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Insights

Update Regarding CFPB's Finalized Changes to Regulation F to Implement the Fair Debt Collection Practices Act

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As noted in our two earlier Alerts, "CFPB Issues Finalized Changes to Regulation F to Implement the Fair Debt Collection Practices Act," December 16, 2020, and "CFPB Proposes Two Measures to Address Ongoing COVID-19 Pandemic Concerns," May 13, 2021, the Consumer Financial Protection Bureau's ("CFPB") final rule ("Final Rule") that amends Regulation F, 12 C.F.R. part 1006 ("Amended Regulation F"), which implements the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692, *et seq.* ("FDCPA"), goes into effect November 30, 2021 (on September 1, 2021, the CFPB withdrew its earlier proposal to extend the Final Rule's effective date to January 29, 2022).

On October 29, 2021, the CFPB issued guidance on how debt collectors (as defined under the FDCPA) can provide both information about a consumer debt (defined as "[a]ny obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment," 15 U.S.C. § 1692a(5)) as of a particular date and the consumer debt's current amount (itemized information) in a debt validation notice required by the Final Rule. This Alert supplements our December 16, 2020 Alert which discussed the Final Rule in detail, and to which Alert reference is hereby made.

While the Final Rule does not change existing law under the FDCPA that creditors collecting their own consumer debts are exempt from the FDCPA's rules and regulations, the Final Rule will affect creditors which use debt collectors by regulating the information these creditors must provide to their debt collectors. This Alert focuses on these issues.

Debt collectors cannot pursue time-barred consumer debts.

The Final Rule provides that "[a] debt collector must not bring or threaten to bring a legal action against a consumer to collect a time-barred debt," defined as "a debt for which the applicable statute of limitations has expired." 12 C.F.R. § 1006.26. However, this limitation "does not apply to proofs of claim filed in connection with a bankruptcy proceeding." *Id.*

Information needed by debt collectors from creditors for debt validation notices.

The FDCPA requires that the consumer debtor must be given certain written information together with, or within five days of, the debt collector's initial communication. 15 U.S.C. § 1692g(a). The written communication

providing this information commonly is referred to as a “validation notice.” The Final Rule greatly expands the information which must be disclosed to a consumer in a validation notice within this five-day period. Specifically, the debt collector must now provide a long list of additional disclosures (including an itemized breakdown of the payoff) to assist the consumer in identifying the debt at issue and how the balance was calculated. *See* 12 C.F.R. §§ 1006.6 – 1006.42. Fortunately, the Final Rule includes a form notice which can be used as a "safe harbor" to avoid violations of the new rule. *See* 12 C.F.R. § 1006.34(d)(2) *and* Appendix B to Part 1006, B–1 “Model Form for Validation Notice.” However, to fully comply with the Final Rule and to fill-in the “safe harbor” Model Form correctly, creditors will need to work closely with their counsel and/or debt collectors to ensure the latter have internal processes in place and are ready to track the necessary information.

Record retention requirement.

The Final Rule requires a debt collector to retain records that are evidence of compliance or noncompliance with the FDCPA and the Final Rule starting on the date that the debt collector begins collection activity on a debt, until three years after the debt collector’s last collection activity on the debt. 12 C.F.R. § 1006.100(a). Moreover, if a debt collector records telephone calls made in connection with the collection of a debt, the debt collector must retain the recording of each such telephone call for three years after the date of the call. 12 C.F.R. § 1006.100(b).

Takeaways: While not directly applicable to creditors collecting their own consumer debts, the duties the Final Rule imposes on debt collectors will require creditors using debt collectors to coordinate with their debtor collectors to make sure these debt collectors receive the information they will need to comply with the Final Rule. For this reason, it makes sense for these creditors to discuss the Final Rule with their legal counsel to make sure these creditors are adequately prepared when the Final Rule goes into effect on November 30, 2021.

Please contact any member of the **Krieg DeVault Financial Institutions** or **Creditors’ Rights & Bankruptcy** practice groups with any questions you may have about this Alert.

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