

The image features a large red diagonal shape on the left side, partially overlapping a grayscale photograph of a modern office building. The building has a grid of windows and the word "Bradley" is visible on its facade. In the top right corner, the word "Bradley" is written in a bold, black, sans-serif font with a red horizontal line underneath it.

**Bradley**

# CFPB Debt Collection Rules – Part 2

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**What is the CFPB's debt collection rulemaking?**

**01**

**Does this rulemaking apply to first-party creditors?**

**02**

**How should entities seek to comply?**

**03**

# Agenda Items

# What is the CFPB's Debt Collection Rulemaking?

- Notice of Proposed Rulemaking issued May 7, 2019
  - Published in the Federal Register on May 21, 2019
- Comment Period: 90 Days
  - Extension: 30 Days
- Comments due by Sept. 18, 2019
- Final rule likely to be published in 2020
  - CFPB proposed a 1-year implementation period
- Rule likely to become effective in 2021 or 2022

# What Does the Rulemaking Claim to Accomplish?

- CFPB “proposes to amend Regulation F, 12 CFR part 1006, which implements the Fair Debt Collection Practices Act (FDCPA).”
- Amendment prescribes new rules governing the activities of debt collectors, as that term is defined in the FDCPA.
- Proposed amendment addresses: communications in connection with debt collection; prohibitions on harassment or abuse, false or misleading representations, and unfair practices in debt collection; and requirements for certain consumer-facing debt collection disclosures.

# Highlights of Proposed Rule

1. Telephone Conversations and Attempts
2. Debt Validation Notice
3. Technology Updates
4. Work Emails
5. Limited Content Messages
6. Time-Barred Debts
7. Communication Before Credit Reporting

# Highlights of Proposed Rule

## Telephone Conversations and Attempts

- Bright-line rule limiting call attempts and telephone conversations
  - Seven attempts per week per consumer
  - One week waiting period after contact with consumer
- Limitations are debt specific

# Highlights of Proposed Rule

## Debt Validation Notice

- Clarified consumer protection requirements for certain consumer-facing debt collection disclosures
  - Rule requires debt collectors to send consumers a mandatory disclosure
  - Notice must include an itemization of the debt and plain-language information about how a consumer may respond or dispute the debt
  - Disclosure must include a “tear-off” consumer response form that consumers could send back to the debt collector to respond to the collection attempt or dispute the debt
- Proposed rule includes a model form collectors could use

# Highlights of Proposed Rule Debt Validation Notice

<p>North South Group P.O. Box 121212 Pasadena, CA 91111-2222 (800) 123-4567 from 8am to 8pm EST, Monday to Saturday <a href="http://www.example.com">www.example.com</a></p>	<p>To: Person A 2323 Park Street Apartment 342 Bethesda, MD 20815 Reference: 584-345</p>
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**North South Group is a debt collector.** We are trying to collect a debt that you owe to Bank of Rockville. We will use any information you give us to help collect the debt.

<p><b>Our information shows:</b></p> <p>You had a Main Street Department Store credit card from Bank of Rockville with account number 123-456-789.</p> <table border="1"> <tr> <td>As of January 2, 2017, you owed:</td> <td style="text-align: right;">\$ 2,234.56</td> </tr> <tr> <td colspan="2">Between January 2, 2017 and today:</td> </tr> <tr> <td>You were charged this amount in interest:</td> <td style="text-align: right;">+ \$ 75.00</td> </tr> <tr> <td>You were charged this amount in fees:</td> <td style="text-align: right;">+ \$ 25.00</td> </tr> <tr> <td>You paid or were credited this amount toward the debt:</td> <td style="text-align: right;">- \$ 50.00</td> </tr> <tr> <td><b>Total amount of the debt now:</b></td> <td style="text-align: right;"><b>\$ 2,284.56</b></td> </tr> </table>	As of January 2, 2017, you owed:	\$ 2,234.56	Between January 2, 2017 and today:		You were charged this amount in interest:	+ \$ 75.00	You were charged this amount in fees:	+ \$ 25.00	You paid or were credited this amount toward the debt:	- \$ 50.00	<b>Total amount of the debt now:</b>	<b>\$ 2,284.56</b>	<p><b>How can you dispute the debt?</b></p> <ul style="list-style-type: none"> <li>• <b>Call or write to us by November 12, 2019, to dispute all or part of the debt.</b> If you do not, we will assume that our information is correct. If you write to us by November 12, 2019, we must stop collection on any amount you dispute until we send you information that shows you owe the debt.</li> <li>• You may use the form below or you may write to us without the form. You may also include supporting documents. We accept disputes electronically at <a href="http://www.example.com/dispute">www.example.com/dispute</a>.</li> </ul> <p><b>What else can you do?</b></p> <ul style="list-style-type: none"> <li>• <b>Write to ask for the name and address of the original creditor.</b> If you write by November 12, 2019, we will stop collection until we send you that information. You may use the form below or write to us without the form. We accept such requests electronically at <a href="http://www.example.com/request">www.example.com/request</a>.</li> <li>• <b>Learn more about your rights under federal law.</b> For instance, you have the right to stop or limit how we contact you. Go to <a href="http://www.consumerfinance.gov">www.consumerfinance.gov</a>.</li> <li>• Contact us about your payment options.</li> <li>• Review state law disclosures on reverse side, if applicable.</li> <li>• Póngase en contacto con nosotros para solicitar una copia de este formulario en español.</li> </ul>
As of January 2, 2017, you owed:	\$ 2,234.56												
Between January 2, 2017 and today:													
You were charged this amount in interest:	+ \$ 75.00												
You were charged this amount in fees:	+ \$ 25.00												
You paid or were credited this amount toward the debt:	- \$ 50.00												
<b>Total amount of the debt now:</b>	<b>\$ 2,284.56</b>												

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<p><b>Mail this form to:</b> North South Group P.O. Box 121212 Pasadena, CA 91111-2222</p> <p>Person A 2323 Park Street Apartment 342 Bethesda, MD 20815</p>	<p><b>How do you want to respond?</b></p> <p><i>Check all that apply:</i></p> <p><input type="checkbox"/> I want to dispute the debt because I think:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> This is not my debt.</li> <li><input type="checkbox"/> The amount is wrong.</li> <li><input type="checkbox"/> Other (please describe on reverse or attach additional information).</li> </ul> <p><input type="checkbox"/> I want you to send me the name and address of the original creditor.</p> <p><input type="checkbox"/> I enclosed this amount: \$ <input type="text"/></p> <p>Make your check payable to North South Group. Include the reference number 584-345.</p> <p><input type="checkbox"/> Quiero esta forma en español.</p>
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# Highlights of Proposed Amendment

## Technology Updates

- Clarified rules for how debt collectors may communicate with consumers
  - Explains how debt collectors may use newer communication technologies, such as voicemails, e-mails and text messages
    - E.g., time and place restrictions apply
  - Emails, text messages, and other electronic communications would have to give the consumer the option to unsubscribe
  - Provides guidance on how collectors may provide required disclosures electronically
  - Consumers may limit timing or manner in which debt collectors contact them

# Highlights of Proposed Amendment

## Work Emails

- CFPB recognizes that there are risks associated with emailing someone's work email address
  - Same applies to text messages to a work issued phone
- A collector would be prohibited from using an email address it knows or should know is provided by the consumer's employer
- Exception would apply if consumer consents or emails the debt collector from a work email

# Highlights of Proposed Amendment

## Limited Content Messages

- Risk of disclosure to third-party if voice message left
- CFPB created safe harbor language
- What information one must and may include in message
- No other information permitted
- Covers voice messages, text messages, oral message with third-party answering telephone
- “Consumer” definition now formally allows communications with executor/administrator/P.R. of estate if deceased, or confirmed successor in interest

# Highlights of Proposed Amendment

## Limited Content Messages

- A Limited Content Message
  - The consumer's name;
  - A request that the consumer reply to the message;
  - The name or names of one or more natural persons whom the consumer can contact to reply to the debt collector;
  - A telephone number that the consumer can use to reply to the debt collector, and
  - If applicable, a clear and conspicuous statement describing one or more ways the consumer can opt out of further attempts to communicate by the debt collector to that telephone number

# Highlights of Proposed Amendment

## Time-Barred Debts

- Prohibition against lawsuits or threats of lawsuit on time-barred debts
  - Applies if the debt collector knows or should have known that the statute of limitations has expired

## Communication Before Credit Reporting

- Prohibition against furnishing information to CRA unless debt collector first communicated about the debt to consumer

# Who Does the Rulemaking Apply To?

## Proposed Rule:

“The Bureau’s proposal would amend Regulation F to prescribe Federal rules governing the activities of debt collectors, as that term is defined in the FDCPA.”

## Debt Collector:

Any person who uses interstate commerce or mail in any business to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. Includes any creditor who uses any name other than his own when attempting to collect such debts.

## Does This Rulemaking Impact First-Party Creditors?

- FDCPA Scope:
  - Third-Party Debt Collectors
  - First-Party Creditors Using a Third-Party Name
- BUT Footnote 69 (p. 31) says:  
“...the Bureau does not take a position on whether such practices also would constitute an unfair, deceptive, or abusive act or practice under section 1031 of the Dodd-Frank Act”  
“...the section-by-section analysis explains why the Bureau proposes to identify the act or practice as unfair under the Dodd-Frank Act”

## Does This Rulemaking Impact First-Party Creditors?

- One Call Per Week Rule – Footnote 331 (p. 165):

“The Bureau has not determined in connection with this proposal whether telephone calls in excess of the limit in proposed § 1006.14(b)(2)(ii) by creditors and others not covered by the FDCPA would constitute an unfair act or practice under Dodd-Frank Act 1031(c) if engaged in by those persons, rather than by an FDCPA-covered debt collector.”
- Explicitly leaves open the possibility that the CFPB will enforce the limitation on weekly calls to first-party creditors.

## Does This Rulemaking Impact First-Party Creditors?

- Rulemaking by Enforcement?
  - Cash Express LLC Consent Order (10/2018) – UDAAP Authority Used to Apply FDCPA
  - Could Future Administrations Penalize Past Conduct?
    - NPRM defines covered conduct as “conduct the natural consequence of which is to *harass, oppress, or abuse*”

## Does This Rulemaking Impact First-Party Creditors?

- State Law Impacts
  - State Versions of FDCPA May Cover First-Party Creditors
  - Some State Statutes Adopt FDCPA Prohibitions as Own
  - Thus, Indirect Regulation of First-Party Creditors
- Other Impacts
  - Additional requirements for debt validation may increase obligations of creditors transferring or selling debt

# How Should Entities Comply?

## Many Unknowns:

- Future Clarification as to Scope
- Unknown Effective Date (2021?)
- Future Amendments to Technical Requirements in Rules

# How Should Entities Comply?

## Manner of Communication With Consumers

- Review consents to e-mails, text messages
- Good time to think about TCPA consents as well
- Review systems to see if organization can track limitations on consent, including timing and manner of communications
- Is your system capable of allowing consumer to unsubscribe through same method as communication?

# Takeaways

Appears likely that third party creditors will be subjected to compliance risk

Consider comments to NPRM

18 Months to Implementation

Good opportunity to review systems and processes

Best practices to avoid litigation risk

# Questions?



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