



December 1, 2020

THE FINAL DEBT COLLECTION RULE HAS AN EFFECTIVE DATE; TIME TO START PREPARING

The Consumer Financial Protection Bureau (“CFPB”) has published part one of the final federal debt collection rule (known as Regulation F) to the Federal Register. The communications-focused provisions included in part one of the final rule will become effective on November 30, 2021.

The CFPB plans to release part two of the final federal debt collection rule in December 2020. Part two will focus on disclosure-related provisions. Whether part one and part two of the rule will have staggered effective dates or the same effective date remains to be seen.

With an effective date for at least part one of Regulation F set, creditors, first-party debt collectors, third-party debt collectors and vendors supporting collections should begin implementing Regulation F. A non-exhaustive list of steps that creditors who are not “debt collectors” subject to the federal Fair Debt Collection Practices Act (“FDCPA”) might take before Regulation F becomes effective includes:

- **Get sufficient background on Regulation F.** At a minimum, creditors should have a general understanding of Regulation F and its official interpretations. Depending on the situation, creditors may need a deeper understanding of all or part of Regulation F. The CFPB’s commentary accompanying the final rule also contains material guidance.
- **(Re-)consider the applicability of the FDCPA to you, your vendors and your collection strategy.** Vendor relationships and collection practices evolve over time. The implementation of Regulation F is a prime opportunity to re-evaluate how the FDCPA and Regulation F apply to the collection of your accounts.
- **Even if the FDCPA does not apply on its terms, evaluate whether Regulation F may affect your collection practices.** The FDCPA and Regulation F identify prohibited collection conduct that could inform the CFPB’s or the Federal Trade Commission’s views of collection conduct that is unfair, deceptive or abusive. In commentary accompanying the final rule, the CFPB declined to clarify whether a particular action taken by creditors or first-party collectors, who are not FDCPA

debt collectors, would constitute unfair, deceptive or abusive practices (“UDAP/UDAAP”) under the Dodd-Frank Act. Creditors and their first-party collectors should consider what Regulation F provisions they might choose to follow to reduce their risk of engaging in a UDAP/UDAAP.

- **Have discussions with your collection vendors.** As an initial matter, creditors should learn about their collection vendors’ implementation plans. For example, how will the debt collector re-train its staff on Regulation F? Is the debt collector planning to use any new communication practices or technologies or to modify their existing practices, once Regulation F becomes effective? Will they implement changes sooner? As part of the discussions, creditors should confirm their role in the debt collector’s collection activities. Regulation F has provisions that may require creditors to be more involved in third-party collections by, for example, sending a notice to debtors.
- **Review your collection vendor agreements.** Changes in collection activities caused by Regulation F, including which party is performing an activity, may require corresponding changes to a creditor’s and debt collector’s vendor agreement.
- **Evaluate whether your ongoing vendor oversight measures need to be adjusted.** Adjustments to collection practices and communication methods will cause adjustments to recordkeeping and monitoring tools. In addition, creditors may be required to perform enhanced oversight of a collector’s activities if such a collector (i) engages in certain practices (like leaving voicemails) for the first time because of the legal certainty provided by the final rule or (ii) engages new subcontractors to help the collector comply with new Regulation F provisions.
- **Don’t forget about state collection laws.** State and local laws also regulate debt collection. Creditors should consider the interplay between the FDCPA/Regulation F and applicable state and local collection laws especially in light of the CFPB’s use of safe harbors and rebuttable presumptions in Regulation F.

We have a Regulation F overview outline for creditors, multi-state compliance resources, including the 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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