CFPB issues 21st Century Proposed Debt Collection Rules: Regulation F looks to Provide Clarity to the FDCPA

By Joann Needleman, Ann E. Lemmo / May 08, 2019

Yesterday, the Consumer Financial Protection Bureau (CFPB or Bureau) issued its long-awaited Notice of Proposed Rulemaking (NPR) for debt collection. These proposals precede a final rule, that will be known as Regulation F, and will be the first rules issued under the tenure of Director Kathleen Kraninger.

When the Fair Debt Collection Practices Act (FDCPA or Act) was enacted in 1977, its intent and purpose was to address abusive debt collection practices and to ensure that debt collectors who did comply with the law would not be otherwise competitively disadvantaged. Forty-two years later, the FDCPA represents an outdated and ineffective law which provides no clarity for industry and has done little to protect consumers. This quagmire falls squarely upon Congress when it failed to provide the Federal Trade Commission (FTC), then the primary regulator for the FDCPA, with any rulemaking authority. Thus, the FDCPA has been left to the inconsistent interpretations of the Courts.

Fast forward to 2008 and the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) which created the Consumer Financial Protection Bureau (CFPB or Bureau). Dodd-Frank granted specific authority to the CFPB over certain enumerated consumer protection laws, including the FDCPA. With this authority, the CFPB was tasked to write clear rules of the road in order to ensure compliance of industry as well as provide consumers with a clear understanding of what constituted appropriate debt collection activity.

The Bureau started the debt collection rulemaking process in 2013. The proposals unveiled yesterday were a culmination of extensive work to understand the nuisances of the debt collections industry. A topline summary of the proposals are as follows:

- **Opportunities to Communicate with Consumers by Email and/or Text**
  Debt collectors will now be able to communicate with consumers by email and text provided that the consumer is given the reasonable opportunity to opt-out of those communications. No other social media channels will be available. Debt collectors will need to have reasonable procedures in place to ensure that emails and texts are sent to the proper consumer and that the consumer was given proper notice that such a communication channel was used.
- **Limited Content Messages will be Exempt from the FDCPA**
  Debt collectors will now be allowed to leave a specific message for consumers, either by phone or text, in an effort to get a call back or response without running afoul of the FDCPA.
- **Debt Collectors are Limited to No More Than 7 Telephone Calls per Week per Account**
  However, once a debt collector reaches a consumer, subsequent communication is limited to 1 call every 7 days. There are certain exceptions including if a consumer provides consent to be called or requests a call back from a debt collector.
- **A Model Validation Notice and Disclosures with the Opportunities to Provide same Electronically**
  The Bureau has proposed a standard model validation notice which provides clear cut disclosures a debt collector can use when initially communicating with a consumer. The proposed notice also provides consumers with an electronic means of disputing a debt. The Bureau is also considering the electronic delivery of these disclosures provided the debt collector and/or the original creditor has otherwise complied with E-Sign.
- **Additional Prohibitive Actions**
  Debt collectors will not be permitted to sue or threaten suit on a debt if the debt collector knows or should know that the applicable statute of limitations has expired. Further, the rule prohibits debt collectors from reporting collection items to consumer reporting agencies without first communicating with the consumer.

The proposals in the NPR are a clear recognition by the Bureau that modern forms of communication must be incorporated into the debt collection process. However, the NPR is over 500 pages and it will take time to digest the details to see whether these proposals are practical and capable of compliance. Both industry and advocates will be pouring over these proposals in the coming days and weeks to determine their viability. The comment period ends within the next 90 days.

The Clark Hill team will also be reviewing and analyzing these proposals with an eye towards providing greater insight and recommendations. Look for future in-depth analysis on specific provisions of the NPR shortly. A clear understanding of these proposals and their impact on client operations is critical in order to fashion the appropriate comments for the administrative record. Any stakeholder in the debt collection space must consider submitting comments in order to ensure Regulation F achieves the desired result of true clarity when collecting consumer debt.

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