Congressional Research Service
Informing the legislative debate since 1914

INSIGHT

CFPB Proposes New Debt Collection Regulation

Cheryl R. Cooper
Analyst in Financial Economics

June 6, 2019

On May 21, 2019, the Bureau of Consumer Financial Protection (CFPB) issued a Notice of Proposed Rulemaking to implement the Fair Debt Collection Practices Act (FDCPA; 15 U.S.C. §1692). Congress passed the FDCPA in 1977 to "eliminate abusive debt collection practices by debt collectors." The CFPB's proposal would clarify how certain debt collectors may communicate with consumers and what information they must disclose. The CFPB is accepting comments on the proposal until August 19, 2019.

This Insight begins with an overview of the debt collection market and its regulation. It then analyzes major parts of the CFPB's proposed rule and reactions to the proposal by various stakeholders.

Debt Collection Market and Regulation

When a consumer defaults on a debt, the debt obligations are often collected not by the lender to whom the debt is originally owed, but rather by a third-party debt collector (hereinafter referred to as "debt collector"). Debt collectors either contract with the original lender to receive a share of any amount they collect on behalf of the original lender or buy the debt obligation in full. If a consumer does not settle a debt, the debt owner often has several options, such as taking the collateral for secured loans (e.g., car, mortgage) or garnishing a consumer's wages after obtaining a court order. According to a CFPB survey, approximately one-third of consumers with a credit bureau file reported being contacted by at least one creditor or debt collector in the previous year.

The FDCPA is the primary federal statute regulating the debt collection market. Among other things, the FDCPA prohibits debt collectors from engaging in certain types of conduct (such as misrepresentation or harassment) when seeking to collect debts from consumers, requires that debt collectors disclose certain information to consumers, and grants consumers the right to dispute an alleged debt. The Dodd-Frank

Congressional Research Service
7-....
www.crs.gov
IN11140

Wall Street Reform and Consumer Protection Act (P.L. 111-203, §1002 and §1011) granted the CFPB authority to write regulations to implement the FDCPA.

The FDCPA requires that a debt collector must send a consumer a validation notice, which discloses certain information about the debt to the consumer, prior to taking action to collect a debt. In general, debt collectors expect that they will collect only a fraction of the face value of any particular debt, knowing that some consumers will never pay back their debt in full. Therefore, both parties can negotiate the amount and payment schedule of the debt. Although debt collectors are not required to furnish information about the debt to credit bureaus, they may do so.

According to the CFPB, consumer complaints about debt collection accounted for 25% of the total complaints it received in 2018. The most common such complaints asserted that debt collectors had attempted to collect a debt the consumer did not owe (44%); a consumer received insufficient written notification about a debt (24%); and general complaints about a debt collector's communications tactics, such as frequent or repeated calls (12%).

CFPB's Proposed Regulation

The CFPB's proposed regulation generally seeks to clarify what information debt collectors should disclose to consumers and how they should communicate with consumers. The following describes selected provisions of the CFPB's proposal that have received significant attention from stakeholders.

Disclosure

The CFPB's proposed regulation would clarify the information a debt collector must include in the validation notice it sends to consumers, requiring certain information about the debt and the consumer's rights in the debt collection process, such as how to dispute a debt. The proposed regulation would also establish certain procedures by which a debt collector may obtain a "safe harbor" from liability, including a model validation notice. Furthermore, the proposal would bar debt collectors from furnishing information about a debt to a credit bureau before communicating with the consumer about the debt.

According to a CFPB survey, more than half of consumers who had been contacted about a debt in collection reported that there was an error as to at least one such debt, and over a quarter disputed the debt with the debt collector. Currently, debt collectors are not required to obtain a debt's full files from the original lender. Sometimes, the original lender conveys only basic information to the debt collector, unless a consumer disputes the debt. For this reason, some argue that errors will not be reduced without regulation mandating that debt collectors certify that a debt is for the right person and the right amount prior to taking action to collect the debt. Others argue that this type of regulation may be prohibitively expensive and overly burdensome for debt collectors.

Communication

The proposal would also clarify appropriate communication tactics for debt collectors. The proposed regulation would limit debt collector phone calls to seven times in a seven-day period and would prohibit debt collectors from making calls within a week after speaking by phone to a consumer. The CFPB survey, however, noted that most consumers considered four or more calls a week too much contact. Some take this as evidence that the phone call limit should be lower, but debt collection firms argue that a lower limit would be too restrictive, making it more difficult for them to contact a consumer.

The proposed regulation would also clarify that debt collectors can use newer technologies, such as email, voicemail, and text messages, to provide limited content messages to a consumer. Debt collectors would be able to use these communication tools without limit, but consumers would have the right to request convenient times or places, or restrict the medium for communication (e.g., opt out of text messages). Although some commentators believe that these new technologies could be convenient for consumers and reduce debt collection costs, others argue that allowing debt collectors to send unlimited emails and text messages could lead to consumer abuse.