

BACK TO BASICS, Continued—Collections, Again!

Publish Date: 05/22/2019

Maurice Shevin

Consumer Finance Report Newsletter

Earlier this month, the CFPB issued its Notice of Proposed Rulemaking to implement Fair Debt Collection Practices Act (FDCPA) Regulation F. As with its prior effort in 2016, the proposal is aimed squarely at third-party debt collectors, not at traditional installment lenders and sellers collecting their own debt. So, in a major way, that is a relief.

We have written about collections several times in the past. See the following links to review prior articles: [BACK TO BASICS, Continued—Debt Collection!](#), [BACK TO BASICS, Continued—Collection Communications](#) and [BACK TO BASICS, CONTINUED—Collection communications—Using the Real Social Media: Facebook and Twitter!](#) So, why write about this proposal in this blog?

The answer is that I want to restate our instruction that original creditors should make every reasonable effort to follow the basic FDCPA prohibitions with respect to harassing, oppressive, or abusive conduct; false, deceptive or misleading representations; and, unfair or unconscionable practices. We have previously suggested that it is sound business practice to use the FDCPA sections of the law dealing with these topics as guidelines for original creditors in collecting their own debt. And, if this proposed regulation becomes effective, we think it important that original creditors view the Regulation's prohibitions and restrictions as sound business practices as well.

A few of the specific additional prohibitions in this proposed Regulation F that may be meaningful to follow include:

- The frequency limitation on call attempts and telephone conversations to no more than seven by telephone/week; and, then a black-out period of one week before calling again
- The requirement that collectors give debtors “opt-out” rights with respect to email and text messaging
- The prohibition against collecting time-barred debts

There are other prohibitions contained in the proposed Regulation F that original creditors may choose not to respect. This is not to say that such prohibitions are not significant, but such may not be as significant in original creditor collection as compared to third-party debt collection. An example would be the requirement to deliver a notice of the right of debt validation.

Practice Pointer: If this proposed regulation is adopted, then it may set the standard as to what is unfair, deceptive, and abusive actions in collection of debt. So, even though the regulation would only directly apply to third-party debt collectors, an unintended consequence is that this Regulation F could set the Dodd-Frank Act standard of unfair, deceptive and abusive acts and practices (UDAAP) for all debt collection. And, that is no minor matter for original collectors.

Please note: This is the fifty-seventh blog in a series of *Back to Basics* blogs, in which relevant and resourceful information can be easily accessed by clicking [here](#).