



December 22, 2020

THE CFPB RELEASES PART TWO OF THE FEDERAL DEBT COLLECTION RULE

On December 18th, the Consumer Financial Protection Bureau (“CFPB”) released part two of its federal debt collection rule (known as “Regulation F,” to be codified at 12 C.F.R. Part 1006) under the federal Fair Debt Collection Practices Act (“FDCPA”). Part two focuses on debt validation information, time-barred debts, certain credit reporting in collections and deceased consumers. Part two of the final rule becomes effective on the same date as part one of the final rule — November 30, 2021.

The CFPB did not finalize the provisions in part two of the rule exactly as proposed. After receiving comments from various stakeholders, the CFPB made the following significant changes:

- The definition of “consumer” includes a deceased natural person. The CFPB changed the definition of “consumer” from part one of the rule. The CFPB provided guidance on a debt collector’s responsibility to provide validation information when the debt collector knows or should know that the consumer is deceased.
- The CFPB adopted a strict liability standard for bringing or threatening to bring a legal action to collect a time-barred debt. The CFPB had proposed that the prohibition apply if a debt collector knows or should know the debt was time-barred.
- The CFPB did not finalize the time-barred debt disclosures that appeared in the CFPB’s February 2020 supplemental notice of proposed rulemaking.
- The prohibition on “passive collections” (*i.e.*, reporting a debt to a credit bureau before contacting a consumer) was finalized, but the rule requires debt collectors to take more specific steps when contacting a consumer about a debt before the debt collectors may report the debt to a credit bureau.
- Debt collectors are no longer required to provide a validation notice that is substantially similar to the model validation notice. Rather, a debt collector will qualify for two safe harbors if it uses a validation notice that is substantially similar to the model notice. The rule provides guidance on how a debt collector may modify the model form without losing the safe harbors.
- The CFPB revised some of the required validation information by, for example, (i) adding an “itemization date” option for judgment dates and clarifying the “itemization date” option for

the last statement date, (ii) requiring a debt collector’s mailing address to be the address where a debt collector receives disputes and requests for original-creditor information, (iii) making the disclosure of the merchant brand for credit card debts optional instead of required and (iv) permitting the itemization of the debt amount to appear in a separate document in the same communication as the validation notice if certain conditions are met.

- With respect to optional validation information, the final rule permits a debt collector to include in the validation information both (i) specific disclosures required by applicable law and (ii) disclosures that give a debt collector a safe harbor under applicable law.
- When collecting time-barred debt, a debt collector may provide disclosures that are specifically required by applicable law or that give a debt collector a safe harbor under applicable law provided that applicable law specifies the content of the disclosure.
- The rule sets forth an optional alternative procedure that a debt collector may follow to respond to consumers who request original-creditor information, when the original creditor and the current creditor are the same.

This is not an exhaustive list of all of the changes made in part two of the final rule.

The CFPB finalized part one of the federal debt collection rule on October 30, 2020. On a high level, part one provided guidance on (i) the use of newer communication technologies in collections and (ii) compliance with existing FDCPA communication provisions. See ALERT dated Nov. 2, 2020.

Regulation F represents the first substantive regulation under the FDCPA since the FDCPA was passed in 1977. Regulation F affects more financial services providers than just “debt collectors” subject to the FDCPA. Regulation F could impact creditors and first party collectors directly or indirectly.

We have a Regulation F overview outline for creditors, multi-state compliance resources, including the Firm’s DEBT COLLECTION DIGEST, and other materials that can help you wade through these new rules for collections. Let us know what questions you have

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