

Alert | Financial Regulatory & Compliance



March 2020

U.S. Consumer Financial Protection Bureau issues a Supplemental Notice of Proposed Rulemaking on Time-Barred Debt Disclosures

On Feb. 21, 2020, the U.S. Consumer Financial Protection Bureau (CFPB) issued a Supplemental Notice of Proposed Rulemaking (**Supplemental NPRM**)¹ regarding the collection of “time-barred debt” as to which the statute of limitations will have expired. The Supplemental NPRM follows the CFPB’s proposal last year (the **May 2019 NPRM**) to amend **Regulation F**, 12 CFR part 1006, which would implement the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. §§ 1692 *et seq.*

Background

The May 2019 NPRM proposed to provide consumers with clear protections against harassment by debt collectors and straightforward options to address or dispute debts. The key areas addressed by the May 2019 NPRM include:

- Establishing bright-line limits on the number of calls debt collectors may place to reach consumers on a weekly basis;

¹ The Supplemental NPRM was published in the Federal Register on March 3, 2020 at 85 Fed. Reg. 12672. The Supplemental NPRM is also available at: <https://www.consumerfinance.gov/policy-compliance/rulemaking/rules-under-development/debt-collection-practices-regulation-f-supplemental-proposal-time-barred-debt/>.

- Clarifying how collectors may communicate lawfully using newer technologies, such as voicemails, emails and text messages, that have developed since the FDCPA’s passage in 1977; and
- Requiring collectors to provide additional information to consumers to help them identify debts and respond to collection attempts.

The May 2019 NPRM also proposes to prohibit debt collectors from suing or threatening to sue on debts they know or should know are time-barred. The Bureau included the “know or should know” standard in its proposal recognizing the concern that, in some instances, debt collectors may be genuinely uncertain of whether the statute of limitations has expired even after undertaking a reasonable investigation.

The Bureau received over 14,000 public comments on the May 2019 NPRM, with a significant proportion of the comments raising concerns regarding the treatment of time-barred debt, as well as the complexity of determining whether the “know or should know” standard has been met.

The Supplemental Proposed Rule

The Supplemental NPRM supplements the May 2019 NPRM by proposing to require debt collectors, as that term is defined in the FDCPA,² to make certain disclosures when collecting time-barred debts.

Time-barred debts are debts for which the applicable statute of limitations has expired. For most debts, state law supplies the applicable statute of limitations for collecting debts, and these limitation periods can vary significantly across states and by debt type.³

The Bureau proposed in the Supplemental NPRM to require a debt collector that is collecting a debt that the debt collector “knows or should know” is time barred to disclose:

- that the law limits how long the consumer can be sued for a debt and that, because of the age of the debt, the debt collector will not sue the consumer to collect it; and
- if the debt collector’s right to bring a legal action against the consumer to collect the debt can be revived under applicable law, the fact that revival can occur and the circumstances in which it can occur. The Bureau proposes model language and forms that debt collectors could use to comply with the proposed disclosure requirements.

The Supplemental NPRM also included model language and forms that debt collectors could use to comply with the proposed disclosure requirements. Consistent with the May 2019 NPRM, the Supplemental NPRM additionally proposed to require disclosures only if a debt collector knows or should know that the debt is time-barred.

The Bureau proposes that the effective date of the final rule would be one year after the final rule is published in the *Federal Register*. The Bureau requests comment on this proposed effective date. and currently contains the procedures for State application for exemption from the provisions of the FDCPA.

² 15 U.S.C. §1692a(6). This proposal would cover the same universe of debt collectors as the May 2019 Proposed Rule, *i.e.*, only FDCPA-covered debt collectors. Creditors therefore would only have to comply to the extent they are FDCPA-covered debt collectors.

³ Federal law sometimes establishes the statute of limitations. For example, legal actions to recover certain telecommunications debt are subject to a statute of limitations set by Federal law. *See* 47 U.S.C. § 415(a). The limitations period applicable to debt collection claims can be anywhere between three and six years, although some can be as long as 15 years: *See* Fed. Trade Comm’n, *The Structure and Practices of the Debt Buying Industry*, at 42 (Jan. 2013), <https://www.ftc.gov/sites/default/files/documents/reports/structure-and-practices-debt-buying-industry/debtbuyingreport.pdf>.

The Supplemental NPRM is open for submission of written comments until May 4, 2020.

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* *Special thanks to Laura Buchholz for her valuable assistance in preparing this GT Alert.*

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