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The CFPB Debt Collection Rule: Compliance Considerations

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Overview

1. Introduction
2. Status of Rule
3. Discussion of Implications for Creditors
4. Discussion of Specific Provisions
5. Implementation by Debt Collectors

Introduction

- Applicability
 - “Debt collectors” under the federal FDCPA
- Statutory Authority
 - FDCPA and ESIGN
 - Not Section 1031 of the Dodd-Frank Act, which prohibits UDAAPs

Current Status of Rule

- Effective 12 months from publication to Federal Register
- Congressional Review Act
- December 2020 Rule on Disclosures –
 1. Debt Validation Notice Requirements
 2. Collecting Time-Barred Debt
 3. Passive Debt Collection

Implications for Creditors

“The Bureau declines to expand the rule to apply to first-party debt collectors who are not FDCPA debt collectors, as requested by some commenters. The proposal was intended to implement provisions of the FDCPA, and the Bureau did not solicit feedback on whether or how such provisions should apply to first-party debt collectors. This rule also is not intended to address whether activities performed by entities that are not subject to the FDCPA may violate other laws, including the prohibitions against unfair, deceptive, or abusive practices in Dodd Frank Act section 1031. For the same reasons, the Bureau also ***declines to clarify whether any particular actions taken by a first-party debt collector who is not an FDCPA debt collector would constitute an unfair, deceptive, or abusive practice under Dodd-Frank Act section 1031.***”

Specific Provisions – Electronic Communications

- Electronic Communications, 12 C.F.R. 1006.14(h)(1), 1006.6, 1006.22
 - Express authority to communicate via email and text message subject to restrictions
 - Not subject to numerical limits on telephone contact frequency
 - Specific rules for inconvenient time/place
 - Safe harbors against third-party disclosure claim
 - Opt-out notice and “reasonable and simple” method to opt-out
 - E-SIGN compliance for certain required disclosures

Specific Provisions – Electronic Communications (continued)

- Work Email and Social Media, 12 C.F.R. 1006.22(f)(3), (4)
 - Emails to employer-provided email addresses prohibited
 - No social media “wall postings” but direct messages are allowed

Specific Provisions – Telephone Communications

- Telephone Contact Frequency, 12 C.F.R. 1006.14
 - Rebuttable presumption, not a safe harbor
 - 7 times within a 7-day period
 - No attempts within 7 days after a telephone conversation
 - Exceptions
- Voicemail, 12 C.F.R. 1006.2(j)
 - “Limited-content message” is not a “communication”
 - Mini-Miranda not required and message does not reveal existence of debt to third party

Specific Provisions – Miscellaneous Issues

- **Limits on Debt Transfers, 12 C.F.R. 1006.30**
 - Prohibiting from transferring debt that has been paid, settled, or discharged in bankruptcy
 - Exceptions for certain transfers and certain debts
- **Disputes, 12 C.F.R. 1006.38**
 - Handling of duplicative disputes
 - Requests for original creditor information

Questions

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