the debt collector to cease further collection activity until the debt collector has obtained additional support to address the issue raised by the warning sign.
 - The proposal would require that debt collectors³ that receive written or verbal disputes regarding the validity of the debt cease further debt collection activity until the debt collector has substantiated the debt pursuant to the guidelines for the types of disputes discussed below.⁴ If the dispute was received within 30 days of the debt validation notice, the debt collector must also provide the consumer with a copy of the documentation substantiating the debt, or, for verbal disputes, notify the consumer of the right to receive the documentation.
 - In response to “Generic Disputes” (*e.g.* a statement that the consumer disputes the debt with no additional information), the collector must review the following facts:
 - The first and last name, address, and account number (with the creditor at the time of default) of the debtor;
 - The date of default and date of last payment;
 - The name and address of the creditor at default; and
 - The amount of the debt balance at default and any post-default interest and fees, and a description of the amount owed. (“Generic Dispute Information”)
 - The collector may satisfy this requirement by reviewing documents such as: (1) a charge off statement, (2) the most recent billing statement, or (3) the contract, note, application, or service agreement.
 - In response to “Specific Disputes” (*e.g.* a statement that the consumer disputes the debt with additional information regarding the dispute), the collector must first identify the nature of the dispute: (1) disputes challenging the amount of the debt, (2) disputes indicating the collector is collecting from the wrong person, or (3) disputes indicating the debt collector is not the owner of the debt or not entitled to collect the debt. For each type of Specific Dispute, the collector must review the information above for Generic Disputes, plus the additional information below:
 - For disputes challenging the amount of the debt:

³ Importantly, these dispute requirements would extend to subsequent debt collectors under the CFPB’s proposal.

⁴ While the proposal allows collectors to adopt alternative approaches, the collector would “bear the burden of justifying its alternative approach.” As a result, adopting alternative approaches creates substantial risk for the collector.

- The amount of principal, interest, or fees disputed;
- The basis for seeking to collect any such disputed amount (e.g. late fees or a charge for purchase on a credit card and the date the charge was made), including the terms and conditions relevant to collecting any post-default interest or fees, if applicable;
- The date and amount of each payment (or other credit) after default; and
- Any additional information required to respond to the specific dispute.
- The collector may satisfy this requirement by reviewing relevant documentation such as the billing statements for the relevant period and/or the underlying agreement describing applicable interest rates or fees.
- For disputes indicating the collector is collecting from the wrong customer:
 - Either (1) information that the consumer provided to the creditor with respect to the consumer’s date of birth and information obtained with respect to the consumer’s addresses throughout the life of the account; or (2) a number that uniquely identifies the consumer (e.g., SSN, EIN, ITIN):
 - The consumer’s original agreement or original consent to the debt; and
 - Any additional information required to respond to the specific dispute.
- The collector may satisfy this requirement by reviewing relevant documentation such as a copy of the credit application, new patient form, or document reflecting information gathered from the creditor’s Customer Identification Program, and a copy of the contract, note, application, or service agreement.
- For disputes indicating the collector is not the owner of the debt or does not have the right to collect the debt:
 - The names and addresses of all persons that obtained the debt after default (as debt owners or third-party collectors), and the date of and parties to each purchase, assignment, or transfer; and
 - Any additional information required to respond to the specific dispute.
- The collector may satisfy this requirement by reviewing relevant documentation such as a copy of the bill of sale or assignment of debt.
- The proposal would also require the collectors to take the following steps prior to filing litigation:
 - Review all of the documentation, discussed above, that it would be required to review in the event a debt collector received a debt dispute.⁵

⁵ While the proposal allows collectors to adopt alternative approaches rather than reviewing all of the documentation for all types of disputes, the collector would “bear the burden of justifying its alternative approach.” As a result, adopting alternative approaches creates substantial risk for the collector.

b. Review and Transfer of Certain Information

The CFPB's proposal would create an obligation for transferee debt collectors, prior to commencing collection activity, to review and obtain (and transferor debt collectors to provide) specific documentation and information that could affect the transferee debt collectors' ability to comply with its obligations under the FDCPA and other federal consumer protection laws.

- The information might include the following:
 - Whether the debt was disputed in writing within 30 days of receipt of the validation notice and either (1) a statement that the debt was verified; or (2) the details of the dispute, including information the consumer submitted or the prior collector provided;
 - Whether the debt was disputed in writing within 30 days of receipt of the validation notice and either (1) a statement that the claims were substantiated; or (2) the details of the dispute, including information the consumer submitted or the prior collector provided;
 - Any time, place, or method of communication that the consumer stated is inconvenient;
 - The name and address of any attorney who is representing the consumer in connection with the debt;
 - Whether the consumer's employer prohibits the consumer from receiving collection communications at the place of employment;
 - Whether the collector has made confirmed consumer contact, and the contact information used to establish such contact;
 - Whether the collector has provided the time-barred debt disclosure; and
 - Whether the consumer is deceased and, if so, the date of death.
 - Whether the consumer is an active duty service member and whether the consumer has secured an interest rate reduction pursuant to the SCRA;
 - For defaulted student loans, whether the consumer has applied for discharge of the debt on a basis that imposes a collections pause, and the date of the application;
 - For defaulted student loans eligible for rehabilitation, the terms of any rehabilitation agreement, the number of payments made, and any requested adjustment to the amount of the monthly payment;
 - Whether the consumer's income and assets are exempt under federal or state laws from a judgment-creditor seeking garnishment related to debt collection litigation;
 - The language preference of the consumer; and
 - Whether the consumer has submitted an oral or written cease communication request.
- The transferor would also be obligated to forward information that could indicate that all or part of the debt could be uncollectible or lacks sufficient support:
 - Payments submitted by the consumer;
 - Bankruptcy discharge notices;
 - Identity theft reports;
 - Disputes; and
 - Assertions or implications by the consumer that his or her income and assets are exempt under federal or state laws from judgment creditors seeking garnishment.
- These obligations only apply to information received from the consumer and do not obligate the transferee collector or the transferor collector to affirmatively obtain information from the consumer.

c. Validation Notices and Statements of Rights

The CFPB's proposal would significantly alter the collectors' current debt validation notice practices and require the collector to send a one page Statement of Rights.

- The enhanced debt validation would include the following:⁶
 - The consumer's full name and address;
 - The debt collector's name and address;
 - A description of the debt type (e.g., "credit card");
 - The merchant brand associated with the debt (e.g., the name of the retailer that appears on a branded card), if applicable;
 - The name of the creditor at the time of default (the "default creditor");
 - The account number with the default creditor;
 - The amount owed on the default date;
 - The creditor to which the debt is currently owed;
 - An itemization of interest, fees, payments, and credits since the default date;
 - The amount owed currently;
 - A statement describing the effect of submitting either an oral dispute or any dispute outside the 30-day period—i.e., that before the debt collector may continue making collection communications it must confirm that it has a reasonable basis for its claims of indebtedness;
 - A statement explaining the "collections pause"—i.e., the requirement that a debt collector in receipt of a timely written dispute or an original-creditor-information request cease collection until it verifies the debt or provides the name and address of the original creditor, as appropriate;
 - A statement that, for additional information, the consumer should refer to the accompanying Statement of Rights and visit the CFPB's website; and
 - A "tear-off" that would allow the consumer to check a box next to a list of pre-written dispute options or to request the name and address of the original debtor.
 - The debt collector could also include in the "tear-off" section a check-off box that would allow the consumer to indicate that he or she is submitting a payment.
- The Statement of Rights is a one page document that must include a plain-language explanation of the following:
 - The consumer's right under the FDCPA to preclude a collector from contacting him or her at a time or place that the collector knows or should know (including based on information from the consumer) is inconvenient for the consumer;
 - The consumer's right under the FDCPA to have the debt collector cease communications upon written request;
 - The consumer's right under the FDCPA to dispute the debt;
 - The restrictions under the FDCPA on a debt collector communicating with third-parties about a debt;
 - The prohibition under the FDCPA on harassment, oppression, or abuse by debt collectors;
 - The prohibition under the FDCPA on false or misleading representations by debt collectors;

⁶ The CFPB's proposal included model forms for the enhanced debt validation notice and the Statement of Rights.

- The consumer’s right under the Fair Credit Reporting Act to obtain a copy of the consumer’s credit report from consumer reporting agencies and dispute any inaccurate or incomplete information that appears in it;
- The existence of restrictions and prohibitions under various federal and state laws on collectors garnishing certain assets and income; and
- A statement, in Spanish, that the consumer can obtain a translated version of the Statement of Rights and validation notice from the CFPB website or the debt collector.
- The CFPB’s proposal would require the collector to include a copy of the statement of rights in the same mailing as the enhanced debt validation notice.
- The CFPB’s proposal would require debt collectors, in the first communication made more than 180 days after the consumer received the initial debt validation notice and Statement of Rights, to provide or offer to provide an additional copy of the Statement of Rights.
- The CFPB’s proposal would also prohibit collectors from furnishing information about a debt to a consumer reporting agency until it has communicated with the customer.

III. Other Consumer Understanding Initiatives

a. Litigation Disclosure

The CFPB’s proposal would create an obligation to provide a litigation disclosure in all written or oral communications in which the collector expressly or impliedly indicates an intent to sue.

- The litigation disclosure would convey the following information:
 - The debt collector intends to sue;
 - A court could rule against the consumer if he or she fails to defend a lawsuit; and
 - Additional information about debt collection litigation, including contact information for other legal services programs, is available on the Bureau’s website and through calling the Bureau’s toll-free telephone number.

b. Collection of Time-Barred Debts

The CFPB’s proposal would prohibit suit or threat of suit on time-barred debts and require certain disclosures for time-barred debts.

- The collector would be required to provide a time-barred debt disclosure in the validation notice and in the first oral communication in which it requests a payment.
 - The disclosure would include a brief, plain-language statement informing the consumer that, because of the age of the debt, the debt collector cannot sue to recover it.
 - When a debt becomes time-barred during collections, debt collectors would have to provide the disclosure in the first communication in which they seek payment after the statute of limitations has expired.
 - If the first communication is oral, the disclosure would also have to be included in the first written communication following the oral communication.
 - The validation notice would also disclose whether the time barred debt can or cannot appear on a credit report.
- The CFPB is considering two standards for when a collector must provide the disclosure.
 - First, the collector would be required to provide the disclosure when it **knew or should have known** that the statute of limitations had run.

- Second, the collector would be required to provide the disclosure in any situation where the statute of limitations has run, **regardless of knowledge**.
- The proposal would bind subsequent collectors to treat a debt as time-barred and comply with the above requirements if the prior collector sent a time-barred disclosure.
 - The subsequent collector would be responsible for identifying debts to which it provided time-barred disclosures.
- The proposal would prevent collectors from collecting on a time-barred debt unless it waives its right to sue prior to collecting.
- For debts that are time-barred and that cannot appear on a credit report, the proposal would require a collector to obtain written confirmation that the consumer received the appropriate disclosures prior to accepting payment.

IV. Collector Communication Practices

a. Caps on Consumer and Third Party Contact Attempts

The CFPB’s proposal would supplement the FDCPA’s vague limitation on contact attempts with consumers and third parties by establishing defined caps on the number of contacts a debt collector may initiate with a consumer or a third party.⁷ 15 U.S.C. 1692d(5).

- The limits would be different depending on whether the debt collector had successfully contacted the consumer.
- The limits would be on a per account basis rather than a per consumer/third party basis.
- The CFPB is currently proposing separate limits for unique phone numbers or addresses as well as total contacts per week.
- The CFPB is considering whether to apply the contact limits to all communications (*i.e.* phone calls, letters, etc.)

Permissible Consumer Contacts (or Contact Attempts) Per Account Per Week		
Collector Activity	Collector Does Not Have Confirmed Consumer Contact	Collector Has Confirmed Consumer Contact
Attempts per unique address or phone number	3	2
Total contact attempts	6	3
Live communications	N/A	1

⁷ While the Bureau has currently proposed defined call limits, it is considering whether the limits will serve as “hard” caps or whether they will merely create a rebuttable presumption of harassment.

Permissible Number of Location Contacts (or Contact Attempts) to a Third Party Per Account Per Week		
Collector Activity	Collector Does Not Have Confirmed Consumer Contact	Collector Has Confirmed Consumer Contact
Attempts per unique address or phone number per third party	3	0
Total contact attempts per third party	6	0
Total contact attempts across all third parties	No specific limit	0

b. Time, Place and Manner of Contact

The CFPB’s proposal supplements the FDCPA’s restriction on contacting consumers at an unusual time or place. 15 U.S.C. 1692c(a)(1).

- All communications must be made at a permissible time based on **all locations that the consumer’s information indicates he or she may be.**
- The proposal creates presumptively inconvenient places:
 - Medical facilities;
 - Places of worship;
 - Places of burial or grieving; and
 - Daycare or childcare facilities.
- The proposal requires the collector to discontinue the call upon learning that the consumer is located at a presumptively inconvenient place.
 - The collector can continue the call only if the consumer affirmatively and without prompting consented to continue the call.
- The proposal requires the collector to ask clarifying questions to affirmatively determine whether a method of communication is inconvenient.
- The proposal prohibits collectors from using a consumer’s work email when collecting a debt.

c. Decedent Debt

The CFPB’s proposal supplements the FDCPA’s restriction on contacting consumers at an unusual time or place. The FDCPA defines “consumer” to include “the consumer’s spouse, parent (if the consumer is a minor), guardian, executor, or administrator.” 15 U.S.C. § 1692c(d).

- The proposal expands the definition of several key terms:
 - “Spouse” and “Parent” would include surviving spouses and parents of deceased minors.
 - “Consumer” would include “personal representatives” as those individuals who have been recognized under state probate or estate laws as having responsibilities to perform many of the same functions as executors and administrators.
- The proposal creates a 30 day waiting period following a consumer’s death. During this 30 day-period, the collector cannot contact the surviving spouse, parents of a deceased minor, or personal representative.
 - The proposal includes a safe harbor for communications where the collector is not aware of the death.

- Upon learning of the death, the collector can seek location information for the personal representative of the deceased but must otherwise discontinue contact until the 30-day window has expired.

d. Consumer Consent

The CFPB's proposal supplements the definition of consumer consent.

- The proposal prohibits collectors on consent provided to a prior collector.
 - Consent can be provided orally or in writing, but the collector is responsible for memorializing consent in its system of record.
- The proposal allows the consumer to revoke previously provided consent.

V. Additional Proposals

a. Transferring Debt

The CFPB proposal would prohibit debt buyers from placing debt with, or selling debt to: (1) those subject to a judgment, order, or similar restriction prohibiting them from purchasing or collecting debt in the state in which the consumer resides; or (2) those that lack any license required to purchase.

b. Recordkeeping

The CFPB proposal would require collectors to maintain all records related to the collector's interaction with a consumer and all records used to validate or respond to a dispute regarding the debt for a period of three years.