

## KD Alert: CFPB Releases its Long-Awaited Final Debt Collection Rule

On October 30, 2020, the Consumer Financial Protection Bureau ("CFPB") issued its final rule (the "Rule") amending the federal regulations which implement the Fair Debt Collection Practices Act ("FDCPA"). A link to the Rule can be found by clicking [here](#).

Here is a summary of the important highlights in the Rule.

- The Rule will become effective one year after it is published in the Federal Register, which will be at least in October 2021.
- The Rule covers "debt collection communications and related practices." The CFPB stated that it intends to issue another final rule in December 2020 to "implement and interpret the FDCPA's requirements regarding consumer disclosures and certain related consumer protections." This subsequent rule likely will address validation notices and possibly time-barred debt.
- The Rule authorizes a "Limited-Content Voicemail" which is a voicemail message for a consumer that must include: (1) A business name for the debt collector (that does not indicate that the debt collector is in the debt collection business); (2) a request that the consumer reply to the message; (3) the name (or names) of one or more person(s) whom the consumer can contact to reply to the debt collector; and (4) a phone number (or numbers) that the consumer can use to reply to the debt collector. This information can only be communicated via voicemail. The CFPB declined to create any limited-content communications for text messages or emails.
- In addition to the above requirements, a Limited-Content Voicemail may also include the following: (1) a salutation; (2) the date and time of the message; (3) suggested dates and times for the consumer to reply to the message; and (4) a statement that if the consumer replies, the consumer may speak to any of the company's representatives or associates. Because a limited-content message must be "for a consumer," a message knowingly left for a third party is not a limited-content message.
- The following are two examples of a Limited-Content Voicemail: (1) "This is Robin Smith calling from ABC Inc. Please contact me or Jim Johnson at 1-800-555-1212."; and (2) "Hi, this is Robin Smith calling from ABC Inc. It is 4:15 p.m. on Wednesday, September 1. Please contact me or any of our representatives at 1-800-555-1212 today until 6:00 p.m. Eastern time, or any weekday from 8:00 a.m. to 6:00 p.m. Eastern time."
- The Rule restates the FDCPA's specific prohibition against causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number. The Rule clarifies that this provision applies to a telephone call that goes directly to voicemail (i.e., a ringless voicemail) but does not apply to sending an electronic message (e.g., a text message or an email). The Rule also creates a rebuttable presumption of compliance with, and of a violation of, this prohibition based on telephone call frequency, as follows:
  - A debt collector is presumed to comply with the prohibition if the debt collector places telephone calls to a particular person in connection with the collection of a particular debt 7 or fewer times within 7 consecutive days and not within 7 consecutive days after having had a telephone conversation about the debt.
  - A debt collector is presumed to violate the prohibition if the debt collector places telephone calls to a particular person in connection with the collection of a particular debt more than 7 times within 7 consecutive days or within 7 consecutive days of having had a telephone conversation about the debt.
- The Rule identifies certain telephone calls that do not count toward these telephone call frequencies, including: calls placed with the consumer's prior consent, calls not connected to the dialed number, and calls placed to certain professionals.
- The Rule clarifies that the FDCPA's definition of communication includes newer electronic media, such as email, text messaging, and social media.

- The Rule prohibits a debt collector from communicating or attempting to communicate with a person through a specific medium of communication (for example, email or telephone calls) if the person has requested that the debt collector not use that medium. The Rule also generally prohibits a debt collector from communicating or attempting to communicate with a consumer using an email address that the debt collector knows or should know is provided to the consumer by the consumer's employer.
- The Rule also provides that a consumer may submit a written cease communication request using an electronic communication medium, such as email or through a website portal where the debt collector accepts electronic communications from consumers.
- The Debt Collection Rule requires retention of evidence of compliance or noncompliance with the Rule starting on the date that the debt collector begins collection activity on a debt until three years after the debt collector's last collection activity on the debt. If a debt collector chooses to record telephone calls, a debt collector must retain those recordings for three years after the date of the telephone call.
- Under the Rule, a debt collector must not post a message regarding the collection of a debt on the public part of a person's social media page, including the part that is viewable only by the person's social media contacts. A debt collector may send a private message over social media unless, for example, the consumer has requested that the debt collector not use that medium to communicate. If a debt collector chooses to send a private social media message requesting to be added as one of the consumer's contacts, a debt collector must disclose his or her identity as a debt collector. The Rule also clarifies that a debt collector violates the FDCPA and the Rule by communicating with the wrong person through a private message.

KD's Consumer Financial Services Group will continue to provide the latest updates regarding the CFPB's rules, and can assist you with any questions regarding the necessary steps to get into compliance with the CFPB's new Rule.