

### **Fair Debt Collection Practices Act<sup>1</sup>**

The Fair Debt Collection Practices Act (FDCPA) (15 USC 1692 et seq.), which became effective March 20, 1978, was designed to eliminate abusive, deceptive, and unfair debt collection practices. The FDCPA also protects reputable debt collectors from unfair competition and encourages state action to protect consumers from abuses in debt collection. The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) granted rulemaking authority under the FDCPA to the Consumer Financial Protection Bureau (CFPB) and, with respect to entities under its jurisdiction, granted authority to the CFPB to enforce compliance with the FDCPA.<sup>2</sup> The federal banking agencies, the National Credit Union Administration (NCUA), the Federal Trade Commission (FTC), and certain other regulators are authorized to enforce compliance with the FDCPA with respect to institutions under their respective jurisdictions.<sup>3</sup>

When the FDCPA became effective, it authorized the FTC to issue rules only for States to apply for exemptions from the requirements of the FDCPA. The FTC issued Regulation F to govern this process. The Dodd-Frank Act transferred authority for Regulation F to the CFPB and authorized the CFPB to issue substantive rules under the FDCPA with respect to the collection of debts by debt collectors. The CFPB restated the FTC's Regulation F in 2011.<sup>4</sup> In 2020 and 2021, the CFPB amended Regulation F. The amendments, which address a broader range of topics, such as debt collection communications, and restate the substantive provisions of the FDCPA, became effective on November 30, 2021.<sup>5</sup>

The CFPB has issued frequently asked questions, a small-entity compliance guide, and other reference materials related to the FDCPA and Regulation F.<sup>6</sup>

### **Definitions – 12 CFR 1006.2**

#### **Debt That Is Covered**

The FDCPA and Regulation F apply only to the collection of debt incurred by a consumer primarily for personal, family, or household purposes. They do not apply to the collection of corporate debt or to debt owed for business or agricultural purposes.

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<sup>1</sup> These reflect FFIEC-approved procedures, including changes to Regulation F through January 2021.

<sup>2</sup> 12 USC 5481(12)(H), 5514(b)-(c), 5515(b)-(c).

<sup>3</sup> 15 USC 1692l.

<sup>4</sup> 76 Fed. Reg. 78121 (Dec. 16, 2011).

<sup>5</sup> 85 Fed. Reg. 76734 (Nov. 30, 2020); 86 Fed. Reg. 5766 (Jan. 19, 2021). For convenience, where the regulation restates the statute, these procedures cite only the regulation.

<sup>6</sup> See <https://www.consumerfinance.gov/compliance/compliance-resources/other-applicable-requirements/debt-collection/>.

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## **Debt Collectors That Are Covered**

Under the FDCPA and Regulation F, a “debt collector” is defined as:

- Any person<sup>7</sup> who uses any instrumentality of interstate commerce or mail in any business whose principal purpose is debt collection.
- Any person who regularly collects, or attempts to collect, debts owed to another person.
- A creditor who, in the process of collecting its own debts, uses a name, other than the creditor’s own, which would indicate that a third person is collecting the debt.
- For purposes of 12 CFR 1006.22(e) only, any person who uses any instrumentality of interstate commerce or mail in any business whose principal purpose is the enforcement of security interests.

## **Debt Collectors That Are Not Covered**

A person is not a debt collector under the FDCPA and Regulation F when the person collects:

- Another’s debts in isolated instances.
- Debts under the person’s own name that the person originated.
- Debts that the person originated and then sold but continues to service (for example, mortgage and student loans).
- Debts owed or due, or asserted to be owed or due, to another, that were not in default when they were obtained.
- Debts that were obtained as security for a commercial credit transaction (for example, accounts receivable financing).
- Debts incidental to a bona fide fiduciary relationship or escrow arrangement (for example, a debt held in the institution’s trust department or mortgage loan escrow for taxes and insurance).
- Debts for another person who is related by common ownership or corporate control.

Others that are not covered also include:

- Officers or employees of a creditor who collect debts owed to the creditor in the creditor’s name.
- Legal process servers.

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<sup>7</sup> Person includes natural persons, corporations, companies, associations, firms, partnerships, societies, and joint stock companies.

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## **Examples**

The following examples illustrate the definition of “debt collector”:

- An institution’s principal business purpose is the collection of debts. The institution is a debt collector, assuming it uses any instrumentality of interstate commerce or mail.
- An institution regularly collects debts owed or due to another. The institution is a debt collector.
- An institution services loans owned by others. The loans placed for servicing regularly include loans that are in default when placed with the institution. The institution is a debt collector as to any debts that were in default at placement.
- An institution’s principal business purpose is the collection of debts it has purchased. The institution is a debt collector both when it contacts consumers itself and when it hires other collection agencies to do so, assuming it uses any instrumentality of interstate commerce or mail.
- An institution collects defaulted debts that the institution has purchased, but does not collect or attempt to collect, directly or indirectly, debts owed or due, or asserted to be owed or due, to another, and does not have a business the principal purpose of which is the collection of debts. The institution is not a debt collector.
- An institution originates loans. When any of its loans go into default, the institution attempts to collect them while using an assumed name. The name indicates that a third party is collecting the debt. The institution is a debt collector.
- An institution’s principal business purpose is the enforcement of security interests. The institution is a debt collector for purposes of 12 CFR 1006.22(e), assuming it uses any instrumentality of interstate commerce or mail. 12 CFR 1006.22(e) prohibits taking or threatening to take any nonjudicial action in certain circumstances, such as where there is no present right to possession through an enforceable security instrument.

## **Communications**

“Communicate” or “communication” (as defined in 12 CFR 1006.2(d)) means the conveying of information regarding a debt directly or indirectly to any person through any medium. If an attempt to contact, a message to, or a discussion with a consumer or third party does not convey information regarding a debt, it is not a communication under Regulation F.

Even if such actions are not communications, they may be “attempts to communicate” for the purposes of the FDCPA and Regulation F. An “attempt to communicate” is any act to initiate a communication or other contact about a debt with any person through any medium, including by soliciting a response from such person. For example, placing a telephone call to a person is an attempt to communicate with the person regardless of whether the collector reaches the person.

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A voicemail with the content described in 12 CFR 1006.2(j) is a “limited-content message.” A limited-content message is not a communication for the purposes of the FDCPA and Regulation F; however, it is an attempt to communicate.

## **Communications in Connection With Debt Collection – 12 CFR 1006.6 and 1006.10**

### **When, Where, and With Whom Communication Is Permitted**

#### ***Communicating With the Consumer***

A debt collector may not communicate or attempt to communicate with a consumer at any unusual time or place, or at any time or place that the debt collector knows or should know is inconvenient to the consumer, unless the consumer has given prior consent for such contacts directly to the debt collector, or a court of competent jurisdiction has already given express permission for such contacts. A debt collector may not communicate or attempt to communicate with a consumer at the consumer’s place of employment if the collector knows or has reason to know that the employer prohibits such contacts.

A debt collector knows or should know that a time or place is inconvenient for a consumer if the consumer uses the word “inconvenient” or if the facts and circumstances indicate that a time or place is inconvenient for the consumer, even if the consumer does not specifically state to the debt collector that a time or place is “inconvenient.” Absent information to the contrary, debt collectors are to assume that communications and attempts to communicate between 9:00 p.m. and 8:00 a.m. in the consumer’s time zone are inconvenient.

If a debt collector knows that the consumer has retained an attorney to handle the debt, and knows or can readily obtain the attorney’s name and address, the debt collector may not communicate or attempt to communicate with the consumer, unless the attorney is unresponsive or agrees to allow direct communication with the consumer.

#### ***Ceasing Communication With the Consumer***

When a consumer refuses, in writing or electronically, to pay a debt or requests that the debt collector cease further communication, the collector must cease all further communication and attempts to communicate with the consumer with respect to that debt, except to advise the consumer that:

- The collection effort is being stopped.
- Certain specified remedies ordinarily invoked may be pursued or, if applicable, that a specific remedy will be pursued.

Cease-communication requests sent by the consumer in writing or electronically are complete when they are received by the debt collector.

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## ***Communicating With Third Parties***

In general, a debt collector who is trying to collect a debt may communicate with only the following persons:

- The consumer.
- The consumer's attorney.
- A consumer reporting agency (if permitted by law).
- The creditor.
- The creditor's attorney.
- The debt collector's attorney.

The consumer or a court of competent jurisdiction may, however, give the debt collector specific permission to communicate with other third parties.

For purposes of this restriction, the term "consumer" is defined to include the consumer's spouse, parent (if the consumer is a minor), guardian, executor, administrator, or successor in interest.

A debt collector who has not yet located a consumer may ask a third party for the consumer's home address, telephone number, and place of employment (location information). The debt collector must give the collector's own name and state that the collector is confirming or correcting location information about the consumer. Unless specifically asked, the debt collector may not name the collection firm or agency. The debt collector must not state that the consumer owes any debt.

The prohibition against engaging any person in telephone conversations repeatedly or continuously with intent to annoy, abuse, or harass discussed below applies to calls to third parties. Additionally, a debt collector may not communicate with a third party more than once unless the collector believes that the information from the earlier communication was wrong or incomplete and that the third party has since received better information, or unless requested to do so by the third party.

## ***Bona Fide Error in Electronic Communications With Third Parties***

A debt collector's prohibited communication with a third party by email or text message can be a bona fide error for purposes of civil liability under 15 USC 1692k(c) if the debt collector maintains procedures reasonably adapted to prevent such communications. The procedures are reasonably adapted to this purpose, for example, if they contain the steps outlined in 12 CFR 1006.6(d)(3)-(5).

## ***Right to Opt Out of Electronic Communications***

When communicating or attempting to communicate using a specific email address, telephone number for text messages, or other electronic-medium address, a debt collector must provide the

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consumer an opt-out notice. The notice must be clear and conspicuous and must describe a reasonable and simple method by which the consumer can opt out of further electronic communications or attempts to communicate by the debt collector to that address or telephone number.

## **Prohibited Practices**

### **Harassing, Oppressive, or Abusive Conduct – 12 CFR 1006.14**

A debt collector may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt. For example, a debt collector may not:

- Use or threaten to use violence or other criminal means to harm the physical person, reputation, or property of any person.
- Use obscene, profane, or other language that abuses the hearer or reader.
- Publish a list of consumers who allegedly refuse to pay debts, except to a consumer reporting agency or to persons meeting the requirements of Sections 603(f) or 604(a)(3) of the Fair Credit Reporting Act.
- Advertise a debt for sale to coerce payment.
- Make telephone calls without meaningfully disclosing the debt collector's identity, except as allowed to obtain location information.
- Communicate or attempt to communicate with a person through a medium of communication if the person has requested that the debt collector not use that medium to communicate with the person, with certain limited exceptions.

### **Telephone Call Frequency Limitation**

A debt collector may not cause a person's telephone to ring or engage any person in telephone conversations repeatedly or continuously with intent to annoy, abuse, or harass. Compliance with this provision is presumed, unless either of the following occurs (in which case, a violation is presumed):

- The debt collector places telephone calls to a person in connection with the collection of a particular debt more than seven times within a seven-day period.
- The debt collector places a telephone call to a person in connection with the collection of a particular debt within seven days after engaging in a telephone conversation with the person about the particular debt.

Telephone calls do not count toward these telephone call frequencies if they are:

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- Placed with the person's consent given directly to the collector within the last seven days.
- Not connected to a dialed number. A call does not connect to the dialed number if, for example, the collector receives a busy signal or an indication that the number is not in service. (Comment 14(b)(3)(ii)-1).
- Placed to the consumer's attorney, a consumer reporting agency, the creditor or creditor's attorney, or the debt collector's attorney.

In the case of student loan debts, the term "particular debt" means all student loan debts that a consumer owes or allegedly owes that were serviced under a single account number at the time the debts were obtained by a debt collector.

## **False, Deceptive, or Misleading Representations or Means – 12 CFR 1006.18**

A debt collector may not use any false, deceptive, or misleading representation or means to collect or attempt to collect a debt. For example, a debt collector may not:

- Falsely represent or imply that the collector is vouched for, bonded by, or affiliated with the United States or any State, including the use of any badge, uniform, or similar identification.
- Falsely represent the character, amount, or legal status of the debt, or of any services rendered, or compensation that the collector may receive for collecting the debt.
- Falsely represent or imply that the collector is an attorney or that communications are from an attorney.
- Threaten to take any action that cannot legally be taken or that is not intended to be taken.
- Falsely represent or imply that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages of any person, unless such action is lawful and intended by the debt collector or creditor.
- Falsely represent or imply that the sale, referral, or other transfer of the debt will cause the consumer to lose a claim or a defense to payment, or become subject to any practice prohibited by the FDCPA or Regulation F.
- Falsely represent or imply that the consumer committed a crime or other conduct to disgrace the consumer.
- Communicate, or threaten to communicate, credit information that the debt collector knows or should know to be false, including not identifying disputed debts as such.

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- Use or distribute written communications made to look like or falsely represented to be documents authorized, issued, or approved by any court, official, or agency of the United States or any State, or that give a false impression of their source, authorization, or approval.
- Use any false representation or deceptive means to collect or attempt to collect a debt or to obtain information about a consumer.
- Fail to disclose in the initial written communication with the consumer, and in the initial oral communication if it precedes the initial written communication, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose. In addition, the debt collector must disclose in subsequent communications that the communication is from a debt collector. (These disclosures do not apply to a formal pleading made in connection with a legal action.)
- Falsely represent or imply that accounts have been sold to innocent purchasers.
- Falsely represent or imply that documents are legal process.
- Use any name other than the true name of the debt collector's business, company, or organization. (A debt collector's employee may use an assumed name when communicating or attempting to communicate with a person, provided that the employee uses the assumed name consistently and that the debt collector can readily identify any employee using an assumed name.)
- Falsely represent or imply that documents are not legal process or do not require action by the consumer.
- Falsely represent or imply that the collector operates or is employed by a consumer reporting agency.

## **Unfair or Unconscionable Means – 12 CFR 1006.22**

A debt collector may not use unfair or unconscionable means to collect or attempt to collect a debt. For example, a debt collector may not:

- Collect any amount, including any interest, fee, charge, or expense incidental to the principal obligation, unless it was expressly authorized by the original debt agreement or permitted by law.
- Accept a check or other instrument post-dated by more than five days, unless the collector notifies the consumer, in writing, of any intention to deposit the check or instrument. That notice must be made not more than 10 or less than 3 business days before the date of the deposit.
- Solicit a post-dated check or other post-dated payment instrument to use as a threat or to institute criminal prosecution.

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- Deposit or threaten to deposit a post-dated check or other post-dated payment instrument before the date on the check or instrument.
- Cause communication charges, such as those for collect telephone calls and telegrams, to be made to any person by concealing the true purpose of the communication.
- Take or threaten to repossess or disable property when the creditor has no enforceable right to the property or does not intend to take possession of it, or if, under law, the property cannot be taken, repossessed, or disabled.
- Communicate with a consumer regarding a debt by postcard.
- Use any language or symbol, other than the debt collector's address, on any envelope when communicating with a consumer; a debt collector may use its business name if such name does not indicate it is in the debt collection business.
- Communicate or attempt to communicate with a consumer by sending an email to an email address that the debt collector knows is provided to the consumer by the consumer's employer, with certain exceptions.
- Communicate or attempt 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.

## **Collection of Time-Barred Debts – 12 CFR 1006.26**

A debt collector may not bring, or threaten to bring, a legal action against a consumer to collect a time-barred debt (i.e., a debt for which the applicable statute of limitations has expired).

## **Other Prohibited Practices – 12 CFR 1006.30**

### **Passive Collections**

In general, a debt collector may not furnish information about a debt to a consumer reporting agency before the debt collector:

- Speaks to the consumer about the debt in person or by telephone; or
- Sends a letter or electronic message to the consumer about the debt and waits a reasonable period of time (14 days is a safe harbor) to receive a notice of undeliverability.

This prohibition does not apply to a debt collector's furnishing of information to a nationwide specialty consumer reporting agency that compiles information on a consumer's check-writing history.

### **Selling or Placing for Collection Certain Debt**

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A debt collector may not, with certain exceptions, sell, transfer for consideration, or place for collection a debt that it knows or should know has been paid or settled or discharged in bankruptcy.

## **Multiple Debts**

If a consumer owes several debts that are being collected by the same debt collector and makes any single payment, that payment must be applied according to the consumer's instructions if such instructions are provided. No payment may be applied to a disputed debt.

## **Legal Actions by Debt Collectors**

A debt collector may file a lawsuit to enforce a security interest in real property only in the judicial district in which the real property is located. Other legal actions may be brought only in the judicial district in which the consumer lives or in which the contract creating the debt was signed.

## **Furnishing Certain Deceptive Forms**

No debt collector (and under 15 USC 1692j, no person) may design, compile, and furnish any form knowing that such form would be used to create the false impression that someone other than the creditor (for example, a debt collector) is participating in the collection of a debt.

## **Validation of Debts – 12 CFR 1006.34 and 1006.38**

The debt collector must provide the consumer with "validation information" in a "clear and conspicuous" form in the initial communication or within five days of the initial communication. If not provided in the initial communication, the validation information must be provided in writing or electronically. If the consumer pays the debt within five days of the initial communication, then the debt collector is not required to provide the validation information.

The validation information must include the following:

- The debt collector communication disclosure required by 12 CFR 1006.34(c)(1).
- The information about the debt required by 12 CFR 1006.34(c)(2).
- The information about consumer protections required by 12 CFR 1006.34(c)(3).
- The consumer-response information required by 12 CFR 1006.34(c)(4).

The document containing this information is often called a "validation notice." A model validation notice appears in appendix B-1 to Regulation F. Use of the model notice is not required, but a debt collector who uses it has complied with the validation information content and form requirements. A debt collector has the option to use a version of the model validation notice that adds or omits certain optional content, a version that includes certain content on a separate page, or a version that is otherwise substantially similar to the model validation notice. A debt collector may make these changes and retain the safe harbor for compliance with the validation information content and form requirements received through use of the model validation notice.

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During the validation period (as defined in 12 CFR 1006.34(b)(5)), the debt collector must not engage in any collection activities or communications that overshadow or are inconsistent with the disclosure of the consumer's rights to dispute the debt and to request the name and address of the original creditor.

If, within 30 days of receiving the validation notice, the consumer disputes in writing any portion of the debt or requests the name and address of the original creditor, the collector must stop all collection efforts until the collector sends the consumer, in writing or electronically, a copy of a judgment or verification of the debt, or the name and address of the original creditor, as applicable.

## **Sending Required Disclosures – 12 CFR 1006.42**

With certain exceptions, whenever the FDCPA or Regulation F requires a debt collector to provide a disclosure and the disclosure is provided in writing or electronically, the debt collector must provide the disclosure in a manner that is reasonably expected to provide actual notice and in a form that the consumer may keep and access later.

To comply with this requirement, a debt collector sending the following disclosures electronically must do so in accordance with the Electronic Signatures in Global and National Commerce Act:<sup>8</sup>

- The validation notice described in 12 CFR 1006.34(a)(1)(i)(B).
- The response to a request for original-creditor information described in 12 CFR 1006.38(c).
- The response to a dispute described in 12 CFR 1006.38(d)(2)(i).

## **Record Retention – 12 CFR 1006.100**

A debt collector must retain records that are evidence of compliance or noncompliance with the FDCPA and Regulation F starting on the date that the collector begins collection activity on the debt and until at least three years after the last collection activity on the debt. A debt collector must retain any recordings of telephone calls in connection with the collection of a debt for three years after the date of the call.

## **Civil Liability – 15 USC 1692k, 1692n, 1692o**

A debt collector who fails to comply with any provision of the FDCPA or Regulation F is liable for:

- Any actual damages sustained as a result of that failure.
- Punitive damages as allowed by the court:
  - in an individual action, up to \$1,000; or

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<sup>8</sup> 15 USC 7001(c).

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- in a class action, up to \$1,000 for each named plaintiff and an award to be divided among all members of the class of an amount up to \$500,000 or 1 percent of the debt collector's net worth, whichever is less.
- Costs and a reasonable attorney's fee in any such action.

In determining punitive damages, the court must consider the nature, frequency and persistency of the violations and the extent to which they were intentional. In a class action, the court must also consider the resources of the debt collector and the number of persons adversely affected.

## **Intent**

A debt collector may have a bona fide error defense to civil liability if it shows by a preponderance of the evidence that the violation was not intentional and was the result of a bona fide error that arose despite procedures reasonably designed to avoid any such error. The collector is also not civilly liable if the collector, in good faith, relied on an advisory opinion of the CFPB, even if the ruling is later amended, rescinded, or determined to be invalid for any reason.

## **Jurisdiction and Statute of Limitations**

Action against debt collectors for violations of the FDCPA or Regulation F may be brought in any appropriate U.S. district court or other court of competent jurisdiction. The consumer has one year from the date on which the violation occurred to start such an action.

## **State Law – 12 CFR 1006.104, 1006.108**

### **Relation to State Law**

The FDCPA and Regulation F preempt state law only to the extent that a state law is inconsistent with them. A state law that is more protective of the consumer is not considered inconsistent with the FDCPA or Regulation F.

### **Exemption for State Regulation**

The CFPB may exempt certain classes of debt collection practices within any state from the requirements of the FDCPA and Regulation F if the CFPB has determined that the law of that state imposes substantially similar requirements and that there is adequate provision for enforcement.

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## **REFERENCES**

### **Laws**

15 USC 1692 *et seq.*, Fair Debt Collection Practices Act (FDCPA)

### **Regulations**

Consumer Financial Protection Bureau Regulation 12 CFR Part 1006, Debt Collection Practices (Regulation F)

### **Guides**

CFPB compliance guides<sup>9</sup>

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<sup>9</sup> The CFPB has issued frequently asked questions, a small-entity compliance guide, and other reference materials related to the FDCPA and Regulation F. See <https://www.consumerfinance.gov/compliance/compliance-resources/other-applicable-requirements/debt-collection/>.

### **Fair Debt Collection Practices Act<sup>10</sup>**

#### **Examination Objectives**

1. To assess the quality of the institution's compliance management system for the FDCPA and Regulation F.
2. To determine compliance with the FDCPA and Regulation F.
3. To initiate corrective action when the institution's compliance management system is deficient, or when violations of law or regulation are identified.

#### **Examination Procedures**

Each examination should be risk-based and may not require an examiner to address all of the procedures below. In addition, each supervising agency may have its own supervisory strategy that will dictate which examination procedures are required to be completed.

#### **General Procedures**

1. Determine if the institution acts as a debt collector under the FDCPA and Regulation F.
2. Determine if the institution places debt for collection by, or sells debt to, one or more debt collectors under the FDCPA and Regulation F.
3. Through discussions with management and review of relevant documents, determine the adequacy of the institution's compliance management system for the FDCPA and Regulation F.
4. If the institution (and, if consistent with the scope of the review, any service providers with which the institution places debt for collection) has acted or is acting as a debt collector, assess compliance with the FDCPA and Regulation F. Consider, among other things practices and contracts for debt placements, purchases and sales, collection letters, dunning notices, envelopes, electronic communications, call logs, call recordings, scripts used by collection personnel, validation notices, individual collection files, complaint files, and other relevant records. Determine if the institution has:
  - a. Communicated with the consumer or third parties in any prohibited manner (12 CFR 1006.6, 1006.10);
  - b. Used any harassing, abusive, unfair, or deceptive collection practice or any other prohibited practice (12 CFR 1006.14, 1006.18, 1006.22, 1006.30);

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<sup>10</sup> These reflect FFIEC-approved procedures, including changes to Regulation F through January 2021.

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- c. Brought or threatened to bring a legal action against a consumer to collect a time-barred debt (12 CFR 1006.26);
- d. Furnished the written validation notice within the required time period and otherwise complied with applicable validation requirements (12 CFR 1006.34, 1006.38);
- e. Sent required disclosures in the prescribed manner (12 CFR 1006.42); and
- f. Retained records as required (12 CFR 1006.100).

## **Examiner's Summary, Recommendations, and Comments**