

Countdown to Compliance with Regulation F of the Fair Debt Collection Practices Act (FDCPA), Nov. 15 – Nov. 19

It is now 15 days until "Regulation F" of the Fair Debt Collection Practices Act ("FDCPA") takes effect on November 30. Today, our alert focuses on Validation Requirements, to consider in your preparations.

15 Days Left

Validation Requirements-Model Validation Notice

The FDCPA requires a debt collector to provide certain information to a consumer either at the time or shortly after, the debt collector first communicates with the consumer, in connection with the collection of a debt. The required information—the validation information—includes details about the debt and about consumer protections, such as the consumer's rights to dispute and receive verification of the debt, and to request information about the original creditor. When this validation information is provided in writing, the document containing the information is commonly referred to as a "validation notice." This week KD's "Countdown to Compliance" will review these requirements.

Reg F requires debt collectors to provide certain validation information to consumers and to specify when and how the information must be provided. The CFPB provides a model form that debt collectors may use to comply with the information and form requirements of Reg F. This form is referred to in the Rule as *Model Form B-1 in appendix B, or more generally as the Model Validation Notice (MVN)*. *The MVN can be delivered by mail or electronically. The MVN, as published by the Consumer Financial Protection Bureau, can be found here.*

Why is this important?

Reg F requires debt collectors to provide certain validation information in initial communications, or within five days of the initial communication. Importantly, a debt collector who uses the MVN, complies with the information and form requirements of Reg F, including if the debt collector omits any or all of the optional disclosures shown on the MVN, or adds any or all of the optional disclosures described in Reg F that are not shown on the MVN, as long as such optional disclosures are no more prominent than any of the required validation information.

Further, a debt collector may make changes to the form to retain a safe harbor of compliance with the information and form requirements, provided that the form remains substantially similar to the MVN.

Substantially Similar?

The comments to Reg F provide permissible changes to the MVN that would remain substantially similar in substance:

- Modifications to remove language that could suggest liability for the debt if such language is not applicable. For example, if a debt collector sends a validation notice to a person who is authorized to act on behalf of the deceased consumer's estate (see comment 34(a)(1)-1), and that person is not liable for the debt, the debt collector may use the name of the deceased consumer

instead of “you”;

- Relocating the consumer-response information required by Reg F to facilitate mailing;
 - Adding barcodes or QR codes,
 - Adding the date the form is generated; and
 - Embedding hyperlinks, if delivering the form electronically.
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14 Days Left

Validation Requirements—Mandatory Disclosures—Information About the Debt

Yesterday, we reviewed the form of Validation Notices as required by Reg F, and how the CFPB provides a Model Validation Form (MVN) that debt collectors may use. Today we review the exact information required—the validation information—which includes details about the debt and consumer protections, such as consumers’ rights to dispute and receive verification of debts and to request information about original creditors.

Debt Collector Communication Disclosure

Reg F and the FDCPA require that a debt collector disclose in its initial communication that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose. Reg F also requires that each subsequent communication state that the communication is from a debt collector. A debt collector complies with this requirement even if the MVN constitutes a subsequent communication but instead contains the language required in the initial communication. Reg F provides an example:

Example: ABC debt collector has an initial communication with the consumer by telephone. Within five days of that initial communication, ABC debt collector sends the consumer a validation notice using the MVN. ABC debt collector has complied with the validation information requirements even if the MVN states the information required on an initial communication, as opposed to a subsequent communication.

Information about a Debt

As part of the validation notice, a debt collector must provide the following.

1. The debt collector’s name and the mailing address at which the debt collector accepts disputes and requests for original-creditor information.
2. The consumer’s name and mailing address.
3. If the debt collector is collecting a debt related to a consumer financial product or service, the name of the creditor to whom the debt was owed on the itemization date.

4. The account number, if any, associated with the debt on the itemization date, or a truncated version of that number.
5. The name of the creditor to whom the debt currently is owed.
6. The itemization date.
7. The amount of the debt on the itemization date.
8. An itemization of the current amount of the debt reflecting interest, fees, payments, and credits since the itemization date. A debt collector may disclose the itemization on a separate page provided in the same communication with a validation notice, if the debt collector includes on the validation notice, where the itemization would have appeared, a statement referring to that separate page.
9. The current amount of the debt.

The MVN contains each and every one of these requirements. Tomorrow, KD's Countdown to Compliance will dig into specific categories of information, including itemization dates and itemization of a debt.

13 Days Left

Validation Requirements—Itemization Date and Itemization of a Debt

Our alert yesterday listed required information about a debt as part of the requisite validation information included on a validation notice, including the Model Validation Notice (MVN). Today, we highlight two more requirements that are now required under Reg F that sound similar, but are easily confused: Itemization Date and Itemization of a Debt.

1. Itemization Date

The purpose of the Itemization Date is to have a consistent reference point for consumers, creditors, and collectors, in discussing the details of a debt. The Bureau sought to provide adequate flexibility for different creditor's information systems and record retention, as to specific debts as well as provide consumers with sufficient information to identify the debt obligation involved. Thus, Reg F provides five reference dates that a collector may use in a validation notice to convey to the consumer the information regarding the debt.

- Last Statement Date
- Charge-Off Date
- Last Payment Date
- Transaction Date
- Judgment Date

A debt collector can choose any one of these as the Itemization Date, but must be consistent in the date it chooses. A debt collector may use a different reference date than a prior debt collector who attempted to collect the debt.

2. Itemization of the Debt

Another new required disclosure on a validation notice under Reg F is that collectors must provide an itemization of the current debt reflecting interest, fees, payments, and credits since the Itemization Date.

Debt collectors have the option to provide this itemization on a separate page provided in the same communication with a validation notice-if the notice contains a statement referring the consumer to that separate page. In electronic communications, such a separate page can be accessed via hyperlink if a collector so chooses.

Even if no interest, fees, payments or credits have been assessed or applied to the debt, a debt collector must include fields in the notice for each one of these fields. A collector may indicate a value as “0” or “none,” but may not leave a required field blank.

Impact of Other Applicable Laws: Other federal and state laws may require a debt collector itemize a debt separate and apart from Reg F. If such a disclosure is substantially similar to the itemization form that appears in the MVN, a debt collector can comply with Reg F if it complies with the rules under the other applicable laws.

Multiple Debts: For some collectors, especially in the context of collecting medical debts, there may be multiple debts to report on a single validation notice. Reg F contemplates that a debt collector who combines multiple debts on a single validation notice can comply with the rules by disclosing either a single, cumulative itemization on the validation notice or a separate itemization of each debt on a separate page or pages provided in the same communication as the validation notice.

12 Days Left

Validation Requirements—Information about Consumer Protections and Consumer Response Information

With just 12 days left until Reg F becomes effective, we continue today to discuss the remaining requirements on a validation notice. Reg F requires debt collectors provide very specific disclosure statements to consumers.

1. Information about Consumer Protections

In addition to the required information about the debt required by Reg F, there are additional requirements related to statements of a consumer’s rights. This includes listing the date that the debt collector will consider the end date of the validation period and three specific statements; including:

- If the consumer notifies the debt collector in writing on or before that date that the debt, or any portion of the debt, is disputed, the debt collector must cease collection of the debt, or the disputed portion of the debt, until the debt collector sends the consumer either verification of the debt or a copy of a judgment;
- If the consumer requests in writing on or before that date the name and address of the original creditor, the debt collector must cease collection of the debt until the debt collector sends the consumer the name and address of the original creditor, if different from the current creditor; and

- Unless the consumer contacts the debt collector to dispute the validity of the debt, or any portion of the debt, on or before that date, the debt collector will assume that the debt is valid.

If the debt collector is collecting debt related to a consumer financial product or service, the debt collector must also include a statement that informs the consumer that additional information regarding consumer protections in debt collection is available on the CFPB's website at www.cfpb.gov/debt-collection.

Electronic Communications: If the debt collector sends the validation notice electronically, the debt collector must include a statement explaining how a consumer can dispute the debt or request original-creditor information electronically.

Examples:

- "We accept disputes electronically at," using that phrase or a substantially similar phrase, followed by an email address or website portal that a consumer can use, and
- "We accept original creditor information requests electronically," using that phrase or a substantially similar phrase, followed by an email address or website portal that a consumer can use

If a debt collector accepts electronic communications from consumers through more than one medium, such as by email and through a website portal, the debt collector is required to provide information regarding only one of these media but may provide information on any additional media.

2. Consumer Response Information

A debt collector must also provide user-friendly consumer-response information. The following must be included, segregated from the required validation information and from any optional information.

If provided on a validation notice, it must be located at the bottom of the notice under the headings, "How do you want to respond?" and "Check all that apply:"

Dispute prompts: The following statements, listed in the following order, and using the following phrasing or substantially similar phrasing, each next to a prompt:

- "I want to dispute the debt because I think:";
- "This is not my debt.";
- "The amount is wrong."; and
- "Other (please describe on reverse or attach additional information)."

If delivering electronically or in writing, Reg F allows the use of checkboxes for consumers to use to respond, as it is formatted in the Model Validation Notice.

Original-creditor information prompt: The notice must include the statement, “I want you to send me the name and address of the original creditor”, using that phrase or a substantially similar phrase, next to a prompt.

Mailing addresses: Mailing addresses for the consumer and the debt collector must be listed.

11 Days Left

Validation Requirements—Optional Disclosures

As we head into Thanksgiving week, we’ll continue discussing some of the optional disclosures a debt collector can include within the guidance of Reg F. The use of optional disclosures allows debt collectors to add more user-friendly options and comply with applicable state disclosure laws.

A debt collector may include any of the following information when providing the validation information. A debt collector who includes any of the following information receives the safe harbor protections of the Model Validation Notice, provided that the debt collector otherwise uses the MVN.

Telephone Contact Information: The debt collector may include its telephone contact information, including for example, times the debt collector accepts consumer telephone calls.

Reference Code: A debt collector can add a number or code that the debt collector uses to identify the debt or the consumer.

Payment Disclosures: A debt collector may include either or both of the following phrases:

- “Contact us about your payment options.”, using that phrase or a substantially similar phrase; and
- Below the consumer response information required (see Countdown 11/18/21), the statement, “I enclosed this amount:”, using that phrase or a substantially similar phrase, payment instructions after that statement, and a prompt.

Disclosures on the reverse of the validation notice: On the reverse of the validation notice, any disclosures that are specifically required by, or that provide safe harbors under, applicable law and, if any such disclosures are included, a statement on the front of the validation notice referring to those disclosures. Any such disclosures must not appear directly on the reverse of the consumer-response information required by Reg F.

E-mailed Notices: If a debt collector provides a validation notice in the body of an email, the debt collector may, in lieu of including the disclosures on the reverse of the validation notice, include them in the same communication below the content of the validation notice.

Disclosures under Applicable Law: These disclosures include, for example, specific disclosures required by Federal, State, or municipal statutes or regulations, and specific disclosures required by judicial or administrative decisions or orders, including administrative consent orders. Such disclosures could include, for example, time-barred debt disclosures and disclosures that the current amount of the debt may increase or vary due to interest, fees, or other charges, provided that such disclosures are specifically required by applicable law.

“Statement on the Front of the Validation Notice”: A debt collector may comply with the requirement by including on the front of the

validation notice the statement:

- “Notice: See reverse side for important information,” or a substantially similar statement. If a debt collector places the disclosures below the content of the validation notice, the debt collector may comply with the requirement to refer to the disclosures by stating: “Notice: See below for important information,” or a substantially similar statement.

Disclosures on the front of the validation notice. If a debt collector is collecting time-barred debt, on the front of the validation notice below the “amount of debt” disclosure required any time-barred debt disclosure that is specifically required by, or that provides a safe harbor under, applicable law, provided that applicable law specifies the content of the disclosure.

Kaufman Dolowich & Voluck’s Consumer Financial Services Group is here to assist in your collection preparations to comply with Regulation F. We can also answer other compliance questions you may have.