



# Ensuring Compliance with the CFPB Regulation F

a white paper by state collection service, inc.



## Ensuring Compliance with the CFPB Regulation F

While the regulatory and legislative landscape for medical debt collections remains fragmented by the various levels of government and regulatory bodies, new federal regulations from the Consumer Financial Protection Bureau (CFPB) go into effect on November 30, 2021.

As a quick refresher, the CFPB was formed in 2011 to provide a single point of accountability for enforcing federal consumer financial laws. The agency oversees much of the banking and consumer finance industry, including debt collections. In October 2020, the agency published its long-awaited debt collection rules, known as Regulation F.

It is important to note that these regulations only apply to bad debt being collected by an external collection agency, and not to your extended business office partners. However, all collection agencies nationwide will be required to follow the rules outlined in the CFPB's Regulation F. You will want to collaborate with your collection agency partners, as well as with your own legal counsel, to ensure readiness for the fast-approaching compliance deadline.

There are several sections within Regulation F, each with its own compliance requirements. The CFPB has provided a "safe harbor" for those agencies that follow the rules related to the following items:

- (a) Limited Content Voice Mail Messages, (b) Email and Text Communications, (c) Notice prior to Credit Reporting (d) Model Validation Notice, Model Form B-1, (e) Disclosures that require e-sign consent, and (f) Records retention.

Safe harbor is a defense that a third-party agency can use in litigation where the plaintiff alleges a violation of the Fair Debt Collection Practices Act (FDCPA). It is not a litigation exemption and some safe harbors provided on the above mentioned items are significantly limited in scope. Thus, understanding how the rule will impact current policies and procedures is important for agencies and creditors.

Below are the details for each section that will be critical for your organization's compliance:

### Limited Content Messages

Following the limited content message requirements enable a voice mail message to be left for the patient without fear of inadvertent third-party disclosure. The requirements for a limited content *voicemail* message include:

- A business name for the debt collector that does not indicate that the debt collector is in the debt collection business
- A request that the consumer (patient) reply to the message
- The name or names of one or more natural persons whom the consumer can contact to reply to the debt collector

CFPB's Regulation F applies to all bad debt collection activities and agencies. However, it does NOT apply to extended business office relationships or healthcare providers following up on their



- A telephone number or numbers that the consumer can use to reply to the debt collector

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.”

## Email and Text Communications

The email and text guidelines also provide “safe harbor” protection from unintended third-party disclosures when followed. However, it is limited in scope and does not prevent a debt collector from using email or text with a consumer in a different manner.

Email options include:

- Prior Consent to Creditor – A creditor obtained the email address from the consumer; and
- Creditor Use – 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; or
- Creditor Notice – Before a debt collector used the email address the creditor sent the consumer a written or electronic notice, to an address the creditor obtained from the consumer and use to communicate with the consumer about the account, a disclosure: (1) That the debt have been or will be transferred to a debt collector; (2) The email address and the fact that the debt collector might use the email address to communicate with the consumer about the debt; (3) That, if others have access to the email address, then it is possible they may have seen the emails; (4) Instructions for a reasonable and simple method by which the consumer could opt out of such communications; and (5) The date by which the debt collector or the creditor must receive the consumer’s opt-out, must be at least 15 days after the date notice is sent.

A debt collector may send a text message to a telephone number if:

- Prior Use – the consumer used the telephone number to communicate with the debt collector about the debt by text message, the consumer has not since opted out of text message communications to that phone number and within the past 60 days either:
  - The consumer sent a text message to the debt collector from that telephone number; or
  - The debt collector confirmed, using a complete and accurate database, that the telephone number has not been reassigned from the consumer to another user since the date of the consumer’s most recent text message to the debt collector from that telephone number; or
  - The debt collector received directly from the consumer prior consent to use the telephone number to communicate with the consumer about the debt by text message, the consumer has not since withdrawn that consent, and within the past 60 days the debt collector either:



- Obtained prior or renewed consent from the consumer; or
- Confirmed, using a complete and accurate database, that the telephone number has not been reassigned from the consumer to another user since the date of the consumer's most recent consent to use that telephone number to communicate about the debt by text message.

It is important to note that all email and text communications must include opt-outs that are "reasonable and simple" and included in every electronic communication. Additionally, the electronic communications must be free to the consumer, and the debt collector may not require any fee or additional information to be provided by the consumer to the debt collector in order to opt-out.

## Harassing, Oppressive or Abusive Conduct

This section of Regulation F creates a rebuttable presumption of compliance where an agency follows the call volume restrictions, commonly referred to as "the 7 in 7 call restrictions."

The regulation stipulates that a debt collector may not attempt communication with a consumer more than 7 times within 7 consecutive days without a Right Party Contact (RPC). Additionally, there is a 7-day hold on future communication attempts after an RFP occurs. If no communication occurs after the 7-day hold, revert to 7 attempts within 7 consecutive days.

Exclusions to this regulation are:

- If the debt collector obtains consent from the called party within 7 days of consent
- "Particular Debt" – Debt level restrictions for all telephone call frequency restrictions (unless student loan debt, then at the account level if multiple accounts are placed and serviced under a single account number)

## Credit Reporting

Debt collectors may not furnish a credit reporting agency with information regarding a debt before communicating with the consumer about the debt. A letter or electronic message must be placed in the mail or sent electronically to the consumer prior to reporting the debt to a credit reporting agency (CRA) and the debt collector must wait a reasonable period of time to receive a notice of undeliverability prior to reporting said debt to a CRA.

The regulation goes on to explain that the "reasonable period of time" means 14 consecutive days after placing the letter in the mail or sending the notice electronically. It also states the debt collector must monitor for notifications of undeliverability.

The debt collector should include 30 days from the date the notice is sent electronically or placed in the mail to avoid "overshadowing" issues. It is recommended that debt collectors wait 45+ days after sending a notice before reporting a debt to a CRA.

It is important to note that both "Paid in Full" and "Balance in Full" accounts are exempt from this requirement, as are check writing history reports.



## Validation Notice

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](http://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
<b>Total amount of the debt now:</b>	<b>\$ 2,284.56</b>

### 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](http://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](http://www.example.com/request).
- **Go to [www.cfpb.gov/debt-collection](http://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.



Of particular interest to providers will be the requirement the itemization date. The regulation allows for any of the following reference dates to be used by a debt collector to ascertain the amount of the debt:

- Last Statement Date – the date of the last periodic statement or written account statement or invoice provided to the consumer by the creditor;
- Charge-off Date – the date the debt was charged off;
- Last Payment Date – the date the last payment was applied to the debt;
- Transaction Date – the date of the transaction that gave rise to the debt;
- Judgement Date – the date of a final court judgement that determines the amount of the debt owed by the consumer

It also is important to note the inclusion of dispute prompts on the remit portion of the model validation notice. The dispute prompt should include the following statements, listed in the following order, and using the following phrasing or substantially similar phrasing, each next to a prompt:

- 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)

Additional key changes in the model validation notice include:

- Debt collectors need to calculate the 30-day validation notice date and not just state 30 days from the date of the letter.
- A web site link to a payment portal is allowed but only for consumers to file a dispute electronically.
- A web site link to the CFPB web site is required.
- State regulatory language may be included on the back of the validation notice but may not be on the remit portion of the backer.
- Debt collectors may provide model validation notice for multiple debts, but those debts must be broken out on a subsequent page and roll up on all accounts on the front of the letter.
- Out of statute disclosures must be on the front of the letter.

The regulation does permit the following changes to the model form and retain a “safe harbor” for compliance provided the form remains substantially similar in substance, clarity and meaningful sequence to Model Form B-1. These changes include:



- Modifications to remove language that could suggest liability for the debt if such language is not applicable. (e.g. validation notice to a person who is authorized to act on behalf of the consumer's estate – use the name of decedent instead of "you")
- Relocation of consumer responses information to facilitate mailing
- Adding barcodes or QR codes, as long as the inclusion of such items does not create "overshadowing" issues
- Adding the date the form is generated
- Embedding hyperlinks, if delivered electronically
- Other optional disclosures

## Sending Required Disclosures

Debt collectors sending required written disclosures electronically must do so in accordance with the E-SIGN Act. The list of notices required by the Federal Debt Collection Practices Act (FDCPA) include:

- Validation Notice (may be in writing or verbal)
- Initial Mini-Miranda Disclosure (may be in writing or verbal)
- Post Date Notice Letter

The CFPB Reg F is now also requiring:

- Verification of Debt
- Providing Creditor Information

However, the consumer's E-SIGN consent is not required for follow up communications, responses to balance inquiries, settlement offer letters, payment receipts and similar. Also of note is that the bureau is not taking a position on E-SIGN's applicability for intent to deposit letters but the letter is subject to actual notice and form requirements under 1006.52(a)(1), which states that written or electronic notices must be sent in a manner that is reasonably expected to provide an actual notice, and in a form that the consumer may keep and access later.

## Records Retention

The regulation requires a 3-year retention period for debt collector records evidencing compliance with Regulation F. The period begins to run on the last collection activity on the account. It is important for debt collectors to match replaced accounts as restarting collection activity at any time would mean that the last collection activity on the debt had not yet occurred.

The regulation also requires a 3 year retention period for all call recordings.



## Conclusion

If you would like to review Regulation F, it is available [online](#). The CFPB also has published an online [FAQ site](#).

Ensuring compliance with Regulation F by November 30, 2021 will require focused collaboration between healthcare providers and their collection agencies. If you have additional questions regarding State's plan to meet the compliance deadlines or the action steps required from your organization, please contact your Account Executive