

6 Days Remain to Prepare for "Regulation F": KD's Countdown to Compliance Continues

We are just days away until "Regulation F" of the Fair Debt Collection Practices Act ("FDCPA") takes effect on Tuesday, November 30. Today's preparation alert focuses on Record Retention.

Record Retention

Another new requirement in Regulation F is that debt collectors must create and enforce policies on the retention of records that show compliance or non-compliance with the FDCPA and Reg F. Please note:

A debt collector must retain records that show evidence of compliance or noncompliance with the FDCPA and Reg F. that evidence must begin on the date the debt collector begins collection activity, and until three years after the debt collector's last collection activity on the debt.

Reg F does not prohibit a debt collector from retaining records that show compliance or noncompliance for more than three years after the applicable date.

Records that evidence compliance: If a record could show evidence of compliance or noncompliance, depending on the collector's activity revealed within the record, then the record must be retained by the debt collector.

Such records include, but are not limited to, records that evidence that the debt collector's communications and attempts to communicate in connection with the collection of a debt complied (or did not comply) with the FDCPA and Reg F. For example, a debt collector must retain:

- Telephone call logs as evidence of compliance or noncompliance with the prohibition against harassing telephone calls in; and
- Copies of documents provided to consumers as evidence that the debt collector provided the information and met the delivery requirements of Reg F.

No requirement to create additional records: A debt collector need not create and maintain additional records, for the sole purpose of evidencing compliance, that the debt collector would not have created in the ordinary course of its business in the absence of the record retention requirement. For example, Reg F does not require a debt collector to create call logs showing that it has not attempted to communicate with any consumers at times that the consumers designated as inconvenient. However, if the debt collector maintains call logs, the call logs are evidence of compliance or noncompliance with the FDCPA and this part and the collector must retain them.

Methods of retaining evidence: Reg F does not require a debt collector to retain actual paper copies of documents. Records may be retained by any method that reproduces the records accurately (including computer programs) and that ensures that the debt collector can easily access the records (including a contractual right to access records possessed by another entity).

- **Starts the Three-Year Clock:** Debt collector transfers the debt for consideration, no longer conducts debt collection activity on that debt.
- **Does Not Start the Three-Year Clock:** Discharge in bankruptcy; consumer's curing of default of the debt, if debt collector continues collection activity.

Telephone Calls: Nothing in Reg F requires a debt collector to record telephone calls. If a debt collector records telephone calls made in connection with the collection of a debt, the debt collector must retain the recording of each such telephone call for three years after the date of the call.

Kaufman Dolowich & Voluck's Consumer Financial Services Group is here to assist in your collection preparations to comply with Regulation F. We can also answer other compliance questions you may have.