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CFPB Issues Final Rule Clarifying Regulation of Fair Debt Collection Practices

On October 30, 2020, the Consumer Financial Protection Bureau (“CFPB”) published a long-awaited final rule revising Regulation F, which implements the Fair Debt Collection Practices Act (“FDCPA”) of 1977. Prior to the formation of the CFPB, there was no regulatory body with rulemaking authority over debt collection practices. The CFPB has not taken this responsibility lightly, as it diligently considered over 14,000 comments from debt collectors and other stakeholders during the more than seven years it spent developing the new rule, which will become effective one year from its publication in the Federal Register.

The final rule clarifies various outstanding issues originally addressed by the FDCPA, such as what debt collection practices are considered harassing, oppressive, or abusive, including communications by e-mail and text message. For example, the use of obscene or profane language and threats of physical violence are prohibited under the rule. The final rule also makes it clear that a debt collector violates section 806(5) of the FDCPA (15 U.S.C. § 1692d(5)) if it contacts a consumer by telephone regarding a particular debt more than seven times within seven consecutive days, or within seven consecutive days of speaking to the consumer regarding the debt, except in certain exempt circumstances. Debt collectors will now be required to allow consumers to impose limits on, or opt out of, receiving electronic debt

collection communications by contacting a specific e-mail address or telephone number. The consumer may also use whichever electronic form of communication utilized by the debt collector to request that the debt collector cease communications on their account, or indicate that they refuse to pay the debt.

The rule also clarifies certain issues regarding the handling of written disputes from borrowers, and requires that debt collectors comply with the Electronic Signatures in Global and National Commerce Act if certain disclosures provided pursuant to the FDCPA are transmitted electronically. The rule further provides that a debt collector must retain records that evidence its compliance with the FDCPA and the final rule commencing on the date on which debt collection activity begins in connection with a specific debt and continuing until three years after the last collection activity on that debt. Telephone recordings must be retained for three years after the date of the call.

Debt collectors should stay tuned for the CFPB’s forthcoming debt collection final rule focusing on consumer disclosures, which it intends to issue in December 2020. The CFPB indicated that this rule will cover information that a debt collector will be required to provide to a consumer when it begins debt collection activities, and will also include a

model validation notice reflecting the information required by FDCPA section 809(a). The December 2020 rule is also expected to impose additional disclosure requirements and restrictions related to the collection of time-barred debt.

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