New Federal Regulations Yielding Mixed Returns for Debt Collection Industry

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At the end of November, new federal regulations took effect altering the landscape of the debt collection industry. These regulations, known commonly as Regulation F, impacted numerous core debt collection activities. They increased the amount of information that must be provided to debtors with the initial validation notice, clarified what types of messages trigger disclosure duties, and expanded the types of communications debt collectors can use to interact with debtors. These monumental regulatory changes have been in effect for over three months now and debt collectors are beginning to assess their practical impact upon daily business. The results are mixed.

On one hand, collectors are now empowered with new avenues of communicating with debtors. Regulation F provides guideposts and rules expanding debt collectors' methods of communication to include emails, texts, and direct messaging through social media platforms. These tools have made it easier for collectors to communicate with debtors on existing accounts.

The challenge for the debt collection industry in the wake of Regulation F is in initiating collections on new debtor accounts. The Consumer Financial Protection Bureau (CFPB) created a standardized initial validation notice. One of its primary purposes is to create a safe harbor for debt collectors and creditors from frivolous lawsuits which challenge the language of the initial validation notice. However, the federal government's design of the model validation notice has had the practical effect of encouraging more debtors to dispute a debt rather than make arrangements for payment of a debt.

The government's model notice, now in widespread use throughout the debt collection industry, makes every effort to inform debtors of the possible actions that they can take regarding a debt. A large bolded heading in the notice alerts debtors to how the debt can be disputed. Other statements in the notice discuss how debtors can request the name of the original creditor and suggest debtors review the CFPB website to learn how to stop or limit debt collectors from making contact. Only one line in the main body of the notice offers the option of contacting the debt collector to make payment arrangements. The notice does not even include an option for collectors to inform debtors of an online payment portal.

Early reports on the use of the model notice indicate fewer debtors are stepping up to quickly pay off their debts or make payment arrangements in response to receiving the model notice. Instead, more debtors are seeking to challenge the debt (including challenging valid and bona fide debts) or requesting the name and address of the original creditor (which is typically the same creditor listed on the notice). This change in consumer behavior has had the effect of lowering collection rates and extending the collection process. Time will tell if the CFPB eventually considers this data and revises the terms of the model notice.