

Getting Ready for Reg F Checklist

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Nearly eight years in the making, the wait is finally over. The CFPB has officially announced the compliance date for Regulation F, 12 CFR part 1006 (Regulation F) is November 30, 2021. The CFPB proposed delaying the effective date to give the industry more time to implement the requirements. The CFPB has now determined that additional time is not needed, but it will continue to consider additional guidance for debt collectors, as necessary. Regulation F is the biggest regulatory change to the debt collection industry in decades. Regulation F updates regulations concerning debt collection communications. These updates include addressing new forms of communications not available when the FDCPA was created (like texts and emails) as well as updating regulations concerning what constitutes harassing conduct.

COLLECTION PRACTICES

Regulation F sets forth a number of guidelines that apply to the collection practices employed by debt collectors. These guidelines apply for the placing of phone calls, communicating in different languages, and credit reporting. Here is a checklist of items related to collection practices to ensure compliance.

- Review the Frequency of Call Placements – Only Seven Calls in Seven Days on Each Debt:** Regulation F prohibits debt collectors from calling the same consumer more than seven times within seven consecutive days. If a debt collector has a conversation with a person over the phone, the collector is prohibited from calling them again for seven days unless the consumer provides consent directly to the debt collector to receive additional calls.
- Review Any Communications in Language Other than English:** Regulation F does not specifically mandate disclosures in any language other than English. It does provide that if debt collectors choose to provide validation notices in other languages, they must also include an English-language notice in the same communication.
- Review Text and Email Forms of Communication:** Regulation F provides updated guidance on communicating with consumers via texts and emails. This guidance includes when and how these communications can be made. The guidance for email and text communications is set forth more fully below.
- Review Communications on Accounts Where There Is Credit Reporting:** Regulation F requires debt collectors to attempt to speak with a consumer by phone, actually speak to a consumer, or send an email or letter before furnishing any information to a credit bureau. In addition, any communications sent via email or letter requires a 14-day waiting period to allow for a “reasonable period of time” to receive a notice that the communication was not delivered.
- Decide Whether to Employ the Limited Content Message:** Regulation F provides that debt collectors may use a limited content message, or LCM, that creates an exception that is not considered a communication under the FDCPA. That message may only include (1) a request that the consumer reply to the message; (2) a business name for the debt collector that does not indicate the nature of the call; (3) the name of a person or persons whom the consumer can contact; and (4) a return phone number.
- Review Communications on Time Barred Debt:** Regulation F prohibits debt collectors from threatening to sue consumers when attempting to collect time-barred debt but excludes proofs of claim filed in connection with a bankruptcy proceeding from this prohibition.
- Review Social Media Collection Practices:** Regulation F prohibits debt collectors from communicating or attempting to communicate with a person through a social media platform if the communication is viewable by the general public or the person’s social media contacts.
- Review Initial Collection Notices:** Regulation F clarifies that debt collectors may provide the FDCPA initial debt validation notices in writing or electronically. Regulation F also provides a model validation notice that can be used in a debt collector’s initial letter and explains that if debt collectors use the model notice, they are in compliance with Regulation F’s content requirements, i.e., it is a safe harbor. Additionally, the use of the model validation notice would not be considered a violation of the prohibition on conduct that “overshadows” a consumer’s rights during the validation period. The notice is available at <http://rmaintl.org/ModelValidationNotice>.

COMPLIANCE AND MONITORING ISSUES

Setting up Regulation F compliance correctly now can ensure continued compliance through a process designed towards proper monitoring and involvement on all levels. Here is a list of things you can now do to ensure good monitoring of compliance going forward.

- **Discuss with Clients and Review Collection Guidelines:** Consider whether the changes you are making to your collection practices are something to discuss with your clients. Also review your clients' guidelines to determine if any changes are needed.
- **Document Updates to Consumer Information:** Regulation F allows contact with newer technology (such as texts and emails) with consent. As such, ensure that collectors and collection processes document when consumers request communications in these forms.
- **Discuss with Vendors:** Begin the process now of updating your vendors, including technology vendors, to ensure they are prepared well in advance of the November 30th implementation date. Do not wait until the Thanksgiving holiday to learn that there are issues with the new collection forms or practices.
- **Review Document Retention Policies:** Regulation F requires that a debt collector must keep a record of documents from the date the collection activity began to the date of the last collection activity on the debt for three years after the last collection activity.
- **Train Collection Staff:** Although the benefits and requirements of training are self-evident, it is worth noting that all staff involved in the affected collection areas need to be trained, tested, and monitored to ensure compliance with Regulation F. Be sure to record your training efforts. This training will not only ensure compliance but will demonstrate your careful compliance management processes for multi-state and regulatory examinations.
- **Inform and Involve the Highest Levels:** You should be discussing the relevant changes at all levels of the organization, including the highest levels of people on the compliance monitoring teams. By doing this now, you will help ensure both an understanding of the reasons for the changes and build an inherent ability to monitor the implementation of those changes going forward.

TEXT AND EMAIL COMMUNICATIONS

Time and Location Communication Requirements and Regulations (§1006.6)

- Time and Location of Communication:
 - Inconvenient Time: before 8 a.m. and after 9 p.m. local time at the consumer's location.
 - Inconvenient or unusual locations are determined by the medium of communication:
 - Mailing addresses and landline telephone numbers are associated with a place.
 - As such, if a consumer notifies a debt collector that letters or calls to their home are inconvenient, calls and/or letters to that place should stop.
 - Email addresses and mobile telephone numbers are not associated with a place.
 - As such, if a consumer notifies a debt collector that letters or calls to their home are inconvenient, the debt collector may still send emails and place calls to cell phones.

Procedures for communicating via text message (§1006.6(d)(3)) and via email address (§1006.6(d)(4)):

- Debt collectors may still communicate via text with consent from the consumer.
- Communicating via text message must contain opt out options.
 - Example of text message opt out language provided by the CFPB: "Reply STOP to stop texts to this telephone number."
 - Example of e-mail opt out language provided by the CFPB: "Click here to opt out of further emails to this email address."



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