

RISK Alert

ACTIONABLE INSIGHTS FOR BOND POLICYHOLDERS.



CUNA
MUTUAL
GROUP

Alert Type

Awareness

Watch

Warning

FDCPA-Reg F: What you need to know before November 30, 2021

A comprehensive federal debt collection regulation interpreting the Fair Debt Collection Practices Act (FDCPA) takes effect November 30, 2021. The updated regulation applies to debt collectors as defined by the FDCPA, which generally includes debt collection agencies, collection attorneys, debt buyers, and mortgage servicers that obtained the account in default, and generally excludes original creditors. While the revised rule does not specifically address first party creditors, credit unions should be aware of the rule and ensure that any third-party collectors engaged by the credit union are in compliance with Regulation F.

Details

A comprehensive federal debt collection regulation interpreting the Fair Debt Collection Practices Act (FDCPA) takes effect November 30, 2021. The regulation includes two parts amending Regulation F, 12 C.F.R. part 1006. Part one addresses communications and Part two focuses on disclosures - the information a debt collector must provide to a consumer at the outset of debt collection communications.

Significant provisions of Regulation F include:

- Establishes a presumption that a certain number of calls per week is or is not an FDCPA violation (with factors that can rebut those presumptions),
- Permits certain use of electronic communications to provide disclosures required under the FDCPA or to collect a debt,
- Gives consumers the right to stop specific types of communications,
- Requires debt collectors to provide notice of the right to opt out of electronic communications,
- Provides a safe harbor from FDCPA liability for third-party disclosures when communicating with a consumer by email or text message where the email address or phone number were obtained using specified methods,
- Excludes specified debt collector voicemail messages left for consumers from some FDCPA requirements,
- Sets out an expanded list of information that a debt collector must provide to a consumer at the outset of debt collection communications,
- Provides a model notice containing such information,
- Prohibits debt collectors from bringing or threatening to bring a legal action against a consumer to collect a time-barred debt, and
- Requires debt collectors to take certain actions before furnishing information about a consumer's alleged debt to a consumer reporting agency.

Date: November 9, 2021

Risk Category: Lending; Compliance; Debt Collection; Regulation F

States: All

Share with:

- Collections
- Compliance
- Executive Management
- Loan Manager
- Loan Staff
- Risk Manager



Facing risk challenges?

[Schedule](#) a free personalized discussion with a Risk Consultant to learn more about managing risk.

FDCPA-Reg F: What you need to know before November 30, 2021

The new regulation reflects the CFPB's Consumer Protection focus and provides the following new rights for consumers:

- **Ability to Stop Collection Calls:** If a consumer requests that a collector stop using a particular method of communication (phone calls or texts), the collector must stop using that specific means of communication. Consumers may inform debt collectors of their revocation verbally.
- **Preconditions to Any Collector Credit Reporting:** A debt collector must speak to a consumer or send a letter or electronic message about an alleged debt before reporting the account to a credit bureau. This revision is intended to decrease the likelihood that a consumer first learns about an alleged debt when they try to access credit to buy a car or home, or an employer does a credit check for a new job.
- **Limits on the Frequency of Collection Conversations:** Debt collectors will generally have to wait a week after speaking to a consumer before placing another call about that account. These limits are per debt, meaning that the collector could continue to contact the same consumer about other accounts if there are multiple accounts placed for collection with that collector.
- **Expanded Information on Required Debt Collection Notices:** Collectors will have to expand the information that they provide to consumers when they provide a validation notice, which may make it easier for the consumer to identify the alleged debt or exercise their debt collection rights.

Risk Mitigation

Credit unions that engage third-party debt collectors have vendor oversight responsibilities, including the evaluation of a vendor's ability to perform services in compliance with applicable law. It is critical to understand Regulation F and to perform due diligence of existing and potential third-party collection agencies that are subject to FDCPA and to fulfill their oversight responsibilities.

Other laws may require or cause credit unions engaging in first-party collections to follow all or part of Regulation F. For example, federal and state laws contain prohibitions on unfair, deceptive, or abusive acts or practices ("UDAAPs"). The FDCPA and Regulation F establish broad prohibitions on using unfair, false, deceptive, misleading, harassing, abusive or oppressive practices or means to collect a consumer debt. The FDCPA and Regulation F also identify specific prohibitive collection conduct under these broad prohibitions. The bureau has declined to clarify whether a particular action taken by creditors or first-party collectors, who are not FDCPA debt collectors, would constitute a UDAAP under the federal Consumer Financial, leaving open the option to pursue creditors for failure to comply with Regulation F.

Nearly all U.S. states, and some cities, regulate debt collection through a variety of laws including, but not limited to, debt collection statutes and trade practice statutes. State and local collection laws can vary in scope from the FDCPA and Regulation F in terms of who is subject to the law and what practices the law covers. For over 40 years, state and local laws have operated as a relatively static federal debt collection statute. The new provisions in Regulation F could create new state law compliance questions for creditors and debt collectors to address. For example:

- Do state law requirements interact with the safe harbors and rebuttable presumptions under Regulation F?
- To what extent do applicable state laws require a creditor or first-party collector to comply with Regulation F?

To fully understand the implications of Regulation F, applicable state and local collection laws should also be considered.

The CFPB's intention is to provide guidance and more legal certainty on the use of newer communication channels such as voicemail, email, and text messaging. Many debt collectors and creditors have concerns about using these communication channels because of legal uncertainty created by court decisions and the absence of regulatory guidance.



Notable is that Regulation F limits the number of calls a debt collector may place which may encourage debt collectors to explore the use of new communication practices and technologies. Regulation F contains new provisions that give consumers choices when it comes to receiving collection communications. For example, if a consumer prefers to communicate with a debt collector through email but not text messages, then Regulation F requires a debt collector to respect that communication preference subject to certain exceptions. The degree to which Regulation F gives consumers control of how a debt collector communicates with them may cause debt collector's communication practices to evolve.

i Credit unions are suggested to implement the following:

- Limit collection calls to the timing permitted at Regulation F Section 1006.14(b)(2),
- Acknowledge and implement the requirement that debt collectors give debtors "opt-out" rights with respect to email and text messaging at Section 1006.6(e),
- Recognize the prohibition against collecting time-barred debts, Section 1006.26.

The key to success is to conduct collection activity in such a manner that you never have to argue with a member's attorney about why the credit union is not a "debt collector" under the FDCPA and this new Regulation F.

Risk Prevention Resources

Access CUNA Mutual Group's **Protection Resource Center** at cunamutual.com/prc for exclusive risk resources (User ID and Password required).

- [Federal Register-Debt Collection Practices \(Regulation F\)](#)



Access the Protection Resource Center for exclusive resources:

- [Loss Prevention Library](#) for resources & checklists
- [Webinars and Education](#)
- [RISK Alerts Library](#)
- [Report a RISK Alert](#)

The Protection Resource Center requires a User ID and Password.

© CUNA Mutual Group, 2021.

Insurance products offered to credit unions are underwritten by CUMIS Insurance Society, Inc., a member of the CUNA Mutual Group. This RISK Alert is intended solely for CUNA Mutual Group Fidelity Bond policyowners to prevent fraud losses. Any further distribution of this information could subject you to liability under common law and various statutes including the Fair Credit Reporting Act.

This resource was created by CUNA Mutual Group based on our experience in the credit union, insurance, and risk management marketplace. It is intended to be used only as a guide, not as legal advice. Any examples provided have been simplified to give you an overview of the importance of selecting appropriate coverage limits, insuring-to-value, and implementing loss prevention techniques. No coverage is provided by this resource, nor does it replace any provisions of any insurance policy or bond. Please read the actual policy for specific coverage, terms, conditions, and exclusions.