

New FDCPA Rules Are Now in Effect: Is Your Company Compliant?

SmithAmundsen Class Action Alert
December 21, 2021

The Consumer Financial Protection Bureau (CFPB) recently implemented a new set of rules applicable to collections agencies and others qualifying as “debt collectors” under the FDCPA. These rules, which appear within the amended “Regulation F” of the Federal Register, modernized the ways in which collectors can interact with debtors, as well as revamped rules for debt validation notices. The regulations became effective on **November 30, 2021**. These are just three of the more notable changes:

First, the Regulations attempt to modernize the FDCPA by setting forth new rules for collectors’ use of text messaging, email, and direct messaging via social media. In short, collectors may now reach out to debtors via social media platforms, so long as those messages are private—for example, a direct message is ok, while posting on someone’s wall is not. The regulations also set presumptive limits for how often collectors can call or text a consumer, and also requires any electronic messages to include instructions on how debtors can “opt-out” of future communications. You can read about these new rules in more detail in our previous alert.

Second, the Regulations allow for greater flexibility for creditors to reach out to debtors without triggering onerous disclosure requirements. Prior to the amendments to Regulation F, collectors were hesitant to leave voicemails to debtors lest those voicemails be considered a “Communication” under the FDCPA, which requires additional, onerous disclosures. Now, voicemails left for debtors may be considered “limited content messages,” which don’t trigger additional disclosure requirements, if the voicemails contain only the following information: 1) the name of the debt collection firm, 2) a call-back phone number, 3) the name of a person the debtor can reach at that number, and 4) a request for a return call. Importantly, the limited content message should **not** state that the purpose of the call is for debt collection.

Third, the CFPB also made significant changes to the debt validation notice requirements and disclosures that must be sent to debtors. In addition to the disclosures currently required under the FDCPA, Regulation F adds numerous additional required disclosures, including, for example: 1) the name and address, and telephone number of the debt collector; 2) an itemization of the debt owed;

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Partner

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3) the “Itemization date” of the debt, among other requirements. The CFPB has provided a “model” validation notice. Notably, collectors who use the CFPB’s model notice are entitled to a “safe harbor” when it comes to compliance with debt validation notice requirements.

Regulation F spans hundreds of pages, meaning there is a lot to digest and review to ensure full compliance. For now, here are a few items to consider as your collections business rings in the new year:

- Make sure your validation disclosures conform with the CFPB’s new model form;
- Conduct an audit of your policies regarding phone calls to debtors so as not to run afoul of the new call frequency requirements;
- Consider whether alternative forms of communication (i.e. social media messaging) could bolster your collection business; and
- Make sure your voicemails to debtors qualify as “limited content messages.”

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