

# **Comprehensive Risk Management in the Age of Regulation F**

**Jonathan L. Pompan**  
Partner, Venable LLP

**Alexandra Megaris**  
Partner, Venable LLP

# ACA LEGAL DISCLAIMER



The content provided herein ("Content") is presented for educational and general reference purposes only. ACA International, either directly or indirectly through speakers, independent contractors, employees or members of ACA International (collectively referred to as "ACA") provides the Content as a courtesy to be used for informational purposes only. The Contents are not intended to serve as legal or other advice. ACA does not represent or warrant that the Content is accurate, complete or current for any specific or particular purpose or application. This information is not intended to be a full and exhaustive explanation of the law in any area, nor should it be used to replace the advice of your own legal counsel. ACA is the sole owner of the Contents and all the associated copyrights. ACA hereby grants a limited license to the Contents solely in accordance with the copyright policy included on the [acainternational.org](http://acainternational.org) website that is incorporated herein by reference ("Agreement"). By utilizing this product, you, as the user agree to be bound by the terms of the Agreement. If you do not agree to the terms of the Agreement, you should not utilize this product. By using the Contents in any way, whether or not authorized, the user assumes all risk and hereby releases ACA from any liability associated with the Content.

# What We Will Cover

- Today's Regulatory Landscape
- Introduction to Regulation F (Reg. F) and How It Is Enforced
- Enforcement of Reg. F Since It Went into Effect
- CFPB Expectations For Compliance Management Systems (CMS)
- Designing and Enhancing Your CMS to Maximize Compliance with Regulation F



# Today's Landscape

# Personnel Is Policy

## Federal Trade Commission

- New Chair Lina Khan
- Negative Option Marketing Enforcement Policy
- FTC Safeguards Rule
- Resurrection of its penalty offense authority? (education/student loans, endorsements and testimonials)
- Scrutiny of “dark patterns.”
- A focus on individual liability, and investors
- Confluence of consumer protection and antitrust (echoed by Chopra at CFPB)

## Consumer Financial Protection Bureau

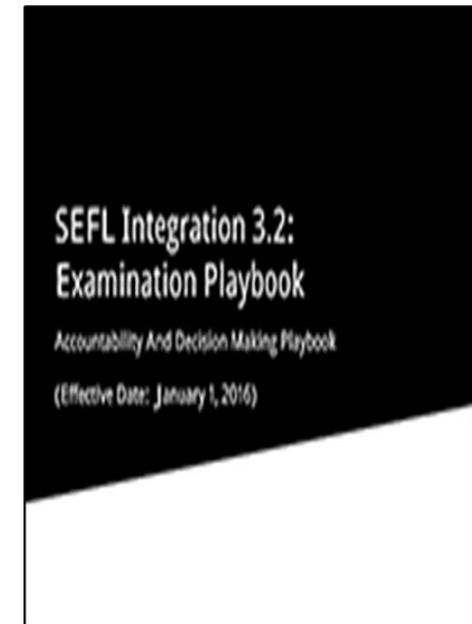
- New Director Rohit Chopra and staffing changes at the Bureau
- Big announcements, taking on tech, taking on FDIC, promoting competition, and more
- Guidance to staff re engaging with former employees, and heightened scrutiny
- Part of joint federal / state task force on fair lending / anti-discrimination
- High interest in use of AI, big data, and more - relevant to lead generation
- Individual liability
- Move to expand supervision and examination over higher risk nonbanks



# CFPB Moves to Expand Supervision and Examination of Nonbanks



- The CFPB may supervise and examine nonbanks whose activities the CFPB has reasonable cause to determine pose risks to consumers.
- This authority is not specific to any particular financial product or service.
- The CFPB implemented the provision through a procedural rule in 2013, the agency has in Spring 2022 begun to invoke this authority.
- Risky conduct may involve, for example, potentially unfair, deceptive, or abusive acts or practices, or other acts or practices that potentially violate federal consumer financial law.
- The CFPB may base such reasonable cause determinations on complaints collected by the CFPB, or on information from other sources, such as judicial opinions and administrative decisions. The CFPB may also learn of such risks through whistleblower complaints, state partners, federal partners, or news reports.



# CFPB Examination Focus on IT



- **Module 1: Board Management Oversight**
- **Module 2: Compliance Program** – Objectives include compliance policies and procedures that document and are sufficiently detailed to implement the board-approved policy documents. Exam guidance is provided for the review of policies and procedures, training, monitoring and/or audits, and consumer complaint response.
- **Module 3: Service Provider Oversight** – Examiners are instructed to review the entity's use of service providers, including such topics as oversight and risk management practices; the use and provision of IT functions; formal service level agreements; policies and procedures related to application or system acquisition activities where the application or system is used to support compliance with federal consumer financial law; policies and procedures for corrective action and monitoring for changes or conversion of system provider information systems; and, for critical service providers with access to sensitive consumer information, the entity's assessment of the service provider written information security programs.
- **Module 4: Violations of Law and Consumer Harm** – In the event that examiners identify violations of law, the module provides four factors to consider: the root cause; the severity of the consumer harm; duration of the violation; and pervasiveness of the violation to the extent it violates federal consumer financial law and resulting consumer harm, if any.
- **Module 5: Examiner Conclusions and Wrap-up** – Examiners are given instruction to complete, regardless of the entity's risk, and provide a written summary with corrective action steps, discuss and record findings, and prepare a memo for the work papers and CFPB's official system of record that outlines planning and strategy considerations for the next examination and, if appropriate, interim follow-up.

## CFPB

### Examination Procedures

### CMR-IT

#### Compliance Management Review – Information Technology (CMR-IT)

Exam Date:	<input type="text"/>
Exam ID No.:	<input type="text"/>
Prepared By:	<input type="text"/>
Reviewer:	<input type="text"/>
Supervision ID #:	<input type="text"/>
Entity Name:	<input type="text"/>
Event #:	<input type="text"/>

#### General Principles and Introduction

Institutions<sup>1</sup> within the scope of the CFPB's supervision and enforcement authority include both depository institutions and non-depository consumer financial services companies. These institutions operate in a dynamic environment influenced by challenges to profitability, increased focus on outcomes to consumers, industry consolidation, advancing technology, market globalization, and changes to laws and regulations.

To remain competitive and responsive to consumer needs in such an environment, institutions continuously assess their business strategies and modify product and service offerings and delivery channels. To maintain legal compliance, an institution should develop and maintain a sound compliance management system (CMS) that is integrated into the overall framework for product design, delivery, and administration across its entire product and service life cycle. Ultimately, compliance should be part of the day-to-day responsibilities of management and the employees of a supervised entity. Issues should be self-identified, and corrective action should be initiated by the entity. Institutions are also expected to manage relationships with service providers to ensure that service providers effectively manage compliance with Federal consumer financial laws applicable to the product or service being provided.<sup>2</sup>

Institutions often use information technology (IT) that could impact compliance with Federal consumer financial laws. As part of its overall CMS assessment, the CFPB may evaluate the technology controls of an institution and its service providers. The CFPB may also evaluate an institution's IT as it relates to compliance with Federal consumer financial laws. The Compliance Management System – Information Technology (CMS-IT) examination procedures set forth below are used by examiners to assess IT and IT controls as part of a CMS review.

A CMS is how an institution:

- Establishes its compliance responsibilities;
- Communicates those responsibilities to employees;
- Ensures that responsibilities for meeting legal requirements and internal policies and procedures are incorporated into business processes;

<sup>1</sup> The terms "institution" and "entity" are used interchangeably throughout this document.

<sup>2</sup> See CFPB Bulletin 2016-02, *Service Providers* (October 31, 2016), which describes the CFPB's expectation that supervised banks and nonbanks oversee their business relationships with service providers in a manner that ensures compliance with Federal consumer financial law. [Compliance Bulletin and Policy Guidance: 2016-02](#)

# GLBA Safeguards Final Rule



- Provides additional specificity on how financial institution should develop and implement aspects of an information security program. For instance, the rule requires:
  - Implementation and review of access controls;
  - Encryption of customer information in transit and at rest;
  - Development, implementation, and maintenance of information disposal practices; and
  - Adoption of change management procedures.
- Adds provisions designed to improve the accountability of financial institutions' information security programs.
  - Requires a financial institution to designate a “Qualified Individual” to be responsible for the program who regularly reports to the financial institution’s board of directors or governing body.
- Exempts financial institutions that collect less customer information from certain requirements.
- **Expands the definition of “financial institution.”**



# Reg. F Background

# CFPB Debt Collection Rule



- Started in 2013, Proposed Rule rolled out in 2019
- Final rule issued in two parts (Regulation F, 12 CFR part 1006)
  - October 30, 2020 - Addresses **electronic communications** (e.g., email, text messages, and social media) and **interprets and applies prohibitions on harassment or abuse, false or misleading representations, and unfair practices.**
  - December 18, 2020 - Interprets the FDCPA's requirements regarding **consumer disclosures and certain related consumer protections.**
- The rule took effect on November 30, 2021.

BILLING CODE: 4810-AM-P

BUREAU OF CONSUMER FINANCIAL PROTECTION  
12 CFR Part 1006  
[Docket No. CFPB-2019-0022]  
RIN 3170-AA41  
**Debt Collection Practices (Regulation F)**

AGENCY: Bureau of Consumer Financial Protection.  
ACTION: Final rule; official interpretation.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is issuing this final rule to revise Regulation F, which implements the Fair Debt Collection Practices Act (FDCPA) and currently contains the procedures for State application for exemption from the provisions of the FDCPA. The Bureau is finalizing Federal rules governing the activities of debt collectors, as that term is defined in the FDCPA. The Bureau's final rule addresses, among other things, communications in connection with debt collection and prohibitions on harassment or abuse, false or misleading representations, and unfair practices in debt collection.

DATES: This rule is effective [INSERT DATE ONE YEAR AFTER PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Dania Ayoubi, Joseph Baresi, Seth Caffrey, Brandy Hood, David Jacobs, Courtney Jean, Jaclyn Maier, Adam Mayle, Kristin McPartland, Michael Scherzer, or Michael Silver, Senior Counsels, Office of Regulations, at 202-435-7700. If you require this document in an alternative electronic format, please contact [CFPB\\_Accessibility@cfpb.gov](mailto:CFPB_Accessibility@cfpb.gov).

1

# Coverage and Definitions



- The rule covers “debt collectors” as that term is defined in the FDCPA
  - CFPB declined to expand the rule to apply to first-party collectors who are not “debt collectors” under FDCPA.
  - CFPB stated that the rule is not intended to address whether activities performed by entities that are not subject to FDCPA may violate other laws, including UDAAP provisions of Dodd-Frank Act.
- The rule covers four major areas:
  1. Communicating with consumers in connection with collection of a debt
  2. Use of electronic methods of communication such as text, email, and social media
  3. Required disclosures, including information required in validation notices
  4. Disputes
- Rule also includes (we will not focus on these today)
  1. Prerequisites for credit reporting
  2. Ban on legal actions--or threats of legal action--on time-barred debt
  3. Ban on transferring certain debts
  4. Record retention requirements



# Enforcement of FDICPA Since Reg. F Went Into Effect



- Regulatory enforcement to date has not focused on Reg. F violations.
- Several private lawsuits, including class action, have been filed in district courts around the country since November 2021
  - Majority allege violations of the 7/7/7 Rule
  - In April 2022, a law firm filed four separate class action lawsuits in the district for the Southern District of Florida alleging that the validation notices sent my multiple collection agencies violated Reg. F because the agencies provided a “Represented Itemization Date”, which is not one of the allowed dates that can be used.



# CFPB Expectations For Your CMS

# What is a Compliance Management System (CMS)?

- According to CFPB, a “robust and effective compliance management system” is a critical component of the structure of an organization.
- The CFPB expects a CMS to have two interdependent control components:
  1. Board and Management Oversight
  2. A Compliance Program

## CFPB

### Examination Procedures

### CMR

#### Compliance Management Review

#### General Principles and Introduction

Exam Date:	[Click&type]
Exam ID No.	[Click&type]
Prepared By:	[Click&type]
Reviewer:	[Click&type]
Supervision ID #:	[Click&type]
Entity Name:	[Click&type]
Event #:	[Click&type]

Institutions within the scope of the CFPB’s supervision and enforcement authority include both depository institutions and non-depository consumer financial services companies. These institutions operate in a dynamic environment influenced by challenges to profitability and survival, increased focus on outcomes to consumers, industry consolidation, advancing technology, market globalization, and changes in laws and regulations.

To remain competitive and responsive to consumer needs in such an environment, institutions continuously assess their business strategies and modify product and service offerings and delivery channels. To maintain legal compliance, an institution must develop and maintain a sound compliance management system (CMS) that is integrated into the overall framework for product design, delivery, and administration across their entire product and service lifecycle. Ultimately, compliance should be part of the day-to-day responsibilities of management and the employees of a supervised entity; issues should be self-identified; and corrective action should be initiated by the entity. Institutions are also expected to manage relationships with service providers to ensure that service providers effectively manage compliance with Federal consumer financial laws applicable to the product or service being provided.<sup>1</sup>

A CMS is how an institution:

- Establishes its compliance responsibilities;
- Communicates those responsibilities to employees;
- Ensures that responsibilities for meeting legal requirements and internal policies and procedures are incorporated into business processes;
- Reviews operations to ensure responsibilities are carried out and legal requirements are met; and
- Takes corrective action and updates tools, systems, and materials as necessary.

An effective CMS commonly has two interdependent control components:

- Board and Management Oversight; and

# Why is a CMS Important?

- Helps to manage risk by setting a framework and infrastructure to proactively and reactively respond to incidents, issues, and change.
  - Changing product and service offerings
  - New legislation, regulation, interpretations, court decisions, etc. that address developments in the marketplace and are relevant to the product and service offerings of the organization
  - Unexpected incidents (data breach, global pandemic, etc.)
- Noncompliance with consumer protection laws may result in:
  - Litigation by consumers
  - Enforcement actions by state or federal agencies
  - Reputation risk
- For supervised entities, the CMS in and of itself is subject to examination

# Board and Management Oversight

- The Board (or equivalent) is responsible for:
  - ✓ oversight of and commitment to the firm's CMS;
  - ✓ change management;
  - ✓ comprehension, identification and management of risk; and
  - ✓ corrective action.

# Compliance Program (CP)

- Four elements of a comprehensive CP
  - ✓ Policies and procedures that are subject to regular review and update
  - ✓ Training of Board members, management, and staff
  - ✓ Monitoring and testing
  - ✓ Consumer complaint management



# CMS Tune-up

# Reg. F's Communication Requirements



- Reg. F defines “communicate” or “communication” to mean the conveying of information regarding a debt directly or indirectly to any person through any medium.
- Marketing or advertising that does not contain information about specific debt or debts is **not** a communication under rule.
- Any “attempt to communicate” is any act to initiate a communication or other contract about a debt with any person through any medium, including by soliciting a response from such person.



# Unusual or Inconvenient Times

- Definition of “consumer” to include “successor-in-interest,” surviving spouse, parent, legal guardian, and executor.
- Inconvenient to call before 8:00 a.m. and after 9:00 p.m. at consumer’s location.
  - Unless a consumer consents to receiving a call outside this window.
- How to determine what time it is at consumer’s location
  - Debt collector not required to know where consumer actually is.
  - But, if there is conflicting information re a consumer’s location (e.g., zip code suggests one time zone and area code suggests a different one), can only contact at a time that would be convenient in both locations.
  - Electronic communications – deemed to be made when debt collector sends them, not when consumers receives them.

# Unusual or Inconvenient Places



- Again, “consumer” includes “successor-in-interest,” surviving spouse, parent, legal guardian, and executor.
- Place of employment is presumptively inconvenient if collector knows—or has reason to know—employer prohibits consumer from receiving such communications.
  - Not required to track which employers prohibit personal communications at the workplace.
  - Can contact person at work if consumer gives consent.
- There's also the risk of third-party disclosure when contacting people at work.

# Consumer Consent



- If a consumer gives her **direct prior consent** to receive calls outside the presumptively convenient call window or to receive calls at work, they are permissible.
  - **Direct:** consent must be given to the debt collection company making the call.
    - Consent to a prior debt collector or the creditor does not count here.
  - **Prior:** the consent must be obtained prior to making the impermissible call (and not during it).
    - You cannot call someone at 7:00 am local time and say, “Is it OK to talk now?”

# Call Frequency

- Reg. F creates a rebuttable-presumption framework for the prohibition against “causing a telephone to ring” if the natural consequence is to harass, oppress, or abuse any person.
- The rule also provides non-exhaustive lists of factors that may be used to rebut the presumption of compliance or of a violation.
- “7/7/7 Rule”: A debt collector is presumed to violate the FDCPA if the debt collector places a telephone call to a person
  - more than 7 times within a 7-day period, or
  - within 7 days after engaging in a telephone conversation with the person.
- A debt collector is presumed to comply with that prohibition if the debt collector does not exceed either of these rules.
- Some calls are exempted, and do not count towards the count.
- CFPB adopted a per-debt approach to counting for the call frequency restriction (not a “per-consumer” approach).
  - However, for student loan debts, they are aggregated if serviced under a single account number at the time the debts were obtained by a debt collector.

# Limited-Content Messages



- “Limited-Content Messages” are *voicemail* messages left for the *debtor*:
  1. That must include all of the following content:
    - A business name that does not indicate that caller is in the collection business
    - A request that the consumer reply to the message.
    - Name of one or more natural person whom consumer can contact.
    - A telephone number.
  2. And can include any of the following content:
    - A salutation
    - Date and time of message
    - Suggested times for consumer to reply.
    - A statement that if consumer replies, the consumer can speak to any representative.
  3. But, cannot include any other content.
- Good news:
  - They are not communications for purposes of the Debt Collection Rule.
  - Therefore, if a voicemail meets the definition of a limited-content message, it does not violate the FDCPA (and Reg. F) requirement to meaningfully disclose the caller’s identify.
- Bad news:
  - They are, however, “attempts to communicate.”
  - Therefore, they are subject to time and place restrictions and the limits on frequency.

# Communicating with Consumers



Policies & Procedures	<ul style="list-style-type: none"> <li>• Have written policies and procedures been updated?</li> <li>• How are verbal and written consents and designations captured?</li> <li>• Are calls outside permitted time periods or during times or to numbers designated as inconvenient “blocked”? If not, what mechanism ensures the call is not made?</li> <li>• Is there a script for Limited-Content voice messages?</li> </ul>
Training	<ul style="list-style-type: none"> <li>• Has FDCPA training been updated?</li> <li>• Are collectors trained to identify when a consumer is designating a place or a time as inconvenient?</li> </ul>
Monitoring & Testing	<ul style="list-style-type: none"> <li>• Is there an exception report that covers...             <ul style="list-style-type: none"> <li>• Dials made (or texts/emails sent) before 8:00 am and after 9:00 pm at consumer’s local time or during other times designed by consumer as inconvenient?</li> <li>• Calls that exceed the 7/7/7 rule?</li> </ul> </li> <li>• Are Limited-Content voicemails recorded and monitored for compliance?</li> <li>• Are calls monitored to ensure consumer designations and consents are captured correctly?</li> </ul>
Complaint Management	<ul style="list-style-type: none"> <li>• Are complaints about frequent calls, inconvenient calls, and revocation of consent categorized as such?</li> <li>• Are regular reports about such complaints prepared and circulated to managers within firm that can address the problem?</li> </ul>
Board Oversight	<ul style="list-style-type: none"> <li>• Does the Board receive exception reports and complaint reports referenced above</li> </ul>

# Electronic Communications



- No communications at inconvenient times/place
- No harassment or intimidation through communication methods, communications, or through content or substance of communications
- No third-party disclosure
- Must provide and comply with opt-out
- Reg. F also has built-in guardrails to prevent third-party disclosure and protect debt collectors who follow framework

# Email Communications



- Scenario 1: Consumer used email address with collector – debt collector sends email to address that consumer has used to communicate with the debt collector about the debt, and consumer has not opted out. Different debt does not qualify.
- Scenario 2: Consumer provided direct prior consent– debt collector has received direct prior consent from the consumer to use the email address to communicate about the debt, and consumer has not opted out.
  - Consent does not transfer from third party, including creditor or prior debt collector.
  - Consent must be in advance of communicating or attempt to communicate.
  - May be provided through any medium.

Must accept and track complaints regarding third-party receipt of email messages, as procedures must also include steps to reasonably confirm and document that the debt collector did not communicate with the consumer by sending an email message to an address debt collector knows has led to a violation of prohibition on third-party communications.

# Email Communications Cont'd



- Scenario 3: Creditor and consumer communicated via email address
  - Creditor obtained email address from the consumer; does not include any person that receives an assignment or transfer of a debt in default solely to facilitate collection of a debt for another;
  - Creditor used email address about the account underlying the debt, and consumer did not opt out; and
  - Before the debt collector uses the email address to communicate with the consumer about the debt, the creditor send the consumer a written or electronic notice to an address the creditor obtained form the consumer and used to communicate, and the notice clearly and conspicuously disclosed all of the following:
    - The debt has or will be transferred to the debt collector, with name of collector
    - Email address will be transferred and may be used by the debt collector
    - If others have access to the email address, that its possible others may see the emails
    - Instructions for opt out
    - The date by which the debt collector or the creditor must receive the consumer's opt out request, which must be at least 35 days after the date the notice is sent
- The opt-out period clearly and conspicuously disclosed in the creditor's notice to the consumer has expired, and the consumer has not opted out.
- The email address has a domain name that is available for use by the general public and the debt collector does not know that the email address is an employer-provided email address.
- Procedures must also include steps to reasonably confirm and document that the debt collector did not communicate with the consumer by sending an email message to an email address that the debt collector knows has led to a violation of the prohibition on third-party communications.

# Text Communications

- Scenario 1: Consumer used the phone number– the consumer used the telephone number to communicate with the debt collector about the debt by text message. This prong is not satisfied if the consumer used the phone number to communicate with the debt collector about the debt only by telephone call.
  - The consumer has not since opted out of text message communications to that telephone number.
  - Within the past 60 days, either
    - the consumer sent a text message to the debt collector from that phone number, or
    - the debt collector confirmed that the phone number has not been reassigned from the consumer to another user since the date of the consumer's most recent text message to the debt collector from that phone number.
    - The debt collector must confirm that the phone number has not been re-assigned using a complete and accurate database.
- Scenario 2: Consumer provided direct prior consent – the debt collector received prior consent directly from the consumer to use the phone number to communicate with the consumer about the debt by text message.
  - The consumer has not since withdrawn that consent.
  - Within the past 60 days either
    - the debt collector obtained or renewed the consumer's consent to use the telephone number to communicate by text message, or
    - the debt collector confirmed that the telephone number has not been reassigned from the consumer to another user since the date of consumer's most recent consent to use that telephone number to communicate about the debt by text message.
    - The debt collector must confirm that the number has not been re-assigned using a complete and accurate database.

# Electronic Communications



Policies & Procedures	<ul style="list-style-type: none"><li>• Have written policies and procedures been updated?</li><li>• Is there a process in place to receive email and text opt-outs and update account to prevent future email and/or texts?</li></ul>
Training	<ul style="list-style-type: none"><li>• Are collectors trained to notate account when a consumer verbally opts out of receiving texts or email?</li><li>• Are collectors trained to request permission to contact consumer by text or email at a specific number or email address?</li></ul>
Monitoring & Testing	<ul style="list-style-type: none"><li>• Are calls monitored to ensure consumer opt-outs and consents are captured correctly?</li><li>• Is there an exemption report identifying emails and/or texts sent after a consumer opted-out?</li></ul>
Complaint Management	<ul style="list-style-type: none"><li>• Are complaints about email and text communication categorized as such?</li><li>• Are regular reports about such complaints prepared and circulated to managers within firm that can address the problem?</li></ul>
Board Oversight	Does Board receive the exception and complaint reports referenced above?

# Social Media

- Reg. F prohibits a debt collector from communicating or attempting to communicate with a person, in connection with the collection of a debt, through a social media platform **if the communication or attempt to communicate is viewable** by the general public or the person's social media contacts.
- It does not prohibit a debt collector from sending a message through a social media platform **if the message is not viewable** by the general public or the person's social media contacts.
- The definition of “person” includes a consumer, which under the FDCPA is any natural person obligated or allegedly obligated to pay any debt.
- Relevant question is whether the communication or attempt to communicate is viewable, not whether the platform itself is viewable.

# Social Media



Policies & Procedures	Have written policies and procedures been updated to prohibit use of social media or to ensure it is only used as permitted by Reg. F?
Training	Has FDCPA training been updated to communicate firm policy on social media?
Monitoring & Testing	<ul style="list-style-type: none"><li>• If prohibited completely, is logging into social media sites blocked?</li><li>• If not blocked, how do you detect if collector contacts consumer via social media in a way that is publicly viewable?</li></ul>
Complaint Management	<ul style="list-style-type: none"><li>• Are complaints about contacting consumers via social categorized as such?</li><li>• Are regular reports about such complaints prepared and circulated to managers within firm that can address the problem?</li></ul>
Board Oversight	Does the Board receive reports of impermissible communications via social media?

# Disputes



- Rule restates FDCPA's requirement that a debt collector must cease collection of a debt, or any disputed portion of a debt, when a debt collector receives a written dispute.
  - A debt collector may not resume collection of that debt until the debt collector responds to the consumer's dispute in writing or electronically.
  - A debt collector must provide a copy of either a verification of the debt or of a judgment
  - If consumer requests for name and address of original creditor, must send the name and address.
- If a debt collector determines that the consumer's dispute is duplicative of an earlier dispute, as defined in the Rule, a debt collector must either:
  - 1) provide the consumer with a brief statement of the reasons for the determination and refer the consumer to the debt collector's response to the earlier dispute; or
  - 2) send a verification of the debt or of a judgment to the consumer.

# Disputes



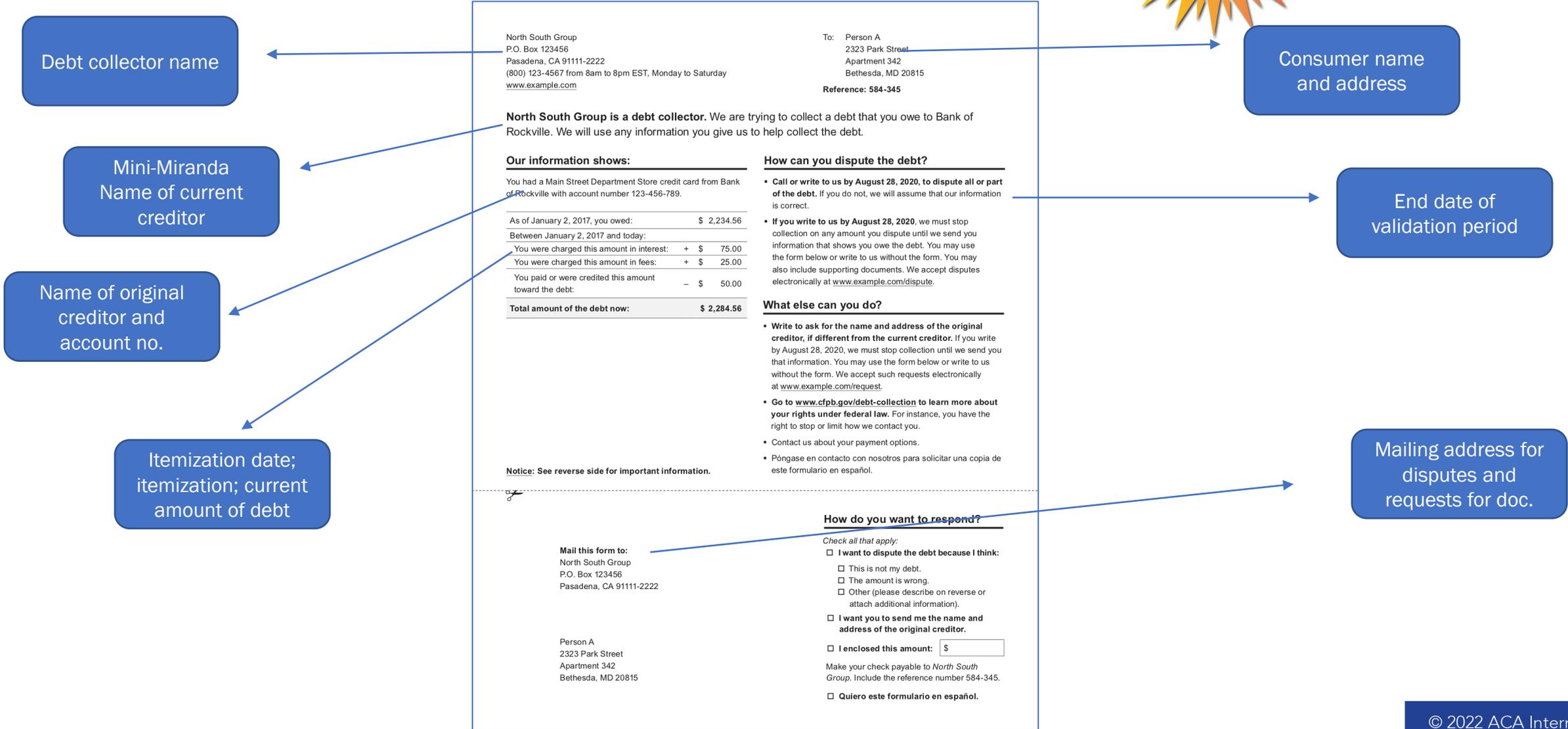
Policies & Procedures	Have written policies and procedures been updated?
Training	<ul style="list-style-type: none"><li>• Are relevant employees trained to notate account when a dispute is received?</li><li>• Are relevant employees trained to identify “duplicative” disputes or requests?</li><li>• Are relevant employees trained to respond with correct information and/or documentation?</li></ul>
Monitoring & Testing	Is there any exception report to identify collection attempts while a dispute is pending?
Complaint Management	Are complaints about how disputes are handled captured as such?
Board Oversight	Does Board receive exception and complaint reports referenced above?

# Disclosures



- The Rule generally restates the FDCPA’s requirement that a debt collector disclose in their initial, and in each subsequent, communication with the consumer that the communication is from a debt collector (i.e., the “mini-Miranda” disclosure).
- The Rule requires a debt collector to make any required disclosures in the same language used for the rest of the communication in which the disclosures are conveyed.
- The Rule clarifies that all required disclosures must be sent in a manner that is reasonably expected to provide *actual notice*; required *written* disclosures must be sent in a form that the consumer may keep and access later.
  - To meet the general standard when sending required written disclosures electronically, a debt collector must send the disclosures in accordance with the Electronic Signatures in Global and National Commerce Act (E-SIGN Act)’s consumer-consent requirements.
  - The Rule creates a safe harbor for sending required disclosures if the debt collector mails a printed copy of the disclosure to the consumer’s last known address. This safe harbor applies unless the debt collector, at the time of mailing, knows or should know that the consumer does not currently reside at, or receive mail in, that location.

# Validation Notices – Required Information



North South Group  
P.O. Box 123456  
Pasadena, CA 91111-2222  
(800) 123-4567 from 8am to 8pm EST, Monday to Saturday  
[www.example.com](http://www.example.com)

To: Person A  
2323 Park Street  
Apartment 342  
Bethesda, MD 20815  
Reference: 584-345

**North South Group is a debt collector.** We are trying to collect a debt that you owe to Bank of Rockville. We will use any information you give us to help collect the debt.

**Our information shows:**

You had a Main Street Department Store credit card from Bank of Rockville with account number 123-456-789.

As of January 2, 2017, you owed:	\$ 2,234.56
Between January 2, 2017 and today:	
You were charged this amount in interest:	+ \$ 75.00
You were charged this amount in fees:	+ \$ 25.00
You paid or were credited this amount toward the debt:	- \$ 50.00
<b>Total amount of the debt now:</b>	<b>\$ 2,284.56</b>

**How can you dispute the debt?**

- **Call or write to us by August 28, 2020, to dispute all or part of the debt.** If you do not, we will assume that our information is correct.
- **If you write to us by August 28, 2020,** we must stop collection on any amount you dispute until we send you information that shows you owe the debt. You may use the form below or write to us without the form. You may also include supporting documents. We accept disputes electronically at [www.example.com/dispute](http://www.example.com/dispute).

**What else can you do?**

- **Write to ask for the name and address of the original creditor, if different from the current creditor.** If you write by August 28, 2020, we must stop collection until we send you that information. You may use the form below or write to us without the form. We accept such requests electronically at [www.example.com/request](http://www.example.com/request).
- **Go to [www.cfpb.gov/debt-collection](http://www.cfpb.gov/debt-collection) to learn more about your rights under federal law.** For instance, you have the right to stop or limit how we contact you.
- Contact us about your payment options.
- Póngase en contacto con nosotros para solicitar una copia de este formulario en español.

**Notice:** See reverse side for important information.

**Mail this form to:**  
North South Group  
P.O. Box 123456  
Pasadena, CA 91111-2222

Person A  
2323 Park Street  
Apartment 342  
Bethesda, MD 20815

**How do you want to respond?**

Check all that apply:

- I want to dispute the debt because I think:**
  - This is not my debt.
  - The amount is wrong.
  - Other (please describe on reverse or attach additional information).
- I want you to send me the name and address of the original creditor.**
- I enclosed this amount:** \$
- Quiero este formulario en español.**

Make your check payable to *North South Group*. Include the reference number 584-345.

# Disclosures



Policies & Procedures	<ul style="list-style-type: none"><li>• Is firm policy to use CFPB’s Model Form B-1 for its validation notices?</li><li>• Have all validation notice templates been approved by Legal?</li><li>• Is there a process for approving any updates to the validation notice?</li></ul>
Training	Are relevant employees trained on the above policies and procedures?
Monitoring & Testing	<ul style="list-style-type: none"><li>• Is there an exception report identifying where validation notice did not go out?</li><li>• How are “undelivered” validation notices identified?</li></ul>
Complaint Management	
Board Oversight	Does Board receive exception and complaint reports referenced above?

# Questions & Answers



Jonathan L. Pompan  
Partner & Chair Consumer  
Financial Services  
202.344.4383  
jlpompan@Venable.com

Jonathan Pompan, partner and chair of Venable's Consumer Financial Services Practice Group, is based in Venable's Washington, DC office. Jonathan has extensive experience representing financial services companies, including some of the largest debt buyers and collectors and advertisers of financial services in the country, other consumer financial services providers, and their service providers. This work gives him considerable insight into successful strategies for satisfying new and evolving regulatory expectations.

Jonathan has assisted clients in bet-the-company government investigations and litigation pursued by federal agencies such as the CFPB and the FTC, as well as in-state enforcement proceedings involving state attorneys general. His experience includes several CFPB investigations and examination preparation and appeals. In addition, he provides ongoing compliance and general counseling advice to several clients in the FinTech, debt collection and credit services, lenders, and advertising and marketing sectors.

Jonathan is a frequent speaker, organizer, and moderator of conference panels, and author on legal and regulatory issues of significance to financial services companies. Recent speaking engagements include, PerformLine's COMPLY! Conference, OLA Compliance University, Lend360, LeadsCon, Education Finance Council, ACA International Annual Convention, and the Receivables Management Association International (RMAI) Annual Conference.



Alexandra Megaris  
Partner, Financial Services  
212.370.6210  
amegaris@Venable.com

Alex Megaris focuses on complex regulatory investigations and government enforcement matters involving state attorneys general, the Federal Trade Commission (FTC), the Consumer Financial Protection Bureau (CFPB), state regulatory agencies, and the U.S. Congress. Alex also works closely with Venable's government affairs team in advocating for clients before these agencies. She has extensive experience with consumer protection laws, such as state unfair, deceptive and abusive practices (UDAAP) laws, the FTC Act, the Consumer Financial Protection Act, the FTC's Telemarketing Sales Rule, and product-specific regulations, including those regulating credit reporting, loan servicing, and debt collection.

Alex has recent experience providing strategic advice and counsel to high-profile political ventures, including a high-net-worth individual exploring federal office and a presidential campaign. Through these experiences and her government litigation and investigations work, Alex brings a legal, business, and crisis-management sensibility to her clients, their management, and boards, offering thoughtful, creative, and pragmatic solutions to often thorny issues to help them manage their legal and reputational risks.

Alex is the hiring partner in Venable's New York office.