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Mood Barometer: On a scale from 1-5,
with 5 being the highest, how are you
feeling today?

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Background

- 1977 Congress passes Fair Debt Collections Practices Act (FDCPA)
- An attempt to eliminate debt collectors abusive collection practices.
- Ensure those who refrain from abusive tactics were not competitively disadvantaged.
- To promote consistent action to protect consumers against debt collector abuses.

Dodd-Frank Act

- 2010 Congress passes Dodd-Frank Act
- Creates Consumer Financial Protection Bureau (CFPB)
- CFPB, the first federal agency with authority to prescribe rules for debt collectors.
- The bureau set about making changes to Rule F, issuing its final rules in Oct-Dec 2020.
- The October release is 653 pages!
- New rule is set to become effective Nov 30, 2021.*

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Have you had any interactions with the CFPB?

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What does the Final Rule Cover?

- Communications in connection with debt collections. (Does not include 1st party creditors)
- Prohibitions on harassment or abuse.
- False or misleading representations.
- Unfair practices in debt collection.
- Clarifying consumer disclosure requirements.
- Required actions prior to reporting credit reporting and treatment of time-barred debt.

Communication

- Added new technologies such as texts to mobile phones
- Ability to send emails
- Can send messages through social media.
- Adds the term "limited content message" LCM. LCM is the model for leaving messages for consumers. (safe harbor created)
- Must provide an **opt-out** option that is clear and simple.

Cont'd

- Call frequency established.
- Avoid repeated continuous telephone calls.
- 7 calls within a 7 day period about a particular debt.
- Communication is defined as an attempt to communicate, regardless if consumer is reached.
- Can be made thru phone, audio recording, paper document, mail, email, text message, social media or other electronic media.

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What is your level of understanding of this topic?

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Limited Content Message “LCM”

- Is a voicemail message for a consumer that includes all of the content that the Debt Collection Rule requires.
- Is an attempt to communicate. (subject to 7 by 7)
- But is not a communication for purposes of the rule. (removes disclosures)
- Any message that contains more than is required is not considered a LCM and might be a communication depending on its content.

Required content-LCM

- A business name for the debt collector.
- Name cannot indicate caller is in the debt collection business (example ABC Collections)
- A request that the consumer reply to the message.
- Name of one or more natural persons whom the consumer can contact to reply.
- A telephone number that the consumer can use to reply.

Additional items that can be included.

- A salutation.
- The date and time of the message.
- Suggested dates and times for the consumer to reply.
- A statement that if the consumer replies, the consumer may speak to any of the company's associates.
- **** A message other than a voicemail message, such as a text message, is not a LCM. Even if it meets the requirements of a LCM.**

Prohibitions on certain communications to consumer

- Inconvenient times or places after a consumer refuses to pay or requested ceasing communications.
- At the workplace if the collectors knows or has reason to know the employer prohibits.
- If represented by an attorney.
- Consumer can be spouse, parent (minor), legal guardian, confirmed successor in interest, executor or administrator.

Unusual or inconvenient times or places.

- Before 8 am or after 9 pm, local time at the consumer's location.
- Electronic, is based on when the collector sends it, not when the consumer receives/reviews it.
- Through a medium associated with an already determined place such as home. (landline phone would be prohibited, but cell phone or emails would be ok as these cant be associated with a place.)
- Ltd exception: if consumer initiates at a time or from a place then ok, one time.

Consumer's place of employment

- Must not communicate to attempt to communicate if you know or have reason to know the employer prohibits such.
- This applies to any media such as sending mail, calling the employer's landline, calling or texting the employer's mobile number.
- However, a collector can reach out to consumer on their mobile phone or personal email, unless the collector knows the consumer is at work at the time of the communication.
- So you would want to inquire of the consumer when they would be at work.
- Exception: getting the consumer's direct prior consent or expressed permission of a court of competent jurisdiction.

Third party communication

- Does not apply when a debt collector
 1. Is given prior consent of the consumer, *directly* to the debt collector.
 2. With express permission from a court of competent jurisdiction.
 3. When reasonably necessary to effectuate a post-judgment remedy.
 4. For the purpose of acquiring location information in 12 CFR 1006.10.

Email messages based on consumer and debt collector

- Can send to consumers when...
 1. The consumer has used the email to communicate with the debt collector.
 2. The debt collector has received **direct** prior consent. Can be given in writing, electronically or orally. **Can not be implied consent.**
 3. Debt collector must accept and track complaints regarding third-party receipt of email messages.

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Have you incorporated email and texting permissions in your registration process?

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Based on communications by the creditor

- Can use email obtained from creditor if...
 1. The email address was obtained from the consumer but not another debt collector or skip tracing service
 2. The creditor used the email address to communicate with the consumer about the debt and the consumer didn't ask the creditor to stop.
 3. The creditor sent a notice to the consumer either written or electronically that the debt will be assigned to the debt collector. Must identify by name the debt collector, the email address and the fact that the debt collector might use it to communicate, if others have that email address then it could be seen by others, and an opt out option for the consumer, a time limit for such (at least 35 days after the notice was sent)
 4. The email address is not know to be a work email or can be used by the general public.

Based on communication by a prior debt collector

- Email can be used if obtained from a prior debt collector when...
 1. The prior debt collector followed all the rules for obtaining the email address.
 2. Used that email to communicate with the consumer.
 3. The consumer didn't opt out.

Emailing to address provided by consumer's employer

- The consumer provided direct prior consent to the debt collector to use the email address.
- The consumer has used the email address to communicate with the debt collector about the debt, even without direct prior consent.
- The debt collector obtained the email address from a prior debt collector, as long as the rules for obtaining the address were followed.

Text messaging

- Debt collectors can send text messages if...
 1. The consumer used the telephone number to communicate by text.
 2. The consumer has not opted out.
 3. Received direct prior consent from the consumer to use the number for texting.
 4. Within the last 60 days either (a) the consumer sent a text message to the collector from that number or (b) the debt collector has confirmed that the number has not been reassigned, using a complete and accurate database.

Repeated or continuous telephone calls

- Cannot call a particular person about the debt more than 7 times within 7 consecutive calendar days.
- Cannot call a particular person within a period of 7 consecutive calendar days after having had a telephone conversation with the person.
- This applies to each particular debt.

Exclusions to call frequencies

- Consumer gives prior consent directly to the debt collector.
- A busy signal
- A disconnected number.
- Call is answered and subsequently is dropped.
- Placed to consumer's attorney, the creditor, or their attorney, the debt collectors attorney, or a consumer reporting agency .
- Consumer requests a debt collector to call them.

Social media

- Cannot communicate via social media if viewable by the general public or the person's social media contacts.
- Can send private messages.
- Unless consumer has requested not use that medium to communicate.
- Debt collector must be sure that information send in private message doesn't go to the wrong person.

Validation information requirements-required content

- A statement that indicates the communication is from a debt collector.
- Debt collector's name and mailing address.
- Name and address of the consumer who owes the debt.
- Name and address of the creditor to whom the debt is owed.
- Account number associated with the debt.
- Itemization of the current amount of the debt.

cont.

- Current amount of the debt.
- Information about consumer protections, i.e. validation notice which includes the validation period.
- A statement directing the consumer to the CFPB's website for more consumer protection information.
- Consumer response information.
- Optional information.

Itemization

- Must reflect interest, fees, payments and credits since the itemization date.
- Itemization date reflects an event in the debt's history that provides a reference point that consumers may recognize.
- The debt collector can select one of five reference dates as the itemization date.
 - 1) Last statement date; 2) charge-off date;
 - 3) Last payment date; 4) the transaction date; 5) judgment date.

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Have you heard about this "new" validation notice before today?

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Consumer response information-CRI

- Statements and prompts that the consumer make take certain actions, such as disputing the debt.
- This is provided in a tear-off the consumer may detach and return to the collector.
- If the validation notice is provided electronically, include a statement explaining how the consumer can respond (CRI) electronically.

Optional information

- The debt collector's phone number.
- A reference code to identify the debt.
- Certain payment disclosures.
- Debt collector's website or email address.
- Certain Spanish language disclosures.
- Merchant brand, affinity brand, facility name associated with the debt.
- Required disclosures under other applicable law.

Required actions before credit reporting

- Before a debt collector furnishes information to CRA, the debt collector must do one of the following:
 1. Speak with the consumer in person about the debt.
 2. Speak with the consumer by telephone about the debt.
 3. Mail the consumer a letter about the debt and wait a reasonable amount of time to receive notice of undeliverability (14 days).
 4. Send electronically then wait a reasonable amount of time to receive notice of undeliverability.

Time-Barred Debt

- Defined as the applicable statute of limitations has expired.
- Prohibited from bringing or threatening to bring an action in or to collect.
- Exception: proof of claims in bankruptcy.

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Do you know what the statute of limitations are for medical debts in Arkansas?

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Summary

- FDCPA was adopted over 40 years ago.
- No internet, no cell phones, no email.
- Many of today's consumers prefer to use modern technology to communicate and "self-cure" their debts.
- The recent CFPB rulemaking is a positive step in that direction.
- Gives debt collectors a framework, with safe harbors, from which to proceed. Gives consumers clarity and additional safeguards.
- Going to be imperative that creditors provide their agencies with the necessary information for the model validation notice.
- Good news is that we have some time since the rule becomes law in November.

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Now that we have highlighted the new rule changes, are you confident that you and your vendor will be ready come November?

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Are you ready for some football? Who is going to win the SEC this year?

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