



Pennsylvania Creditors Bar Association

THE LATEST NEWS AND UPDATES REGARDING CREDIT AND COLLECTION AND THE FINANCIAL SERVICES INDUSTRIES



Welcome Message From The President

I hope this newsletter finds everyone enjoying summer! The beginning of summer was kicked off with a bang, thanks to the Consumer Financial Protection Bureau (finally) publishing its Notice of Proposed Rulemaking for Debt Collection. A copy of the proposal can be found [here](#).

The NPR is quite lengthy and encompasses many aspects of the FDCPA. I highly recommend everyone at least look over the actual rules within the proposal which being around page 425. While many of the proposals cover items more geared toward collection agencies, I think every PACBA membership should thoroughly look over the proposed “safe harbor” for “meaningful attorney involvement” at Section 1006.18. This section could have a tremendous impact on creditors’ rights attorneys.

I encourage all members to submit their own comments to the [Federal Register](#). All comments are due August 19, 2019. Instructions for submissions can be found [here](#). If anyone is interested in assisting PACBA with drafting comments, please reach out to me.

While the CFPB Proposal has certainly dominated the landscape, I would be remiss if I did not point out the case of [Rotkiske v. Klemm & Assocs.](#), which is up on review at the United State Supreme Court from the Third Circuit. The Third Circuit found that the statute of limitations for the FDCPA was clear in that it runs from the date the violation occurs, not the date from when the consumer finds out about the violation. This is at odds with at least two other circuits. Oral argument has been set for October 16, 2019. I’m sure I’m not alone in hoping for another victory for our industry from the highest court.

- Brit J. Suttell, Barron & Newburger, P.C.

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ANNUAL SEMINAR REGISTRATION



Pennsylvania Creditors Bar Association

CFPB Issues 21st Century Proposed Debt Collection Rules: Regulation F Looks to Provide Clarity to the FDCPA

By Joann Needleman, Ann E. Lemm

On May 7, 2019, the Consumer Financial Protection Bureau (CFPB or Bureau) issued its long-awaited Notice of Proposed Rulemaking (NPR) for debt collection. These proposals precede a final rule, that will be known as Regulation F, and will be the first rules issued under the tenure of Director Kathleen Kraninger.

When the Fair Debt Collection Practices Act (FDCPA or Act) was enacted in 1977, its intent and purpose was to address abusive debt collection practices and to ensure that debt collectors who did comply with the law would not be otherwise competitively disadvantaged. Forty-two years later, the FDCPA represents an outdated and ineffective law which provides no clarity for industry and has done little to protect consumers. This quagmire falls squarely upon Congress when it failed to provide the Federal Trade Commission (FTC), then the primary regulator for the FDCPA, with any rulemaking authority. Thus, the FDCPA has been left to the inconsistent interpretations of the Courts.

Fast forward to 2008 and the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) which created the CFPB. Dodd-Frank granted specific authority to the CFPB over certain enumerated consumer protection laws, including the FDCPA. With this authority, the CFPB was tasked to write clear rules of the road in order to ensure compliance of industry as well as provide consumers with a clear understanding of what constituted appropriate debt collection activity.

The Bureau started the debt collection rulemaking process in 2013. The proposals unveiled yesterday were a culmination of extensive work to understand the nuisances of the debt collections industry. A topline summary of the proposals are as follows:

- Opportunities to Communicate with Consumers by Email and/or Text

Debt collectors will now be able to communicate with consumers by email and text provided that the consumer is given the reasonable opportunity to opt-out of those communications. No other social media channels will be available. Debt collectors will need to have reasonable procedures in place to ensure that emails and texts are sent to the proper consumer and that the consumer was given proper notice that such a communication channel was used.

- Limited Content Messages will be Exempt from the FDCPA

Debt collectors will now be allowed to leave a specific message for consumers, either by phone or text, in an effort to get a call back or response without running afoul of the FDCPA.



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- Debt Collectors are Limited to No More Than 7 Telephone Calls per Week per Account However, once a debt collector reaches a consumer, subsequent communication is limited to 1 call every 7 days. There are certain exceptions including if a consumer provides consent to be called or requests a call back from a debt collector.
- A Model Validation Notice and Disclosures with the Opportunities to Provide same Electronically The Bureau has proposed a standard model validation notice which provides clear cut disclosures a debt collector can use when initially communicating with a consumer. The proposed notice also provides consumers with an electronic means of disputing a debt. The Bureau is also considering the electronic delivery of these disclosures provided the debt collector and/or the original creditor has otherwise complied with E-Sign.

- Additional Prohibitive Actions

Debt collectors will not be permitted to sue or threaten suit on a debt if the debt collector knows or should know that the applicable statute of limitations has expired. Further, the rule prohibits debt collectors from reporting collection items to consumer reporting agencies without first communicating with the consumer.

The proposals in the NPR are a clear recognition by the Bureau that modern forms of communication must be incorporated into the debt collection process. However, the NPR is over 500 pages and it will take time to digest the details to see whether these proposals are practical and capable of compliance. Both industry and advocates will be pouring over these proposals in the coming days and weeks to determine their viability. The actual publication date was May 21, 2019 so the comment period will end on August 19, 2019.

Why Membership in the Pennsylvania Creditors Bar Association is Beneficial:

- Access to member-only listserv: an internet discussion group
- Receive quarterly Newsletter to stay abreast of industry trends
- Seminars on relevant, practical topics
- Attorney to attorney networking opportunities

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Utilizing Technology in PA's Magisterial District Courts: Video Witness Presentations in Civil Proceedings

By Robert N. Polas Jr. Esq.

As collection attorneys we all face challenges attempting to have documents admitted into evidence. MDJ Rule 321 is there to help elevate these issues. The Rule states that "the Magisterial District Judge shall be bound by the rules of evidence, except that a bill, estimate, receipt or statement of account which appears to have been made in the regular course of business may be introduced into evidence by any party without affidavit or other evidence of its truth, accuracy or authenticity." Sometimes Rule 321 is not enough. Depending on the judge, documents in the attorney's possession or opposing counsel's argument, some documents may still have trouble getting admitted. What's next? What is going to change the Judge's opinion? We all know the answer and that would be having a witness present at the hearing to authenticate the documents.

Because of any given client's physical location, balances on the accounts or even witness availability, chances are slim that you are going to have a live witness available. Clients often choose the cost of appealing over the cost of sending a witness to a De Novo proceeding. PA MDJ Rule 215 gives Plaintiff's counsel options now when it comes to contested civil cases in the Pennsylvania Magisterial Courts. The rules states that the "Magisterial District Judges may authorize the use of advanced communication technology during any civil proceeding or action governed by the Rules of Civil Procedure for the Magisterial District Judges." Every Attorney should be notifying their clients of this Rule and encouraging them to embrace this option. Having a custodian of records testifying to the authenticity of the documents in real time via Facetime or Skype all the while remaining inhouse relieving the travel costs is a game changer.

Rule 215 was a discussion topic at this year's Minor Judiciary Education Boards 2018-2019 continuing legal education classes for the Magisterial District Judges. The Judges seemed receptive of the video witness technology. The main concerns over the 14 classes were that (1): Plaintiff would be required to bring the necessary technology to present the witness; (2): Some courts may require advanced notification of the use of an electronic witness; and (3): Some courts may accept telephonic witnesses given the foot notes in Rule 215 but the individual attorney would need to determine that in advance and those courts were in the minority. Video technology was preferred.

This is an opportunity for collection attorneys. The days of limited documents and witness availability are a thing of the past. Embrace the rules of civil procedure as they are your only friend. Good luck at your next hearing and I hope your next contested case is jam packed with documents and witness testimony.



Pennsylvania Creditors Bar Association

2019 Seminar & Annual Meeting

Reserve Your Place



Please join the Pennsylvania Creditors Bar Association for our Fall Seminar & Annual Meeting!

Friday, October 11, 2019
8:30 am - 3:00 pm
The Desmond Hotel
Malvern, Pennsylvania

More details to come!

If you are interested in advertising and sponsorship opportunities, please contact Tricia Fusilero - PACBA@corpevent.com

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