

New FDCPA Guidance Means Collectors May be in Your DMs in the Near Future

SmithAmundsen Class Action Alert
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The Fair Debt Collection Practices Act (FDCPA) was passed to protect the rights of debtors and give guidance to collections agencies in their collection efforts. Although it meant to provide clarity, the FDCPA contains many traps for the unwary and has spawned reams of court decisions interpreting its numerous provisions. With so much uncertainty surrounding what is, or isn't, allowed under the FDCPA, the Consumer Financial Protection Bureau has provided some welcome clarity to collection agencies surrounding how, and how much they may contact debtors.

The Bureau issued a Final Rule in October of 2020, which goes into effect November 30, 2021. Among other provisions, this Final Rule brings the FDCPA into the 21st century by providing rules for contacting debtors not only via telephone calls, but also text messages, email and direct messaging through social media platforms. Let's take a quick look at some of the new rules:

First, telephone calls: The Bureau's Final Rule prohibits more than seven calls within seven consecutive days. And, if a collector speaks with the debtor, the collector may not contact the debtor again within seven consecutive days of the conversation. These limitations apply per "debt," not per "debtor." And note, that a debtor may override these limitations by agreeing to more contact.

What about Facebook messages? The Bureau says that private messages through social media platforms are okay, but that no communications are allowed that are viewable by the public, or the debtor's "friends"—in other words, don't leave messages on someone's timeline! In addition, if a collector attempts to "connect" with a debtor on social media, it must disclose its identity as a debt collector beforehand.

And finally, don't email a debtor at a work email address, unless that debtor provided prior consent to be contacted at his or her work email.

No matter how a collector decides to reach out to a debtor, it must, with every communication, provide a method of opting-out of future communications, and be ready to abide by those opt-out requests. Once a debtor requests that a collector stop contacting them, future communications must cease. In addition, the FDCPA's rules about what time of day collectors may contact debtors (i.e.

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between 8:00 A.M. and 9:00 P.M.) local time, also apply to text messages, emails and messages on social media.

The rules above are only a sample of the new regulations discussed in the Bureau's 538-page Final Rule, so keep in mind that there are many other rules that must be considered to ensure FDCPA compliance. Nevertheless, the Bureau's new rules provide additional avenues to contact debtors, so long as collectors abide by the all of the rule's limitations.

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