

Court Finds That Use of the Model Validation Notice is Not Required to Comply with Regulation F

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Aylix K. Jensen offers analysis and insights for the debt collection industry in her monthly newsletter, *The Safe Harbor: Debt Collection Law Update by Aylix Jensen*. This monthly newsletter provides an update of changes and developments in the law that impact the debt collection industry. It highlights new debt collection laws and practices, discusses what these may mean for the collection industry, and provides tips to ensure compliance. This article is featured in the September/October 2022 edition.

On October 13, 2022, the United States District Court for the Central District of Illinois found that Regulation F does not require debt collectors to use the CFPB's Model Validation Notice for compliance with the rule and granted a debt collector's motion to remand to state court for lack of subject matter jurisdiction. This case stems from a collection services agreement between the plaintiff debt collector and the defendant hospital district and municipal corporation. As part of the agreement, the defendant was required to comply with various laws and regulations including the FDCPA and Regulation F ("Reg F"), which was promulgated by the CFPB and went into effect on November 30, 2021.

Reg F, in part, clarifies section 1692g of the FDCPA and requires debt collectors to include specific information regarding a debt, information about consumer protections, and consumer-response information. The CFPB requires that the information must be "clear and conspicuous" and provides a model form. In addition, the CFPB advised that use of the model form is a safe harbor for debt collectors.

Despite attempts to do so, the plaintiff was unable to ensure that the changes were made to its initial contact letter to reflect the safe harbor model in Reg F before it went into effect. As a result, the defendant claimed that the plaintiff debt collector violated Reg F and the FDCPA and requested that it terminate all debt collection activities on the defendant's behalf, withdraw any accounts placed with it, and return patient collection records.

Disagreeing with the defendant's position, the plaintiff filed suit seeking a declaratory judgment that its initial contact letter complied with the FDCPA. The defendant removed the case to federal court and the plaintiff moved to remand, arguing that there was no federal question jurisdiction over the breach of contract claim. Agreeing with the plaintiff, the court found that the defendant did not meet its burden to show that there was an embedded federal question warranting the exercise of federal question jurisdiction.



The court noted that there was a federal issue because the plaintiff's alleged failure to comply with the FDCPA and Reg F was the basis for the alleged contractual violation, but stated that the issue was not substantial in the relevant sense. Specifically, the court noted that "th[e] case d[id] not involve a nearly pure question of law; instead, it involve[d] application of Regulation F to the facts of the case." Notably, the court stated:

While the amended complaint hints at a dispute over whether Regulation F *requires* use of the model form . . . it clearly does not. (emphasis included in original). The phrase "safe harbor" indicates that use of the form is sufficient but not necessary for compliance. See 12 C.F.R. Section 1006.34(d)(2). A debt collector may comply by using a different form so long as the required information is provided in a clear and conspicuous manner. *Id.* Section 1006.34(d)(1).

In addition, the court stated that the real issue in the case was whether the initial contact letter provided the information in a clear and conspicuous manner. The court concluded that it had no subject matter jurisdiction over the case because the federal issue in the claim was not substantial enough to warrant exercise of federal jurisdiction over a state law claim.

The biggest takeaway from this case is that in a first-in-the-nation decision, a federal district court interpreted Reg F and held that it does not require debt collectors to use the Model Validation Notice. Rather, a debt collector may comply with Reg F so long as the required information is provided in a "clear and conspicuous" manner. Despite the court's findings, we recommend following a conservative approach and using the Model Validation Notice when initially communicating with a consumer.

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Practice Areas

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