

# Insights

## CFPB Issues Finalized Changes To Regulation F To Implement The Fair Debt Collection Practices Act

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On October 30, 2020, the Consumer Financial Protection Bureau (“CFPB”) issued a final rule (“Final Rule”) that amends Regulation F, 12 C.F.R. part 1006, which implements the Fair Debt Collection Practices Act, 15 U.S.C. 1692, *et seq.* (“FDCPA”).

The Final Rule addresses communications by debt collectors, as defined under the FDCPA, made in connection with debt collection and restates and clarifies prohibitions on harassment or abuse, false or misleading representations, and unfair debt collection practices.

### Notable Changes

#### 1. Expansion to Electronic Communications with Consumers

The Final Rule allows the use of newer technologies, such as email and text messages, to be used by debt collectors to communicate with consumers regarding their debts, subject to certain limitations to protect consumers against harassment or abuse. For example, electronic communications must include a clear and conspicuous statement describing a simple method to opt out of receiving further emails or text messages. Additionally, there are restrictions on a debt collector’s use of social media to communicate or attempt to communicate with a consumer regarding a debt owed.

#### 2. Consumer’s Ability to Set Restrictions

The Final Rule places restrictions on the times and places at which a debt collector may communicate with a consumer and a consumer does not need to use specific words or assert a time or place that is inconvenient for debt collection communications. Rather, these restrictions apply to any time or place that the debt collector knows or should know is inconvenient. Additionally, a consumer may designate certain means of communications as off-limits for debt collection communications.

#### 3. Limited Content Message

The Final Rule presents a new term in connection with debt collection communications. A “limited content message” is a voicemail a debt collector may leave for a consumer that falls outside the scope of a “communication” under the FDCPA. The voicemail may only contain permitted content to qualify for the exclusion. The Final Rule provides a non-exhaustive list of factors that may be used to rebut the presumption of compliance or a violation.

#### 4. Telephone Call Frequency

If a debt collector calls a person more than seven times within a seven-day period or within seven days after engaging in a telephone conversation with a person, this is a presumptive violation of the FDCPA's prohibition on repeated or continuous telephone calls. Conversely, a debt collector is presumed to comply with the Final Rule if the debt collector does not call in excess of those telephone call frequencies.

## **5. Records Retention Requirements**

The Final Rule includes provisions clarifying a debt collector's obligation to retain records evidencing compliance or noncompliance with the FDCPA and Regulation F. A debt collector must retain records beginning on the date it begins collection activity and for a period of three years after the debt collector's last collection activity on the debt.

## **6. Clarification for Personal Representatives**

The Final Rule clarifies that the personal representative of a deceased consumer's estate is a "consumer" for the purposes of Regulation F. By doing so, this allows a debt collector to discuss a debt of a deceased consumer with the personal representative of the consumer's estate.

### **Impact on Financial Institutions**

Creditors such as banks and credit unions are generally not considered "debt collectors" under the FDCPA. However, such first-party debt collectors could experience indirect effects from the Final Rule to the extent they hire FDCPA-covered debt collectors or sell debt in default to such debt collectors. Implementation of the Final Rule could increase costs to debt collectors, which could have downstream effects to costs of the first-party debt collectors who employ them.

### **Effective Date**

The Final Rule is effective November 30, 2021.

Please contact any member of the Krieg DeVault **Financial Services** or **Creditors' Rights and Bankruptcy** practice groups with any questions you may have about this Alert.