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COLLECTION COMPLIANCE STRATEGIES AND NEW PRACTICES

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What Should Creditors be Thinking about in the Wake of Regulation F and CFPB Activity?

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- In general, creditors have not paid heed to FDCPA proscriptions.
- Today's debt collection industry includes third-party collectors, debt collection law firms, debt buyers, and creditors.
- However, the FDCPA excluded creditors like banks and auto finance companies from its coverage.
- Regulation F, which is the first implementing regulation for the FDCPA since its enactment in 19777, amends 12 CFR Part 1006, and applies only to those firms that meet the FDCPA's "debt collector" definition.

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In what ways can Regulation F apply?

- State laws
- Vendor liability
- UDAAP and enforcement activity
- CFPB efforts to issues new interpretive rules and collaboration with the states

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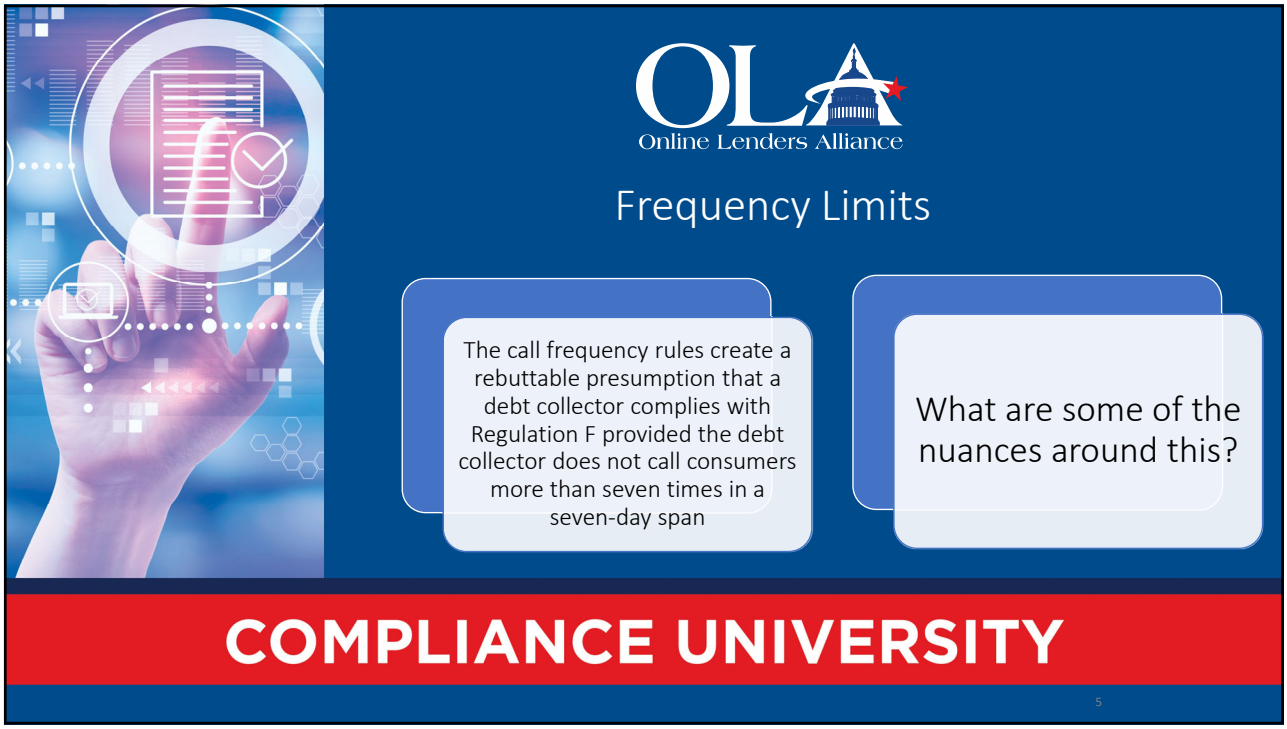
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Frequency Limits
The call frequency rules create a rebuttable presumption that a debt collector complies with Regulation F provided the debt collector does not call consumers more than seven times in a seven-day span
What are some of the nuances around this?
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• Credit Reporting
• Focus of the CFPB and part of Regulation F
• Recent Amicus Brief
• Credit Repair & Other areas to watch
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What Parts of Regulation F Should Creditors Look Closely At?

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New Use of Email and Text Message

Regulation F also creates the first regulatory landscape outlining how debt collectors can send email and text to consumers without engaging in a third-party disclosure

Creditors should implement effective systems to collect borrower emails and phone numbers, as well as authorization to use those contact methods for the purpose of account collection

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Article III Standing: The Gatekeeper to Federal Court

Spokeo, Inc. v. Robins, 578 U.S. 330 (2016)

- Is there a concrete injury?
- Injuries in fact can be both tangible or intangible
- To determine whether an intangible injury constitutes an injury in fact, "both history and the judgment of Congress are instructive. Congress is well positioned to identify intangible harms that meet minimum Article III requirements, but a plaintiff does not automatically satisfy the injury-in-fact requirement whenever a statute grants a right and purports to authorize a suit to vindicate it."

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***TransUnion v. Ramirez,* 141 S. Ct. 2190 (2021)**

- Confirmed that concrete injuries include "traditional tangible harms, such as physical harms and monetary harms," and that certain "intangible harms can also be concrete."
- Regarding intangible harm, the Court stressed that Congress cannot "simply enact an injury into existence, using its lawmaking power to transform something that is not remotely harmful into something that is."
- TransUnion and its progeny – strategies by the consumer bar and judicial application.

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What else is happening in the states?

- New laws and regulations
- Cases to watch
- Collaboration with federal regulators

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Emerging Technologies

Automation and AI

- Compliance Management Systems (CMS)
- Risk Assessment Methodology
- Debt Buying and Increased Opportunity for Scrubbing Accounts with Increased Volume
- Vendor Oversight

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