

Consumer Finance Litigation



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CFPB Issues Second Final Rule Clarifying Regulation of Fair Debt Collection Practices

On December 18, 2020, the Consumer Financial Protection Bureau (“CFPB”) issued a [final rule](#) concerning debt collection disclosures, which follows its October 30, 2020 [final rule](#) regarding debt collection communications. The two final rules implement and interpret the consumer protections set forth in the Fair Debt Collection Practices Act (“FDCPA”) of 1977. The final rules will both become effective on November 30, 2021.

The latest final rule outlines various requirements regarding debt collection disclosures. Specifically, a debt collector must send a written disclosure to a consumer containing information concerning the debt and actions the consumer may take in response, within five days of its initial communication with the consumer. This disclosure must be sent unless such validation information was provided in the initial communication or the consumer has paid the debt. The final rule includes a model validation notice, which, if used, provides a safe harbor for compliance with the disclosure requirements. The final rule also requires debt collectors to disclose the existence of a debt to the customer, orally, in writing, or electronically, before it can report information concerning the debt to a consumer reporting agency.

Another significant area of focus in the final rule is the prohibition of filing a suit to collect, or threatening suit to collect, time-barred debt, which is defined as debt that has exceeded the applicable statute of limitations. The CFPB notes in the final rule that although a debt collector may be

precluded from bringing suit to collect time-barred debt, to the extent the debt collector is still permitted to collect the debt through other means in the applicable jurisdiction, such as through letters or telephone calls, it may do so. Further, if only a portion of a debt is time-barred under applicable law, the debt collector is only prohibited from filing suit to collect that portion of the debt. The rule also specifies that the prohibition on filing suit to collect time-barred debt does not apply to filing a proof of claim in bankruptcy proceedings.

In the coming months, debt collectors should familiarize themselves with this final rule and the recent final rule concerning debt collection communications in order to ensure that they are prepared to modify their policies and procedures as needed when the final rules become effective late next year.

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