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HIGHLIGHTS OF THE NEW FDCPA RULE ISSUED BY THE CFPB

This overview is pulled from sources provided by the Consumer Financial Protection Bureau (CFPB) and direct text from the Bureau's final rule on the Federal Debt Collection Practices Act (FDCPA) and was compiled by Marissa Yaker, Esq., Managing Attorney of Foreclosure, Padgett Law Group. The following sections are deemed important to mortgage servicers but is not an exhaustive representation of the Bureau's final rule. Please refer to the original texts, the Bureau's website, or direct any questions to Mrs. Yaker by emailing Marissa.Yaker@PadgettLawGroup.com.

New Terminology

Attempt to Communicate:

Means any act to initiate a communication or other contact about a debt with any person through any medium, including by soliciting a response from such person. An attempt to communicate includes leaving a limited-content message.

Interpretation:

An act to initiate a communication or other contact about a debt is an attempt to communicate regardless of whether the attempt, if successful, would be a communication that conveys information regarding a debt directly or indirectly to any person.

Expansion of the Definition of Consumer:

Now includes a confirmed successor in interest, as defined in Regulation X, 12 CFR 1024.31, or Regulation Z, 12 CFR 1026.2(a)(27)(ii).

Expansions of Communication in with Debt Collectors

Clarification on Prohibitions Regarding Unusual or Inconvenient Time or Places:

A debt collector knows or should know that a time or place is inconvenient to a consumer if the consumer uses the word "inconvenient" to notify the debt collector. In addition, depending on the facts and circumstances, the debt collector knows or should know that a time or place is inconvenient even if the consumer does not specifically state to the debt collector that a time or place is "inconvenient." The debt collector may ask follow-up questions regarding whether a time or place is convenient to clarify statements by the consumer.

Consumer-initiated communication:

If a consumer initiates a communication with a debt collector at a time or from a place that the consumer previously designated as inconvenient, the debt collector may respond once at that time or place through the same medium of communication used by the consumer



Clarification on Communications with a consumer—after refusal to pay or cease communication notice:

If a consumer notifies a debt collector in writing or electronically using a medium of electronic communication through which a debt collector accepts electronic communications from consumers that the consumer either refuses to pay a debt or wants the debt collector to cease further communication with the consumer, notification is complete upon the debt collector's receipt of that information.

E-Sign Act:

Interpretation of the E-SIGN Act. Under this interpretation, section 101(a) of the E-SIGN Act enables a consumer to satisfy the requirement in FDCPA section 805(c) that the consumer's notification of the debt collector be "in writing" through an electronic request. Further, because the consumer may only satisfy the writing requirement using a medium of electronic communication through which a debt collector accepts electronic communications from consumers, section 101(b) of the E-SIGN Act is not contravened.

Exceptions:

Written early intervention notice for mortgage servicers. The Bureau has interpreted the written early intervention notice required by 12 CFR 1024.39(d)(3) to fall within the exceptions to the cease communication provision in FDCPA section 805(c)(2) and (3).

Other mortgage servicing rule provisions. Notwithstanding a consumer's cease communication request pursuant to § [1006.6\(c\)\(1\)](#), a mortgage servicer who is subject to the FDCPA with respect to a mortgage loan is not liable under the FDCPA for complying with certain servicing rule provisions, including requirements to provide a consumer with disclosures regarding the forced placement of hazard insurance as required by 12 CFR 1024.37, a disclosure regarding an adjustable-rate mortgage's initial interest rate adjustment as required by 12 CFR 1026.20(d), and a periodic statement for each billing cycle as required by 12 CFR 1026.41.

Expanding into Newer Technologies

Reasonable procedures for email and text message communications- Communications with Third Parties:

A debt collector maintains procedures that are reasonably adapted, for purposes of FDCPA section 813(c) (that the violation was not intentional), to avoid a bona fide error in sending an email or text message communication that would result in a violation of paragraph (d)(1) of this section if those procedures include steps to reasonably confirm and document that:

- (i) The debt collector communicated with the consumer by sending an email to an email address described in paragraph (d)(4) of this section or a text message to a telephone number described in paragraph (d)(5) of this section; and



- (ii) The debt collector did not communicate with the consumer by sending an email to an email address or a text message to a telephone number that the debt collector knows has led to a disclosure prohibited by paragraph (d)(1) of this section.

Knowledge of prohibited disclosure.

A debt collector knows that sending an email to an email address or a text message to a telephone number has led to a disclosure that is prohibited if any person has informed the debt collector of that fact.

Procedures for email addresses. A debt collector may send an email to an email address if:

(i) Procedures based on communication between the consumer and the debt collector.

- (A) The consumer used the email address to communicate with the debt collector about the debt and the consumer has not since opted out of communications to that email address; or
- (B) The debt collector has received directly from the consumer prior consent to use the email address to communicate with the consumer about the debt and the consumer has not withdrawn that consent; or

Interpretations by the CFPB:

1. Prior consent—in general. A debt collector may send an email to an email address if, among other things, the debt collector has received directly from the consumer prior consent to use the email address to communicate with the consumer about the debt. A consumer may provide consent directly to a debt collector through any medium of communication, such as in writing, electronically, or orally.

2. Prior consent—consumer-provided email address. If a consumer provides an email address to a debt collector (including on the debt collector's website or online portal), the debt collector may treat the consumer as having consented directly to the debt collector's use of the email address to communicate with the consumer about the debt for purposes of § 1006.6(d)(4)(i)(B) if the debt collector discloses clearly and conspicuously that the debt collector may use the email address to communicate with the consumer about the debt.

Procedures based on communication by the creditor.

- (A) A creditor obtained the email address from the consumer;
- (B) The creditor used the email address to communicate with the consumer about the account and the consumer did not ask the creditor to stop using it;
- (C) Before the debt collector used the email address to communicate with the consumer about the debt, the creditor sent the consumer a written or electronic notice, to an address the creditor obtained from the consumer and used to communicate with the consumer about the account, that clearly and conspicuously disclosed:



- (1) That the debt has been or will be transferred to the debt collector;
 - (2) The email address and the fact that the debt collector might use the email address to communicate with the consumer about the debt;
 - (3) That, if others have access to the email address, then it is possible they may see the emails;
 - (4) Instructions for a reasonable and simple method by which the consumer could opt out of such communications; and
 - (5) The date by which the debt collector or the creditor must receive the consumer's request to opt out, which must be at least 35 days after the date the notice is sent;
- (D) The opt-out period provided under paragraph (d)(4)(ii)(C)(5) of this section has expired and the consumer has not opted out; and
 - (E) The email address has a domain name that is available for use by the general public, unless the debt collector knows the address is provided by the consumer's employer.

Procedures for telephone numbers for text messages.

A debt collector may send a text message to a telephone number if:

1. Complete and accurate database. The debt collector confirms, using a complete and accurate database, that the telephone number has not been reassigned from the consumer to another user. For purposes of § [1006.6\(d\)\(5\)](#) (i) and (ii), the database established by the FCC in *In re Advanced Methods to Target & Eliminate Unlawful Robocalls* (33 FCC Rcd. 12024 (Dec. 12, 2018)) qualifies as a complete and accurate database, as does any commercially available database that is substantially similar in terms of completeness and accuracy to the FCC's database.

(i) The consumer used the telephone number to communicate with the debt collector about the debt by text message, the consumer has not since opted out of text message communications to that telephone number, and within the past 60 days either:

(A) The consumer sent the text message described in paragraph (d)(5)(i) of this section or a new text message to the debt collector from that telephone number; or

(B) The debt collector confirmed, using a complete and accurate database, that the telephone number has not been reassigned from the consumer to another user since the date of the consumer's most recent text message to the debt collector from that telephone number; or



(ii) The debt collector received directly from the consumer prior consent to use the telephone number to communicate with the consumer about the debt by text message, the consumer has not since withdrawn that consent, and within the past 60 days the debt collector either:

(A) Obtained the prior consent described in paragraph (d)(5)(ii) of this section or renewed consent from the consumer; or

(B) Confirmed, using a complete and accurate database, that the telephone number has not been reassigned from the consumer to another user since the date of the consumer's most recent consent to use that telephone number to communicate about the debt by text message.

Harassing, oppressive, or abusive conduct

In general:

A debt collector must not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt, including, but not limited to, the conduct described in paragraphs (b) through (h) of this section.

Telephone call frequencies; presumptions of compliance and violation:

(i) A debt collector is presumed to comply with this section and FDCPA section 806(5) (15 U.S.C. 1692d(5)) if the debt collector places a telephone call to a particular person in connection with the collection of a particular debt neither:

(A) More than seven times within seven consecutive days; nor

(B) Within a period of seven consecutive days after having had a telephone conversation with the person in connection with the collection of such debt. The date of the telephone conversation is the first day of the seven-consecutive-day period.

(ii) Subject to the exclusions in paragraph (b)(3) of this section, a debt collector is presumed to violate paragraph (b)(1) of this section and FDCPA section 806(5) if the debt collector places a telephone call to a particular person in connection with the collection of a particular debt in excess of either of the telephone call frequencies described in paragraph (b)(2)(i) of this section.

Certain telephone calls excluded from the telephone call frequencies:

Telephone calls placed to a person do not count toward the telephone call frequencies described in paragraph (b)(2)(i) of this section if they are:

(i) Placed with such person's prior consent given directly to the debt collector and within a period no longer than seven consecutive days after receiving the



prior consent, with the date the debt collector receives prior consent counting as the first day of the seven-consecutive-day period;

(ii) Not connected to the dialed number; or

(iii) Placed to the persons described in below:

(i) The consumer;

(ii) The consumer's attorney;

(iii) A consumer reporting agency, if otherwise permitted by law;

(iv) The creditor;

(v) The creditor's attorney; or

(vi) The debt collector's attorney.

Prohibited Communication Media:

In general: In connection with the collection of any debt, a debt collector must not communicate or attempt to communicate with a person through a medium of communication if the person has requested that the debt collector not use that medium to communicate with the person.

Exceptions: Notwithstanding the prohibition above:

(i) If a person opts out of receiving electronic communications from a debt collector, a debt collector may send an electronic confirmation of the person's request to opt out, provided that the electronic confirmation contains no information other than a statement confirming the person's request and that the debt collector will honor it;

(ii) If a person initiates contact with a debt collector using a medium of communication that the person previously requested the debt collector not use, the debt collector may respond once through the same medium of communication used by the person; or

(iii) If otherwise required by applicable law, a debt collector may communicate or attempt to communicate with a person in connection with the collection of any debt through a medium of communication that the person has requested the debt collector not use to communicate with the person.

Unfair or Unconscionable Means

In General:

A debt collector must not use unfair or unconscionable means to collect or attempt to collect any debt, including, but not limited to, the conduct described below (abbreviated below without the definitions):

- Collection of unauthorized amounts;
- Postdated payment instruments;
- Charges resulting from concealment of purpose;
- Nonjudicial action regarding property;
- Restrictions on use of certain media.
 - A debt collector must not:

- (1) Communicate with a consumer regarding a debt by postcard.



- (2) Use any language or symbol, other than the debt collector's address, on any envelope when communicating with a consumer by mail, except that a debt collector may use the debt collector's business name on an envelope if such name does not indicate that the debt collector is in the debt collection business.
- (3) Communicate or attempt to communicate with a consumer by sending an email to an email address that the debt collector knows is provided to the consumer by the consumer's employer, unless the email address is one described in § 1006.6(d)(4)(i) or (iii).
- (4) Communicate or attempt to communicate with a person in connection with the collection of a debt through a social media platform if the communication or attempt to communicate is viewable by the general public or the person's social media contacts.

Social media:

Section 1006.22(f)(4) prohibits a debt collector from communicating or attempting to communicate with a person in connection with the collection of a debt through a social media platform if the communication or attempt to communicate is viewable by the general public or the person's social media contacts.

For example, § 1006.22(f)(4) prohibits a debt collector from posting, in connection with the collection of a debt, any message for a person on a social media webpage if that webpage is viewable by the general public or the person's social media contacts. Section 1006.22(f)(4) does not prohibit a debt collector from sending a message to a person if the message is not viewable by the general public or the person's social media contacts. Section 1006.6(b) or § 1006.14(h) nonetheless may prohibit the debt collector from sending such a message, and a debt collector who communicates by sending such a message about the debt to the wrong person violates § 1006.6(d)(1). See also comment 18(d)-1 with respect to communications and attempts to communicate with consumers and third parties on social media platforms.

Safe harbor:

For certain emails and text messages relating to the collection of a debt. A debt collector who communicates with a consumer by sending an email or text message in accordance with the procedures described in § 1006.6(d)(3) does not violate paragraph (a) of this section by revealing in the email or text message the debt collector's name or other information indicating that the communication relates to the collection of a debt.