



# The State of South Carolina Department of Consumer Affairs

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September 18, 2019

*Via Electronic Submission*

Consumer Financial Protection Bureau  
Office of Regulations  
1700 G Street NW  
Washington, DC 20552

**RE: Debt Collection Practices (Regulation F)  
Docket No. CFPB-2019-0022**

Dear Director Kraninger:

The South Carolina Department of Consumer Affairs (“SCDCA”/“Department”) is pleased to offer comments in response to the Consumer Financial Protection Bureau’s (“CFPB”/“Bureau”) proposed debt collection rule. SCDCA is the state’s consumer protection agency. Established in 1974, SCDCA helps formulate and modify consumer laws, policies, and regulations; resolves complaints arising out of the production, promotion, or sale of consumer goods or services in South Carolina, whether or not credit is involved; and promotes a healthy competitive business climate with mutual confidence between buyers and sellers. The Department’s primary responsibility is to administer and enforce of Title 37 of the South Carolina Code of Laws, the law governing consumer credit transactions, of which the state’s *Unconscionable Debt Collection Practices Act*<sup>1</sup> is a part.

In the previous 5 calendar years (2014-2018), SCDCA received approximately 2,082 complaints regarding debt collection issues, constituting 11% of complaints filed. Of those, approximately 57% alleged unconscionable debt collection tactics and 15% alleged debt collection harassment. These complaints ranged from ignored requests to stop debt collection calls to unwillingness to validate or verify the debt.

<sup>1</sup> See S.C. Code Ann. Section 37-5-108, available at <https://www.scstatehouse.gov/code/t37c005.php>.

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Additionally, SCDCA receives numerous calls annually pertaining to debt collection scams. Oftentimes fraudsters are able to provide the consumer with some personal information, perhaps even a portion of their social security number, to make their scheme seem more legitimate. Agency data from October 2013 through August 2018 also shows that debt collection efforts were the fourth most common way identity theft victims became aware their identity was stolen.

The following comments are based on SCDCA's experience in mediating debt collection complaints as well as administering and enforcing South Carolina's consumer debt collection laws.

### **Debt Collection Communications: Frequency and Methods**

Under appropriate regulation, the Department believes permitting the use of electronic communication methods can be beneficial for both debt collectors and consumers. Ideal outcomes include efficiencies in the business processes for debt collectors and convenience for consumers in responding to communications, disputing inaccurate information, and enabling easy storage of communication records. Expanding the scope of allowed communication methods; however, must be tempered with consumer consent in order to prevent the risks from outweighing the benefits.

The proposed rule clearly limits the frequency with which debt collectors can communicate or attempt to communicate with consumers via phone calls. The failure to extend these restrictions to other forms of attempted communication; however, may result in harassing or abusive tactics simply shifting from one method of contact to another. Thus, while the number of phone calls would be limited, debt collectors could attempt to contact consumers numerous times via text messages, email, and even social media platforms<sup>2</sup>. Further, permitting a debt collector to contact a consumer through methods not expressly agreed to by the consumer can result in the consumer ignoring the attempted contact out of confusion or considering it spam or a scam. A debt collector's accuracy in making contact with the correct consumer via an alternative communication method is also at risk absent a process whereby the consumer provides the appropriate contact information, including applicable social media handles, along with permission to be contacted via such methods.

To minimize the potential negative aspects from permitting multiple methods of communication, SCDCA encourages the Bureau to require that prior to a debt collector attempting to use alternative methods of communication, the debt collector must obtain the consumer's express permission to receive such communications<sup>3</sup>. At a minimum, the Department recommends consumers be able to opt out of future communications delivered electronically by responding

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<sup>2</sup> The use of social media platforms without first obtaining consumer consent is especially concerning for consumer privacy and is far more likely to result in such communication reaching someone other than the consumer.

<sup>3</sup> The FCC has found that consumers can incur substantial costs as a result of unwanted calls and text messages. *In re Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991*, 30 F.C.C. Rcd. 7961, 8021 (2015). Additionally, the CFPB's own research shows that approximately 10 percent of U.S. mobile phone numbers are not enrolled in an unlimited text plan.



directly through the same method with which they are contacted by a debt collector. For example, the Bureau's commentary for § 1006.6(e) indicates that collectors *may* comply with this provision by providing a text message notice when texting a consumer or instructions in an email when an email is sent to a consumer.<sup>4</sup> Explicitly requiring these mechanisms for opting out of future communications would better balance the convenience of utilizing newer communication channels for both consumers and debt collectors.

### Disclosures

While SCDCA supports the concept of a model disclosure form<sup>5</sup>, the Department suggests the following modifications to better ensure the consumer is aware of their rights and responsibilities: (1) adding a statement notifying the consumer that if he/she fails to act or dispute the debt within thirty days that the debt collector may report the debt to Consumer Reporting Agencies; and (2) adding the website where consumers can access and view their free, annual credit report ([www.annualcreditreport.com](http://www.annualcreditreport.com)).

Further, the current model disclosure includes the name of the original creditor together with the account number, but also includes a statement regarding the consumer's right to request the name and address of the original creditor, potentially confusing consumers. We suggest updating the model form to include that consumers can write to ask for the address of [*Insert Name of Original Creditor*] which would match the creditor name included with the account number.

### Conclusion

SCDCA appreciates the opportunity to comment on the Proposed Rule regarding Debt Collection Practices (Regulation F). SCDCA commends the CFPB for its work to modernize the Debt Collection Rule in a manner that protects consumers while allowing debt collectors who operate lawfully to continue doing so. We hope the information provided assists with this effort. Should you have any questions pertaining to our comments, please feel free to contact me at 803-734-4233.

Best Regards,

Carri Grube Lybarker, Esq

<sup>4</sup> See 84 Fed. Reg. at 23412, 6(e)-1(i)-(iii).

<sup>5</sup> SCDCA strongly supports the itemized amount allegedly owed that is currently included in the notice, as this allows consumers to see the principal, interest, and any other charges separately. We urge the Bureau to retain this item in the final rule.