

Group Comments from RegulationRoom.org:

**Debt Collection (Regulation F)
(Docket ID: CFPB-2013-0033)**

Background

Regulation Room is an open government pilot project aimed at increasing the breadth and quality of public participation in the rulemaking process. It is a collaboration between the [Cornell eRulemaking Initiative](#) (CeRI), which owns, designs, and operates the site, and numerous federal agencies, including the Consumer Financial Protection Bureau (CFPB).

From November 6, 2013 to February 28, 2014, people could use Regulation Room to learn about and discuss CFPB's Advance Notice of Proposed Rulemaking (ANPRM) on debt collection practices. This timeframe coincided with the official comment period for the proposal.

As an academic research group, CeRI conducts experiments to learn more about how online tools and related socio-technical features can be used to increase the quality of public participation in the rulemaking process. In particular, CeRI is currently researching how groups can work together to produce more thorough and inclusive information and advice for agencies than any one person could do alone.

To that end, CeRI asked a small group of Regulation Room users to work together to create a comment containing helpful experiences, ideas, and suggestions on three of the questions raised in the ANPRM. For each question, we invited both a group of consumers and a group of industry members to participate. Each comment is written from one of these two perspectives.

The unedited text produced by the experiment participants is included in this submission, along with the names of those who chose to sign the comments they helped draft.

Group Comments

Validation Notice Requirements: Consumers

Info that might help consumers recognize the debt

Expanding the scope of the validation notice would benefit consumers. Especially important is a means for the consumer to contact the original creditor and identify the account in question.

When debts are sold multiple times it becomes difficult, if not impossible, for consumers to:

- (1) determine if the account is theirs;
- (2) validate proper assignment; and
- (3) determine if the statute of limitations has expired.

The current requirements facilitate "zombie debt" accounts which - *although already paid by the consumer* - come back to life again and again. Absent a means for consumers to identify the account in question, there is no way for them to verify the validity of that debt.

Every validation notice should be required to include, not only the name, *but the full business address and phone number of the current owner of the debt*. It is not always the case that the consumer knows who the owner of the debt is, or how to contact them. This would not be a burden on collection agencies, because it would only require the collection agency to cut and paste the address and phone number of the debt owner onto the validation notice. The collection agency should already have this information in their company records, as the debt collector is forwarding consumer payments to said debt owner's address. This would allow the consumer to attempt to deal with the debt owner directly to try to resolve the dispute. For example, a case of mistaken identity can more easily be resolved by talking to a customer service representative of the debt owner, than by talking to a debt collector. The debt collector has no authority to correct the mistake, but a customer service representative of the debt owner does.

The debt collector should be required to mail the debtor a validation notice 5 days *before* any phone contact, not 5 days after. Otherwise, the debtor is speaking with an unknown caller, who has surprised them with a demand for money. The debtor has not been provided with any time to prepare their thoughts, or to formulate important questions about the alleged debt. They may be caught "off guard", increasing the fear and anxiety of the debtor, which would necessarily lead to impaired verbal communication. The debtor has no written factual statement to refer to during the phone call, while the debt collector has all of the factual details in front of them on their computer screen, and can cite facts and figures. This situation creates an imbalance of power not conducive to good communication. This proposal to require debt collectors to send a validation notice 5 days *before* the first telephone contact would impose no financial burden on the debt

collector, because validation notices are already required to be sent to the debtor. It is simply a change in the timing of an already existing requirement.

Section 809a provides debt collectors a loophole to use in order to not send consumers a debt validation notice at all. The wording is: "Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, *unless the following information is contained in the initial communication* or the consumer has paid the debt, send the consumer a written notice..." The text "unless the following information is contained in the initial communication" allows the debt collector to hastily read the required consumer protections over the phone, thus satisfying Section 809a, and obviating the need to mail the consumer a debt validation notice. This specific text, "*unless the following information is contained in the initial communication*", should be removed from the law. All consumers should be provided with a written debt validation notice, with no exceptions.

Info about the amount owed

Info about the consumer's right to dispute the debt

Consumers should be made aware that:

- The statute of limitations might prevent suing for the debt.
- Certain activities by the consumer (e.g. making a small payment on the debt) will start the clock over again and can change the status of the debt - making the consumer again liable to be sued.
- The creditor can only sue on a debt in which they have a proper claim.
- Either a credit line which they initiated (e.g. a department store for their private label card) or which has been "assigned" to them (i.e. they purchased it from the original creditor).
- Many consumers are not aware that *it is the responsibility of the creditor to prove that they have valid assignment.*
- Sometimes a debt will have been assigned many times before the consumer is confronted with a claim. The company which is collecting that debt is responsible to show a valid chain of assignment as it goes from hand-to-hand-to-hand.
- The debt collector should be required to either:
- produce this at the initial contact with the consumer; or
- inform consumers of their right to proof of "sufficient particularity to identify the rights assigned" proving the debt collector's right to collect on that debt.

It would be very helpful if the notice from debt collectors told consumers that debt collectors are governed by a law called the Fair Debt Collection Practices Act, the full text of which can be found on the website of the Federal Trade Commission. Also, the notice should inform consumers that debt collection agencies are regulated by the Consumer Financial Protection Bureau, and that if the consumer feels that his or her legal rights have been violated, that the consumer can file a complaint against the debt collector via the website of the Consumer Financial Protection Bureau.

Format of the notice

Languages other than English

Signed:

Drew Crecente
Joseph Baker

Validation Notice Requirements: Industry

The initial notification should include the following:

1. The original creditor.
2. The amount of the claim.
3. The last date of service.
4. The name, address, telephone number and account # of the collection agency.
5. The date of mailing.
6. A demand for payment.

It should also include the following information:

1. Collection activity.

If you do not recognize this obligation you have the right to certain information. This includes:

- Name of original creditor and your account number with such creditor.
- Identifying information provided by the creditor limited to date of birth, gender or last four numbers of a social security number. All information may or may not be available. Missing information does not invalidate the account.
- A statement or ledger of the account in question.
- Date of service.
- Amount claimed.

You have 60 days from the date of this notice to request this information. Upon receipt of your request for this information we must stop subsequent active collection efforts. This means we cannot telephone you, contact you via mail or litigate this account against you until we provide this information to you, in writing, within 60 days of your request. Our obligation is to mail the information to the address on this notice, or a different address if provided by you. We are only obligated to mail such information once, including if an adjustment is made which differs from the amount demanded on this notice. If an adjustment is made to the amount demanded, that new amount will be the amount demanded.

Unless and until you request this information we may proceed.

2. Credit Reporting Activity.

A. You can also dispute this account, with or without requesting the information in Section 1.

Disputing the bill does not void, stay, or negate the actions we may take. If you dispute the account our sole requirement is reporting the account as "disputed" to any credit reporting repository we have reported the account to, and only to those repositories. If we have not reported the account to any repository we have no obligation to report the dispute.

B. If we have not provided the information in section 1 within the 60 day time limit we must remove the account from any repositories we have reported it to. Our sole requirement is sending a deletion request to any credit reporting repository we have reported the account to, and only to those repositories. If we have not reported the account to any repository we have no obligation to send a deletion request.

C. If an adjustment is made to the amount demanded as a result of your request for information in Section 1 that new amount is the amount we will report. Our sole requirement is reporting the

new balance to any credit reporting repository we have reported the account to, and only to those repositories. If we have not reported the account to any repository we have no obligation to report the new balance.

3. You may have certain other remedies. A synopsis is available at CFPB.com.

This notice complies to and is sent in accordance with the rules and regulations of the CFPB. As such no claim can be made against the sender of this notice for any infraction, real or perceived, pertaining to this notice.

Signed:

Jeffrey J. Koch

Auto-dialing & Repetitive Calls: Consumers

The issue with repetitive calling is that it is used for consumer harassment rather than "establishing contact" with the consumer. This is evident in that debt collectors for the most part do not leave a voicemail with their name and contact information. We need to establish clear rules regarding the use of robo dialing and not open to interpretation. Debt collectors should only be allowed to call numbers that the recipient has agreed in writing to being called on. This could be in the original debt contract for example. However, written letters of contact need to be enforced as well. If a consumer sends a certified letter or email to the collector stating they do not wish to be called this should be followed. Debt collectors should be required to follow a 1 call a day limit between a set time limit to be chosen by the debtor at time of contract signing and be required to leave their company name, personal name, and full contact information on a voicemail. In addition the debtor should be able to change their desired call window via certified letter or email.

In the above recommendation, the consumer must assume responsibility for making sure that the contract holder always has up-to-date contact information.

The rules should also address the problem of debt collection robocalls that are placed to the wrong person. All too often, these calls are intentionally made to relatives and neighbors in an effort to embarrass the debtor. It is illegal for other types of for-profit businesses to make robocalls to people with whom they do not have a prior business relationship. Why are debt collectors exempt?

And the calls can be to someone with the same last name. That has happened to me frequently.

Debt collectors have established a prior relationship with us--they granted us credit and want to be paid. Unfortunately, I share what many consumers are experiencing today in that I have less income and have a lot of debt. The creditors use robo-calling and some of the messages start in the middle like: "...our hours of operation are blah blah blah Monday through Sunday." and hang up. That helps no one, nor do the repeated calls. I do not intend to discuss my financial woes with a computer or someone earning a few cents an hour in an overseas call center. The whole system needs to be overhauled. All I can say is thank God for caller ID. I don't bother answering calls that are blocked or are obviously from a creditor. I call back the ones who are real people and have set up repayment arrangements with most. But the calls keep coming. This does border on harassment, although I have kept my promises to pay and do understand that I owe the creditors. I will pay them, but calling several times a day does nothing but interrupt my work and reduce my ability to pay. I agree with colleagues on this board who wish for the prohibition of robo-calls. I feel that if something is important enough to call me about, it is worthy of having a real person make the call. No offense to anyone working in call centers, but most staff in such places are not trained or authorized to make decisions about my debts. If creditors want their money, they should please have a person who can help me resolve the situation make the call. And when I m put on hold, spare me the cheesy music and ads about more credit. That is the last thing any of us need.

My final comment is about credit cards, but is off topic. Is there a board for discussing credit card interest rates? I am old enough to recall usury laws that regulated how much interest and fees could be charged by creditors. Now it seems unlimited with rates as high as 30 percent and fees on top of fees. Is anyone planning to do anything about this????? When companies are allowed to charge such high rates, it is almost a guarantee that default will be the result. After all, am I going to feed my family or pay higher and higher costs to credit card companies. I know the answer to that one, and I bet a lot of American consumers do, too.

I get calls like the ones described below---this is regarding your credit card. "Your account is not delinquent, but we can offer you a one-time opportunity to lower your credit card rate...." I think this is the way callers get around the do not call list. It all needs to stop.

Robocalls are not used just by debt collectors. There should also be rules regarding those who use robocalls to promote business, services, and quite often scams. I think robocalls should be banned, period. I get so many calls for things like "vacations", "credit card interest deductions" (I don't even use credit cards - yet the spiel that is left on my answering machine says that "this call is about your credit card balance"). The caller ID on my phone says "Florida" or "Unknown" or "Business Services" or something similar. I think robocalls should be banned, altogether. They are an invasion of privacy.

The use of robocalls enables scammers because of the anonymity and the difficulty in tracing the robocall.

I have a question: what can be done legally to stop the use of robocalls? Should it be a legislative action - done locally, state-wise, or federally?

I thought this discussion was about how (if at all) automated dialing and other repetitive calling should be regulated. So the comments about credit card interest rates are not off topic but a part of the problem, which is the irritation, the invasion of privacy, that these robocalls put on the people who receive them.

Yes, exactly! and the thing is - I don't even use a credit card!!

Perhaps ATT has a feature that blocks any robocall? does anybody know?

If they do, please post it here. I am soooooo sick of these calls. And just wait until the mid-term elections gear up....

I got a robocall from two different phone numbers, but was the same person speaking; he said that the call was about an emergency alert system that said "Help, I've fallen and can't get up" on the TV; when you click on the number it said to find out more, the live person on the other end repeated the phrase "Help, I've fallen and I can't get up!" but the name of the alert company was NOT the same one that advertises on TV. I called the real company and reported it. I read in a Consumer Finance Protection bulletin that this was a scam going out of Florida and that they had

been stopped. Well I still have the recordings on my answering machine, if anybody from the Consumer Bureau is interested.

No debt collector should ever be allowed to contact an individual at his/her place of employment. I'm retired now, but I have never worked anywhere that allowed the making or receiving of personal calls at the workplace. To that end, perhaps all debt collection agencies should be required to increase the number of employees working during the evening and on the weekends when they are more likely to find people at home.

There should be vastly improved training of telephone representatives, especially in the lost art of listening. Perhaps there should be some sort of certification requirement. The representatives tend to hang up on people and this triggers a return call by the robo dialer. Sometimes this callback is immediate, as happened to me many times one afternoon.

There should be vastly improved record keeping by the agencies. Before a call is placed, the representative assigned to the case should be able to see a record of all previous contacts. There should be very strict rules about frequency of calls. Once per week is certainly sufficient. There is software readily available to accomplish this record keeping. The representative should be required to log any contact before moving on to the next case.

There should be vastly improved accountability on the part of the telephone representatives and their employers. Written apologies to individuals called in error should be routine. If a debt collector has my phone number, then the debt collector must have my address as well. Each account should be assigned to one representative who would make all contact with the alleged debtor. This would cut down on the number of calls.

There should be vastly improved metrics. Although I have never been in the debt-collection business, I have a suspicion that one way collectors judge themselves and would have their clients, both actual and potential, judge them is by the number of calls that they make. This would be a big incentive toward repetitive calling. There have to be other, better metrics by which debt collectors can be judged.

The process of "skip tracing" should be improved or done away with entirely, preferably the latter.

If debt collectors are allowed to continue to use robo dialers, the calls should always be directed to a live person. In my experience, none of the recorded messages I have received from debt collectors have been helpful, and some of them have been downright comical, like the one that instructs me not to listen if I am not the person they are calling for.

Signed:

Dr. Sarah Catherine Baker.

Phyllis

Auto-dialing & Repetitive Calls: Industry

[None of the users invited to draft a comment on auto-dialing and repetitive calls from the industry perspective participated.]

When Debt Goes to Collection: Consumers

The short answer to the question about is yes. Absolutely, the consumer/debtor should be informed when these collection agencies take a shot at the credit report (reports a debt).

First, the biggest problem with this entire issue of debt collection is this: the onus always is on the consumer/debtor.

Consumers/debtors have to prove harassment by going to court.. Consumers have to write to ask for validation of a debt or to dispute a debt -- and far too often the debt collector claims to never receive such a letter.

I think the first order of business is to make any new rules consistent. The second is to enforce them.

Right now, people get letters from debt collectors -- or maybe phone calls -- and they are often not signed, tell you to write a post office box, they are vague about the origin of the debt but sure like to make threats, whether abusive or subtle.

I think all letters notifying consumers should be signed by an actual person who works for the debt collector. The collection companies also should provide a physical address, so the consumer can respond with a certified letter that is proof that the debt was disputed.

You at the CFPB need to do more. When collection companies get into trouble, they just change their company name and continue with business as usual. I don't think imposing sanctions against a bad collection company that is breaking the law is unreasonable. Anyone who breaks the law usually has to account for it. That should include not sending a validation letter, or not acknowledging a dispute to a debt.

If the person disputes the debt there should be a requirement that says so and so disputes this debt. What happens now is these companies don't take any of the laws on the books seriously at all. If they did, they wouldn't harass people at work, at home or make mistakes regarding identity. If the onus wasn't on the consumer to have to hire a lawyer and sue for what -- a maximum of \$1,000? -- these companies would put a lot more effort into making sure their facts are accurate.

And something desperately needs to be done to make these credit reporting companies be more responsible. Everyone one of them just say, "we are only reporting what they tell us" and I ask but don't you verify if it is accurate? And they say, that's not our job. This is what makes this system rife for abuse.

You are focusing on ONE thing: the validation letter. But this is a multi-faceted issue involving the original person who claims a debt is owed, the debt collection company and the credit reporting company. And in the end, it is always the consumer who bears the brunt of so many errors.

A validation letter is just one aspect.

God help us when these "debts" travel from company to company -- quite often to circumvent laws on the books that limit the amount of debt or time it can be listed on a credit report. Once a company buys the debt, it should not be altered.

Please, also, don't tip toe around this and say "consumers are confused" by the number of companies. Let's face facts: it is deliberate maneuvering by these companies using different names to pressure and use these to harm people's credit reports. It's deliberate.

Debt collectors have gone on for soooooo very long abusing the laws that do exist and they know nothing will happen to them. And so are the credit reporting agencies who are 1) in bed with these debt collectors and 2) report anything regardless of its accuracy and then tell the consumer oh it's your problem. I hope that also will be addressed sometime down the road.

For example: disclosure. If any of these debt collection companies are owned by these credit reporting agencies like Equifax or Experian etc., or have any type of business relationship beyond just reporting the debt, then they should be barred from debt collecting because it's a conflict of interest.

I don't think this is anything but reasonable and fair.

I hope I understood the question, which was a little vague about the validation letter.

Signed:

GM Thomas

When Debt Goes to Collection: Industry

I may have removed my prior comment so I will restate my thoughts here again. I believe the creditor should not advise the consumer the debt will be placed with a debt collection agency. First, most lenders already communicate that if the consumer fails to either contact them or repay, they may consider further collection alternatives. Secondly, requiring the creditor to notify a consumer will create further confusion. For example, the creditor notifies the consumer and then assigns the account to a debt collector. In the meantime the consumer sends the creditor a partial payment and/or a dispute. Since the debt collector is likely not notified due to timing, then the consumer will be confused when he/she/they receive a written notification and/or call from the debt collection agency. Thirdly, questions will arise as to how long the creditor should wait for a response from the consumer, or will the time trigger of 30 days be included with the creditor's notification? Fourth, what if the consumer claims they never received the creditor notification? Lastly, large creditors may send over 1000 accounts to debt collection agencies monthly and requiring an additional notice requirement will increase expenses.

I agree with the above comments relative to the creditors & agencies and would add that most medical creditors have already sent the debtor (at a minimum) 3 notices of the amounts owed. I also feel that the CFPB should take into account the fact that most businesses today do put a great deal of effort into collecting a debt before sending it on to collections and have very professional "in-house" collectors that work the accounts. Therefore, we should not start the analysis from the perspective that this is the first time the debtor has ever heard of this particular account.

However, from the debtor's perspective, a final notice could help them understand which particular account will be referred to the collection agency and would notify them THAT the account is going to be so referred after _____ (30) days. The notice could also reference the particular agency to which the account will be sent. I can see this helping the situation 1692g is trying to address--i.e. verifying for the debtor that the notice from the agency is not a fraud or scam, but rather a legitimate attempt to collect debt.

This type of forward looking notice to the debtor might also be a good thing when accounts are transferred from an agency to a law firm or when the account is being sold to another collector. The standard should be that the notice is to be sent to the last known address unless the creditor knows that address to be invalid in which case the notice would not be required.

In the interest of balancing the interests of both debtors and creditors, this type of required notice should only apply where the creditor (or debt seller) has not "worked" the account via phone call, email, voicemail or letter within the 30-60 days prior to sending the account on to a collection agency. This would save the creditors the wasted expense of one more mailing (at approximately \$1 per) to a debtor who is already ignoring their attempts to collect.

If a final notice is required of the creditor, the CFPB must create standard "safe harbor" language for that notice. Without it, there will be tons of litigation over these notices just as there has been over 1692g validation notices.

I agree, in part, but there may be a void and likely litigation defining "not worked". Another option would be a requirement of pre-notification to the consumer if the account is sold to a debt buyer and would continue if the account is again sold to another debt buyer. An option to the pre-notice ,if an account is sold, would be a requirement the seller notify a credit reporting agency the account was sold and to whom.

Signed:
Raymond P. Bell, Jr.