

The background of the slide is a collage. On the left, there is a large green triangle. On the right, there is a close-up of a stethoscope and a wooden gavel. In the center, there is a dark blue rectangular box with a white border. Inside this box, the text "CFPB Regulation F Compliance and Americollect" is written in white. The box also contains faint, light blue icons: a scale of justice, a document, a magnifying glass, and a warning sign. The words "COMPLIANCE", "REGULATIONS", and "STANDARDS" are also faintly visible in the background of the box.

CFPB Regulation F Compliance and Americollect

The medical debt collections industry is receiving a regulatory update. After many years of back and forth between the various governmental agencies and regulatory bodies, the Consumer Financial Protection Bureau (CFPB) announced new federal regulations that went into effect on November 30, 2021.

What is the CFPB?

The CFPB was formed in 2011 to provide a single point of accountability for enforcing the various federal consumer financial laws and oversees much of the banking and consumer finance industry, including debt collections. In October and December of 2020, the bureau published a new set of debt collection rules known as Regulation F.

These regulations apply only to bad debt being collected by an external collection agency, not extended business office partners. It is important to note that all collection agencies nationwide will be required to follow the rules outlined in Regulation F. It is best to work with your collection agency partners and your own legal counsel to be ready for the compliance deadline.

When it comes to Regulation F, there are several sections, each of which have their own compliance requirements. The CFPB has provided a "safe harbor" for agencies that follow the rules related to the following areas:

- Limited-Content Voice Mail Messages
- Electronic Communications
- Notice Prior to Credit Reporting
- Sending Required Disclosures Electronically
- Records Retention
- Validation Information Requirements and Disclosures (Model Form B-1)

What is Safe Harbor?

Safe harbor allows for a third-party agency to defend against litigation where the plaintiff alleges a violation of the Fair Debt Collection Practices Act (FDCPA). Safe harbor is not a litigation exemption, and some of the protections provided for sections of Regulation F are significantly limited in scope. It is vital to understand how the rule will impact current policies and procedures for agencies and creditors.

Below we will break down the details for each of the sections that will be critical for your organization to ensure compliance:

Limited Content Messages

A Limited Content Message, as defined by the rules is a voicemail message for a consumer which contains:

1. The business name for the debt collector (so long as the name does not indicate the company is in the debt collection business)
2. A request that the consumer reply to the message
3. The name of one or more natural persons whom the consumer can contact to reply to the message
4. A telephone number(s) that the consumer can use to reply to the message

In addition, the message may also include:

1. A salutation
2. The date and time of the message
3. Suggested dates and times for the consumer to reply to the message
4. A statement that if the consumer replies, the consumer may speak to any of the company's representatives or associates.

Examples provided by the CFPB include:

- "This is Robin Smith calling from ABC Inc. Please contact me or Jim Johnson at 1-800-555-1212."
- "Hi, this is Robin Smith calling from ABC Inc. It is 4:15 p.m. on Wednesday, September 1. Please contact me or any of our representatives at 1-800-555-1212 today until 6:00 p.m. Eastern time, or any weekday from 8:00 a.m. to 6:00 p.m. Eastern time."

A limited-content message may only include the required and optional information above. Because a limited-content message must be "for a consumer," a message knowingly left for a third party is not a limited-content message.

While the limited-content message is a tool that debt collection agencies can use to avoid liability for third-party disclosures (where a third-party overhears the voicemail), it is not the exclusive means by which debt collectors can avoid conveying information about a debt, nor does it reflect a determination that messages that include a business name that reveals that a debt collector is in the debt collection business are always communication under the rules.

Electronic Communications

An important part of Regulation F sets rules for debt collectors to communicate with consumers using electronic communications (text and email). Previously these communication methods were not covered by any rules, which made them unreliable to use.

In addition to allowing communications to a consumer, the rule also provides that a consumer may submit a written cease communication request using electronic communications such as an email or through a website portal where the debt collector accepts electronic communications from consumers. The rule also prohibits debt collectors from communicating or attempting to communicate with a consumer through a specific medium of communication (i.e., email or telephone calls) if the consumer has requested the debt collector not use that medium.

The Debt Collection Rule establishes procedures debt collectors can follow to stay within safe harbor, raising a bona fide error defense for unintentional violations of the Rule because of a third-party viewing the text or email, resulting in a third-party disclosure. The Rule has separate procedures for email and text messages.

Email

A debt collector must maintain procedures to reasonably confirm and document that it did not send an email to an email address that the debt collector knows has led to a prohibited third-party disclosure and communicated with the consumer by email using one of the following methods:

- Direct communication with the consumer. The email address is one that the consumer used to communicate with the debt collector about the debt and the consumer has not since opted out of communications to that email address, or the email address is one for which the debt collector previously received the consumer's consent to use, and the consumer has not since withdrawn consent.
- Creditor communication with the consumer. All of the following criteria must be met in order to use an email address based on communications by the creditor: (1) the creditor obtained the email address from the consumer; (2) the creditor used the email address to communicate with the consumer about the account and the consumer did not ask the creditor to stop using it; (3) before the debt collector used the email address to communicate with the consumer about the debt, the creditor sent the consumer a written or electronic notice that clearly and conspicuously disclosed the information required under the Rule (including the right to opt out of email communications); (4) the opt-out period has expired and the consumer has not opted out; and (5) the email address has a domain name that is available for use by the general public (e.g., @gmail.com), unless the debt collector knows the address is provided by the consumer's employer.
- Prior debt collector communication with the consumer. All of the following criteria must be met in order to use an email based on communication by the prior debt collector: (1) any prior debt collector obtained the email address from the consumer in accordance with either of the two procedures described above; (2) the immediately prior debt collector used the email address to communicate with the consumer about the debt; and (3) the consumer did not opt out of such communications.

Text Messaging

A debt collector must maintain procedures to reasonably confirm and document that it did not communicate with the consumer by sending a text message to a telephone number that the debt collector knows has led to a prohibited third-party disclosure; and communicated with the consumer by text message using a telephone number that:

- The consumer used to communicate about the debt with the debt collector by text message, as long as the consumer has not since opted out; and (2) in the past 60 days, the consumer used to send a text message to the debt collector, or the debt collector confirmed had not been reassigned from the consumer to another user; or
- The consumer gave consent to use, as long as the consumer has not since withdrawn that consent; and (2) in the past 60 days, the consumer provided or renewed their consent to use, or the debt collector confirmed had not been reassigned from the consumer to another user.

Social Media

Social media is the latest frontier when it comes to connecting with consumers and is permissible under Regulation F with some exceptions. According to the rules, a debt collector must not post a message regarding the collection of a debt on the public part of a person's social media page, including the part that is viewable only by the person's social media contacts. A debt collector may send a private message over social media unless, for example, the consumer has requested that the debt collector not use that medium to communicate. If a debt collector chooses to send a private social media message requesting to be added as one of the consumer's contacts, a debt collector must disclose his or her identity as a debt collector. The Rule also clarifies that a debt collector violates the FDCPA and the Rule by communicating with the wrong person through a private message.

No matter which method is used, electronic communications must include opt-outs for additional communications and attempts to communicate that are reasonable and simple, and they must be included in every electronic communication or attempt to communicate (for example, "Reply STOP to stop texts to this telephone number"). This requirement applies to a specific email address, telephone number, or other electronic medium address (such as a social media name or account). If a consumer opts out of receiving electronic communications from a debt collector, a debt collector may respond once, confirming the consumer's request to opt out and stating that the debt collector will honor it.

Harassing, Oppressive or Abusive Conduct

This section of Regulation F clarifies that this prohibition applies to telephone calls in addition to other communication media, such as email and text messages.

When referring to call volume restrictions, it is often referred to as "the seven in seven call restrictions," which stipulates that a debt collector may not attempt communication with a consumer more than seven times in seven consecutive days. After contact is made, there is a seven-day hold on future communication attempts unless asked for by the consumer. If no communication occurs after the seven-day hold, the collector can revert to seven attempts in seven consecutive days.

When it comes to email and text messages, an example of potentially abusive conduct includes a debt collector sending a consumer numerous, unsolicited text messages per day for several consecutive days. With this example, the debt collector may violate the prohibition.

The Rule also clarifies that all of a debt collector's conduct, taken together, is considered in determining whether the debt collector's conduct violates the prohibition on harassing, oppressive, or abusive conduct even if, individually, the conduct would not have violated the prohibition.

Notice Prior to Credit Reporting

In the past, "passive collection" was a tool some debt collectors used. It is the practice of furnishing collection information about a debt to a credit reporting agency (CRA) without first taking action to notify the consumer about the debt. The new rule states that before a debt collector can furnish information to a CRA, they must do at least one of the following:

- Speak with the consumer in person about the debt;
- Speak with the consumer by telephone about the debt;
- Mail the consumer a letter about the debt and wait a reasonable period of time to receive a notice of undeliverability;
- Send the consumer a message about the debt by electronic communication and wait a reasonable period of time to receive a notice of undeliverability.

When a debt collector chooses to comply with this requirement by either mailing a letter or sending a message electronically, the debt collector cannot immediately begin furnishing information to the CRAs. Regulation F requires a debt collector to wait a reasonable period of time to receive a notice of undeliverability before furnishing information to a CRA. The rule gives 14 calendar days after the letter or electronic message was sent as a reasonable period of time. While waiting for this timeframe to pass, the debt collector must permit receipt

of, and monitor for, notifications of undeliverability from communications providers. If the debt collector receives a notice of undeliverability during the "reasonable period of time," they must not furnish information about the debt to a CRA until it resubmits the information about the debt to the consumer using one of the above-mentioned methods. For example, if the debt collector receives a notice of undeliverability during the "reasonable period of time" after sending an email about the debt to the consumer, the debt collector may not furnish information to a CRA until it either 1) speaks with the consumer in person, 2) speaks with the consumer by telephone, 3) mails a letter and waits another reasonable waiting period, or 4) sends another electronic communication and waits another reasonable waiting period. However, if the debt collector does not receive a notice that the letter or electronic message was undeliverable during that reasonable waiting period, the debt collector may furnish information about the debt to a CRA, even if the debt collector later receives a notice of undeliverability.

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.

Providing Disclosures Electronically

Throughout the course of debt collection activities, the Federal Debt Collection Practices Act (FDCPA) requires that debt collectors provide consumers with certain oral and written disclosures.

Regulation F generally restates the FDCPA's requirement that a debt collector must disclose in not only their initial communication, but also in each subsequent communication with the consumer, that they communication is from a debt collector (i.e., the "mini-Miranda" disclosure).

It is required that a debt collector make these disclosures in the same language, or languages, used for the rest of the communication in which the disclosures are conveyed. The Rule clarifies that all required disclosures must be sent in a manner that is reasonably expected to provide actual notice and required written disclosures must be sent in a form that the consumer may keep and access later.

To meet the general standard when sending required written disclosures electronically, a debt collector must send the disclosures in accordance with the Electronic Signatures in Global and National Commerce Act (E-SIGN Act)'s consumer-consent requirements.

Records Retention

Regulation F requires debt collectors follow a retention period to show compliance or noncompliance with the Rule starting on the date that the debt collector begins collection activity on a debt until three years after the debt collectors last collection activity on the debt. If a debt collector records telephone calls, they must retain those recordings for three years after the date of the telephone call.

Validation Information Requirements and Disclosures

The FDCPA requires a debt collector to provide the consumer with certain information when the debt collector first communicates with the consumer to collect the debt, or shortly thereafter. Regulation F implements the FDCPA's validation information requirement. Debt collectors are required to provide the consumer with certain information related to the debt, and the consumer's rights (the "validation information") and imposes timing and delivery requirements.

When the validation information is provided in writing or electronically, the document containing the information is commonly referred to as the "validation notice."

Regulation F clarifies that the debt collector may provide the validation information in a validation notice delivered in writing or electronically. The various requirements – content, timing and delivery, and validation period – as well as the model notice safe harbors are laid out following the validation notice Model B-1 Form.

Required Content

To properly follow the Regulation F requirements for the validation notice, there are several areas of required content that must appear on the notice, including:

- The debt collector communication disclosure – a statement that indicates the communication is from a debt collector.
- Name and mailing information – the debt collector’s name and mailing address, the name and mailing address of the consumer who owes the debt, and the name of the creditor whom the debt is currently owed.
- Account number – the account number (full or truncated) associated with the debt. (This is the account number from the hospital or provider.)
- Itemization-related information – this section contains an itemization of the current amount of the debt reflecting interest, fees, payments, and credits since the itemization date. It is also the section that will impact providers the most. The itemization date is meant to provide a reference point that consumers may recognize and is one that will need to be provided by the facility. One of the following dates can be used as the itemization date: 1) the last statement date; 2) the charge-off date; 3) the last payment date; 4) the transaction date; 5) the judgement date.
- Current amount of the debt – the amount of the debt at the time when the validation information is provided to the consumer.
- Information about consumer protections – the validation notice must include statements about the consumer’s right to dispute the debt and request original-creditor information, and rights that apply if the consumer completes those actions.
 - ◇ The date that the validation period (the 30-day period during which the consumer’s disputes and requests for original-creditor information where the debt collector must pause debt collection and respond) will end. (More information below)
- Consumer-response information – prepared statements and prompts, formatted as a tear-off section on the model notice, that the consumer may use to take certain actions, such as disputing the debt. The tear-off section allows the consumer to detach and return to the debt collector, if they choose to.
 - ◇ If the validation notice is provided electronically, the consumer response information must include a statement explaining how the consumer can take these actions electronically.

The information above must be “clear and conspicuous,” meaning readily understandable according to Regulation F. No matter if the validation notice is provided in writing or electronically, the location and type size must be readily noticeable and legible to consumers.

Optional Content

While the above information is required content, the debt collector may also include certain optional content in the validation notice. That content can be no more prominent than the required content so that it cannot be used to overshadow the required information.

Optional content includes:

- The debt collector’s telephone contact information.
- A reference code the debt collector uses to identify the consumer or the particular debt.
- Certain payment disclosures.
- Certain electronic communication information, such as the debt collector’s website or email address.
- Certain Spanish-language disclosures regarding how a consumer may request a Spanish-language validation notice.
- The merchant brand, affinity brand or facility name associated with the debt.

- Disclosures specifically required under (or that provide safe harbor under) other applicable law.

If the validation information is provided electronically, Regulation F allows the debt collector the option to vary the format or content of the notice in certain places to accommodate the electronic delivery, such as by including hyperlinks or fillable fields for consumer responses.

Delivery Method and Timing Requirements

As with all other aspects of the validation notice, there are requirements to how it is delivered and the timeframe that it must happen within. The validation notice must be provided either: 1) in the debt collector's initial communication to the consumer or 2) no more than five (5) calendar days after the initial communication. If the debt collector provides the validation notice in the initial communication, the debt collector can provide the required information in whatever method they choose (physically or electronically) for the initial communication itself.

If the debt collector does not provide the validation information in the initial communication, they generally must provide the validation notice no more than five (5) calendar days after the initial communication. It must meet the general disclosure delivery requirements from Regulation F. If it is sent electronically, it must also meet the electronic disclosure requirements and the debt collector must have E-SIGN consent. One change that has been brought about is that "consumer" now includes both living and deceased consumers. As a result, debt collectors must provide the validation notice to either the living consumer, or, if it is known to the debt collector that the deceased consumer was never provided the validation notice, then it must be sent to the person authorized to act on behalf of the deceased consumer's estate.

Validation Period Requirements

After sending the validation notification, the debt collector must allow the consumer 30 calendar days from the date the consumer receives or is assumed to have received (which is accepted to be five (5) business days after notice is sent), the validation notice to dispute the debt or request original-creditor information about the debt. This 30-day period is identified as the "validation period."

During the validation period, the debt collector is not allowed to engage in collection activities or communications that would interfere with the consumer's rights to dispute the debt or request original-creditor information. If the consumer disputes the debt or requests the original-creditor information in writing within the validation period, the debt collector must cease debt collection on the disputed portion, until the debt collector provides the information needed to verify the debt or original-creditor information.

Regulation F brings clarity to a variety of consumer debt topics. If you would like to further review Regulation F, it is available at the CFPB website. They have also published an FAQ site to help answer your questions.

Americollect is prepared for the Regulation F November 30, 2021, deadline and is working with facilities like yours to ensure compliance. If you have questions or need more information, please contact your client relations specialist.

americollect
ridiculously nice