



# **Regulation F and the New Debt Collection Rules**

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# Presenters



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# CFPB Debt Collection Final Rule:

## *The Basics*

- The Rule revised Regulation F, 12 CFR part 1006, which implements the Fair Debt Collection Practices Act (FDCPA)
- Although released separately (part 1 in October 2020 and part 2 in December 2020), Reg. F took effect on November 30, 2021
- Removed UDAAP as a basis for rulemaking

# CFPB Debt Collection Final Rule: *Impacts on Creditors*

## Good News:

- The rule is solely predicated on the FDCPA
- Declined to expand the rule to cover creditors
- Distinction between creditors and FDCPA debt collectors

## Open Questions:

- Failed to consider whether/how rule's provisions should be applied to creditors or otherwise address application to collection activities by entities not subject to the FDCPA
- Took no position on applying Dodd-Frank Act § 1031 to creditor collections

# CFPB Debt Collection Final Rule:

## *Potential Avenues For Enforcing Against Creditors*

- UDAAP
  - Failed to consider whether/how rule's provisions should be applied to creditors or otherwise address application to collection activities by entities not subject to the FDCPA
  - Took no position on applying Dodd-Frank Act § 1031 to creditor collections (CFPB Bulletin 2013-07)
- State collection laws containing broader definitions of a “debt collector”
  - California, Maryland, Massachusetts
- Vendor oversight responsibilities
  - CFPB Bulletins 2012-03 and 2016-02

# CFPB Debt Collection Final Rule: *Call Frequency Limitations*

- 7 call attempts within 7 consecutive days
- 7 day waiting period after having had a telephone conversation
- Limited to between 8 a.m. and 9 p.m. in the consumer's time zone
- Voicemails count (including ringless voicemail)
- Per debt basis (with student loan exception)
- Calls excluded from the call attempt calculation (calls not reaching the phone)
- Rebuttable presumption = potential risk even when presumption is met

# CFPB Debt Collection Final Rule: *Respecting Consumer Preferences*

- Must honor consumer requests not to be contacted at certain times, places, or over certain channels unless:
  - The consumer conveys that the time/place/channel is no longer inconvenient; or
  - As otherwise required by law
- Consumer no contact requests do not need to be in writing
  - Unlike a cease and desist request
- Rule reiterates FDCPA restriction on calling consumers who are represented by attorneys and at their places of employment

# CFPB Debt Collection Final Rule: *Email, Text, and Social Media*

- Limited to between 8 a.m. and 9 p.m. in the consumer's time zone
- Email restricted to public domain emails – how identify? Can consumers consent to receiving emails at work?
- Social media platforms ok (as long as private messages)
- Requires conspicuous, unconditional opt out in every email and text communication
- Contemplates advance consent to using such channels but is consent actually “required”?
  - Yes to send “legally required notices” and for safe harbor protection
  - How “safe” is the safe harbor?



# CFPB Debt Collection Final Rule: *Time-Barred Debt*

- No prohibition on collection of time-barred debt
- Whether to disclose?
  - Can't bring or threaten to bring suit on a time-barred debt; exception permits filing proof of claim in bankruptcy
  - Strict liability standard adopted and CFPB commented in the preamble to the rule about failing to disclose constituting an unfair practice
- Required disclosures:
  - California (Cal. Civ. Code 1788.14(d))
  - Massachusetts (940 CMR 7.07(240(b)))
  - West Virginia (W.V. Code 46A-2-128(f))

# CFPB Debt Collection Final Rule: *Documentation Requirements*

- Validation Model Form
  - Safe harbor protection
- Reg. F validation date
- Creditor information
- Increasing state requirements for filing lawsuits

# Vendor Oversight:

- How much oversight is enough?
  - What do you know and when did you know it?
- How much is too much?
- Should I transfer the entire file?
- What if the collector does not want all the information?
- Can I still make calls on accounts while placed for outside collections?

# Current Enforcement Trends

- Prefers to regulate through patch work of consent orders, advisory opinions, interpretative rules, informal guidance, and even blog posts
  - UDAAP as the primary enforcement weapon
- Incredibly close collaboration with the FTC and state regulators and AGs
  - Recently reminded state AGs they are “deputy sheriffs”
  - May 2022 Interpretative Rule on CFPB
    - Limits applicable to CFPB do not apply to states?

# Current Enforcement Trends (con't)

- Other types of collaboration - consumer groups, etc.
- Supervisory Highlights, consumer complaints, and guidance useful to anticipate future areas of attention
  - Investigation of service provider can lead to investigation of supervised entity
  - Again, UDAP as a primary weapon of enforcement
- Anticipate information requests relating to how text, email, social media, bots, AI, etc. are used post-Reg. F
  - Bureau's war on convenience fees

# Current Litigation Trends

- California & Florida (7-in-7)
- Maryland (convenience fees)
- Validation notices
- ADA compliance for online channels
- Dual party recording disclosures

# Best Practices To Reduce Risk

- Invest in a qualified compliance team and provide them with sufficient resources
- Comprehensive review of policies, procedures, training and business practices for changes in applicable law
- Thorough due diligence and continued oversight/audit of any service provider
- Make sure senior management, company board and audit committees are informed about compliance issues
- Be responsive to regulatory or supervisory inquiries

**Questions?**

**Thank you!**