

ALERTS

CFPB Authorizes Debt Collectors to Use Social Media, Text and Email

December 20, 2021

A new rule adopted in the last administration has now gone into effect.[1] The Debt Collection Rule, which implements the Fair Debt Collection Practices Act, permits debt collectors to contact consumers “through any medium,” including on social media, by text message and email, in addition to phone calls and letters.[2]

Although the new administration resulted in a new CFPB Director, the agency has stated that it plans to keep the new rule for now, opting to monitor its effects and only then pursue new rulemaking, rather than trying to withdraw or delay the rule before it went into effect.[3]

Under the Debt Collection Rule, a debt collector can contact a consumer by email, text message or social media so long as:

- Any social media communication is a private direct message that other users on the platform cannot see;
- Any connection request on social media clearly identifies the person as a debt collector; and
- They provide a simple method for the consumer to opt-out of further communications.[4]

While consumers will very likely notice these changes as the texts, emails and direct messages roll in, this is unlikely to tamper the CFPB's interest in or ability to defend consumers with outstanding debts. The CFPB has broad authority to enforce against unfair, deceptive and abusive acts or practices (“UDAAPs”).[5] Additionally, the FTC's Telemarketing Sales Rule

reaches debt collectors as well as their service providers, including payment processors, who facilitate practices the regulators deem improper.[6] As an FTC Commissioner, now CFPB Director, Rohit Chopra was particularly vocal about reining in debt collection practices through enforcement, including joint enforcement where the FTC and CFPB work together.[7] Director Chopra has also been vigilant against attempts to revive expired debts.[8]

Payment processors and other businesses that are involved in debt collection should carefully review their policies and procedures and their clients' practices to promote compliance with this new rule and with the enforcement that will ensure debt collectors do not take undue advantage of this new medium.

Authored by Donald J. Mosher, Kara A. Kuchar, Douglas I. Koff and Noah N. Gillespie.

If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or one of the authors.

[1] "Can a debt collector contact me through social media?" *CFPB* (Nov. 30, 2021), available here.

[2] 12 C.F.R. § 1006.2(d) & cmt. 1.

[3] Michelle Singletary, "New rule will allow debt collectors to track you down on social media," *The Washington Post* (Nov. 30, 2021), available here.

[4] CFPB, *supra*; 12 C.F.R. § 1006.6.

[5] E.g., "CFPB Policy Rescission Stakes Out Broad Enforcement Authority," *SRZ Client Alert* (March 22, 2021), available here.

[6] Telemarketing Sales Rule, 16 C.F.R. part 310.

[7] E.g., Statement of Commissioner Rohit Chopra, *In the Matter of Midwest Recovery Systems*, File No. 1923042 (Nov. 25, 2020) (dissenting).

[8] Singletary, *supra*.

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Mosher**

Partner
New York



**Kara
Kuchar**

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