

The Debt Collector's New Decision: Whether to Adopt the Model Initial Validation Notice of Regulation F

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This article provides background on an important recent update to federal law and why many collection agencies are electing to adopt the model validation notice outlined in Regulation F.

One of the federal laws regulating collection agencies is the Federal Debt Collection Practices Act (FDCPA). The FDCPA was created in 1977 to eliminate abusive debt collection practices utilized by some debt collectors, to ensure that debt collectors who employ legal debt collection methods are not competitively disadvantaged, and to promote consistent actions throughout the states to protect consumers from abusive debt collection practices. In order to more effectively and consistently interpret and enforce the FDCPA, a government agency called the Consumer Financial Protection Bureau (CFPB) was created in 2011.

In late 2020, the CFPB issued amendments to 12 CFR part 1006, regarding the implementation of the FDCPA. These amendments, commonly referred to as Regulation F, prohibit certain debt collection conduct, such as suing or threatening to sue in an

attempt to collect debt that is past the statute of limitations. These amendments also provide guidance on the permitted use of newer channels of communication, such as text messaging, email and voicemail, during the collection of debt.

One of the most important components of these recent amendments relates to debt collectors' initial notices to debtors. These initial notices are frequently scrutinized by debtors' attorneys who subsequently file lawsuits claiming the notices are unclear or do not contain all of the required disclosures. To create clarity for consumers and to prevent debtors' attorneys from pursuing technical legal claims, the CFPB created a model notice for debt collectors to utilize in their initial communications with debtors. As part of creating this model notice, the CFPB utilized a consumer survey company to assess consumer understanding. The company's work found that eighty-eight percent of its consumer study participants rated the final model validation notice as "very easy" or "easy" to understand. Moreover, no participant in the study rated the notice as "difficult" or "very difficult."

The content of the model notice provides additional information beyond the information that has been traditionally included in an initial notice. The current notice must include the balance due as of the date of the letter. The model notice must include the same information but must also include the balance due as of an "itemization date." Furthermore, the notice must detail how the balance has changed by itemizing interest, fees, payments, and credits since the itemization date. The itemization date is defined as one of the following five dates: 1) last statement date; 2) charge-off date; 3) last payment date; 4) transaction date; or 5) judgment date. It is important that the debt collector and creditor work together to determine the most applicable itemization date to use for a particular account.

There are benefits for debt collectors and their clients when the debt collector utilizes the model notice. The amendments to Regulation F provide a safe harbor from liability related to the initial validation notice where a collector follows the requirements of the model notice as long as the provisions of the notice are “clear and conspicuous” and the content is “substantially similar” to what is prescribed by the amendment.

Collection agencies who elect to adopt the model notice will require additional account information from their clients. Providing this important supplemental information will reap dividends through lower legal expenditures and less time invested fighting legal claims. Furthermore, account holders will have a better understanding of their past due unpaid balances. In summary, debt collectors and their clients who carefully adhere to the CFPB’s model notice should find that they are the subject of far fewer frivolous lawsuits by consumer attorneys focused on the content of the initial validation notice.

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