

## Countdown to Compliance with Regulation F of the Fair Debt Collection Practices Act (FDCPA), Nov. 1 - Nov. 5

KD shares this email alert with our clients today to kick-off our “Countdown to Compliance” — our 30-day countdown until “Regulation F” of the Fair Debt Collection Practices Act (FDCPA) takes effect on November 30, 2021. Each day leading up to November 30th, we will highlight one requirement or new aspect for your consideration as you ramp up preparation for the new regulatory environment.

29 Days Left

Limited-Content Messages:

What is it? Under Reg F, a “Limited-Content Message” is a message that is a (1) voicemail (2) for a consumer; and (3) includes the “required content.”

What is the required content?

1. A business name for the debt collector that does not indicate that the debt collector is in the debt collection business;
2. A request that the consumer reply to the message;
3. The name or names of one or more persons whom the consumer can contact to reply to the debt collector; and
4. A telephone number or numbers that the consumer can use to reply to the debt collector.

Is the required content also the only content allowed?

No, a limited-content message can also include specified “Optional Content” including

1. A salutation
2. The date and time of the message;
3. Suggested dates and times for the consumer to reply to the message; and
4. A statement that if the consumer replies, the consumer may speak to any of the company’s representatives or associates.

Why does this matter?

Under Reg F, a limited-content message is not a “communication” as it is defined in the FDCPA, but rather an “attempt to communicate.” This means that collectors that use a limited content message will NOT be found to violate rules and regulations that prohibit unauthorized communications with third parties.

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28 Days Left

Is it still a Limited Content Message?

Yesterday, we shared the basic requirements of a Limited-Content Message (“LCM”) and why it matters. Today, we explore what may or may not extinguish a call’s status as a LCM.

Is it still an LCM if...

...The call drops or is otherwise interrupted while the debt collector is leaving the LCM?

Answer: No. If the debt collector leaves only a partial voicemail that does not include all of the “required content,” then it is no longer an LCM.

...I use a pre-recorded voicemail to deliver the LCM?

Answer: Yes. Reg F does not prohibit using pre-recorded messages to leave an LCM. However, callers should also make sure that their use of pre-recorded messages does not violate the Telephone Consumer Protection Act (“TCPA”).

...The consumer who receives the LCM researches the business name provided and is able to identify the caller as a debt collector?

Answer: No. Even if the consumer finds out later that the call came from a debt collector, the voicemail remains an LCM.

...The caller leaves a message that includes a more detailed description of the representative or associate group, *e.g.* an agent saying they are from the “credit card receivables group.”

Answer: No. Such a statement is not “required content” and goes beyond the permitted “optional content.”

...State law requires the message contain certain information that is not “required” nor “optional” under Reg F?

Answer: No. Inclusion of state-required information that is outside of Reg F’s required and permitted content defeats the message’s status as an LCM.

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27 Days Left

Call Frequency Restrictions: The 7-in-7 Rule

Regulation F prohibits debt collectors from repeatedly or continuously calling a consumer in connection with the collection of a debt. Regulation F does not provide a bright-line rule as to what volume of calls violates that prohibition, but instead provides a rebuttable presumption analysis.

The 7-in-7 Rule

A debt collector is presumed to comply with the prohibition against repeated or continuous telephone calls or conversations if the debt collector places a telephone call to a particular person in connection with the collection of a particular debt neither:

- More than seven times within seven consecutive calendar days; nor
- Within a period of seven consecutive calendar days after having had a telephone conversation with the person in connection with the collection of such debt.

The presumption does not apply if debt collector exceeds either prong.

Conversely, a debt collector is presumed to be in violation of the rules if it exceeds either prong.

#### “The collection of a particular debt”

Importantly, the 7-in-7 Rule applies on a “per-debt” basis, as opposed to a “per-person” or “per number” basis.

Example Question 1: I am seeking payment from a single consumer for five separate debts for which they owe. Am I allowed to call them up to 35 (5 X 7) times in a week so long as I am only calling about one of the five debts?

Answer: Yes. The rule permits up to seven calls within seven consecutive calendar days “per debt.” However, if you attempt to collect multiple debts on one call, then that call would count towards the limit as to each debt. Additionally, if a debt collector speaks to a consumer seeking to collect a single debt and the consumer independently discusses additional debts for which you are collecting, then the debt collector may not contact the consumer as to either debt discussed for at least seven days.

Example Question 2: I have eight different phone numbers associated with a consumer from whom I am seeking to collect a debt—am I presumed to violate the rules if I placed an unanswered call to each phone number within seven consecutive days?

Answer: Yes. Regulation F’s call frequency presumption applies per debt, regardless of the number of telephone numbers associated with a particular consumer.

Remember, this is not a bright-line test, and the presumption of compliance or non-compliance can be rebutted considering numerous factors, by showing that the debt collector did or did not place a telephone call, or engage any person in telephone conversation repeatedly, or continuously, with intent to annoy, abuse, or harass any person at the called number.

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26 Days Left

#### Call Frequency Restrictions: The 7-in-7 Rule (Applications and Exclusions)

Yesterday, the Countdown discussed Reg F’s rules regarding the presumption of compliance as to the number of calls placed to a consumer about a particular debt (the “7-in-7 Rule”). Today we continue to apply that rule and discuss possible exclusions.

Example Question 1: If a consumer calls the debt collector and speaks about a particular debt, does that count against the collector’s permitted frequency of calls as it pertains to the 7-in 7 rule?

Answer: No. However, if the consumer speaks to the collector about a particular debt, the collector may not place a call to that consumer within seven consecutive days as that would exceed the limits on calls made after speaking with a consumer. Recall the second prong of the 7-in-7 rule states that a debt collector may not place a call to a consumer within seven consecutive days of

speaking to the consumer about a particular debt.

Example Question 2: What if the state in which I'm operating has more stringent call frequency restriction rules?

Answer: State law prevails. Reg F does not preempt state laws affording greater protection to consumers.

Example Question 3: I tried to reach a consumer by phone for four consecutive days regarding both a credit card and a medical debt. Each call went unanswered and I did not leave a voicemail. How does that count towards the 7-in 7 Rule?

Answer: Reg F provides options. You can count the calls any number of ways, for example:

1. Count all 4 calls as in connection with the credit card debt;
2. Count all 4 calls as in connection with the medical debt;
3. Count 2 calls in connection to the credit card debt, and 2 calls in connection with the medical debt, etc.

Exclusions:

Reg F specifically excludes telephone calls from its call frequency restrictions if the telephone call is:

- Placed with a person's direct prior consent
- Prior consent lasts for a maximum of seven days and can be revoked.
- Not connected to the dialed number
- Caller receives a busy signal or an indication that dialed number is not in service.
- Placed to certain permitted third parties
- *i.e., a consumer's attorney, the creditor, the creditor's attorney, the debt collector's attorney, or a consumer reporting agency (if otherwise permitted by law).*

Example Question 4: Does the 7-in-7 Rule apply to other communication media, like e-mails or text messages?

Answer: No. The 7-in-7 Rule is not applicable to e-mails or texts or any other media aside from placing telephone calls.

BUT: Ringless voicemails do count towards the call frequency restrictions.

AND: A debt collector may still violate the general prohibition against harassing, oppressive, or abusive conduct based on the frequency of communications.

Example Question 5: What about Limited-Content Messages? (See Countdown to Compliance- November 1-2, 2021) Do those count?

Answer: Yes. Limited-Content Messages count as placed telephone calls for the purposes of the 7-in-7 Rule, even if they are not “communications” under Reg F.

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25 Days Left

### Time and Place Restrictions

In addition to the Call Frequency Restrictions discussed on the Countdown this week, Reg F also places restrictions on when and where a debt collector may communicate or attempt to communicate with a consumer.

A debt collector must not communicate or attempt to communicate with a consumer in connection with the collection of any debt:

1. At any unusual time, or at a time that the debt collector knows or should know is inconvenient to the consumer. In the absence of the debt collector’s knowledge of circumstances to the contrary, a time before 8:00 a.m. and after 9:00 p.m. local time at the consumer’s location is inconvenient; or
2. At any unusual place, or at a place that the debt collector knows or should know is inconvenient to the consumer.

When would a debt collector “know or should know” a time or place is inconvenient? Some examples:

- A creditor provides a consumer’s file to the debt collector that says the consumer cannot be disturbed on Tuesdays and Thursdays. That knowledge is imputed to the debt collector, so the debt collector may not communicate with the consumer on those days.
- The consumer directly informs the debt collector when it is inconvenient. For example, a consumer can say “I am busy right now, but I can talk weekdays except on Wednesdays.” A debt collector can ask follow-up questions in order determine a time that might be convenient to reach the consumer, e.g. “What about on weekends?”
- *Consumer informs a debt collector not to contact them at home. Unless the consumer says otherwise, a debt collector may not send any communications to the consumer’s home, including by mail.*

What if the consumer initiates a communication with a debt collector at a time or from a place that was previously designated as “inconvenient”?

- The debt collector may respond once at that time or place through the same medium of communication that the consumer used, but may not communicate at the time or place with the consumer again unless the consumer informs the debt collector that that time or place is no longer inconvenient.

KD’s Consumer Financial Services Group is here to assist you as you prepare your collection procedures for Regulation F. We can also answer other compliance questions you may have.