KAUFMAN | DOLOWICH

Mansfield Rule Certified 2022-2023

Countdown to Compliance with Regulation F of the Fair Debt Collection Practices Act (FDCPA), Nov. 22 – Nov. 24

It is now 8 days until "Regulation F" of the Fair Debt Collection Practices Act ("FDCPA") takes effect on November 30. Today, our alert focuses on Validation Requirements, to consider in your preparations.

8 Days Left

Validation Requirements—Optional Disclosures

KD's countdown to Regulation F continues today by exploring language options debt collectors can utilize in validation notices, within the requirements of Reg F and the safe harbor of the Model Validation Notice.

Spanish-language translation disclosures: A debt collector can include either or both of the following disclosures regarding a consumer's ability to request a Spanish-language translation of a validation notice:

- **A debt collector may include supplemental information in Spanish, that specifies how a consumer may request a Spanish-language validation notice The statement, "Póngase en contacto con nosotros para solicitar una copia de este formulario en español" (which means "Contact us to request a copy of this form in Spanish"), is a phrase that can be used when providing this optional disclosure.**
- **In the consumer-response information required, the statement "Quiero este formulario en español" (which means "I want this form in Spanish"), can be used next to a prompt.**

A debt collector who includes in the validation information either or both of the optional disclosures, and who thereafter receives a request from the consumer for a Spanish-language validation notice, must provide the consumer a validation notice completely and accurately translated into Spanish.

Translation into other languages: A debt collector may send a consumer a validation notice completely and accurately translated into any language if the debt collector:

- **Sends the consumer an English-language validation notice in the same communication as the translated validation notice; or**
- **Previously provided the consumer an English-language validation notice, in which case the debt collector need not send the consumer an English-language validation notice in the same communication, as the translated validation notice.**

Note: A debt collector may use translations found on the CFPB's website, or may choose another accurate translation.

Alternative Names: A debt collector can include the Merchant brand, Affinity brand, or Facility name, if any, associated with the debt.

- **Merchant brand: Assume that a debt collector is attempting to collect a consumer's credit card debt. The credit card was issued by ABC Bank and was co-branded XYZ Store. "XYZ Store" is the merchant brand.**
- **Affinity brand: Assume that a debt collector is attempting to collect a consumer's credit card debt. The credit card was issued by ABC Bank, and the logo for the College of Columbia appears on the credit card. "College of Columbia" is the affinity brand.**
- **Facility name: Assume that a debt collector is attempting to collect a consumer's medical debt. The medical debt relates to a treatment that the consumer received at ABC Hospital. "ABC Hospital" is the facility name.**

Electronic Validation Notice: If a debt collector delivers a validation notice electronically, a debt collector may, at its option, format the validation notice as follows:

- **Prompts–any prompt may be displayed electronically as a fillable field.**
- **Hyperlinks–hyperlinks may be embedded that, when clicked:**
  - **Connect a consumer to the debt collector's website;**
  - **Connect a consumer to the Bureau's debt collection website; or**
  - **Permit a consumer to respond to the dispute and original-creditor information prompts**

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7 Days Left

Prohibited Practices—Credit Reporting

Reg F doesn't just regulate debt collectors' communications with consumers, but also debt collectors' interactions with credit reporting agencies ("CRAs"). Specifically, Reg F contains certain prohibitions on debt collectors prior to furnishing information to CRAs.

In General: A debt collector must not furnish to a CRA information about a debt before the debt collector:

- **Speaks to the consumer about the debt in person or by telephone; or**
- **Places a letter in the mail or sends an electronic message to the consumer about the debt and waits a reasonable period of time to receive a notice of undeliverability. During the reasonable period, the debt collector must permit receipt of, and monitor for, notifications of undeliverability from communications providers. If the debt collector receives such a notification during the reasonable period, the debt collector must not furnish information about the debt to a CRA until the debt collector otherwise satisfies the above requirements.**

About the debt: Includes such information provided in a validation notice, *i.e.* the validation information.

Reasonable Period of Time: The reasonable period of time begins on the date that the debt collector places the letter in the mail or sends the electronic message. A period of 14

consecutive days after the date that the debt collector places a letter in the mail or sends an electronic message is a reasonable period of time.

Notices of Undeliverability: A debt collector who does not receive a notice of undeliverability during the reasonable period of time and who thereafter furnishes information about the debt to a CRA does not violate this section even if the debt collector subsequently receives a notice of undeliverability. Reg F provides the following examples:

- **Example 1: Assume that, on May 1, a debt collector mails the consumer a validation notice. On May 10, the debt collector receives a notice of undeliverability and, without taking any additional action described in this section, subsequently furnishes information regarding the debt to a CRA. The debt collector has violated Reg F.**
- **Example 2: Assume that, on May 1, a debt collector mails the consumer a validation notice. On May 10, the debt collector receives a notice of undeliverability. On May 11, the debt collector mails the consumer another validation notice. From May 11 to May 24, the debt collector permits receipt of, monitors for, and does not receive, a notice of undeliverability and thereafter furnishes information regarding the debt to a CRA. The debt collector has not violated Reg F.**
- **Example 3: Assume that, on May 1, a debt collector mails the consumer a validation notice. From May 1 to May 14, the debt collector permits receipt of, monitors for, and does not receive a notice of undeliverability, and thereafter furnishes information regarding the debt to a CRA. After furnishing the information, the debt collector receives a notice of undeliverability. The debt collector has not violated Reg F and, without taking any further action, may furnish additional information about the debt to a CRA.**

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.

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