
CFPB Debt Collection Proposed Rules Under Consideration

Presented by
General Revenue Corporation
August 2016



Legal Disclaimer

- This presentation does not constitute legal advice. Prior to any legal or compliance changes within your organization, please consult your legal counsel.
- This presentation may be recorded for future dissemination.
- Finally, although we believe the information in this presentation is accurate as of this date, the statutes, regulatory guidance and case law in this area is ever changing. Please continue to monitor for changes.



Agenda

- **What is Happening with the CFPB Proposed Debt Collection Rules?**
 - Scope of the Proposed Rules
 - Overview of Proposed Changes
 - Likely Effect on the Asset Recovery Industry
- **Maintaining Collectability of Your Accounts – Practical Steps for Educational Institutions Intending to Recover A/R Debt and Perkins Loan Debt**
 - Need for Better Accounting of Borrower Information when Debt Incurred
 - Increased Quantity of Data Needed at Placement
 - Debt Substantiation before collection and after dispute
 - Enhanced disclosures required on initial demand letter
- **How to Maintain Compliance with Existing Rules and Proposed Rules, Mitigate Regulator Risk and Minimize Risk of Litigation**
 - More restrictive Call/Communication attempts
 - Time-Barred debt and more!
- **Next Steps for the Rule-Making Process**
- **Question & Answer Period**



What is Happening with the CFPB Proposed Debt Collection Rules?

- The Consumer Financial Protection Bureau released a framework for proposed rules on debt collection released at field hearing in Sacramento, CA on 7/28/16.
 - http://files.consumerfinance.gov/f/documents/20160727_cfpb_Outline_of_proposals.pdf
- First public glimpse at the proposals and alternatives under consideration for debt collection rulemaking, but this only the first step.
 - **Scope:** the proposed rules will apply to debt collectors, and any of the following businesses working with debt acquired in default: debt buyers, collection law firms, and loan servicers. However, proposed rules are not intended to apply to creditors collecting their own debt, for now. The CFPB intends to convene second proceeding to discuss rules for creditors collecting own debt “in the next several months.”



Overview of Proposed Changes

- **Changes in the Following Areas:**

1. Debt Substantiation
2. Debt Transfers
3. Validation Notice
4. Time-Barred Debts/Statute of Limitations
5. Communication Limits

- **How will this impact the Asset Recovery Industry and YOUR collection efforts?**

These proposals will place **significant** requirements on you to:

- Record and provide documentation on your debtor, including the way your debtor incurred and then defaulted on the debt;
- Will place limits on collection attempts to the debtor, including on the way we communicate with the debtor (potentially via all forms of communication);
- May have a substantial amount of negative impact on recoveries.



How to Maintain Collectability of Your Accounts: Compliance with Existing and Proposed Rules



1. DEBT SUBSTANTIATION – how do you prove a debt is a valid and collectible debt?

Initiation of Credit – Incurring of Debt

Ensure written contract is signed

Affirmative Written Representation from the School Regarding Policies and Account Records

Placement of Debt Post Delinquency/Default

Data sent to collection agency

Agency to review for Warning Signs that debt is not collectible across individual accounts and also entire debt portfolio

Collection of Debt

Response to Disputes (Suspend Collection Activity Pending Response)

Provide Appropriate Documentation of Debt to Debtor

Establish Reasonable Basis for Resuming Collection Activity

- New or enhanced requirement for school
- New requirement for GRC
- Practice already in place by school and/or GRC



DATA REQUIRED AT PLACEMENT

Consumer's full name, last known phone number, and last known address

Name of creditor at time of default

Complete chain of title, from debt owner at time of default to the present time of collection

Debt collector's name and address

Default creditor account number

Amount owed on default date

Current creditor

Itemization of any charges (e.g. interest, fees, payments, and credits) since default date

Spanish Language Preference Indicator

Current amount owed

Date and amount of any credit applied for after default.



New requirement for school



Practice already in place by school or GRC



2. DEBT TRANSFERS – what must always “travel” with the debt?

Active Disputes

If the debt is not collectible or lacks sufficient support, this information must be forwarded to the next handler.

Debtor Demographics

The contact information for a debtor must stay with the account.

Conversely, incorrect contact information for the account must also stay with the account.

FDCPA Permissions

Revoked Consumer Consent to Contact a Debtor May be Required to Travel with the Debt

- New or enhanced requirement for school
- New requirement for GRC
- Practice already in place by school or GRC



Schools to Provide/Retain Information for Collections Purposes

- The school will be expected to retain and also pass on the following information if it receives it:
 1. Whether debt was disputed in writing within 30 days, and result of dispute, and any associated records.
 2. Whether debt was disputed orally or after 30 days and either that the claims were substantiated or dispute details (including information consumer submitted or prior collector provided).
 3. Any records or information regarding whether the debtor is a service member eligible for SCRA benefits.
 4. **Any time, place, or method of inconvenient communication, or any cease communications request, or any language preference.**
 5. **Whether a consumer has applied for a discharge, and on what terms.**
 6. Name and address of attorney representing consumer.
 7. Whether consumer's employer prohibits collection communications.
 8. Whether collector made a right-party connect and if so, the contact information.
 9. Whether collector provided Statute of Limitations disclosure.
 10. Whether consumer is deceased and if so, date of death.



GRC Responsibilities – Processes Already in Place to Fulfill These Obligations

- Require debt collectors to forward information received even after returning the account/debt to the owner that could indicate all or part of the debt could be uncollectible or is likely to lack sufficient support.
- We must forward:
 - Payments
 - Bankruptcy discharge notices/notices of bankruptcy
 - Identity theft reports
 - Disputed account notifications requesting validation of debt
 - Assertion/implication of legally exempt income/assets



FDCPA Permissions – Consumer Consent for Contact Methods that Must Travel with the Account

- Fresh consent. Require each collector, to obtain consent, obtain it directly from the consumer (orally or in writing).
- Consent disclosure. Require collectors to clearly and prominently disclose to the consumer—either orally or in writing—what the consumer is consenting to.
 - e.g., that the consumer consents to communications at a specific date and time, or to the debt collector revealing information about a debt to a third party.
- Memorialization. Require collectors to memorialize consent.
 - Oral consent- by recording the conversation or by noting the consumer's consent in the account file.
 - Written consent- by maintaining records of it in the account file.
- Revocation of consent. The CFPB is considering specifying that consumers may revoke consent previously provided to the collector.



3. DEBT VALIDATION – how do we notify a consumer that they owe you a debt?

Initiation of Credit – Incurring of Debt

Ensure written contract is signed

Placement of Debt Post Delinquency/Default

Data sent to collection agency

Warning Signs that debt is not collectible across individual accounts and also entire debt portfolio

Validation Notice

Collection of Debt

Response to Disputes (Suspend Collection Activity Pending Response)

Provide Appropriate Documentation of Debt to Debtor

Establish Reasonable Basis for Resuming Collection Activity



New or enhanced requirement for school



New or enhanced requirement for GRC



Practice already in place by school or GRC



Validation Notice – Model Tear Off Notice

I want to dispute this debt because I think:

This is not my debt
(Generic disputes)

The amount is wrong
(Amount of debt disputes)

I already paid this debt in full or I settled it
(Wrong consumer complaints)

You are not the right person to pay
(Wrong collector disputes)

Other or more detail

- The box selected will determine what validation items GRC and the school will be required to send to the debtor.



New or enhanced requirement for school



New requirement for GRC



Practice already in place by school or GRC



Documentation Required for a Generic Dispute Response

Default date and last payment made

Name, address, creditor account number at time of default

Name and address of creditor at default

Balance at default, post-default interest and fees, description of amount owed



New or enhanced requirement for school



Possibly Not Applicable



Practice already in place by school or GRC



Confidential and proprietary information © 2019 General Revenue Corporation. All rights reserved.

Documentation Required for Amount of Debt Dispute Response

Default date and last payment made

Name, address, creditor account number at time of default

Name and address of creditor at default

Balance at default, post-default interest and fees, description of amount owed

Amount of principal, interest, or fees disputed

Basis for seeking to collect such amount, including terms and conditions relevant to collecting any post-default interest or fees

Date and amount of each payment or credit after default

Any additional information required to respond to the specific dispute



New or enhanced requirement for school



Possibly Not Applicable



Practice already in place by school or GRC



Confidential and proprietary information © 2019 General Revenue Corporation. All rights reserved.

Documentation Required for Wrong Consumer Dispute Response

Default date and last payment made

Name, address, creditor account number at time of default

Name and address of creditor at default

Balance at default, post-default interest and fees, description of amount owed

Either date of birth information and addresses through life of the account that consumer provided to creditor, OR unique identifying number (SSN, EIN, ITIN)

Original agreement or original consent to the debt

Any additional information required to respond to the specific dispute



New requirement for school



Possibly Not Applicable



Practice already in place by school or GRC



Documentation Required for Wrong Collector Dispute Response

Default date and last payment made

Name, address, creditor account number at time of default

Name and address of creditor at default

Balance at default, post-default interest and fees, description of amount owed

Names and addresses of all persons that obtained the debt after default, date of and parties to each purchase, assignment, or transfer

Any additional information required to respond to the specific dispute



New or enhanced requirement for school



Possibly Not Applicable



Practice already in place by school or GRC



4. Time-Barred Debt and Obsolete Debt Requirements

Placement of Debt Post Delinquency/Default

Ensure data to calculate statute of limitations is passed to debt collector

Collection of debt

Ensure disclosure of time barred debt is provided

Ensure disclosure of obsolescence is provided

Transfer of data

Ensure all time barred debt information is transferred with debt



New or enhanced requirement for school



New requirement for GRC and school



Practice already in place by school or GRC



5. COMMUNICATION LIMITS

Contact Frequency-Attempts Per Week

- Contact caps would limit both successful and attempted contacts.
- Confirmed consumer contact would pass from collector to collector.
- The caps would apply on a per-account basis, not a per-consumer basis

Collector Activity	Collector Does Not Have Confirmed Consumer Contact	Collector Has Confirmed Consumer Contact
Attempts per unique address or phone number	3	2
Total contact attempts	6	3
Live communication	N/A	1



Contact Frequency-Location Attempts Per Week

- Cap the number of location attempts with third parties.
- Caps would not restrict the total number of location attempts made to all third parties per account per week.

Collector Activity	Collector Does Not Have Confirmed Consumer Contact	Collector Has Confirmed Consumer Contact
Attempts per unique address or phone number per third party	3	0
Total contact attempts per third party	6	0
Total contact attempts across all third parties	No specific limit	0
Live communications per third party (total, not weekly)	1	0



What Does This Mean Now?

- These are not final interpretations or rules; not binding.
- BUT a very good roadmap of where the CFPB is heading as it gets closer to releasing debt collection rules. Also, this is a very good indicator of what the CFPB will propose in terms of rules for creditors collecting their own assets.
- It is important for all creditors and those in the asset recovery industry to examine current practices in light of the proposals.



NEXT STEPS - SBREFA Panel Process

- The Small Business Regulatory Enforcement Fairness Act (“SBREFA”) created a panel process that requires certain agencies to conduct special outreach efforts to ensure that small business views are carefully considered prior to the issuance of a proposed rule.
- Trigger: Rules that are expected to have a significant economic impact on a substantial number of small entities.
- The panel meets with small entity representatives (“SERs”) to obtain advice and recommendations about the potential impacts of the proposed rule.
- It is a built-in pathway that essentially forces the CFPB to explain its position, engage in dialogue, and do so in a formal way with other agencies included.
- The SBREFA report (issued within 60 days of the panel) becomes part of the administrative record so it can support a legal challenge to a final rule if necessary.
- Following the SBREFA panel, a final set of proposed rules will be published, public comments will be received and reviewed by the CFPB, and a final rule will be issued (which will include an effective date for the implementation of these rules).



Frequently Asked Questions on CFPB Proposed Rules as of 08/2016

- 1. Since these are proposed changes, should we, as creditors, begin making any changes now or should we wait until these proposed changes are placed into effect?**
 - We recommend completing a gap analysis to see where your institution might need to make enhancements. As the rules progress towards finalization we will keep you up to date. We however do believe the final rules will be very close to these proposals.
- 2. Can we expect GRC to keep us informed of when these proposed changes become effective or will we have to figure this out on our own?**
 - GRC will offer more webinars in the future as the rule making process continues and will continue to communicate with you on changes needed.
- 3. What is “right party connect”?**
 - This is an oral communication (conversation) with the consumer / student.



Frequently Asked Questions on CFPB Proposed Rules as of 08/2016 Continued

- 4. For Institutions of higher education with a large number of online registration component, what constitutes a written consent from students to collect?**
 - In practice, the person who wishes to enforce an electronically signed contract must reproduce some form of the agreement and the electronic signature, along with documentation or testimony showing what authentication of the signer's identity was collected and how the signer's intent was demonstrated. However, please consult with your counsel on the best practice for your institution and the appropriate state law in your jurisdiction.
- 5. Are we required to get a new promissory note signed for each enrollment period; will an electronic signature be acceptable?**
 - We do not believe you will be required to obtain a new promissory note for each enrollment period, as long as your promissory note provides for multiple disbursements. Please see above regarding electronic signatures.
- 6. For Universities who are not having students sign or e-sign documents acknowledging the debt for tuition, can we still assign the debt to external agencies?**
 - In short, the CFPB has indicated these will not be collectible debts.



Frequently Asked Questions on CFPB Proposed Rules as of 08/2016 Continued

- 7. Can we add collection fees and assign the fees to the account if the student has not signed a clear acknowledgement of the debt to add such costs?**
 - The CFPB has indicated there must be a written document evidencing the debt, and all fees and consequences associated with defaulting on the debt. Therefore, if the student has not signed a clear acknowledgement of the debt (which contains a clear disclosure of the consequences of default, including collection fees) the CFPB has indicated this debt could not be substantiated and therefore uncollectible.
- 8. Can the general rules about tuition being payable listed in the University's handbook be a substitute for an individual acknowledgement?**
 - See above. The CFPB has indicated there must be a written acknowledgment of the extension of debt for the debt to later be substantiated. As such, we do not believe this would be an acceptable substitute.
- 9. Will GRC notify clients of any type of statute of limitations once the account is returned?**
 - GRC currently notifies clients when an account is closed as a result of the statute of limitations expiring as evidenced on your Daily and Monthly Debtor Status Reports and your Close & Return Report with the description reading "Out of Statute."



Frequently Asked Questions on CFPB Proposed Rules as of 08/2016 Continued

- 10. Do we know if these proposed changes will affect the College's withholding of academic information in the event a balance is due?**
 - The CFPB did not address this specific point in its proposed rules. However, consistent with its other guidance, if this particular consequence is disclosed to the student during the extension of credit, and the student acknowledges the possibility (by signing), you will likely be able to continue this practice.
- 11. Are we required to document any/all conversations we have with a student prior to them leaving the University with a balance owed?**
 - We do not believe this is required unless they communicate a communication preference, but we recommend you document all conversations with a student in their file.
- 12. How will the proposed changes affect Sundry accounts? Will we be required to obtain a signed agreement?**
 - To the extent you are asking whether this applies to all types of accounts, the answer is yes – the CFPB's rules will apply to any type of account placed for debt collection. Please consult with your legal counsel for any further specific questions.



Frequently Asked Questions on CFPB Proposed Rules as of 08/2016 Continued

13. Is the Affirmative Written Representation required on every account we send to an agency?

- While this representation will be required for every account, GRC will continue to work with you on the best possible process for obtaining this representation. We will likely ask you to produce this representation at the time of placement for a portfolio of accounts, and not on an individual account basis. However, this will be an evolving process as the final CFPB rules are issued.

14. Will these proposed rules apply to all debt types?

- At this time we believe it applies to all of your debt types.

15. Our University does not have account numbers, will a social security number be accepted as the account number?

- Yes, this should suffice. The important piece of this requirement is the consumer/student borrower will recognize the account number.



Frequently Asked Questions on CFPB Proposed Rules as of 08/2016 Continued

16. Will GRC provide a new format for assigning accounts to include the newly proposed changes regarding debt history?

- Yes, we will work with you to implement new formats to provide the necessary data elements for placement.

17. Will my University be required to provide itemization at the time of placement if the account was previously disputed? If so, will I be required to do so on all of my accounts?

- This may be a possibility and we will work with you to implement a process that is convenient for both you and GRC.

18. Will these changes impact existing accounts or just newly placed accounts based on the CFPB's effective date of implementation?

- This will impact all accounts regardless of placement





Confidential and proprietary information © 2019 General Revenue Corporation. All rights reserved.