EVALUATING REGULATION F

A SIX-MONTH CHECK-UP ON NEW FEDERAL DEBT COLLECTION REGULATIONS

NCLC National Consumer Law Center
Fighting Together for Economic Justice

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1. INTRODUCTION

More than four decades after the Fair Debt Collection Practices Act (FDCPA) was enacted in 1977, the Consumer Financial Protection Bureau (CFPB) issued the first comprehensive federal debt collection regulations—Regulation F, which took effect on November 30, 2021.

Six months after Regulation F took effect, we investigated its impact on debt collection practices, focusing on two issues that are at the heart of the regulation: debt collectors' communications with consumers and debt collection disclosures. We surveyed 117 consumer advocates from private practice, legal services and the non-profit sector, asking them about their observations regarding these debt collection practices. Following the survey, we conducted in-depth interviews with 22 survey respondents.

Given the scope of the new regulations, it is not surprising that the field is still adjusting to the new regulations, as many consumer advocates indicated in their responses and interviews. Advocates also reported that it was possibly too soon after Regulation F took effect to have observed certain changes, and that as they familiarize themselves with the new regulations, with time, they will likely encounter more specific issues and violations. Moreover, some consumer advocates mentioned that debt collectors' changes to collection practices during the COVID-19 pandemic have made it more complicated to identify the effects of Regulation F. We hope that this is the first of many reports to try to understand what these changes mean for consumers and the debt collection industry.

Key Findings

- **Collection by email and text increased, with a few reports of social media use.** Many consumer advocates reported observing an increase in the frequency of emails and text messages from debt collectors to consumers since November 30, 2021. A limited number of consumer advocates reported use of social media by debt collectors for collection purposes, primarily via private direct messages.
- **There was apparent compliance with call frequency limits, but that is often hard to assess.** Regulation F has frequency limits on collection communication by phone. Consumer advocates report that most debt collectors are generally complying with these limits. However, it is difficult to assess compliance because call limits are per account and because consumers, who often feel harassed by spam and other calls, tend not to answer calls from unknown numbers.

- **Notices of the right to opt out of electronic messages were generally included in debt collection electronic communications but were not always clear and conspicuous.** Many consumer advocates reported general compliance with Regulation F's requirement that electronic messages include opt outs, but some reported that these are often not "clear and conspicuous" as further required by Regulation F.
- **Requests to stop particular types of communication are often ignored by collectors.** Most survey respondents indicated that debt collectors generally do not comply with requests from consumers to cease contacting them via a particular method of communication—in violation of Regulation F.
- **The use of the model validation notice is widespread.** Regulation F included a model validation notice for providing information to consumers about the alleged debt. A majority of consumer advocates observed that debt collectors are generally using the model validation notice in their initial communication with consumers.
- **Collectors are delivering validation information electronically and orally; oral delivery was particularly difficult to understand.** Consumer advocates reported that validation information is being sent to consumers in the body of an email, as an attachment to or hyperlink in an email, as a hyperlink in a text message, and orally. They noted that oral transmission of validation information is particularly difficult for consumers to comprehend.
- **Electronic messages are viewed with more suspicion.** Consumer advocates observed that consumers tend to be more suspicious of electronic written communication due to concerns about fraud and scams, raising concerns about electronic delivery of validation information, especially where consumers must click on an attachment or hyperlink from an unknown sender.
- **Consumers lack sufficient comprehension of the model validation notice.** Although the model validation notice was created to increase consumer comprehension, the overwhelming majority of consumer advocates reported that consumer comprehension has not improved. The option to dispute the debt may be clearer in the model validation notice, but the itemization is particularly complicated to understand—including for consumer advocates.
- **Collection of time-barred debts continued, including suits and threats of suits.** A majority of consumer advocates reported that debt collectors are still collecting time-barred debts after November 30, 2021. Even with disclosures, consumer advocates reported that consumers find this concept confusing. Moreover, some consumer advocates reported that debt collectors continue to sue and threaten to sue on time-barred debts, although this was prohibited by Regulation F.

- **There was non-compliance with requirements to provide notice before credit reporting.** Consumer advocates reported non-compliance with Regulation F's requirement to provide notice to consumers before reporting information about an alleged debt to credit bureaus. Rental debt was mentioned as a particular type of account in which non-compliance has been observed.

This report first provides background about the FDCPA, Regulation F, and the research methodology. It then breaks the two focus areas—debt collectors' communications with consumers and debt collection disclosures—into subtopics. Each subtopic reports findings and makes detailed recommendations for the CFPB. The report concludes with an overview of the key policy recommendations the CFPB should implement to use its authority to enforce and improve Regulation F.

2. BACKGROUND

2.1 The Fair Debt Collection Practices Act and Regulation F

The federal Fair Debt Collection Practices Act (FDCPA) was enacted in 1977.[1] Congress specified three purposes for the FDCPA: 1) "to eliminate abusive debt collection practices by debt collectors," 2) "to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged," and 3) "to promote consistent State action to protect consumers against debt collection abuses."[2]

In 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) created a new Consumer Financial Protection Bureau (CFPB) and amended the FDCPA to grant the CFPB broad authority to issue regulations "with respect to the collection of debts by debt collectors."[3] The previous version of the FDCPA prohibited the Federal Trade Commission (FTC) or any other agency from issuing rules under the Act.[4]

After a lengthy rulemaking process, the CFPB issued the final debt collection regulations in two parts. The CFPB published the first part, which focused on debt collection communications, on November 30, 2020.[5] The second part, which focused on debt collection disclosures, was published on January 19, 2021.[6] Collectively, these two parts are referred to as Regulation F, which took effect on November 30, 2021.[7]

2.2 Methodology

The research underlying this report is based on responses to a survey of consumer advocates and one-on-one interviews conducted later with survey respondents.

The survey was conducted during the month of June 2022. The respondents included private attorneys (60.7% of the 117 respondents), legal services attorneys (33.3%), and advocates working at non-profit organizations (6%). The survey included questions about the respondent's practice, debt collection communications, debt collection disclosures, and a final section allowing the respondents to provide additional thoughts about Regulation F.

Most questions included multiple-choice answers, and a smaller portion of questions were open-ended questions. In all multiple-choice questions, respondents could add a different, short textual response ("other"). They could also choose to respond "I don't know / not applicable to my practice," or they could skip the question entirely.

Following the survey, we reached out to many survey respondents to invite them to participate in a one-on-one conversation about the survey questions. During June and July 2022, we conducted 22 video or phone interviews that lasted about half an hour on average. In these interviews, we asked attorneys for further details about their survey responses and the debt collection practices they had observed since Regulation F took effect.

For detailed methodological information, see Appendix A. For a copy of the survey, see Appendix B.

3. RESEARCH FINDINGS

3.1 Overview

The following sections list our findings about debt collection practices since the effective date of Regulation F, November 30, 2021, as reflected in the responses of consumer advocates to our survey and in the follow-up interviews. The presentation of the findings is divided into: (3.2) Debt Collectors' Communications with Consumers and (3.3) Debt Collection Disclosures. Each topic is then divided into sub-divisions according to specific issues and topics.

Before proceeding to the specific results, there are two general observations related to the newness of the regulations and the impacts of Covid-19. First, in the survey responses and interviews, many consumer advocates expressed their opinion that the field is still adjusting to the new regulations, and that as more time passes they will be more familiar with the new regulations and more likely encounter specific violations. Consequently, consumer advocates reported that they have not yet observed certain changes. Second, in the follow-up interviews many consumer advocates mentioned the significant changes to debt collection practices that have occurred due to the Covid-19 pandemic as a major factor that influenced the field in the past couple of years. Some of them mentioned that it can be difficult to identify which changes are due to the new regulations and which are changes brought about by the pandemic.

In our survey, we allowed respondents to answer "I don't know / not applicable to my practice" or to skip questions altogether. We excluded such answers from our analysis, and the findings presented in the following sections are based only on substantive answers. For each survey question, this report notes in an endnote the percentage of substantive answers among all survey respondents. See Appendix A (and in particular Table 3) for a detailed analysis of the response rates in different questions.

3.2 Debt Collectors' Communications with Consumers

3.2.1 Written Electronic Communication: Emails, Text Messages, Social Media

3.2.1.1 Frequency and Consumers' Perceptions of Collection Emails and Text Messages

Summary

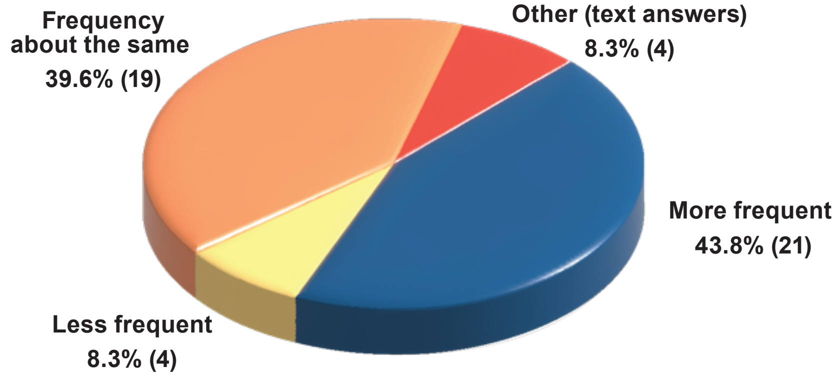
Many consumer advocates report a general increase in the frequency of collection messages being sent to consumers via emails or text messages since Regulation F took effect. Some consumer advocates noted that text messages are particularly disruptive to consumers.

Regulation F permits debt collectors to use email and text messages in some cases to communicate with consumers.[8] We asked consumer advocates how the frequency of email and text message usage by debt collectors differed before and after Regulation F took effect.

Regarding emails, 43.8% of the respondents who provided substantive answers[9] said that debt collectors use email communication more after the November 30th, 2021 effective date of Regulation F than they used emails before that date. A slightly smaller number of respondents, 39.6%, said that debt collectors email consumers with about the same frequency before and after November 30, 2021. Only 8.3% of the respondents indicated that they see less email communication after November 30, 2021 than they had seen beforehand. The remaining respondents (also 8.3%) wrote in an answer after responding "other," with half of them saying that they cannot answer the question. Among the other half, one mentioned that "I have seen significantly more emails since 11/30/21," and one did not refer to frequency, but complained that debt collectors "almost always" email consumers despite knowing that they are legally represented. See Figure 1.

FIGURE 1

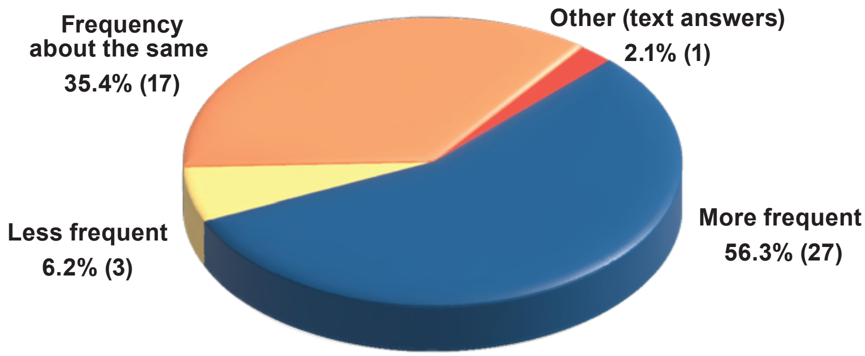
General frequency of collection emails after Regulation F's effective date compared to before that date



Regarding text messages, among the respondents who provided substantive answers,[10] 56.3% reported that debt collectors make more frequent use of text messages after November 30, 2021, and 35.4% said that the frequency of text messages before and after that date is about the same. Only 6.2% of respondents said that debt collectors make less use of text messages after November 30, 2021 compared to beforehand, and 2.1% (one respondent) wrote in an answer, after responding "other," that they have not yet had a client bring in a text message. See Figure 2.

FIGURE 2

General frequency of collection text messages after Regulation F's effective date compared to before that date



In our follow-up interviews, we received insights from consumer advocates about the frequency of email and text communications.

For example, a private attorney from Indiana reported that he has observed a significant increase in the amount of email communication:

> "That [collection emails] has increased dramatically in the last six months or so. Before Regulation F, there's a [single] debt collector, called [debt collector name], that would use emails as kind of its modus operandi [. . .] But in the last six months or so [since January 2022], I've seen [names another debt collector] doing that via email. I've seen some local and regional debt collectors using emails.[11] I've seen my first text message from a debt collector [. . .] earlier this week. So, yeah, the alternative forms of debt collection are gaining popularity."

When asked about the general prevalence of the use of these communications by debt collectors, this attorney answered:

> "There's probably 20 to 30 percent of the debt collectors using emails on a regular basis. And some also use text messages. I haven't seen that as much. [. . .]

A private attorney from Illinois reported:

> "I've noticed that some consumers have been receiving text messages more than they used to. Not necessarily a lot, but it used to be that basically I've never seen text messages, for the most part, and it's happening now. There's been some increase in emails, but not a lot."

In addition to commenting about the frequency of emails and text messages, some interviewees also mentioned how consumers perceive them. (For related findings about electronic communications and consumer concerns about fraud or scams, see section 3.3.1.2.2 below.)

Several interviewees reported that consumers did not tend to react strongly to receiving email communications. For example, the private attorney from Indiana quoted above noted:

> "I have not had a client coming through to my office saying 'I can't believe I got this email.' I haven't had anybody upset about it. [. . .] There's only: 'I've got emails from these people,' and that's pretty much it."

In contrast, several interviewees reported that their clients found text messages distressing. For example, a private attorney from Tennessee mentioned that he has seen a significant increase in the number of text messages. He emphasized that consumers may be upset over this form of communication, especially since text messages are more likely than other forms of collection communications to be seen by people other than the intended recipient.[12]

> "I have seen people get a lot of text messages. [In response to a question whether this has increased since November 30, 2021]—Yes, definitely. Yes, text, emails, definitely. [. . .] I don't recall seeing text messages hardly ever prior to [that date…] I haven't seen anybody come in [complaining about] say, a ridiculous amount or a litany [. . .] [Nevertheless,] It's disruptive. It's annoying. It's embarrassing. [. . .] Sometimes, people have more than one phone number in their name because they're on a partner's or relative's account [. . .] so I know there's been instances of text messages going to the wrong parties and whatnot."

Similarly, a private attorney from Florida emphasized consumers' annoyance over debt collection text messages especially:

> "Text messages are the worst for consumers, they hate them the most. They're disruptive. They're more immediate. They feel more intimate, I think, for consumers, when debt collection companies are just texting them. The other thing is that most consumers have text messages on their phone so that they are aware of it right away or immediately. Emails—not as much. [. . .] So any volume at all of text messages, I think, [causes] consumers [to] react negatively, whether they fall within the allowed limit of the new regulations or not. Emails seem slightly less disruptive."

A legal aid attorney from Virginia, who works primarily with undocumented immigrants, explained that for her clients:

> "[Text is] more prevalent than email, phone [. . . or] Facebook [communications from debt collectors]. [. . .] [This may be because] [m]ost folks either have their phone set to not receiving phone calls if it's not in their contact book or they just routinely ignore calls that they don't even know what it is, so it may just be that the visible thing is the texts."

She noted that when her clients received debt collection text messages they often:

> "[A]ppear to be auto-texters, where [they] just get a text that says [. . .] something like 'discounts for early payments' or something like that, and then it will have a link to a payment system."

The following two examples are collection text messages that interviewees shared with us:

A. "[To recipient] this is a text message from [debt collector's name]. You need to contact us directly at [redacted] regarding your personal business matter in our office. Please have yourself, and or your attorney call us back directly to discuss your documentation. While calling back reference [redacted]."

B. “[Consumer’s first name], [debt collector’s name] is a debt collector for [company name]. You may now receive texts. View terms [hyperlink].
To view your account and pay, please click this link:
[Hyperlink]
Reply HELP for help.
Reply STOP to cancel, msg@data rate may apply”

Recommendations

- The CFPB should monitor developing trends in the use of email and text messaging by debt collectors in its supervisory and market monitoring roles, including reviewing consumer complaints.
- It should research alternative approaches adopted by the states in regulating electronic communication from debt collectors, including: the consent requirement for email communications in New York;[13] communication frequency caps in Washington state that include electronic communications like emails and text messages in addition to telephone calls;[14] and consent requirements and communication frequencies adopted for emails and texts in Washington, D.C.[15]
- The CFPB should use guidance and supervisory highlights to call attention to conduct related to the use of emails and text messages that violates the FDCPA and Regulation F.
- It should bring enforcement actions for abusive uses of these communication channels, including excessive communications and practices that lead to third-party disclosures.

3.2.1.2 Use of Social Media for Debt Collection Purposes

Summary

A few consumer advocates reported encountering debt collectors using social media to communicate with consumers. In the majority of these cases, this was in the form of a direct, private communication between a debt collector and a consumer on a social media platform.

Regulation F permits debt collectors to use social media in certain ways and prohibits other uses.[16] We asked survey respondents if consumers have reported debt collectors doing any of the following (respondents could mark more than one category if they observed more than one type of communication):

- Sending the consumer a private direct message via a social media platform,
- Asking to join the consumer’s social media network, or

- Posting a communication on the consumer's social media network in a way that was visible to the public or to the consumer's social media network (e.g. posting to a Facebook Timeline or Twitter Feed).

Only 17.1% of the respondents provided substantive answers (20 respondents).[17] Of these substantive answers, 30% (six respondents) indicated that a collector sent the consumer a private direct message on a social media platform. One of these respondents was a private attorney from Ohio with whom we followed up for an interview. In the interview, he noted that this was a case of a debt collector contacting a consumer in a Direct Message on Twitter. However, the consumer did not retain the attorney, and the attorney did not have further details on the case.

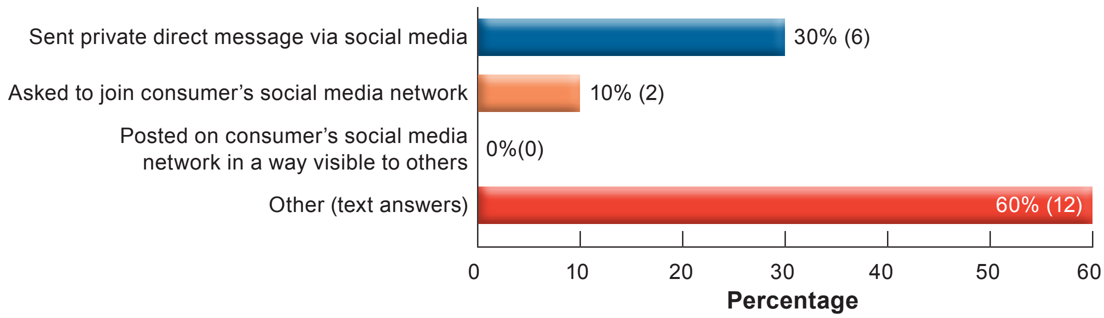
Ten percent of the substantive responses (two respondents) noted they encountered a debt collector asking to join a consumer's social media network. Respondents selecting this response did not respond to requests for interviews, and we were unable to obtain further information about this practice.

We also asked about cases where debt collectors posted a collection communication that was visible to others on a consumer's social media network, but no respondent checked this option.

Sixty percent of the substantive answers (12 responses) were written in (after checking "other"). Almost all of them (10 out of 12) answered that they have not seen collection communications with consumers via social media. Two of the respondents who wrote in an answer did report on communication via social media. One of them wrote that they have seen social media communication by "debt settlement firms only" and was not sure if it was after November 30, 2021. Another respondent noted that they saw a debt collection company trying to shame their client on social media, but the latter was not an individual consumer but rather a small business. See Figure 3.

FIGURE 3

Reported uses of social media for collection purposes after Regulation F's effective date*



* Since respondents could check more than one answer, overall percentages may surpass 100%.

While debt collection communication via social media was not commonly observed by survey respondents, several consumer advocates expressed concern about the implications of such communication. For example, one of the respondents wrote in a text answer (after choosing "other") and noted that he has not had clients contacted via social media. This respondent, a private attorney from Minnesota, further explained:

> "I think all the debt collectors are RIGHTFULLY scared of doing this. [. . .] It's an invasion of privacy."

A legal services attorney from Virginia who works mainly with undocumented immigrants also commented on the option of debt collection via social media, and speculated on the reasons that this has not been a common practice:

> "I have not had any client [say] that they've been contacted through Facebook. [. . .] that may be just the population that I work with [. . .] I think with Latino names [. . .] the same way you can have a lot of Kevin Smith in English [. . .] in Latino names you get a lot of Jose Hernandez and Sandra Rodriguezes and so it's hard for folks to know [which is the right person] […] I also think people are doing [a] much better job generally in creating privacy settings on Facebook that wouldn't allow the debt collectors to find them. So that hasn't been an issue at all."

A private attorney from Ohio expressed concern that consumers being contacted by Facebook Messenger or Twitter would not know how to properly dispute the debt, but rather would be focused on the question "Who the hell are you to contact me [on this platform]?"

He also expressed more general concerns:

> "I'm just thinking more globally, what have we really done here? I get the need to give people the ability to communicate better electronically or via social media because we all use it, but again, we're in the wild west here right now [. . .] I worry. [. . .] There's not enough of us as plaintiff's consumer lawyers to reel these debt collectors in quite honestly."

Recommendations

- The CFPB should amend Regulation F to prohibit debt collectors from seeking to join a consumer's social media network and should prohibit debt collectors from communicating via any social media or direct message platform without first obtaining consent from the consumer.

3.2.2 Oral Communications: Calls and Voicemail Messages

3.2.2.1 Call and Conversation Frequency Limits

Summary

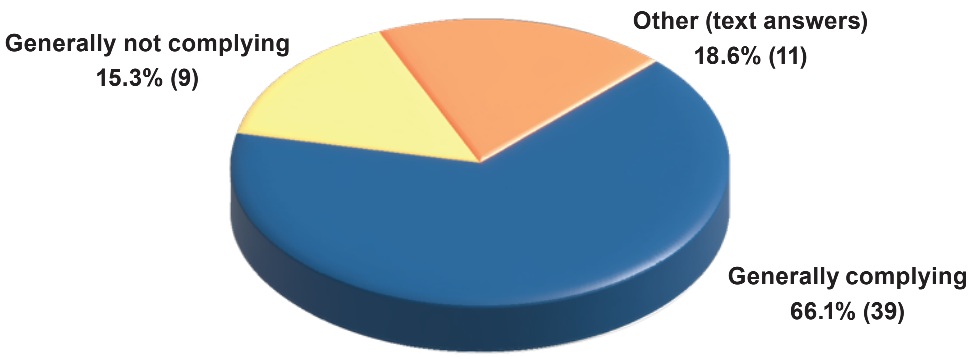
Many consumer advocates report that debt collectors generally appear to be complying with Regulation F's call and conversation limits. However, even within the limits, the number of calls and conversations allowed by the regulations may still cause distress to consumers, who consequently tend to ignore the calls. Moreover, non-compliance with these limits may be under-reported due to the fact that limits are per account, making non-compliance more difficult to track, especially if consumers do not answer every call.

Regulation F generally limits debt collection calls to seven calls in a seven-day period per account in collection.[18] Regulation F also generally limits debt collectors to one conversation in a seven-day period for each account in collection.[19] We asked consumer advocates whether debt collectors generally comply with these call and conversation limits.

Regarding call limits, among the respondents who provided substantive answers,[20] 66.1% reported that debt collectors are generally complying with the call frequency limits mandated in the regulations. 15.3% indicated that debt collectors call more frequently. The remaining 18.6% of respondents wrote in an answer after responding "other," with most (13.6%) indicating that they do not know or cannot know the answer, and a few (5%) saying that they see a mix of compliance and non-compliance. See Figure 4.

FIGURE 4

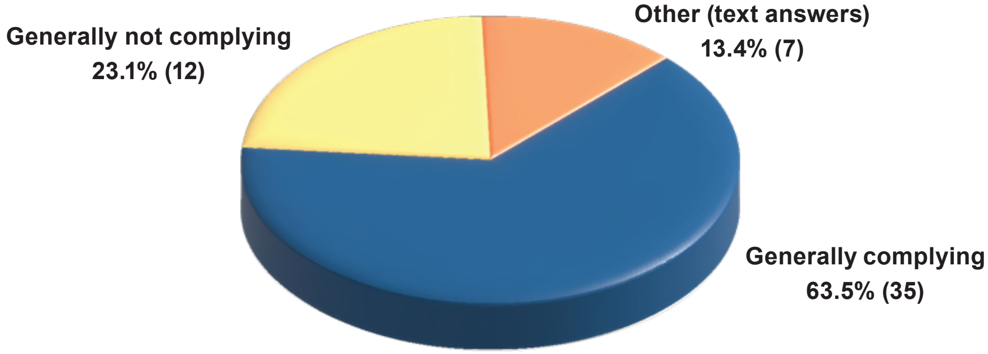
Compliance with Regulation F's call frequency limits



Regarding conversation limits, 63.5% of the substantive answers[21] said that debt collectors generally comply with conversation limits, and 23.1% said that debt collectors engage in more conversations than Regulation F allows. The remaining 13.4% of respondents wrote in an answer after responding "other," most of whom indicated that they do not know the answer since they have not yet received complaints about this from consumers. See Figure 5.

FIGURE 5

Compliance with Regulation F's conversation limits



One challenge for survey respondents answering the question about compliance with call frequency regulations was that, according to consumer advocates, consumers tend not to answer calls, especially if they show up as calls from unknown numbers. A private attorney from Tennessee explained this in an interview:

> "With cell phones now and technologies, most of my clients—the first time they come to see me, they just tell me that they're getting all these calls, but they don't generally answer them or they mark them as spam."

The attorney added, in response to the question of compliance with the call frequency limit: "Just because I haven't seen it [more than seven calls in seven days], doesn't necessarily mean it isn't happening." Similarly, a private attorney from Ohio reported:

> "The bulk of the clients that I have [. . .] ignore [the calls] for the most part. [. . .] if it's the telephone, they're just ignoring. They're just either not answering the call, or they'll send it directly to voicemail."

Furthermore, some debt collectors may call consumers repeatedly while still remaining in formal compliance with the call limit. For example, a private attorney from Indiana reported:

> "I have clients who'd come in and complain about daily collection calls, and when I review the call history, I see that they call six times in 7 days, then wait several days, and they do it all over again, six times. So, basically they're going right up to the edge of legality, and then coming back just a little bit. [. . .] I've seen two different debt collectors do this."

Still, this attorney noted that these calls, however frequent, are not likely to get answered by the consumers:

> "In the modern era, most people—[. . .] a good portion of people, just block [these numbers] on their cell phone, others just ignore it. It is rare that I have a client who actually picks up."

Another challenge for survey respondents answering the questions about compliance with call and conversation frequency limits was that the regulations state that these limits are per account, not per consumer. Since debt collectors may attempt to contact consumers about multiple accounts simultaneously, even a very high volume of calls may be in compliance with Regulation F. As three of the survey respondents explained:

- "Clients get many calls from unknown numbers and don't answer. Clients assume it is collectors, but they don't know which call is about which debt." (Legal services attorney from Maine, in a write-in answer)
- "But one debt collector like [company name] may have 7 accounts for the same debtor." (Private attorney from North Carolina, in a write-in answer)
- "Further complicating that analysis are that the limitations are per debt, so some of these debt buyers, for example [names of companies]—they'd be calling on multiple different debts, so it's difficult to determine again if they're surpassing the limitation on one individual debt." (Private attorney from Florida, in a follow-up interview)

Similarly, a consumer advocate at a South Dakota non-profit organization reported in an interview:

> "They [our clients] normally have five to ten accounts, so that [call frequency] restriction really doesn't help consumers, I would say. [. . .] Yes. I'd say they [debt collectors] are within their guidelines because they [our clients] carry so many debts."

This advocate also mentioned the tendency of clients not to pick up the calls. In response to the question about her clients' reactions to getting frequent collection calls, she said:

> "Actually, none of them have complained [. . .] I'm going to say most of them just let it go to voicemail."

A private attorney from Florida also highlighted the challenge of identifying what type of collector the caller is. The FDCPA and Regulation F apply to entities that qualify as "debt collectors" under the statute and regulations. While some state debt collection laws also cover creditors collecting their own debts, such laws may not include call frequency limitations:

> "All my clients think they are getting too many calls, of course. But it depends on who is calling [debt collector versus original creditor]. A lot of times they [the calls] are completely unanswered, so [it is hard to tell who is calling.] [. . .] Whether it's less call volume or that my clients simply don't answer—it seems that [debt collectors] are complying, but it's not clear."

Recommendations

To decrease the burden from frequent phone calls and make it easier for consumers to identify the callers and enforce Regulation F's call and conversation frequency limits, the CFPB should amend Regulation F to:

1. Decrease the number of permissible calls to three attempted phone calls per week; and
2. Amend the regulations to make the call and conversation frequency limits apply per consumer rather than per account.

3.2.2.2 Limited Content Voicemail Messages

Summary

Many consumer advocates report that debt collectors generally seem to be adopting the form of "limited content messages," as defined by Regulation F, although there are still voicemail messages left that do not qualify as "limited content messages." Consumers in general know that these voicemail messages are from debt collectors, even when they are "limited content messages."

Regulation F created a definition for "limited content messages" that can be left for consumers as voicemail messages.[22] To qualify as a limited-content message, a voicemail to a consumer must contain four items: a business name for the debt collector not indicating that the collector is in the debt collection business; a request that the consumer call back; a name of a person to call back; and a number to call back.[23]

> **Example of a Limited Content Message with Required Information:** “This is Robin Smith calling from ABC Inc. Please contact me or Jim Johnson at 1-800-555-1212.”[24]

Additionally, debt collectors can include four optional items: a salutation; the date and time; the dates and times requested for the consumer’s reply; and a statement that a consumer’s reply can be with any of the company’s representatives or associates.[25]

> **Example of a Limited Content Message with Required and Optional Information:** “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.”[26]

While debt collectors are not required to use limited content messages when they leave a voicemail message for consumers, Regulation F provides that voicemails complying with the definition of limited content messages:

- do not violate FDCPA prohibitions on third-party disclosures if overheard by a third-party;
- are deemed to comply with the FDCPA requirement to meaningfully disclose the debt collector’s identity; and
- do not need to comply with the FDCPA requirement to disclose that the caller is attempting to collect a debt or that the caller is a debt collector.[27]

We asked consumer advocates whether debt collectors are leaving voicemail messages that qualify as “limited content messages” as defined by the regulations.

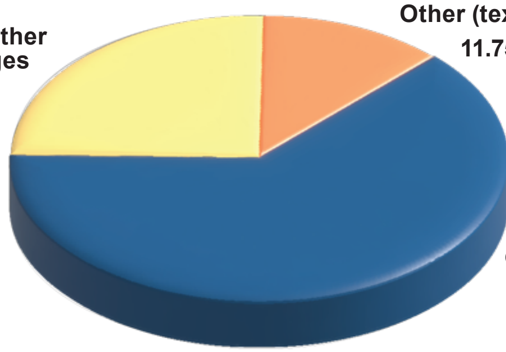
Among the survey respondents who provided a substantive answer,[28] 62.75% said that debt collectors leave “limited content messages” as voicemails, and 25.5% reported that debt collectors leave voicemail messages that do not qualify as “limited content messages.”

Non-qualifying voicemail messages vary in how far they depart from the format defined by Regulation F as “limited content messages.” For example, a private attorney from Tennessee reported in an interview about a client receiving voicemail messages saying “this is an important call” and requesting a call back. Another survey respondent (in response to a different question, asking for general or additional feedback) reported that a debt collector left “a voicemail message with threats about wage garnishment.”

The remaining 11.75% wrote in an answer after responding “other,” indicating that they cannot answer the question or that their clients have not received voicemail messages. One respondent wrote that most of their clients receive text messages, not voicemail messages. See Figure 6

FIGURE 6

Use of "limited content messages" when leaving voicemails



In the follow-up interviews, interviewees provided details about the challenges they had in answering questions about the contents of voicemail messages. Many mentioned that their clients tend not to listen to their voicemail. Furthermore, even when clients did listen to the voicemail, they usually summarized the contents for consumer advocates and did not play it to them, so advocates were unsure about the exact contents.

According to some consumer advocates, consumers who receive voicemail messages are often aware that these messages are from debt collectors, regardless of the contents, because they recognize the number or suspect that it is about a debt they owe. A couple of advocates who work with low-income consumers mentioned that the voicemail messages may create distress for consumers. Having difficulties coming up with payments, the consumers may ignore the message or return the call and say they have no way of paying the debt. For example, an advocate from a non-profit organization in South Dakota who works with low-income populations reported:

> "That [the voicemail] doesn't say they're a collector, but the client knows that it's a collection call."

And a legal services attorney from Nevada said in an interview:

> "They [the consumers] identified the caller and they knew or suspected [who it was] because they knew they had debt outstanding. [. . .] They get stressed out because they don't have ways of dealing with the debt and now they're getting reminded of these debts. Even though the content wasn't something that a third party would view as distressing, it has that effect."

Recommendations

Even compliant limited-content messages indirectly inform people—whether the intended recipient or a third party—that they are voicemail messages from debt collectors. Therefore, the CFPB should amend Regulation F to stop exempting limited-content messages from FDCPA protections that would otherwise apply to voicemail messages.

3.2.3. Stopping Certain Communications

3.2.3.1 Opt-out Notices for Electronic Communication

Summary

Many consumer advocates report that debt collectors are generally complying with Regulation F's requirement to include an opt-out notice for electronic communications. However, a significant percentage reported omission of the opt-out notice. Furthermore, some consumer advocates indicated that the opt-out notice in emails is often not "clear and conspicuous" as Regulation F requires.

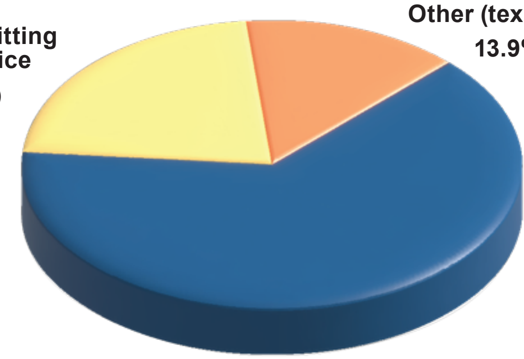
Regulation F requires that any electronic communication from debt collectors include a "clear and conspicuous" statement describing a "reasonable and simple" opt-out method.[29] We asked consumer advocates about debt collectors' compliance with this requirement and about consumers' comprehension and use of such notices.

Among the respondents who provided substantive answers,[30] 63.9% indicated that debt collectors are generally complying with the requirement to include an opt-out method in electronic messages, but 22.2% reported that debt collectors have been omitting an opt-out notice. The remaining 13.9% of respondents provided an answer after responding "other" and wrote in responses. See Figure 7. In some of these write-in responses (5.6%), the respondents have not noticed an opt-out method, and in the remainder (8.3%), the respondents reported that they see opt-out notices in electronic communications, but these are often not clear and conspicuous. One of them, a private attorney from Georgia, answered:

> "Opt out messaging is in flux and often poorly identified or implemented in a way to encourage a consumer to contact [the debt collector], which provides another opportunity to try and convince a consumer to make payments."

FIGURE 7

Compliance with Regulation F's opt-out notice requirement for electronic communications



The observation that opt-out notices are not sufficiently clear and conspicuous was echoed by several interviewees. They added details about how consumers do not necessarily see these notices. For example, a private attorney from Tennessee said:

> "In emails that clients forwarded to me, the opt-out notice is usually in smaller print at the end of the email. It's not very apparent, in big bold letters. It's not placed where it would clearly be read. It could easily be missed. [. . .] It tends to come after the signature block with all the rest of the disclosures and notices, etc. It's not something that a normal person would normally scroll down and read. Most people probably don't see it."

Similarly, a private attorney from Illinois reported that email communication from debt collectors or collection law firms regularly include a statement in the format: "If you no longer wish to receive emails from X please click opt-out or respond to this message." The attorney said that this statement is used uniformly and automatically, such that even emails that he exchanges with an opposing counsel (when discussing a case) would include this statement.

This attorney also mentioned a specific debt collector whose practice was to send daily collections emails. The attorney noted that consumers "may want to get some emails but not every single day." He said that he thinks consumers "don't really understand that when they click opt out it actually means that it stops all the emails."

The same attorney also reported seeing creditors generally provide a "goodbye letter"[31] announcing transfer of the account to a debt collector and including an opt-out method to prevent transfer of the consumer's email address. He expressed concern that this is a problematic method of providing an opt-out notice because consumers tend to overlook it:

"I don't recall the specific language in the goodbye letter regarding 'not transfer'—I have seen a lot of them [goodbye letters] [. . .]

Q: Do you know if the consumers received the letter or not?

A: It shows that it was sent to them [. . .] So my guess is that they probably do, but a lot of people… I mean, if it's coming from the creditor where it's already charged off then they may be tossing it out without even looking at it."

Section 3.2.1.1 above quotes a sample text message that complies with the opt-out notice requirement (Example B) and one that lacks an opt-out notice (Example A).

Recommendations

The CFPB should bring enforcement actions against debt collectors that do not comply with the opt-out notice requirements and should issue guidance regarding when an opt-out notice does not satisfy the "clear and conspicuous" requirement. In light of concerns about scam emails and text messages discussed below in Section 3.3.1.2.2, the CFPB should also specify that the electronic message must allow consumers to reply to the message to opt-out (e.g. by replying "stop"), thus avoiding problems created by clicking on links in messages from unknown senders.

3.2.3.2 Requests to Stop a Particular Method of Communication

Summary

Most survey respondents indicated that debt collectors generally do not comply with requests from consumers to cease contacting them via a particular method of communication. Some advocates reported that debt collectors are more likely to comply with such requests when they are made in writing. When debt collectors comply with such requests, they usually continue to communicate with consumers using other methods.

Regulation F requires debt collectors to stop communicating with a consumer through any communications method specified by the consumer.[32] For example, a debt collector must stop calling a consumer who says "please stop calling"—and such requests can be made orally or in writing. We asked consumer advocates about debt collectors' compliance with these requests.

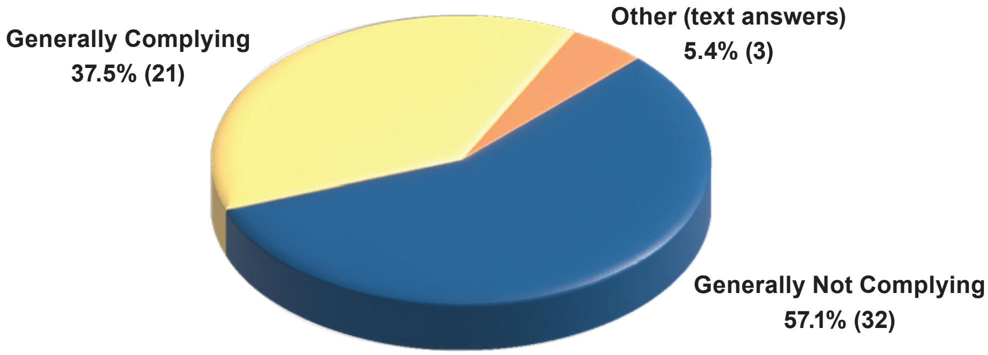
Among those who provided a substantive answer,[33] a majority—57.1% of respondents—reported that debt collectors generally do not comply with requests to stop communication in a specific medium. For example, a private attorney from Tennessee reported:

> "Where I've seen this mostly is just people telling the debt collectors not to call them at this number, or at work, or what have you, and then [they're] ignoring that. [. . .] It's a pretty common complaint that I have from clients who said, 'This is my work number that I use for my work.' It'd be a cellphone or whatever [. . .]. They [debt collectors] ignore that, they don't ever respect that."

In contrast, 37.5% of substantive responses reported that debt collectors generally do comply with such requests. The remaining 5.4% of respondents provided a write-in answer after responding "other." Two thirds of these answers noted that there is a mix of compliance and non-compliance. The remaining respondent answered that no clients have complained about this issue. See Figure 8.

FIGURE 8

Compliance with requests to stop using a method of communication



Most of the interviewees reported that debt collectors generally do not treat these requests to stop a method of communication as requests to cease all communications, and they continue to contact consumers using other methods. For example, a private attorney from Ohio reported:

> "Most of the clients that I have [. . .] they'll do the 'Please stop calling me at this number.' There will be that communication and it stops, and generally, it reverts to [a] letter or [an] email, depending. I have not had an instance since Reg F went into effect of seeing a debt collector that didn't. If the request was affirmatively made by the consumer in some way, [. . .] they've pretty much stopped. [. . .]
>
> **Q:** And they do continue to contact in other forms, you say?
>
> **A:** Yes. They may find another way. If you tell me not to call you, I'm firing out some dunning letters pretty quick after that. If you tell me not to mail things to [you], I'm going to give you a call."

Interviewees also emphasized that they consider written requests by consumers to stop a certain method of communication as more likely to get the desired outcome. For example, a legal services attorney from Massachusetts said:

> "I think it's true [that debt collectors do not comply with the requests] largely when people make the communication orally, because I've heard from clients who say 'I told them to stop calling me but then they didn't,'… What I know is that when I personally have sent letters saying 'stop contacting' and they look maybe a little more official [. . .] in those times I found that they do comply."

Similarly, a non-profit employee in South Dakota reported general compliance with requests to stop communication, but she, too, emphasized the importance of a written request:

> **"**I would say that when we tell clients: 'you have the right to say: you can't contact me,' but we also tell them, 'you need to leave them one way to contact you.'—when we follow up with them, they don't have any issues. [. . .] Normally, we tell them to send it to them [debt collectors] in writing and to keep a copy of it. I know that that's the old way [rather than making requests by phone, text, or email], but that still has proof for them that they've done it."

Recommendation:

The CFPB should screen for compliance with this provision of Regulation F in the course of its supervision work and bring enforcement actions where necessary to ensure compliance, including compliance with oral requests to stop a particular type of communication.

3.3 Debt Collection Disclosures

3.3.1 Validation Notices and Debt Collectors' Use of the Model Notice

3.3.1.1 Use of Model Validation Notice by Debt Collectors

Summary

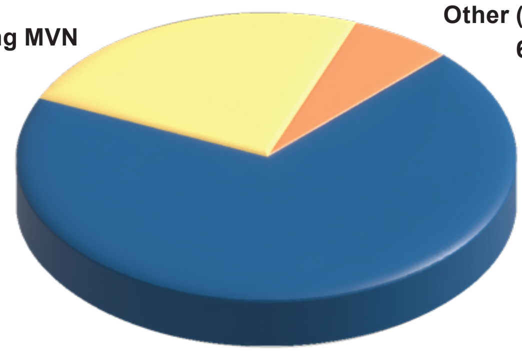
The majority of survey respondents reported that debt collectors generally use the model validation notice. However, some consumer advocates reported that debt collectors continue to use other formats for validation notices. Moreover, since the model notice serves only as a possible replacement for the validation notice, debt collectors have not necessarily changed other types of communication to incorporate language or formatting from the model notice.

Regulation F includes a model validation notice, which debt collectors may choose to use as a template for the validation notices that they send to consumers.[34] We asked consumer advocates whether they observed that debt collectors use the model validation notice that Regulation F provided (or something very similar).

Of the respondents who provided substantive answers,[35] 69.4% answered that debt collectors are generally using the model validation notice, and 24.2% answered that they are not doing so. The remaining 6.4% provided a write-in answer after responding "other," indicating either that they are not sure about the answer, or that they have seen some use of the model notice but it was too early to conclude a general trend. See Figure 9.

FIGURE 9

Use of Regulation F's model validation notice (MVN)



In the follow-up interviews we conducted, interviewees echoed the response that debt collectors generally use the model validation notice. Several interviewees also mentioned the advantages of the model notice.

For example, a private attorney from Pennsylvania mentioned that the model validation notice is the one major influence of Regulation F that he observed, and explained:

> "The regulations had a model type of collection notice. It's like a safe harbor notice that debt collectors can use to ensure that they're more likely to be compliant with the law, if they follow the form. So I'm seeing more of those [. . .] and they appear to be compliant."

Similarly, a private attorney from Indiana provided some details about the use of the model notice by debt collectors, noting his surprise that smaller debt collectors tend to use the model notice more frequently:

> “I would say about 30% to 40% of debt collectors now use the “safe harbor” letter that Regulation F came up with. What’s interesting is that there’s no rhyme or reason as to who’s using it. I just assumed the bigger national debt collectors would use it, and some of the regional ones [medium-size debt collection agencies[36]] would. But I don’t see many of the big national ones using it. I see a whole lot of local debt collection agencies[37] and regional debt collection agencies using it. [. . .] It’s interesting that very few national ones are using it, but a whole lot of local and regional ones do.”

Improvements that were adopted in the form of the model validation notice are not necessarily made by debt collectors in subsequent communications with consumers. A private attorney from Illinois noted:

> “I do think that the model validation notice is better than what it used to be. [... However] there is still miscommunication … I’ve seen the model notice used [by debt collectors] for the initial communication, but then they’ll send their other standard letters after that [which . . .] might have issues there. [. . .] I mean it is changing how they communicate the initial time [by using model validation notice], but it’s not really replacing the other letters, and these [... can] violate the FDCPA in other ways too.”

A private attorney from Ohio noted that debt collection emails vary in their format and do not necessarily conform to the models or even requirements of the regulations:

> “I have yet to see an email communication, debt collection communication that comes from a debt collector that has compliant language or even matches the proposed models. [. . .] Now, the email still contains substantively an acknowledgement of what the debt is, what the consumer’s rights may be. There is some substance to these emails, but they’re not compliant in any way, shape, or form. They’re just not.”

Recommendation:

The CFPB should screen for compliance with Regulation F’s new validation information requirements in the course of its supervision work and bring enforcement actions where necessary to ensure compliance. While use of the model validation notice is not required, significant deviations from this model should attract additional scrutiny.

3.3.1.2 Methods of Delivery of the Validation Notice

Summary

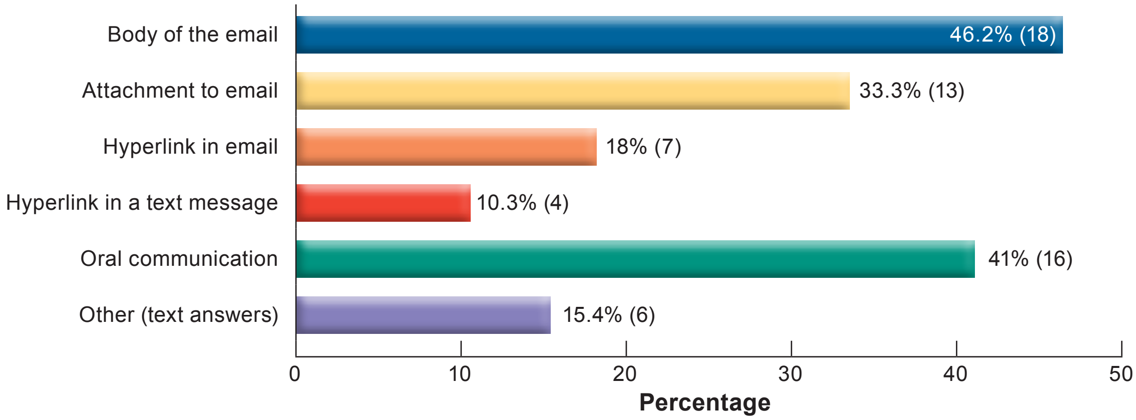
When asked to identify the methods debt collectors are using to deliver validation information (beyond mailing a written validation notice), consumer advocates reported debt collectors using the body of an email, an attachment to an email, a hyperlink in an email, a hyperlink in a text message, and oral delivery. Interviews with consumer advocates identified concerns with consumer comprehension of validation information provided orally. Some consumer advocates report that it is harder for consumers to trust that collection emails and text messages have come from a legitimate source rather than a scamming attempt, raising concerns for electronic delivery of validation information.

Regulation F regulates the method of delivery of validation information, including written, electronic, and oral deliveries.[38] We asked consumer advocates about the methods of delivery that they have observed other than postal mail.

Survey respondents were asked to check one or more methods of delivery that they have observed. Of the substantive responses,[39] 46.2% saw the validation notice being sent in the body of an email; 33.3% saw the validation notice being attached to an email, and 18% saw the validation information provided through a hyperlink in the email. Additionally, 41% of substantive respondents saw the validation notice being communicated orally in the initial communication, and 10.3% saw validation information provided through a hyperlink in a text message. Finally, 15.4% of substantive respondents provided an answer under the “other” category, with two-thirds of these write-in responses saying they have not seen validation information communicated via any of these methods. See Figure 10.

FIGURE 10

Methods of delivery of validation information*



* Since respondents could check more than one answer, overall percentages may surpass 100%.

In follow-up interviews, discussed in the following subsections, respondents gave details about the oral delivery of validation information and responses to disputes. They also described consumer concerns about scams and fraud and the implications for electronic delivery of validation information.

3.3.1.2.1 Oral Delivery of Validation Information and Responses to Disputes

In follow-up interviews, one issue that came up repeatedly was the problematic practice of delivering the validation information orally. Interviewees reported low levels of consumer comprehension when information was delivered orally.

For example, a private attorney from Illinois reported from firsthand experience on the quality of the oral delivery of the model validation notice:

> "Sometimes I'll contact collectors on behalf of a client, [and] if we're defending a lawsuit—they'd call me. It won't be the attorneys, it would be the collection center. [. . .] They don't want to discuss the case, they just want to try, you know [to collect…] They always give me the validation notice over the phone, they give me the whole spiel. [. . .] And I don't think the consumers really understand it. [. . .] It's sometimes got a million lines, it's usually a fairly long spiel. They're talking fast. I don't think the consumers really understand it."

A legal services attorney from Texas similarly reported that consumers do not have sufficient understanding of the validation information when it is delivered orally:

> "That [communicating the validation notice orally] was a problem. It was a big problem. [. . .] It was a problem of actually knowing whether our client had been given a validation notice because if they'd been called and were given it orally, our clients don't remember. I asked, 'Hey, did they tell you this?' They answered, 'I don't know. Maybe, I don't remember.'"

Two interviewees flagged a related issue—oral delivery of information about the alleged debt in response to a dispute or request for additional information about an alleged debt. Regulation F requires that responses to disputes and requests for original-creditor information be provided in writing if submitted in writing within the validation period.[40]

A private attorney from Tennessee reported:

> "I would argue that that's not compliance, oral validation of the notice. [. . .] It has to be in writing. I have had several clients [. . .] They validated over the phone, the [debt collector] explained to her why they thought she owed it or whatever, and promised to send papers backing that up—and never did. Even when I [. . .] came on the case and let them know that I wanted proof

documents, I had to poke at them to get it. [. . .] Clients will come to me and say, 'I've tried to talk to these people and I've called them . . . and I've asked them to send me documents, and they won't send me anything.'"

Similarly, a non-profit employee from South Dakota explained:

"[My clients] get a list of debts from the debt collector with no dates, just who the creditor is. It's rather cryptic and hard to understand. We say 'you have to go back, you have to ask for the date of each debt,' and the debt collector, the primary one here in town is saying, 'I can't give that to you. I'll just read it to you over the phone.' They won't give it to them in writing. [. . .] That would be the number one issue that I see right now."

3.3.1.2.2 Electronic Communications and Concerns about Fraud or Scams

Several of the interviewees mentioned that consumers tend to be more suspicious of electronic written communications due to concerns about fraud and scams. These comments were made in the interviews in the context of discussing the use of electronic communication for collection and were broader than merely electronic delivery of validation notices. We discuss these concerns here because they have significant implications for consumer access to validation information. In the case of electronic delivery of validation information, access to critical disclosures depends upon consumer willingness to open a message from an unknown sender and potentially then open an attachment or click on a hyperlink.

A private attorney from Illinois explained in response to a question about the reaction of consumers to the written electronic methods of communication:

"The texts—they're a little suspicious of it. They're not really sure what to do with that. I think with emails, kind of the same way, just because so much is spam email, there's so many phishing scams out there."

A legal services attorney from Texas also mentioned both the growing frequency of written electronic communication and also that consumers may receive these electronic communications with more suspicion. She noted that this reaction varies by age:

"I did notice that the method would be text, a lot more text or emails. [... As for the consumers' feeling about it, it] depends if they're older or younger. Because if they're older clients, they're just not as tech savvy and phones are like 'click on everything', which is scary. You could be hacked, it could be a scam. I would say probably anywhere between 40 and younger, for those clients I think that it's more of how do they [usually] feel about getting texted."

This attorney noted that for all clients, and especially older clients, getting a collection letter provided reassurance that this is an authentic communication from a debt collector:

> "Historically, mailing [was preferable], because [with] the 1692g validation notice, [the] language—'you have a right to dispute, etc.'—had to be written. I could always tell our clients, 'Hey, you will get something in the mail that you'll know for sure, it's not a scam.' And so that [receiving the validation notice electronically and never receiving a copy via postal mail] was a problem. It was a big problem."

A legal aid attorney from Virginia who works primarily with undocumented immigrants explained about her clients' suspicions regarding written electronic communication when asked about how consumers react to these methods of contact:

> "The undocumented community is a targeted community for fraud [. . .] Because they're such targets, undocumented folks, they get so many texts and emails that I think it's hard to parse out how just this one thing feels, and I think it gets to the point where people are like, 'If I don't recognize the number I'm going to ignore it, no matter what.' [. . .] I think a lot of time clients may not even recognize who's doing the calling or who's doing the texting because they get so much—it's just a part of the noise. [. . .]"

Recommendations

- The CFPB should use guidance to clarify that providing a validation notice via hyperlink or attachment does not comply with Regulation F's requirement that such notice must be provided "in a manner that is reasonably expected to provide actual notice"[41] (unless the consumer provides consent to the debt collector under the E-Sign Act). Concerns about scams and fraud are likely to deter people from clicking on hyperlinks or downloading attachments from unknown senders.
- The CFPB should amend Regulation F to prohibit oral delivery from satisfying the requirement to provide validation information because it is not possible to deliver all of the information required by Regulation F in a method that is "readily understandable"[42] as required by Regulation F.
- To facilitate comprehension and retention of information about an alleged debt that is provided in response to disputes or requests for additional information submitted outside of the validation period, the CFPB should amend Regulation F to require debt collectors to respond to <u>all</u> disputes and requests for additional information in writing by postal mail (unless the consumer provides consent to the debt collector under the E-Sign

Act for the written notice to be provided electronically). To the extent that debt collectors are refusing to respond to disputes or requests for original-creditor information made within the validation period, refusal to provide this information in writing already violates Regulation F and is an issue for CFPB enforcement.

3.3.1.3 Consumers' Comprehension of the Model Validation Notice

Summary

Consumer advocates report that consumers generally still do not understand the model validation notice sufficiently. Interviews with consumer advocates highlighted particular areas where the model validation notice may be clearer, such as the option to dispute the debt, and areas where the model validation notice is complicated to understand, including the itemization of the debt.

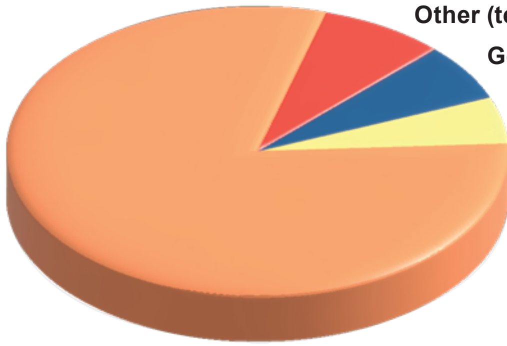
Regulation F provides detailed regulations about required and optional content for validation notices and how to present this information.[43] We asked consumer advocates about consumer comprehension of model validation notices since the issuance of Regulation F.

Of the respondents who provided substantive answers,[44] 80.5% thought that consumer comprehension of validation notices hasn't changed significantly since Regulation F took effect. Only 6.5% of respondents answered that consumer comprehension has improved since then, and a slightly smaller percentage of respondents—5.2%—think that consumer comprehension is worse.

Another 7.8% of respondents provided an answer after checking "other." Two thirds of these write-in responses expressed some form of complaint about consumer comprehension of the model validation notice, whether in direct reference to our question of comparison with the period before Regulation F (e.g., "Consumer understanding was limited prior and seems to be worse now") or as a general observation (e.g., "I have had one consumer complain[ing] that the new notice is confusing and requested too much information"). The remaining third of the write-in answers noted that they do not have sufficient information to answer the question. See Figure 11.

FIGURE 11

Consumer comprehension of validation notice after Regulation F's effective date compared to comprehension before that date



In interviews and write-in responses to the surveys, several consumer advocates brought up consumer comprehension of dispute rights in the model validation notice. First, a private attorney from Illinois noted that the deadline to dispute is clearer:

> "I have seen more consumers noticing that there is a deadline to dispute with the [model] notice, whereas previously, without the model [notice] they wouldn't really understand any of that."

And a private attorney from Indiana said that with the model validation notice it is clearer to consumers that they can dispute the debt:

> "The thing I like about the new letter is that it's easier for a consumer to say 'well, this isn't my debt I'm going to dispute it.' Because the new letter is [equipped] with: 'do you dispute this debt?' whereas the old one really was not."

A private attorney from Minnesota expressed concern about the tear-off portion of the validation notice, writing that:

> "It is a little annoying that the consumer has to tear off part of the disclosure that may contain evidence of a violation of the FDCPA and mail it back to dispute the debt, etc. It would have been nice to have a duplicate bottom portion so that we as attorneys could see what it said before the client mailed it back."

A private attorney in Indiana (different from the one quoted above) also expressed concerns, in his write-in response, about the limited dispute options in the tear off, writing that:

> “The validation notice doesn’t state all of the consumer’s options so I think it’s worse. Before a consumer could respond how she wanted. Now it seems they have to check a box.”

A private attorney in Ohio also mentioned that it would be better to have more detailed options of boxes to check when disputing a debt.

In interviews, some consumer advocates also expressed concern about comprehension of the itemization date and the itemization. Regarding the itemization date, consumer advocates reported that neither they nor their clients have been able to determine why a certain date had been chosen as the specific itemization date. Some consumer advocates expressed concern that the actual itemization itself was not detailed enough.

The following quote of a private attorney from Indiana explains the problems with both of these issues:

> “If you just look at it [the model validation notice] in an instant, it strikes [as] more user friendly, but if you sit down and try to read it all, I think the old one was probably better. [. . .] The new one, it’s bizarre—it will say: ‘you haven’t made a payment since whatever date.’ It has a date up there, and I don’t know why it has that date. It’s not obvious [. . .] It will say: ‘Since whatever date you have not made a payment, here’s what is due,’ or whatever. And then, in the new letter on a regular basis I will see a number in there for, like, fees or whatever. And it just says ‘fees’—it will not say if it’s late fees or interest or whatever, it doesn’t say anything about those fees.”

Similarly, a legal services Attorney from Texas mentioned the lack of clarity of the new validation notice:

> “[E]ven as lawyers, the confusing part is the whole new [. . .] itemization date. That’s way more confusing for me as a lawyer so I can’t even imagine [the confusion] as a consumer. I don’t know how they would determine that amount or anything. I think that the whole system and setup is just confusing as all get out. As far as just the notice of validation and the rights to dispute, I think it’s about the same. [... But as far as the account balance:] The rules state the different ways of being able to state the account balance. You [the debt collector] have the choice of saying different dates, and so, how you would know that and how they would calculate that. I feel, as a lawyer, that … [the rules] give [more] wiggle room for errors to the other side than clarity for consumers. If the goal was to provide clarity to consumers I feel like that just mucked it up and didn’t give clarity to anyone.”

A private attorney from West Virginia commented on incomplete itemizations that fail to provide credit for prior payments:

"Probably [there are] a little more details [in the model notice]. I did see a little more details in some of the letters. Although, the one thing that I think is catching creditors, if I'm not mistaken, [. . .] when you itemize the amount, you're supposed to break it down, with credit [for payments made]. In my area I do see a lot of people, that they get into these payment plans, and there always seems to be an issue of whether things have been properly credited or not."

Recommendation

The CFPB should engage in continued consumer testing with the model validation notice to understand areas where consumer comprehension can be improved and test alternatives that will improve consumer comprehension. The CFPB should use this research to amend Regulation F and provide improved versions of the model validation notice.

3.3.1.4 Use of Spanish-language Disclosures

Summary

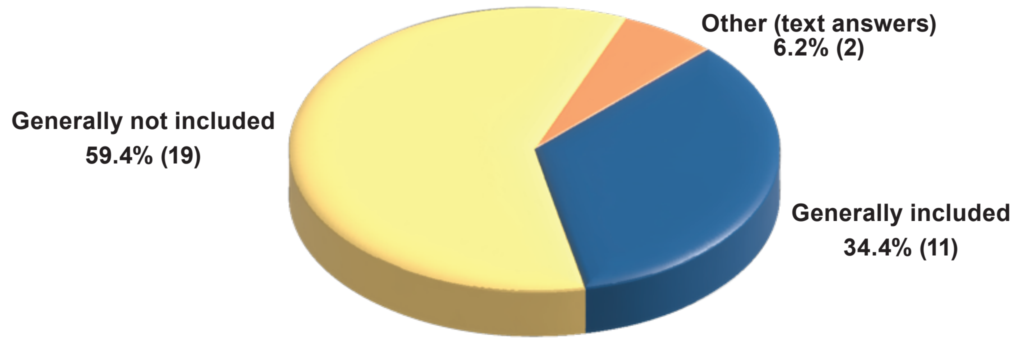
Regulation F contains optional Spanish-language disclosures that debt collectors can choose to add to an English-language validation notice to tell consumers how to request a Spanish-language version. Nevertheless, the majority of consumer advocates who answered our question on this issue have not observed debt collectors using these Spanish-language disclosures. A few interviewees noted that large debt collectors are sending a Spanish translation of the validation notice without waiting for a request from the consumer.

Regulation F contains two optional Spanish-language disclosures that debt collectors can choose to add to an English-language validation notice.[45] Regulation F also allows debt collectors to provide a copy of the validation notice completely and accurately translated into another language if the debt collector includes an English-language validation notice in the same communication or has previously provided an English-language notice.[46] The CFPB has provided a Spanish-language model validation notice.[47] We asked consumer advocates whether they have seen debt collectors generally using the optional Spanish-language disclosures in validation notices since November 30th, 2021.

Of the respondents who provided substantive answers,[48] 59.4% responded that they have not seen debt collectors use these Spanish-language disclosures, and 34.4% responded that debt collectors are generally using these disclosures. The remaining 6.2% of substantive respondents (two respondents) provided a write-in answer after responding "other," with one saying that they do not have information and one saying that they saw debt collectors using these disclosures only sometimes. See Figure 12.

FIGURE 12

Use of optional Spanish-language disclosures in English-language validation notice



A couple of the interviewees said that big, national debt collectors tend to send English-language validation notices with a Spanish-language translation. Both of these interviewees said that the Spanish translation was provided automatically with the English-language validation notices, not in response to a request from the consumer.

Recommendation

The CFPB should amend Regulation F to require debt collectors to provide information in Spanish rather than making this optional. It should allow debt collectors to comply with this requirement either by: 1) including, in the English-language validation notice, the model disclosures about the availability of a Spanish translation, or 2) sending a Spanish translation of the validation notice along with the English version.[49]

3.3.2 Time-Barred Debts

Summary

Many consumer advocates reported that debt collectors are collecting on time-barred debts without disclosing that the debt is time-barred. Some consumer advocates reported that debt collectors also sue on time-barred debts, although Regulation F prohibits this. Consumer advocates also observed that consumers are generally confused about the concept of time-barred debt even when the fact that the debt is beyond the statute of limitations is disclosed.

Regulation F prohibits debt collectors from suing or threatening to sue consumers to collect time-barred debts.[50] We asked consumer advocates about any time-barred debt collection practices that they observed since Regulation F took effect on November 30, 2021. Specifically, we asked respondents if they observed any of the following (respondents could mark more than one category):

- No time-barred debt collection practices.
- Debt collectors suing on a time-barred debt.
- Debt collectors threatening to sue on a time-barred debt.
- Debt collectors collecting on a time-barred debt without disclosing it was time-barred.
- Debt collectors disclosing that the debt is time-barred.
- Debt collectors disclosing that the debt is time-barred and that it may be possible to revive the statute of limitations through partial payment or acknowledgment.
- Debt collectors filing a proof of claim in bankruptcy on a time-barred debt.

Of the respondents who provided substantive answers,[51] 32% observed debt collectors threatening to sue consumers over a time-barred debt, and 27% of respondents observed debt collectors who sued consumers over a time-barred debt. Both practices violate Regulation F.

As seen above, the options included reference to time-barred debt disclosures. While Regulation F does not require a disclosure that a debt is time-barred, the CFPB noted in its discussion of the rule that:

> [A] debt collector may decide that, to avoid violating the FDCPA and the final rule, the debt collector needs to disclose information to consumers about the debt collector's ability to sue and the possibility of revival and, in that case, the debt collector may do so.[52]

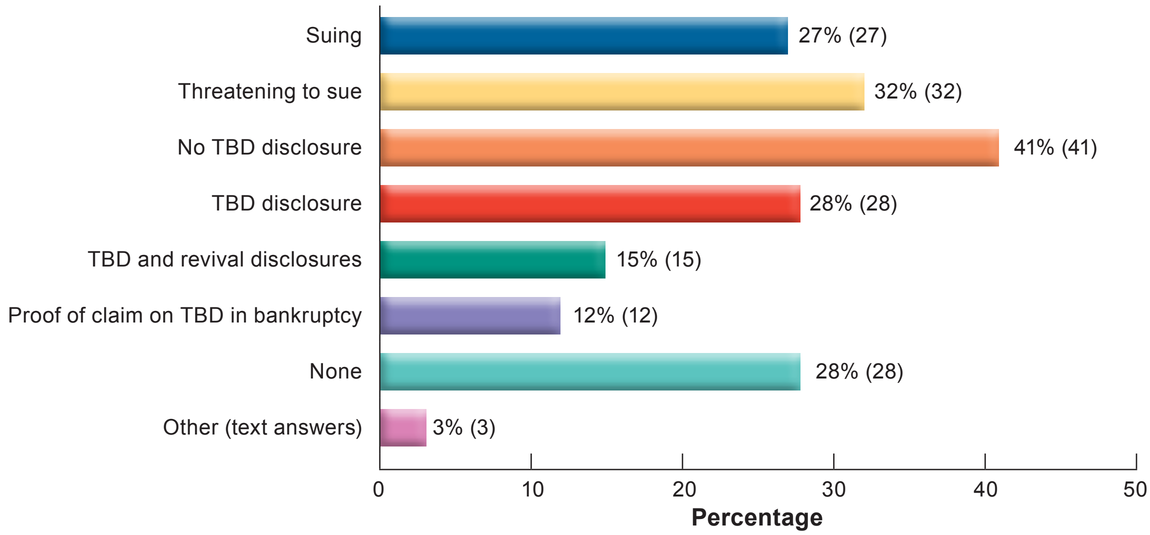
Of the substantive responses received, 41% observed debt collectors communicating with consumers about a time-barred debt without disclosing that it is time-barred, 28% observed debt collectors disclosing that the debt is time-barred, and 15% observed debt collectors disclosing that the debt is time-barred and the statute of limitations may be revived through acknowledgment or partial payment.

In addition, 12% of survey respondents saw debt collectors filing a proof of claim in bankruptcy for a time-barred debt, and 28% of respondents checked that they have not seen any time-barred debt collection practices.

Three percent of respondents wrote in answers after checking the option "other." One reported that debt collectors advanced the last payment date to fall within the statute of limitations, one reported that debt collectors claimed a debt was decelerated after terminating an incomplete nonjudicial foreclosure, and one reported that debt collectors used tricky language in communication with consumers about time-barred debts. See Figure 13.

FIGURE 13

Practices used for collection of time-barred debts (TBD)*



* Since respondents could check more than one answer, overall percentages may surpass 100%.

In the follow-up interviews we conducted, consumer advocates provided more details on the practice of time-barred debt collection. The subsections below look at observations about lawsuits on time-barred debts, the use of time-barred debt disclosures, and consumer comprehension of those disclosures.

3.3.2.1 Lawsuits on Time-Barred Debts

Although Regulation F prohibits debt collectors from bringing or threatening to bring a legal action against a consumer to collect a time-barred debt, consumer advocates report that this practice is still common (see the discussion above and Figure 13). A few interviewees also addressed this practice.

A private attorney from Tennessee confirmed that he observed debt collectors suing on time-barred debts and that this observation is from after Regulation F took effect. When asked whether he has noticed any change in this practice, he responded:

> "I think it [their frequency] is probably the same [after November 30, 2021, as it was before]. That [lawsuits for time-barred debts] is the one that I see most often [. . .] I never see disclosures about statute of limitations."

A private attorney from Ohio said that in Ohio he sees primarily time-barred lawsuits on second mortgages. He said that in Alabama he has seen lawsuits to collect time-barred deficiency balances on auto loans.

A legal services attorney from Texas also noted that debt collectors still sued on time-barred debts, without disclosing that the debt was time-barred:

> "I've never once seen them say that [it was time-barred]. Generally, how we would find out is, they [the consumers] were getting sued. They'd come to us and report on the law-suit, and we would notice: 'Hey, this is time-barred.'"

3.3.2.2 Debt Collectors Use of Time-Barred Debt Disclosures

Many consumer advocates commented on the use or non-use of time-barred debt disclosures in their interviews. For example, a legal services attorney from Nevada reported:

> "[In a recent case involving a disclosure:] it was reasonably prominent, making it clear that you're under no obligation to pay [. . .] It wasn't, like, hidden on the back like I've seen before. [However, regarding debt collection of time-barred debt in which there is not a disclosure:] it's a common thing, and it's usually some third-party debt buyer or the usual suspects [out of state collectors].
>
> **Q:** [. . .] Have you observed, to the extent that you can say, since November 30th, any differences [in regard to lack of disclosure of time-barred debts]?
>
> **A:** No, I haven't seen any difference. I've seen it before and I've seen it again."

A legal services attorney from Texas (who mentioned that clients were sued on time-barred debts) reported:

> "I never got a client who came in showing me a notice that said that the debt was time-barred."

Several consumer advocates mentioned that New York law requires a disclosure that a debt is time-barred.[53] By contrast, a private attorney from Pennsylvania reported:

> "There's no state law in Pennsylvania or in New Jersey that requires such a disclosure [that a debt is time-barred debt] … [When there is a disclosure even though not required] it would say something like, 'because of the age of the debt, we cannot sue you for it.'"

When asked whether the notice mentions that acknowledgement of the debt may revive the ability to sue, this attorney answered that this acknowledgment appears only sometimes. He further mentioned that he has not seen any change in the frequency of this since Regulation F took effect.

Another private attorney from Ohio noted:

> "We do a fair amount of practice in New York. What I've noticed is, if you're a New York resident, you're pretty much covered because obviously not only do you have the Reg F notice, you have the New York state time-barred notice, and also New York City has their time-barred debt [disclosure]. I think debt collectors get it right there."

Nevertheless, a legal services attorney from New York reported that she still observes collection on time-barred debt without disclosure:

> "I think we're still seeing it a little bit. In particular, with the change of the statute of limitation for consumer debt in New York [. . .] a lot of debt collectors [are] coming out of the woodwork trying to file suits before the regulation (of the new state law) went into effect [. . .] but even without that I feel like there are still a couple of occasions that I have seen […] where consumers are still being contacted about it [time-barred debt] without any kind of notice that it is past statute of limitations or trying to collect on a debt that is generally very old."

3.3.2.3 Consumer Comprehension of the Concept of Time-Barred Debt

Several consumer advocates discussed in their interviews consumer comprehension of time-barred debts—both with and without disclosures. According to these advocates, consumers generally find the idea of time-barred debt confusing.

A legal services attorney in Nevada explained in reference to a case where the time-barred debt was disclosed:

> "My client understood that this was a time-barred debt and that the debt collector was making it clear it was a time-barred debt in that case. [. . .] They still asked, "Do I have to pay this debt?" But [. . .] asking them about what they understood from the communication—they understood. They were just confused. 'Why are they sending this when they're admitting that they can't collect it?'"

A private attorney from Ohio reported on a general lack of understanding of the concept:

> "I think there's some ambiguity [. . .] They [the consumers] are not following, because there's still a way to read these letters to say 'I still need to pay the debt,' not [just] if you want to. [. . .] I think there's still a lot of confusion from consumers who say, 'I don't understand this whole concept anyway. I still think I owe the debt. What's a statute of limitations?'"

A legal services attorney from Massachusetts similarly noted that these disclosures are not sufficiently conspicuous or clear:

> "I've seen collection letters for debts that would be time-barred, but they generally included the disclosure required by state law [. . .] 'we could not sue you but still ask you to pay.' [. . .] The problem with the disclosures—I think that a lot of people unfortunately don't really read them and they still make a payment [. . .] I think that [the law says] you just have to include it somewhere on the letter. . . [But usually] they give you the whole very long letter and include it at the end."

Lastly, a private attorney from Indiana reported on a misleading practice of debt collectors, to bring in time-barred debts in conversations about other debts without disclosing that it is time-barred:

> "Interesting[ly], I see more disclosures on letters and emails, and especially if it's in the spring, because everybody is getting their tax checks in the spring, so the debt collectors are trying to contact consumers with old debt [. . .] So they're pulling out all the debt, even if the debt's 20 years old they're still going to send an email or something like that for the debts. [. . .] I've come across on more than one occasion last year when a debt collector calls the consumer and talks to the consumer about a debt that is not beyond the statute of limitation, so it's a viable debt. And then the consumer says, 'sure, I'll pay it from my next tax check.' And the debt collector [would] say, 'oh by the way, you've got this other account in our office. Do you want to pay that one as well?' and they don't disclose that this second account is beyond the statute of limitations."

Recommendations

The CFPB should amend Regulation F to prohibit collectors from collecting time-barred debt not just through lawsuits but also out of court because these debts are so old that they cannot be collected without mistakes or deception. At a minimum, it should add prohibitions of lawsuits on revived debt and sale of time-barred debts.

The CFPB should also bring enforcement actions against debt collectors that sue or threaten to sue on time-barred debts or that engage in false, deceptive, misleading, or unfair practices involving the collection of time-barred debts.

3.3.3 Prohibition on Parking Debts on Credit Reports

Summary

Consumer advocates noted non-compliance with Regulation F's requirement to provide notice to consumers before reporting information about an alleged debt to credit bureaus. Several people mentioned rental debt as a particular type of account where non-compliance has been observed. Consumer advocates also noted that requiring only that the collector wait "a reasonable period of time" after notifying the consumer, without requiring confirmation of delivery before reporting the debt, is problematic, especially for low-income consumers.

Regulation F prohibits debt collectors from reporting a debt to a credit bureau without first taking steps to provide notice to the consumer about the alleged debt—a practice known as "parking" a debt on a consumer's credit report.[54] We asked consumer advocates about debt collector compliance with the new regulation. Specifically, we asked respondents to indicate any of the following credit reporting practices (respondents could mark more than one category):

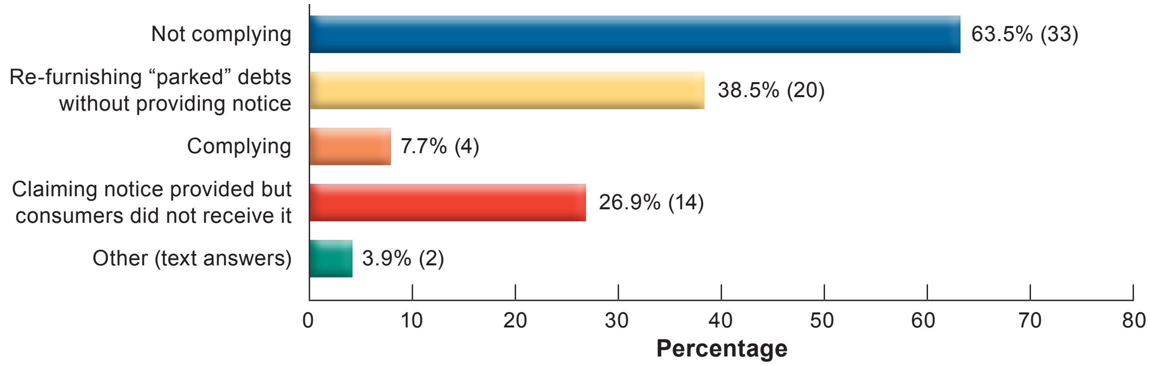
- Reporting ("furnishing") alleged debts to credit bureaus after November 30, 2021 without providing notice to consumers.
- Where debts were originally "parked" on credit reports prior to November 30, 2021, reporting debts to credit bureaus again ("re-furnishing") after November 30, 2021 without providing notice to consumers.
- Providing notice to the consumer about alleged debt as required by Regulation F.
- Claiming to have notified the consumer about the debt before reporting it to a credit bureau, in cases where the consumer never received the notice.

Of the survey respondents who provided substantive answers,[55] only 7.7% replied that they observed debt collectors providing notice to consumers as required by Regulation F, while 63.5% answered that they observed debt collectors reporting the debt without providing notice to consumers.

Additionally, 38.5% reported that debt collectors who "parked" debts before November 30, 2021, reported those debts again after November 30, 2021 without providing notice to the consumer, and 26.9% observed debt collectors claiming that they provided notice as required by Regulation F even though the consumers never received the notice. See Figure 14 for details.

FIGURE 14

Compliance with Regulation F's notice requirement before credit reporting*



* Since respondents could check more than one answer, overall percentages may surpass 100%.

Finally, two respondents (the remaining 3.9%) wrote in an answer after responding "other." One of them noted that the examples of this that they saw were prior to the effective date for Regulation F. The other respondent, a legal services attorney from Virginia, wrote "I still see landlords parking debts on credit reports without notice at all."

In a follow-up interview with this Virginia legal services attorney, she provided further details about parking of rental debts:

> "So often when there's outstanding rent debt, they'll send it to a debt collector and the debt collector would park the rent debt on the credit report, and not then do anything else. I know that the new regulation now makes clear that that's a violation. [... But] that is something that I don't think that has changed [. . .] there's still parking debts on credit reports."

A legal services attorney from Texas also noted rental debt as a major category of debt where "parking" debts continues to be a problem. This attorney remarked on the shortcoming of this particular provision of Regulation F because it only requires debt collectors to send the notice and monitor for "non-delivery" but not to actually confirm that the notice was received.

> "The rule requires the notice to be sent, but not received. Because of that, it's possible [debt collectors] will say, 'We did send it, but your client never received it.'"

She explained why this issue of not receiving the notice is particularly problematic for low-income consumers, especially in the area of rental debt:

> "One of the challenges is when you have low-income consumers that move around a lot. Especially with rental debt [. . .] if you've been evicted and you don't give your landlord your new address [. . .] If you don't even know where you're living next and you don't provide that then how would they know where to send you the notice before parking the debt? [. . .] Also low income consumers [. . .] often they're in crisis, [... things like providing a forwarding address—] that's not on their minds.
>
> "That whole category of rental debt, I think, is super problematic. Those are the ones who mostly need the notice because they find out about it when they're trying to get housing and that's preventing them from being able to get housing. It's super frustrating."

This attorney also mentioned problems with lack of notice before reporting information about credit card debts, auto loans, and medical debt to credit bureaus. She noted that accounts like credit card debt should not present the address change problems present with rental debt since these are generally "people who are at the same place and they should have their address." She also noted the lack of notice before re-furnishing:

> "One of the questions is if they were already reporting it, shouldn't they before continuing to report it send them notice? We weren't getting those either."

A private attorney from Florida also responded that he's seen debt collectors reporting information about alleged debts to credit bureaus without providing notice to the consumer. This attorney also referred to re-furnishing debts, explaining:

> "We don't think that [debt collectors] have complied with the new regulations about communicating with the clients prior to parking the debts. But what's unclear yet is the timing. When the regulations took effect, in late November, I think a lot of the debt collectors argued it's not backwards, it's not ex post facto, [. . .] it's not exactly clear yet, if a debt was parked prior to November, do they have to now do some sort of communication, or not."

This attorney added that the issue of multiple debts further complicates identifying possible violations of the requirements to provide notice before reporting on parking debts:

> "[I]t's so difficult with some of our clients because they get calls about ten different accounts, but if they don't answer fully, or don't really know, how do we tie it to the parked debt? But I would say [generally], debt parking is still an issue and remains [. . .] an important issue to our clients. It's just that it's unclear yet how much of it has changed, if at all, since November."

Recommendations

- The CFPB should clarify that if a debt collector re-furnishes a previously parked account to a consumer reporting agency after November 30, 2021, it must first comply with this provision of Regulation F.
- The CFPB should amend Regulation F to strengthen notice requirements, including regulations about reasonable confirmation of a mailing address and tracking whether electronic notices were actually received—not just returned for non-delivery.
- The CFPB should screen for compliance with this provision of Regulation F in the course of its supervision work and bring enforcement actions where necessary to ensure compliance. Penalties for persistent noncompliance with this provision should include temporarily banning the debt collector from credit reporting.

4. CONCLUSION

This report investigates consumer advocates' observations of debt collectors' compliance with Regulation F and the impact of these regulations on the consumers they represent. Given the scope of the new regulations, we anticipate that it will take some time to get a full picture of what these changes mean for consumers and the debt collection industry. Therefore, we hope that this is the first of many reports that will try to understand these changes.

Throughout this report, we have included recommendations for how the CFPB can address problems with Regulation F or its implementation. The CFPB has supervisory[56] and enforcement[57] authority over the debt collection industry, the authority to amend Regulation F,[58] and the ability to issue sub-regulatory guidance.[59] Additionally, the CFPB has the ability to conduct relevant debt collection research[60] and to engage in consumer testing to evaluate model disclosures,[61] such as the model validation notice. We summarize below some of the key steps that the CFPB can take to use its authority to enforce and improve Regulation F.

Key Recommendations

Debt Collectors' Communications with Consumers. Since the Fair Debt Collection Practices Act (FDCPA) was enacted, new communication channels have emerged and communication practices have changed. Regulation F regulates types of communications such as email, text messages, and social media direct messages that were not addressed in the FDCPA when it was enacted or in any of its subsequent amendments. Regulations to address new communication media must not come at the expense of consumers or undermine the purposes of the FDCPA. The CFPB should take action on each of the issues outlined below.

- **Frequency of Email and Text Communications.** To address changing practices in the use of electronic communications by the collection industry, the CFPB should monitor developing trends in the use of email and text messaging in its supervisory and market monitoring roles, including reviewing consumer complaints and researching alternative approaches adopted by the states. It should use guidance and supervisory highlights to provide examples of conduct that violates the FDCPA and Regulation F. It should bring enforcement actions for abusive uses of these communication channels, including excessive communications and practices that lead to third-party disclosures.
- **Phone Call Frequency.** To decrease the burden from frequent phone calls and make it easier for consumers to identify and enforce Regulation F's call and conversation frequency limits, the CFPB should amend Regulation F to limit collectors to three attempts per week *per consumer*. It should also make the limit of one conversation per week apply *per consumer*, rather than per debt.
- **Use of Social Media.** To address concerns about the invasion of consumer privacy, the CFPB should amend Regulation F to prohibit debt collectors from seeking to join a consumer's social network and should prohibit debt collectors from communicating via any social media or direct message platform without first obtaining consent from the consumer.
- **Opt-Out Notice.** To address concerns about opt-out methods not being displayed "clearly or conspicuously," the CFPB should issue guidance regarding compliance. Additionally, the CFPB should require collectors that send electronic messages to allow consumers to reply to the message to opt-out (e.g., by replying "stop"), rather than requiring them to click on a link. This would create a universal method of opting out that can be clearly communicated to consumers in educational materials and alleviate concerns about scams by eliminating the need to click on a link.
- **Requests to Stop Particular Types of Communication.** To address reports of noncompliance with consumer requests that collectors stop certain types of communications, the CFPB should screen for compliance with this provision of Regulation F in the course of its supervision work. It should bring enforcement actions where necessary to ensure compliance, including compliance with oral requests to stop a particular type of communication.

Debt Collection Disclosures. The FDCPA requires debt collectors to disclose information to consumers, including the fact that they are debt collectors and information about the alleged debt that they are seeking to collect.[62] Regulation F builds upon these and other FDCPA provisions to increase debt collection disclosures to consumers. The CFPB should take action on each of the issues outlined below.

- **Oral Delivery of Validation Information.** The CFPB should amend Regulation F to prohibit oral delivery from satisfying the requirement to provide validation information because such delivery is not "readily understandable" as required by Regulation F.
- **Electronic Delivery of Validation Information.** To respond to consumer concerns about engaging with emails and texts from unknown senders that might be scams, the CFPB should issue guidance to clarify that providing a validation notice via hyperlink or attachment does not satisfy the requirements of Regulation F because it is not "reasonably expected to provide actual notice" (unless the consumer provides consent to the debt collector under the E-Sign Act).
- **Consumer Comprehension of Validation Notices.** Recognizing that consumers continue to struggle to understand validation notices even with the new model validation notice, the CFPB should continue to test and refine the model validation notice to improve consumer understanding.
- **Time-Barred Debt Collection.** To address the lack of consumer comprehension of time-barred debts and continuing false, misleading, and deceptive practices in the collection of time-barred debts—including reports of continued suits on time-barred debts—the CFPB should amend Regulation F to prohibit collectors from collecting time-barred debt out of court. These debts are so old that they cannot be collected without mistakes or deception. At a minimum, the CFPB should prohibit lawsuits on revived debt and sale of time-barred debts, and should bring enforcement actions where collectors are violating the current regulations.
- **Parking Debts on Credit Reports.** To address noncompliance with Regulation F's requirement to provide notice to consumers before reporting information about an alleged debt to credit bureaus, the CFPB should increase supervision and enforcement–penalizing persistent noncompliance with temporary bans on credit reporting. The CFPB should also amend the regulations to require debt collectors to do more than simply monitor for undeliverability.

ENDNOTES

1. 15 U.S.C. §§ 1692 to 1692p.
2. 15 U.S.C. § 1692(e).
3. 15 U.S.C. § 1692*l*(d).
4. As enacted by Pub. L. No. 95-109, 91 Stat. 874 (Sept. 20, 1977), 15 U.S.C. § 1692l(d) read "[n]either the Commission nor any other agency referred to in subsection (b) of this section may promulgate trade regulation rules or other regulations with respect to the collection of debts by debt collectors as defined in this subchapter." *But cf.* National Consumer Law Center, *Fair Debt Collection* § 3.4.4.2 (10th ed. 2022), updated at www.nclc.org/library (discussing limited regulations under 15 U.S.C. § 1692o that the FTC was authorized to issue prior to the Dodd-Frank Act).
5. Debt Collection Practices (Regulation F), 85 Fed. Reg. 76,734 (Nov. 30, 2020).
6. Debt Collection Practices (Regulation F), 86 Fed. Reg. 5766 (Jan. 19, 2021).
7. For additional resources about Regulation F, see:
   - April Kuehnhoff, "Comprehensive New FDCPA Regulation F Takes Effect November 30" (National Consumer Law Center Digital Library Sept. 24, 2021) (briefly summarizing key provisions in the regulations and providing links to additional resources).
   - National Consumer Law Center, *Fair Debt Collection* § 1.1.1.6 (10th ed. 2022), updated at www.nclc.org/library (providing an overview of where various sections of Regulation F are discussed in the manual).
8. *See, e.g.*, 12 C.F.R. §§ 1006.6(d)(3), 6(e), 22(g). *See also* National Consumer Law Center, *Fair Debt Collection* § 1.1.1.7 (10th ed. 2022), updated at www.nclc.org/library (discussing Regulation F treatment of electronic communications).
9. 41% of survey respondents provided a substantive answer to the question about the email messages.
10. 41% of survey respondents provided a substantive answer to the question about text messages.
11. The interviewee distinguished between "big, national" debt collection agencies from local and regional ones. He defined local debt collectors as "the mom and pop debt collection agency that has maybe five to ten employees," and regional ones as "the next size up, they might have 40 or 50 employees, and they might be in several states."
12. In our survey, we asked about instances in which third parties saw or heard debt collection communications. 43% of the 100 substantive respondents reported they observed such a case since November 30, 2021. Among the 22 interviews we conducted, 12 interviewees reported knowing of a third-party disclosure since November 30, 2022. The interviewee quoted here is the only one who reported third-party disclosures due to text messages. The remaining 11 interviewees reported that third-party disclosure occurred as a result of a phone or postal mail communication.
13. N.Y. Comp. Codes R. & Regs. tit. 23, § 1.6.
14. Wash. Rev. Code § 19.16.250(13)(a).
15. D.C. Law 24-154. Protecting Consumers from Unjust Debt Collection Practices Amendment Act of 2022 (effective January 1, 2023).
16. Compare Reg. F Official Interpretation § 18(d)-1 with 12 C.F.R. § 1006.22(f)(4). *See also* National Consumer Law Center, *Fair Debt Collection* § 1.1.1.7 (10th ed. 2022), updated at www.nclc.org/library (discussing Regulation F treatment of electronic communications).
17. 78.6% of the 117 survey respondents marked that they do not have an answer to the question about social media use by collectors, or that the question is not applicable to my practice,

and 4.3% skipped this survey question.

18. 12 C.F.R. § 1006.14(b)(2)(i)(A). *See also* National Consumer Law Center, *Fair Debt Collection* § 6.7.2 (10th ed. 2022), updated at www.nclc.org/library.

19. 12 C.F.R. § 1006.14(b)(2)(i)(B). *See also* National Consumer Law Center, *Fair Debt Collection* § 6.7.2 (10th ed. 2022), updated at www.nclc.org/library.

20. 50.4% of survey respondents provided a substantive answer to the question about compliance with call limits.

21. 44.4% of survey respondents provided a substantive answer to the question about compliance with conversation limits.

22. 12 C.F.R. § 1006.2(j). *See also* National Consumer Law Center, *Fair Debt Collection* § 4.9 (10th ed. 2022), updated at www.nclc.org/library.

23. Id.

24. Reg. F Official Interpretations § 2(j)(1)-1.

25. 12 C.F.R. § 1006.2(j). *See also* National Consumer Law Center, *Fair Debt Collection* § 4.9 (10th ed. 2022), updated at www.nclc.org/library.

26. Reg. F Official Interpretations § 2(j)(2)-2.

27. National Consumer Law Center, *Fair Debt Collection* §§ 5.7.8, 6.8, 7.2.11.2 (10th ed. 2022), updated at www.nclc.org/library.

28. 43.6% of survey respondents provided a substantive answer to this question.

29. 12 C.F.R. § 1006.6(e). *See also* National Consumer Law Center, *Fair Debt Collection* § 9.3.2.1 (10th ed. 2022), updated at www.nclc.org/library.

30. 30.8% of survey respondents provided a substantive answer to this question.

31. Regulation F does not require creditors to send goodbye letters but does discuss such letters as one method that debt collectors can use to obtain email addresses for consumers. 12 C.F.R. § 1006.6(d)(4)(ii)(C). *See also* National Consumer Law Center, *Fair Debt Collection* §§ 5.7.9.3, 12.2.9.2, 12.2.9.4 (10th ed. 2022), updated at www.nclc.org/library.

32. 12 C.F.R. 1006.14(h). *See also* National Consumer Law Center, *Fair Debt Collection* § 6.9 (10th ed. 2022), updated at www.nclc.org/library.

33. 47.9% of survey respondents provided a substantive answer to this question.

34. 12 C.F.R. Appx. B-1 to Part 1006. *See also* National Consumer Law Center, *Fair Debt Collection* § 9.5.2 (10th ed. 2022), updated at www.nclc.org/library.

35. 53% of survey respondents provided a substantive answer to this question.

36. See note 11 above.

37. See note 11 above.

38. 12 C.F.R. §§ 1006.34(a)(1)(ii), 42. *See also* National Consumer Law Center, *Fair Debt Collection* § 9.3 (10th ed. 2022), updated at www.nclc.org/library.

39. 33.3% of survey respondents provided substantive answers to this question.

40. 12 C.F.R. §§ 1006.38(c), (d)(2)(i). *See also* National Consumer Law Center, *Fair Debt Collection* § 9.11.1 (10th ed. 2022), updated at www.nclc.org/library.

41. 12 C.F.R. § 1006.42(a)(1). *See also* National Consumer Law Center, *Fair Debt Collection* § 9.3.2.2 (10th ed. 2022), updated at www.nclc.org/library.

42. 12 C.F.R. § 1006.34 (b)(1). *See also* National Consumer Law Center, *Fair Debt Collection* § 9.3.1 (10th ed. 2022), updated at www.nclc.org/library.

43. 12 C.F.R. § 1006.34. *See also* National Consumer Law Center, *Fair Debt Collection* §§ 9.4, 9.5, 9.6 (10th ed. 2022), updated at www.nclc.org/library.

44. 65.8% of survey respondents provided a substantive answer to this question.

45. 12 C.F.R. § 1006.34(d)(3)(vi). *See also* National Consumer Law Center, *Fair Debt Collection* § 9.6.3 (10th ed. 2022), updated at www.nclc.org/library.

46. 12 C.F.R. § 1006.34(e)(1). *See also* National Consumer Law Center, *Fair Debt Collection* § 9.5.4 (10th ed. 2022), updated at www.nclc.org/library.
47. Consumer Fin. Protection Bureau, Debt Collection Model Forms: Model Validation Notice—Spanish translation (Oct. 2021).
48. 27.4% of respondents provided a substantive answer to this question.
49. *See also* D.C. Law 24-154. Protecting Consumers from Unjust Debt Collection Practices Amendment Act of 2022 (effective January 1, 2023) ("The written notice required pursuant to subparagraph (A) of this paragraph shall be provided to the consumer in English and Spanish; except, that if a language other than Spanish is principally used in the original contract with the consumer or by the debt collector in the initial oral communication with the consumer, notice required by subparagraph (A) of this paragraph shall be provided to the consumer in that language and English.").
50. 12 C.F.R. § 1006.26(b). *See also* National Consumer Law Center, *Fair Debt Collection* § 7.4.9 (10th ed. 2022), updated at www.nclc.org/library.
51. 85.5% of survey respondents provided substantive answers to this question.
52. 86 Fed. Reg. 5766, 5782-83 (Jan. 19, 2021).
53. N.Y. Comp. Codes R. & Regs. tit. 23, § 1.3.
54. 12 C.F.R. § 1006.30(a). *See also* National Consumer Law Center, *Fair Debt Collection* § 8.12 (10th ed. 2022), updated at www.nclc.org/library.
55. 44.4% of survey respondents provided substantive answers to this question.
56. The CFPB has supervisory authority over larger participants in the consumer debt collection market. 12 U.S.C. §§ 5514(a)(1)(B), (a)(2), (b)(7)(A); 12 C.F.R. § 1090.105(b) ("A nonbank covered person is a larger participant of the consumer debt collection market if the nonbank covered person's annual receipts resulting from consumer debt collection are more than $10 million.").
57. 15 U.S.C. § 1692*l*. *See also* 12 U.S.C. §§ 5561—5567.
58. 15 U.S.C. § 1692*l*(d). *See also* 12 U.S.C. § 5512(b)(1).
59. 15 U.S.C. § 1692k(e); 12 U.S.C. § 5512(b)(1).
60. 12 U.S.C. § 5512(c)(4).
61. 12 U.S.C. § 5532(b).
62. 15 U.S.C. § 1692e(11), 1692g.

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