

REGULATION F
A SUMMARY OF HOW THE CFPB
UPDATED THE FDCPA

SOUTHWEST IOWA LAWYERS LEAGUE

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On November 30, 2021, Regulation F took effect.

WHO AND WHY WAS REGULATION F CREATED:

In July 2010, the United States Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act. The law – often referred to as the Dodd-Frank Act – created the Consumer Financial Protection Bureau (the CFPB).

The CFPB Mission Statement is to make markets for consumer financial products and services work for Americans by promoting transparency and consumer choice and preventing abusive and deceptive financial practices.

The CFPB was created in part to make rules and regulations for the continuing implementation of the Fair Debt Collections Practices Act (the FDCPA). The FDCPA was passed by Congress in 1977 and was the first comprehensive federal legislation ensure some consumer protections. The legislations' purpose is to eliminate abusive debt collection practices by debt collectors, to ensure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection.

The CFPB is the first Federal agency to possess the authority to issue substantive rules for debt collection under the FDCPA.

The CFPB proposed and Amended Regulation F, 12 CFR Part 1006, which implements the FDCPA. The CFPB focused on two parts when proposing and passing the Amendments:

Part one focused on communications. *See 85 Fed. Reg. 76,735* (Nov. 30, 2020)

Part two focused on disclosures. *See 86 Fed. Reg. 5766* (Jan. 19, 2021).

WHO DOES REGULATION F IMPACT:

“Debt collector” is a broad term, so Regulation F clears up who qualifies as a debt collector or debt collection agency; it also defines who is excluded from the term. The CFPB’s definition in the regulation incorporates much of the same defining terminology originally used by FDCPA.

It's critical to be clear on these definitions so that you can understand how and if Regulation F applies to you or your business.

According to the regulation, a debt collector is anyone whose main business is to facilitate the process of debt collection on behalf of someone else; this could be an individual or an organization. Also, anyone who enlists the help of a third-party debt collector or uses a different name from their own for the purpose of collecting their own debts is included in this group.

THIS INCLUDES:

- Collection agencies
- Debt buyers
- Collection law firms
- Loan servicers
- Anyone who works for one of these types of businesses in the capacity of a debt collector.

THIS EXEMPTS:

- A creditor, that is the person or entity to whom the debt is actually owed.
- A person who does not work as a debt collector, but who aids in or carries out instructions to facilitate debt collection on behalf of the creditor. This could be a colleague or employee of the creditor.
- Government employees
- People who carry out judicial enforcement
- Nonprofits that help consumers get out of debt by collecting payments from them to reimburse their creditors.
- Anyone who is related to the creditor in a legal, financial, or professional capacity and is also impacted by the debt.

PART ONE – COMMUNICATIONS

The following is a non-exhaustive list of some of the changes regarding communications with consumer under regulation F.

LIMITED CONTENT MESSAGE

Under, Regulation F, this is a voicemail message left for a consumer that **must** contain required information and **may** contain other optional information. A limited-content message is not a “communication,” meaning that it is not subject to other legal requirements and prohibitions. For example, a debt collector who leaves only a limited-content message does not violate the prohibition against third-party communications.

The rule codifies safe harbor language for a debt collector to attempt and leave a telephone message to a number they believe to be the correct consumer. (Prior to this amendment debt collectors opted between two choices set forth in caselaw, *Foti* and *Zortman*.)

For a voicemail message to be a “limited-content message,” it must include the following information:

- A business name for the debt collector that does not indicate the debt collector is in the debt collection business;
- A request that the consumer reply to the message;
- The name(s) of natural persons whom the consumer can contact to reply to the debt collector; and
- The telephone number(s) that the consumer can use to reply to the debt collector.

This is Robin Smith calling from ABC Inc. Please call me or Jim Johnson at 1-800-555-1212.

As taken directly from Regulation F, this list shows what additional information a voicemail may include while still being considered a Limited Content Message:

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

Hi. This is Robin Smith calling from ABC, Inc. It is 4:15 PM on Wednesday, FEBUARY 1. Please contact me or any of our

representatives at 1-800-555-1212 today until 6:00 PM or any weekday from 8:00 AM to 6:00 PM Eastern time.

Other points to keep in mind:

- A Limited Content Message must be a voicemail (not a letter, email, or text message).
- A Limited Content Message may not be knowingly left for a third party — it must be left for the consumer.
- Under Reg F, a Limited Content Message qualifies as an *attempt to communicate* but does not qualify as a communication.

NEW LIMITATIONS ON CONSUMER CONTACT.

The Fair Debt Collection Practices Act (FDCPA) prohibits debt collectors from repeatedly or continuously calling you with the intent to harass, oppress, or abuse you.

Under, Regulation F, collectors are presumed to violate the law if they place a telephone call to you about a particular debt:

- More than seven times within a seven-day period, or
- Within seven days after engaging in a phone conversation with you about a particular debt

These call frequency presumptions only apply to calls placed by the collector to you. They don't apply to text messages, emails, and other types of social media. Those media choices have other restrictions which must be followed.

The 7-in-7 rule explained:

An important aspect of this new rule regulates the frequency in which collectors can place calls to and make contact with consumers at any phone number. Collectors are permitted to place a call to the consumer about a particular debt seven (7) times within a period of seven (7) consecutive days, so long as no contact is made with the consumer in any of the attempts.

The seven days are rolling and do not reset with the start of the calendar week. If, for example, the first call is placed on Tuesday, one call is made on Wednesday,

Thursday, and Friday each, two calls on Saturday, and one on Sunday — totaling seven calls within the past in six days — a call on Monday would be considered the eighth call within seven consecutive days, and would therefore be in violation of the rules.

This rule applies separately to each debt a consumer may have incurred, so seven calls to a consumer about one particular debt within seven days would not count towards the seven-call limit regarding a discrete debt. If contact is made, which by definition includes a phone-call conversation with the consumer, the collector must not attempt to call the consumer again during the next seven days, day one being understood to begin on the day of contact. So, if you make contact on Tuesday, you cannot call again until next Tuesday — day eight — unless express consent is provided by the consumer to call them within seven days.

EMAIL AND TEXT MESSAGING.

Originally, policies were unclear as regards email and text message communication, but as these relatively newer technologies have evolved into more prominent forms of communication, the CFPB has defined policy around them as pertains to debt collection.

Email

Debt collectors can send an email to:

- a **public domain email address obtained from the consumer** where either the consumer has already used an email from that address to communicate with the collector about the debt, or has given the collector permission to use it.
- an **email address obtained from the creditor** provided that the creditor sent the consumer a written or electronic notice indicating the transfer of the debt to a collector. The notice from the creditor must “clearly and conspicuously” state certain details.
- an **email address obtained from the immediately previous debt collector**, as long as he or she used that email address to communicate with the consumer and the consumer did not opt-out.

Text Messaging

Debt collectors are permitted to send a communication by text message when:

- **the consumer has consented by initiating communication through that channel;** however, before sending any further text messages, the collector must confirm within each 60-day period that the consumer responded by text message from that phone number; *or* that the number has not been reassigned since the date of the consumer's most recent text message.
- **the consumer has given explicit prior consent;** even so, every 60 days, the collector must renew consent, or confirm that the number was not reassigned by consulting a database before sending an additional message.

Final Notes on Emails and Text Messaging

When it comes to email and text message communications, opt out forms are critical. All texts and emails must come with clear and conspicuous opt-out instructions. If the consumer opts out of an email or text message communication or revokes consent at any time, the debt collector must cease communication through that channel and clarify the best alternative with the consumer. A statement that is easily seen and easily understood describing a simple and free way to opt out of those communications must always be included.

INCONVENIENT TIME OR PLACE:

Pursuant to § 1006.6(b)(1)(ii), a debt collector **must not communicate** or attempt to communicate with a consumer through media associated with an unusual place, or with a place that the debt collector knows or should know is inconvenient to the consumer.

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, an inconvenient time for communicating with a consumer is before 8:00 a.m. and after 9:00 p.m. local time at the consumer's location. If a debt collector has conflicting or ambiguous information regarding a consumer's location, the debt collector complies if the debt collector communicates or attempts to communicate with the consumer at a time that would be convenient in all of the locations at which the debt collector's information indicates the consumer might be located. Comment 1006.6(b)(1)(i)-2. A debt collector is not required to determine where the consumer actually is located when

communicating or attempting to communicate with the consumer. For purposes of determining the time of an electronic communication, an electronic communication or electronic attempt to communicate occurs at the time that the debt collector sends it, not, for example, at the time that the consumer receives or views it. Comment 1006.6(b)(1)(i)-1.

At any unusual place or at a place that the debt collector knows or should know is inconvenient to the consumer. Some communication media, such as mailing addresses and landline telephone numbers, are associated with a particular place, such as the consumer's home or workplace. A debt collector must not communicate or attempt to communicate with a consumer through a communication medium associated with an unusual place or a place that the debt collector knows or should know is inconvenient. For example, a consumer may designate the consumer's home as inconvenient, and the debt collector must not communicate or attempt to communicate with the consumer through any communication medium associated with the consumer's home, such as the consumer's home landline telephone number. Other communication media, such as email addresses and mobile telephone numbers, are not associated with a place. The prohibition on communicating or attempting to communicate at unusual or inconvenient places does not prohibit a debt collector from communicating or attempting to communicate with a consumer through media not associated with a place unless the debt collector knows that the consumer is at an unusual place or knows that the consumer is at a place that the debt collector knows or should know is inconvenient to the consumer. Comment 1006.6(b)(1)(ii)-1.

CEASING COMMUNICATIONS

Debt collectors are not permitted to continue communication with a consumer — regarding that particular debt — after the consumer has sent notice, in writing (including through electronic forms of communication), that the consumer either refuses to pay the debt or desires to discontinue communication.

It will be important for members of your team to clarify with the consumer which forms of communication the consumer prefers through attentive inquiry. An oral request to discontinue communication doesn't necessarily mean that the consumer wishes to discontinue all modalities of communications, and this should be clarified.

There are also some exceptions to the cease communication rule. A debt collector, after receiving a written communication from a consumer requesting to cease correspondence, may attempt to contact the consumer in order to:

1. advise the consumer that the collector will stop any further collection efforts;
2. notify the consumer that the debt collector may invoke a specified remedy, and, where applicable;
3. to notify the consumer that the debt collector or creditor intends to invoke a specified remedy.

PART TWO DISCLOSURES - MODEL VALIDATION FORM

The CFPB in made one major change regarding disclosures. The CFPB updated what is required in the initial validation notice and created a safe harbor model validation form. (Attached as appendix A). The FDCPA requires debt collectors to provide certain information within five days after the collector first communicates with a consumer, this information is considered a validation notice. The notice must generally include:

- A statement that the communication is from a debt collector
- The name and mailing information of the debt collector and the consumer
- The name of the creditor to whom the debt is owed
 - It is possible that more than one creditor will be listed
- The account number associated with the debt (if any)
- An itemization of the current amount of the debt that reflects interest, fees, payments and credits since a particular date, the “itemization date”
- The current amount of the debt as of when the validation information is provided
- Information about your debt collection rights, including language that:
 - If you *don't* dispute the debt within 30 days the debt collector will assume the debt is valid
 - If you *do* dispute the debt **in writing** within 30 days the debt collector must stop collection until it provides you verification of the debt
 - If you request the name and address of the original creditor (if different from the current creditor) within 30 days, the debt collector will provide you that information
- Information on how to dispute the debt

- The notice must include a “tear-off” form that you can send back to the debt collector to dispute the debt or take other actions.

ITEMIZATION DATE

The itemization date selected by the debt collector must be connected to one of five dates and once chosen must remain as the reference date for that particular debt collector and debt. The five days a debt collector can choose from are:

- The last statement (date of the last periodic statement or invoice provided by a creditor)
- The charge-off date (the date on which the creditor determines the debt to be neglected and unlikely to be paid)
- The last payment date (the date of the most recent payment that has gone towards the debt)
- The transaction date (the date of the initial transaction that is indebted)
- The judgment date (the date of a final court judgment that officially determines that amount owed)

VALIDATION TIME PERIOD.

The period between when the required validation notice is sent and when collection can resume is defined as follows:

Validation period means the period starting on the date that a debt collector provides the validation information required by paragraph (c) of this section and ending 30 days after the consumer receives or is assumed to receive the validation information. For purposes of determining the end of the validation period, the debt collector may assume that a consumer receives the validation information on any date that is at least five days (excluding legal public holidays identified in 5 U.S.C. 6103(a), Saturdays, and Sundays) after the debt collector provides it.

RETAINING COMPLIANCE RECORDS

It’s imperative to keep in mind that you and your team must not only ensure compliance but, you must also retain records showing compliance (or non-compliance) with the FDCPA, beginning on the date that collection activity begins and continuing until three years after the debt collector’s last collection activity on

the debt. Debt collectors can also choose to retain records for a longer period of time, three years being the minimum.

According to the CFPB, records may be kept in any manner that accurately reproduces the communication with the consumer and is easily accessible; this includes computer programs where digital copies of records can be stored. This record-keeping is vital, especially in the face of any kind of audit or inspection your business might receive from the CFPB as a result of complaints.

North South Group
P.O. Box 123456
Pasadena, CA 91111-2222
(800) 123-4567 from 8am to 8pm EST, Monday to Saturday
www.example.com

To: Person A
2323 Park Street
Apartment 342
Bethesda, MD 20815

Reference: 584-345

North South Group is a debt collector. We are trying to collect a debt that you owe to Bank of Rockville. We will use any information you give us to help collect the debt.

Our information shows:

You had a Main Street Department Store credit card from Bank of Rockville with account number 123-456-789.

As of January 2, 2017, you owed:		\$	2,234.56
Between January 2, 2017 and today:			
You were charged this amount in interest:	+	\$	75.00
You were charged this amount in fees:	+	\$	25.00
You paid or were credited this amount toward the debt:	-	\$	50.00
Total amount of the debt now:		\$	2,284.56

How can you dispute the debt?

- **Call or write to us by August 28, 2020, to dispute all or part of the debt.** If you do not, we will assume that our information is correct.
- **If you write to us by August 28, 2020,** we must stop collection on any amount you dispute until we send you information that shows you owe the debt. You may use the form below or write to us without the form. You may also include supporting documents. We accept disputes electronically at www.example.com/dispute.

What else can you do?

- **Write to ask for the name and address of the original creditor, if different from the current creditor.** If you write by August 28, 2020, we must stop collection until we send you that information. You may use the form below or write to us without the form. We accept such requests electronically at www.example.com/request.
- **Go to www.cfpb.gov/debt-collection to learn more about your rights under federal law.** For instance, you have the right to stop or limit how we contact you.
- Contact us about your payment options.
- Póngase en contacto con nosotros para solicitar una copia de este formulario en español.

Notice: See reverse side for important information.



Mail this form to:
North South Group
P.O. Box 123456
Pasadena, CA 91111-2222

Person A
2323 Park Street
Apartment 342
Bethesda, MD 20815

How do you want to respond?

Check all that apply:

- I want to dispute the debt because I think:**
 - This is not my debt.
 - The amount is wrong.
 - Other (please describe on reverse or attach additional information).
- I want you to send me the name and address of the original creditor.**
- I enclosed this amount:** \$

Make your check payable to *North South Group*. Include the reference number 584-345.

- Quiero este formulario en español.**