



MOSSADAMS

What Do the New FDICPA Rules Mean for Credit Unions?

August 10, 2022



Welcome



Noory Song, CRCM, CAMS, CRMA
Consulting Senior Manager

noory.song@mossadams.com
(310) 750-7504





Agenda

01 INTRODUCTION AND DEFINITIONS

02 KEY REQUIREMENTS

03 CONSUMER COMPLAINTS

04 EXAMINATION PROCEDURES

05 SUPERVISORY HIGHLIGHTS FROM EXAMS



The Right Expertise to Serve You

For more than 35 years, our firm has built its credit union expertise through membership in credit union associations, continuing education, and involvement in industry events. Our firm currently serves over 150 credit unions ranging in size from less than \$100 million to more than \$20 billion in assets—with more than 90 clients with assets greater than \$500 million and with the average client size greater than \$1 billion in assets.



CREDIT UNION EXPERIENCE

#2

in the nation in credit union assets audited

#4

in the nation in the number of credit unions served



DEEP, CONSISTENT RESOURCES

175+

professionals dedicated to financial institutions



EXCEPTIONAL CLIENT SERVICE

commitment to maintaining close and regular contact with you throughout the year and serving as a resource for questions and advice with a quick response time



BRIDGING THE DISTANCE GAP

work with clients seamlessly even when we're not on-site and we're well equipped for remote work



Introduction and Definitions

What is the FDCPA?

- The Fair Debt Collection Practices Act (15 U.S.C. §1692) protects consumers from abusive debt collectors.
- Originally enacted in 1977 **“to eliminate abusive debt collection practices by debt collectors, to ensure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses.”** 15 U.S.C. § 1692(e)
- The Consumer Financial Protection Bureau (CFPB) has issued a final rule amending Regulation F (12 C.F.R. §1006) which implements the FDCPA. Regulation F tightens restrictions already in place, while also changing how debt collectors and creditors manage communications with debtors.



Who Does It Apply To?

- The FDCPA only applies to debt collectors, not creditors, mortgagors, or mortgage servicing companies.
- In addition to traditional debt collectors, attorneys who collect debts on behalf of creditors are also considered debt collectors under the FDCPA.
- A debt collector is defined as: any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. 15 U.S.C. § 1692(a)(6)



What Type of Debt Is Covered?

The FDCPA applies only to the collection of debt incurred by a consumer primarily for personal, family, or household purposes. It doesn't apply to the collection of corporate debt or to debt for business or agricultural purposes.



Consumer Debt

- Over the course of 2021, consumer debt rose rapidly, from \$14.33 trillion in the first quarter to a new high of \$15.58 trillion in the last quarter of 2021.
- Strong growth was primarily driven by a \$90 billion increase in credit card debt and a \$80 billion increase in auto loan debt from Q1 2021 to Q4 2021
- A 2016 CFPB survey on consumers' experiences with debt collection found that about one-in-three, or over 70 million consumers with a credit file, had been contacted by at least one creditor or collector trying to collect one or more debts during the year prior to the survey.
- Most consumers with collection tradelines on their credit files have medical debt, followed by telecommunications, retail, or banking and financial services debt. As of 2021, medical debt made up 58% of third-party collections tradelines.



POLLING QUESTION #1

Do you outsource your collections activity or perform them in-house?

- a) Outsource
- b) In-house
- c) Hybrid—some functions done in-house as well as outsourced



Key Requirements and Changes to the FDICPA



Restrictions on Phone Call Frequency

A DEBT COLLECTOR MAY NOT CALL A CONSUMER:

- Outside of the hours of 8:00 a.m. and 9:00 p.m.
- At any time or place known to be inconvenient to the consumer (such as place of employment)
- More than **seven times within seven consecutive days**

OR

- **Within a period of seven consecutive days after having had a telephone conversation** with the person in connection with the collection of such debt

Please note the date of the telephone conversation is the first day of the seven-consecutive-day period. Also note this limitation applies to each particular debt, not per consumer (12 C.F.R. § 1006.14(b)).

LIMITATIONS/EXCLUSIONS ON TELEPHONE CALL FREQUENCY LIMIT :

- Calls for which you gave prior consent
- Calls that don't connect to the dialed number
- Calls placed to specific professional persons, like your attorney (12 C.F.R. 1006.14(b)(3))



Electronic Communications (Texts and Emails)

FDCPA allows debt collectors to use emails and text messages to communicate with consumers regarding debts but are subject to certain limitations:

- Debt collector received directly from the consumer prior consent (written or electronic notice) to use the email/phone number to communicate about the debt and the consumer has not withdrawn that consent
- Debt collectors are prohibited from communicating or attempting to communicate through a social media platform if the message is viewable by the general public or your social media contacts (12 C.F.R. § 1006.22(f))
- Debt collector is to disclose their identity as a debt collector when sending private messages via social media (12 C.F.R. § 1006.18(d))



Consumer Set Restrictions on How Collector Contact

- Consumers still have the right to cease all collection communications from a debt collector; and you can also stop communications through a particular medium, subject to exceptions. (15 C.F.R. § 1692c(c), 12 C.F.R. § 1006.6(c), 12 C.F.R. § 1006.14(h)).
- Request does not have to be in writing; collector only needs to be verbally informed to stop contacting you in a specific way.
- You may request that a debt collector not use a specific address or telephone number. (12 C.F.R. § 1006.14(h)).



Opt Out of Digital Communications

- If a collector sends you a text, email, or other electronic communication, the collector must include in such communication **a clear and conspicuous statement describing a reasonable and simple method by which the consumer can opt out of further electronic communications or attempts to communicate by the debt collector to that address or telephone number**
- The debt collector can't require a fee to opt-out or ask the consumer to provide any information other than the opt-out preferences and the email address, telephone number for text messages, or other electronic-medium address subject to the opt-out request. (12 C.F.R. § 1006.6(e))



Opting Out of Digital Communications Examples

- A debt collector sends a text message to a consumer's mobile telephone number. The text message includes the following instruction: "Reply STOP to stop texts to this telephone number"
- A debt collector sends the consumer an email that includes a hyperlink labeled: "Click here to opt out of further emails to this email address"
- A debt collector sends the consumer an email that includes instructions in a textual format explaining the consumer may opt out of receiving further email communications from the debt collector to that email address by replying with the word "stop" in the subject line



Collectors May Leave Only Limited-Content Voicemails

- A limited-content message is a voicemail message for a consumer that includes:
 - A business name for the debt collector that doesn't indicate that the debt collector is in the debt collection business
 - A request 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 or numbers the consumer can use to reply to the debt collector

An example would be... "This is Robin Smith calling from ABC Inc. Please contact me or Jim Johnson at 1-800-555-1212."

(12 C.F.R. § 1006.2(j))



Employer Provided Email

- A debt collector can't communicate or attempt to communicate with a consumer by sending an email to an email address the debt collector knows is a work email address, subject to some exceptions:
 - A debt collector may send messages to your work email if you used the email address to communicate with the debt collector about the debt and you haven't opted out since
 - If you gave prior consent directly to the debt collector that it could use your work email address and the consumer has not withdrawn consent, then the collector can email the consumer at that email address (12 C.F.R. § 1006.22(f)(3), 12 C.F.R. § 1006.6(d))



Notice for Validation of Debts

The amended law also expands the law's requirements by requiring significantly more information and additional disclosures.

- Validation notice (written or electronic) must be provided within five days of initial communication.
- Collectors can provide validation information orally in an initial communication despite the large volume of information the law requires in the notice. (12 C.F.R. § 1006.34).
- The CFPB has provided a form notice which can be used to avoid violations of the new rule. To comply fully with the rule, you may want to work closely with legal counsel or collection firms to confirm they have internal processes in place to track necessary information. Editable form is also available.



Notice for Validation of Debts (Cont.)

Validation information to be included in notice:

- Debt collector communication disclosure
- Information about the debt
- Information about consumer protections
- Consumer-response information
- Special rule for certain residential mortgage debt



Debt Collection Validation Notice (CFPB)

The following is a copy of the model validation notice provided in Appendix B of the Debt Collection Rule. Compliant use of the model validation notice provides safe harbor for the rule's content and format requirements. 12 CFR 1006.34(d)(2)

More information on the requirements to obtain safe harbor if using the model validation notice are provided in Section 12.1.3 of the [Debt Collection Rule Small Entity Compliance Guide](#).



Debt Collection Validation Notice (CFPB)

North South Group
P.O. Box 123456
Pasadena, CA 91111-2222
(800) 123-4567 from 8am to 8pm EST, Monday to Saturday
www.example.com

To: Person A
2323 Park Street
Apartment 342
Bethesda, MD 20815
Reference: 584-345

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.

Our information shows:

You had a Main Street Department Store credit card from Bank of Rockville with account number 123-456-789.

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
Total amount of the debt now:	\$ 2,284.56

How can you dispute the debt?

- **Call or write to us by August 28, 2020, to dispute all or part of the debt.** If you do not, we will assume that our information is correct.
- **If you write to us by August 28, 2020,** we must stop collection on any amount you dispute until we send you information that shows you owe the debt. You may use the form below or write to us without the form. You may also include supporting documents. We accept disputes electronically at www.example.com/dispute.

What else can you do?

- **Write to ask for the name and address of the original creditor, if different from the current creditor.** If you write by August 28, 2020, we must 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 www.example.com/request.
- **Go to www.cfpb.gov/debt-collection to learn more about your rights under federal law.** For instance, you have the right to stop or limit how we contact you.
- Contact us about your payment options.
- Póngase en contacto con nosotros para solicitar una copia de este formulario en español.

Notice: See reverse side for important information.

Mail this form to:
North South Group
P.O. Box 123456
Pasadena, CA 91111-2222

Person A
2323 Park Street
Apartment 342
Bethesda, MD 20815

How do you want to respond?

Check all that apply:

- ☐ **I want to dispute the debt because I think:**
 - ☐ This is not my debt.
 - ☐ The amount is wrong.
 - ☐ Other (please describe on reverse or attach additional information).
- ☐ **I want you to send me the name and address of the original creditor.**
- ☐ **I enclosed this amount:** \$

Make your check payable to North South Group. Include the reference number 584-345.

- ☐ **Quiero este formulario en español.**



Collection of Time-Barred Debts

- Is a debt for which applicable statute of limitations has expired
- Debt collector must not bring or threaten to bring a legal action against a consumer to collect a time-barred debt (12 C.F.R. § 1006.26(b))
- Currently given the legal risk related to this areas, it would be in the best interest of the legal risk for the collector has increased in this even if it's unaware that a debt is time-barred.



POLLING QUESTION #2

Are you seeing increased delinquencies at your institution?

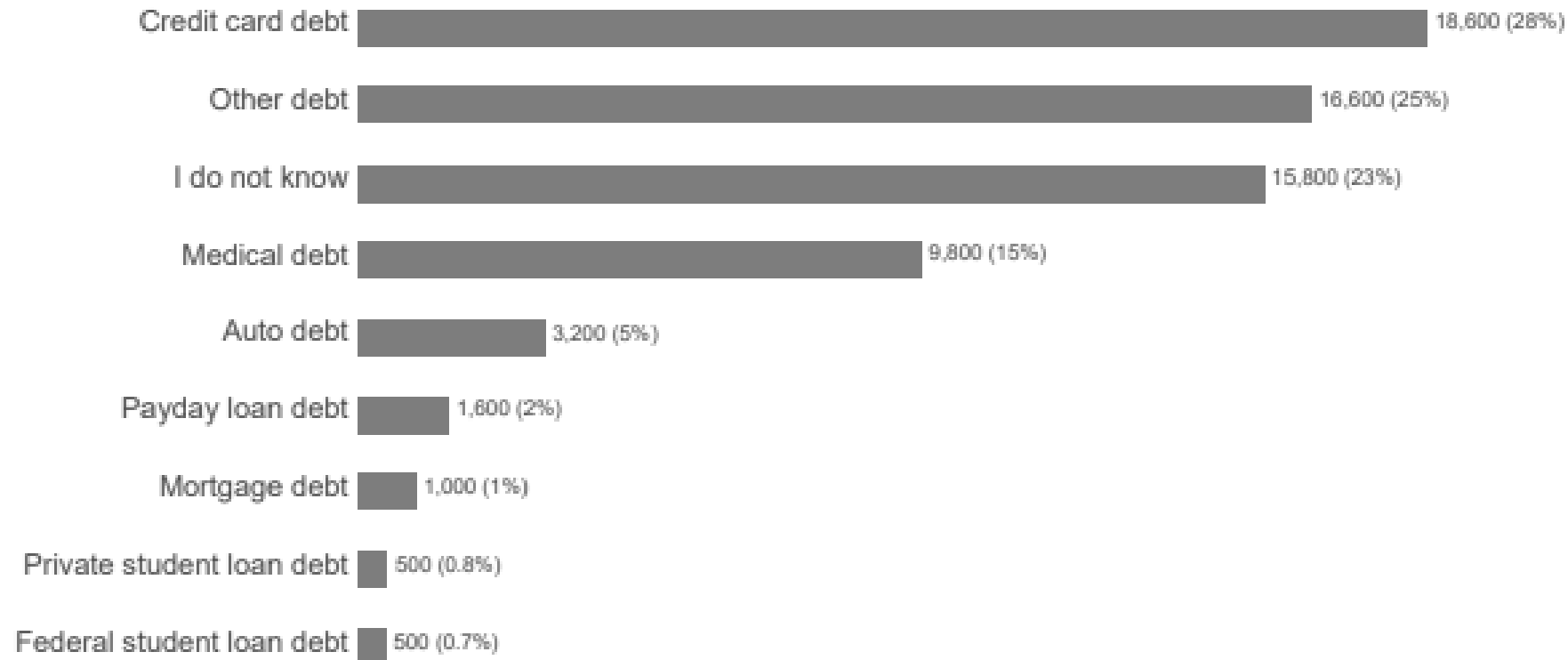
- a) Yes
- b) No
- c) Currently no increased delinquencies, but we are anticipating more in 2022-2023



Consumer Complaints

Consumer Complaints

FIGURE 7: DEBT COLLECTION COMPLAINTS BY TYPE OF DEBT



Consumer Complaints (Cont.)

FIGURE 8: DEBT COLLECTION COMPLAINTS BY ISSUES



Examination Procedures



Examination Procedures

OBJECTIVES

- To determine the adequacy of the institution's internal procedures and controls to assure consistent compliance with the FDCPA
- To determine if the institution complies with the requirements of the FDCPA in collecting or attempting to collect third-party consumer debts.



Examination Procedures

PROCEDURES:

Interviews with personnel knowledgeable about and directly engaged in the institution's collection activities and through reviews of:

- Any written collection procedures
- Reciprocal collection agreements
- Collection letters or dunning notices
- Envelopes
- Scripts used by collection personnel
- Validation notices
- Individual collection files
- Complaint files
- Other relevant records



Examination Procedures (Cont.)

If the institution has acted or is acting as a debt collector under the FDCPA, determine if the institution has:

- a) Communicated with the consumer or third parties in any prohibited manner (15 U.S.C. 1692b and c);
- b) Furnished the written validation notice within the required time period and otherwise complied with applicable validation requirements (15 U.S.C. 1692g);
- c) Used any harassing, abusive, unfair, or deceptive collection practice prohibited by FDCPA (15 U.S.C. 1692d, 1692e, 1692e, 1692f, and 1692j);
- d) Collected any amount not expressly authorized by the debt of instrument creating the debt or by state law (15 U.S.C. 1692f(1));
- e) Applied all payments received as instructed and, where no instruction was given, applied payments only to undisputed debts (15 U.S.C. 1692h);
- f) Filed suit in an authorized forum if the institution sued to collect the debt (15 U.S.C. 1692i)



Supervisory Highlights from Exams



Supervisory Highlights from Exams

CFPB Examinations from January 2020–June 30, 2021, highlighted the following exam findings:

- Prohibited calls to consumer's workplace
- Communication with third parties: FDCPA prohibits a debt collector from communicating in connection with the collection of a debt with any person other than the consumer and certain other parties
- Failure to cease communication upon written request or refusal to pay
- Harassment regarding inability to pay
- Communicating and threatening to communicate false credit information
- False representations or deceptive means of collection (example: one debt collector told a consumer the debt would no longer impact her credit profile once paid, which was false)
- Failure to send complete validation notices



Findings and Recommendations

- Development of scripts for employees or third parties to follow
- Development of policies and procedures to include guidance from the regulation
- Development of training
- Review of outgoing calls and incoming calls (recordings)
- Implementation of a monitoring program
- Policy and procedures not reflecting current practice



POLLING QUESTION #3

At a national level for 2022–2023, if you were to guess an increase in delinquencies for a certain loan type, the increase would probably happen within...

- a) Mortgages
- b) Auto loans
- c) Student loans
- d) Credit cards
- e) Other consumer
- f) No increase



➤ Questions?



Sources

https://files.consumerfinance.gov/f/documents/cfpb_fdcpa_annual-report-congress_04-2022.pdf

<https://www.consumerfinance.gov/compliance/compliance-resources/other-applicable-requirements/debt-collection/>

https://files.consumerfinance.gov/f/documents/cfpb_debt-collection_model-validation-notice_english.pdf

https://files.consumerfinance.gov/f/documents/cfpb_fdcpa_annual-report-congress_04-2022.pdf



The material appearing in this presentation is for informational purposes only and should not be construed as advice of any kind, including, without limitation, legal, accounting, or investment advice. This information is not intended to create, and receipt does not constitute, a legal relationship, including, but not limited to, an accountant-client relationship. Although this information may have been prepared by professionals, it should not be used as a substitute for professional services. If legal, accounting, investment, or other professional advice is required, the services of a professional should be sought.

Assurance, tax, and consulting offered through Moss Adams LLP. ISO/IEC 27001 services offered through Cadence Assurance LLC, a Moss Adams company. Investment advisory offered through Moss Adams Wealth Advisors LLC.

©2022 Moss Adams LLP

