

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1006

[Docket No. CFPB-2021-0007]

RIN 3170-AA41

Debt Collection Practices (Regulation F); Delay of Effective Date

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Proposed rule; request for public comment.

SUMMARY: In 2020, the Bureau of Consumer Financial Protection (Bureau) finalized two rules titled Debt Collection Practices (Regulation F). The rules revise Regulation F, which implements the Fair Debt Collection Practices Act (FDCPA). Both final rules have an effective date of November 30, 2021. The Bureau is proposing to extend that effective date by 60 days, until January 29, 2022.

DATES: Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: You may submit comments, identified by Docket No. CFPB-2021-0007 or RIN 3170-AA41, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Email:* 2021-NPRM-DCEffectiveDate@cfpb.gov. Include Docket No. CFPB-2021-0007 or RIN 3170-AA41 in the subject line of the message.
- *Mail/Hand Delivery/Courier:* Comment Intake—Debt Collection Effective Date, Bureau of Consumer Financial Protection, 1700 G Street, NW, Washington, DC 20552.

Instructions: The Bureau encourages the early submission of comments. All submissions should include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. Because paper mail in the Washington, DC, area and at the Bureau is subject to delay, and in light of difficulties associated with mail and hand deliveries during the COVID-19 pandemic, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to <https://www.regulations.gov>. In addition, once the Bureau's headquarters reopens, comments will be available for public inspection and copying at 1700 G Street, NW, Washington, DC 20552, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning 202-435-7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Proprietary information or sensitive personal information, such as account numbers or Social Security numbers, or names of other individuals, should not be included. Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Seth Caffrey, Courtney Jean, or Kristin McPartland, Senior Counsels, Office of Regulations, at 202-435-7700. If you require this document in an alternative electronic format, please contact CFPB_Accessibility@cfpb.gov.

SUPPLEMENTARY INFORMATION:

I. Summary of the Proposed Rule

In October and December 2020, the Bureau released final rules to revise Regulation F, 12 CFR part 1006, which implements the FDCPA (together, the Debt Collection Final Rules). The Debt Collection Final Rules prescribe Federal rules governing the activities of debt

collectors, as that term is defined in the FDCPA, and have an effective date of November 30, 2021.¹ In light of the ongoing societal disruption caused by the global COVID-19 pandemic, the Bureau is proposing to extend that effective date. To afford stakeholders additional time to review and, if applicable, to implement the Debt Collection Final Rules, the Bureau is proposing to extend the effective date by 60 days, to January 29, 2022. This proposal requests comment on whether the Bureau should extend the effective date of the Debt Collection Final Rules, and if so, whether 60 days is an appropriate length of time for such an extension.

II. Background

A. The Debt Collection Final Rules

The first debt collection final rule, released on October 30, 2020, addresses, among other topics, communications in connection with debt collection and prohibitions on harassment or abuse, false or misleading representations, and unfair practices in debt collection. The first final rule also addresses the use of newer communication technologies in debt collection and establishes record retention requirements.

The second debt collection final rule, released on December 18, 2020, focuses on debt collection disclosures and addresses, among other topics, the information that debt collectors must provide consumers at the outset of collections communications. The second final rule also prohibits debt collectors from bringing or threatening to bring a legal action against a consumer to collect a time-barred debt and prohibits debt collectors from furnishing information about a debt to a consumer reporting agency before the debt collector takes certain actions to contact the consumer about the debt.

¹ 85 FR 76734 (Nov. 30, 2020); 86 FR 5766 (Jan. 19, 2021).

B. Proposed Effective Date

The Debt Collection Final Rules have an effective date of November 30, 2021, or one year after the first debt collection final rule was published in the *Federal Register*. In finalizing that effective date for both final rules, the Bureau concluded that all stakeholders would benefit if both rules had the same effective date, and the Bureau determined that a one-year period from the publication date of the first final rule would provide debt collectors sufficient time to implement the provisions of both rules.²

Since the Debt Collection Final Rules were published, the global COVID-19 pandemic has continued to cause widespread societal disruption, with effects extending into 2021. In light of that disruption, the Bureau believes that providing additional time for stakeholders to review and, if applicable, to implement the final rules may be warranted. The Bureau believes that extending the rules' effective date by 60 days, to January 29, 2022, may provide stakeholders with sufficient time for review and implementation. The Bureau requests comment on whether to extend the final rules' effective date and, if so, whether 60 days is the appropriate amount of time for an extension.

As noted in the Debt Collection Final Rules, debt collectors could choose to comply with the rules' requirements and prohibitions before the effective date. Until the effective date, however, the FDCPA and other applicable law would continue to govern the conduct of FDCPA debt collectors. Similarly, to the extent that the Debt Collection Final Rules establish a safe harbor from liability for certain conduct, or a presumption that certain conduct complies with or violates the rules, those safe harbors and presumptions will not take effect until the effective date. The Bureau requests comment on whether it would facilitate implementation to retain the

² 85 FR 76734, 76863 (Nov. 30, 2020); 86 FR 5766, 5838 (Jan. 19, 2021).

November 30, 2021 effective date for some or all of the safe harbors identified in the Debt Collection Final Rules. The Bureau requests comment on, for example, the costs and benefits of permitting debt collectors to obtain a safe harbor for using the Bureau’s model validation notice³ as of November 30, 2021, even if the Debt Collection Final Rules do not otherwise take effect until January 29, 2022.

III. Legal Authority

To extend the effective date of the Debt Collection Final Rules, the Bureau is proposing to exercise its rulemaking authority pursuant to FDCPA section 814(d) and Dodd-Frank Act sections 1022(b)(1) and 1032(a).

The legal authority for the Debt Collection Final Rules is described in detail in those final rules.⁴ As amended by the Dodd-Frank Act, FDCPA section 814(d) authorizes the Bureau to “prescribe rules with respect to the collection of debts by debt collectors,” as defined in the FDCPA.⁵ Section 1032(a) of the Dodd-Frank Act provides that the Bureau may prescribe rules to ensure that the features of any consumer financial product or service, both initially and over the term of the product or service, are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances.⁶ Additionally, under Dodd-Frank Act section 1022(b)(1), the Bureau has general authority to prescribe rules as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the

³ 86 FR 5766, 5857 (Jan. 19, 2021).

⁴ 85 FR 76734, 76739-41 (Nov. 30, 2020); 86 FR 5766, 5770-71 (Jan. 19, 2021).

⁵ 15 U.S.C. 1692f(d).

⁶ 12 U.S.C. 5532(a).

Federal consumer financial laws, and to prevent evasions thereof.⁷ The FDCPA and title X of the Dodd-Frank Act are Federal consumer financial laws.⁸ Accordingly, in proposing this rule, the Bureau is exercising its authority under Dodd-Frank Act section 1022(b)⁹ to prescribe rules under the FDCPA and title X of the Dodd-Frank Act that carry out the purposes and objectives and prevent evasion of those laws. Section 1022(b)(2) of the Dodd-Frank Act¹⁰ prescribes certain standards for rulemaking that the Bureau must follow in exercising its authority under section 1022(b)(1).

IV. Dodd-Frank Act Section 1022(b) Analysis

In developing the proposed rule, the Bureau has considered the potential benefits, costs and impacts required by section 1022(b)(2) of the Dodd-Frank Act. Specifically, section 1022(b)(2) calls for the Bureau to consider the potential benefits and costs of a regulation to consumers and covered persons, including the potential reduction of consumer access to consumer financial products or services, the impact on depository institutions and credit unions with \$10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act, and the impact on consumers in rural areas. In addition, Dodd-Frank Act section 1022(b)(2)(B)¹¹ directs the Bureau to consult, before and during the rulemaking, with appropriate prudential regulators or other Federal agencies, regarding consistency with the objectives those agencies administer. In developing the proposed rule, the Bureau has consulted, or offered to consult

⁷ 12 U.S.C. 5512(b)(1).

⁸ 12 U.S.C. 5481(14).

⁹ 12 U.S.C. 5512(b).

¹⁰ 12 U.S.C. 5512(b)(2).

¹¹ 12 U.S.C. 5512(b)(2)(B).

with, the appropriate prudential regulators and other Federal agencies, including regarding consistency with any prudential, market, or systemic objectives administered by such agencies.

The Bureau previously considered the costs, benefits, and impacts of the Debt Collection Final Rules' major provisions.¹² Compared to the baseline established by the rules,¹³ the proposed extension of the rules' effective date would generally benefit covered persons by facilitating initial compliance with the rules' requirements and delaying the start of ongoing compliance costs. Because covered persons retain the option of complying with the rules before the effective date, any extension should not increase costs to covered persons because they retain the option of complying by the original effective date. The Bureau believes that extending the effective date may also delay consumers' realization of benefits arising from the protections provided by the rules, although given the short length of the delay, any overall reduction in benefits should be small. In addition, the Bureau does not expect the proposed rule to have a differential impact on depository institutions and credit unions with \$10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act or on consumers in rural areas. The Bureau does not believe that the proposed effective date extension would reduce consumer access to consumer financial products and services, as the evidence discussed in the Debt Collection Final Rules indicates that the rules themselves will have limited negative impact on access to credit.¹⁴

¹² 81 FR 83934, 84269 (Nov. 22, 2016).

¹³ The Bureau has discretion in any rulemaking to choose an appropriate scope of a analysis with respect to potential benefits, costs, and impacts and an appropriate baseline.

¹⁴ See 85 FR 76734, 76879-81 (Nov. 30, 2020); 86 FR 5766, 5849 (Jan. 19, 2021).

The Bureau requests comment on this discussion as well as submission of additional information that could inform the Bureau’s consideration of the potential benefits, costs, and impacts of this proposed rule.

V. Initial Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA),¹⁵ as amended by the Small Business Regulatory Enforcement Fairness Act of 1996,¹⁶ requires each agency to consider the potential impact of its regulations on small entities, including small businesses, small governmental units, and small not-for-profit organizations. The RFA defines a “small business” as a business that meets the size standard developed by the Small Business Administration pursuant to the Small Business Act.¹⁷

The RFA generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule would not have a significant economic impact on a substantial number of small entities.¹⁸ The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business representatives prior to proposing a rule for which an IRFA is required.¹⁹

An IRFA is not required for this proposed rule because the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. As

¹⁵ 5 U.S.C. 601 *et seq.*

¹⁶ Pub. L. 104-121, tit. II, 110 Stat. 857 (1996).

¹⁷ 5 U.S.C. 601(3) (the Bureau may establish an alternative definition after consultation with the Small Business Administration and an opportunity for public comment).

¹⁸ 5 U.S.C. 603–605.

¹⁹ 5 U.S.C. 609.

discussed in part II, because covered persons would retain the option of complying by the Debt Collection Final Rules' original November 30, 2021 effective date, any extension of the effective date would not increase costs to covered persons. Thus, the Bureau anticipates that the proposed rule would only reduce burden on small entities relative to the baseline.

Accordingly, the Acting Director certifies that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The Bureau requests comment on its analysis of the impact of the proposed rule on small entities and requests any relevant data.

VI. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA),²⁰ Federal agencies are generally required to seek, prior to implementation, approval from the Office of Management and Budget (OMB) for information collection requirements. The collections of information related to the Debt Collection Final Rules is under review by OMB in accordance with the PRA and under OMB Control Number 3170-0056. Under the PRA, the Bureau may not conduct or sponsor, and, notwithstanding any other provision of law, a person is not required to respond to, an information collection unless the information collection displays a valid control number assigned by OMB.

The Bureau has determined that this proposed rule would not have any new or revised information collection requirements (recordkeeping, reporting, or disclosure requirements) on covered entities or members of the public that would constitute collections of information requiring OMB approval under the PRA. The Bureau welcomes comments on these determinations or any other aspect of the proposal for purposes of the PRA.

²⁰ 44 U.S.C. 3501 *et seq.*

VII. Signing Authority

The Acting Director of the Bureau, David Uejio, having reviewed and approved this document, is delegating the authority to electronically sign this document to Grace Feola, a Bureau Federal Register Liaison, for purposes of publication in the *Federal Register*.

Dated: April 07, 2021.

/s/Grace Feola

Grace Feola,

Federal Register Liaison, Bureau of Consumer Financial Protection.