The FDCPA does not specifically address electronic communication, and issues arise as to how FDCPA provisions apply to electronic communications between debt collectors and consumers. Regulation F clarifies that, in the definition of “communication,” “any medium” includes email, text message, social media, or other electronic media.²

Regulation F includes new provisions relating to debt collector email, text message, and social media communications with the consumer, as well as consumer email, text message, or web portal communications with the debt collector. This subsection lists these provisions, with reference to other subsections of this treatise where these provisions are examined.

Restrictions on Debt Collector Use of Electronic Mediums to Collect Debts. Regulation F places the following restrictions on electronic communication in connection with collection of a debt:

• Debt collectors cannot send collection emails to a consumer’s email address that the debt collector knows is provided to the consumer by the consumer’s employer, unless the consumer’s provision of the address to a debt collector has met certain conditions. See § 8.10 [1], infra.

• Electronic communications intended for the consumer cannot be viewed by third parties. Regulation F provides a safe harbor if the debt collector acquires the email address or phone number for text messages using certain procedures and the collector has no knowledge that prior electronic communication at that email address has led to disclosure to a third party. See § 5.7.9 [2], infra.

• The limits and presumptions as to a debt collector communicating at an unusual or inconvenient time apply to electronic communication. Electronic communication occurs when the debt collector sends it, not, for example, when the consumer receives or views it. See § 5.4.2 [3], infra.

• Electronic communication media are not associated with a place, and usually their use does not violate the prohibition on contacting the consumer at an inconvenient place. Nevertheless, there is a violation if the debt collector knows that the communication will be received by the consumer at an unusual place, or at a place that the debt collector knows or should know is inconvenient to the consumer. See § 5.4.3 [4], infra.

• Regulation F has no specific frequency standards for emails, text messages, or other electronic communications sent to consumers, but they are still subject to the general standard as to harassment. The total amount of cumulative communications, including electronic communications, can violate the general standard. See § 6.7.2.4 [5], infra.

• Regulation F requires the debt collector to provide notice in any electronic communication to the consumer of the right to opt out of the specific medium of electronic communication, and requires the debt collector to disclose to the consumer a reasonable, simple, and free method to opt out of a specific mode of electronic communication. See § 5.9 [6], infra.

• Where a consumer has opted out of a medium of electronic communications, the collector can communicate with the consumer through that medium only in limited circumstances. See § 6.9 [7], infra.

• Regulation F prohibits debt collector use of social media in connection with collection of a debt when contacting the consumer or third parties (seeking location information), if a person’s social media contacts or the general public can see the message. See § 8.11 [8], infra.

• Debt collectors must disclose their identity as a debt collector when sending a private message, in connection with the collection of a debt, requesting to be added as one of the consumer’s contacts on social media. See § 7.4.2 [9], infra.

• When using social media to obtain the consumer’s location information from a third party, the profile must accurately identify the debt collector’s individual name. See § 7.4.3 [10], infra.

Debt Collector Use of Electronic Mediums to Make Required Disclosures. Regulation F sets restrictions on a debt collector’s use of electronic mediums to provide validation notices and other required disclosures:

• Electronic validation notices must include the right to opt out of that means of communication. See § 9.3.2.1 [11], infra.

• Any electronic validation information in the initial communication or in a subsequent notice must be done in a manner that is reasonably expected to provide actual notice, and in a form that the consumer may keep and access later. See § 9.3.2.2 [12], infra.

• When an electronic validation notice is sent after an initial communication, the debt collector must first have complied with E-SIGN’s consumer consent provisions. See § 9.3.2.3 [13], infra.

• Regulation F sets out optional guidelines as to the form for an electronic validation notice. See § 9.5.3 [14], infra.

• After a consumer’s request for verification of a debt or the identity of the original creditor, the debt collector response, if electronic, must be sent in a manner that is reasonably expected to provide actual notice, and in a form that the consumer may keep and access later. See § 9.8.1 [15], infra.
1.1.1.7 Regulation F Treatment of Electronic Communications

Published on NCLC Digital Library (https://library.nclc.org)

Date downloaded: March 3, 2022 4:48 am

• With the exception as to notice to the consumer that the consumer’s dispute is duplicative, the debt collector, prior to an electronic response, must comply with E-SIGN’s consumer consent provisions. See § 9.8.1 [15], infra.

Consumer Use of Electronic Communication. Regulation F provides consumer rights, triggered by a consumer request of the debt collector. Regulation F establishes guidelines if such a consumer request is made electronically:

• A request for debt verification, to dispute a debt, or to seek the identity of the originating creditor can be made electronically through a medium of electronic communication that the collector uses to accept communications from consumers. See § 9.10.2 [16], infra.

• A consumer can send a cease communication request electronically using a medium of electronic communication through which a debt collector accepts electronic communications from consumers. See § 5.8.2 [17], infra.

• A consumer can opt out of a debt collector’s email, text message, or other electronic method of debt collection. This opt out method must be reasonable, simple, and free. Regulation F Official Interpretations provide examples where the consumer’s response is in the same electronic medium by which the collector’s electronic communication was sent. See § 5.9 [6], infra.

Footnotes


Source URL: https://library.nclc.org/fdc/01010107-0

Links
[1] https://library.nclc.org/nclc/link/FDC.08.10
[2] https://library.nclc.org/nclc/link/FDC.05.07.09
[3] https://library.nclc.org/nclc/link/FDC.05.04.02
[4] https://library.nclc.org/nclc/link/FDC.05.04.03
[5] https://library.nclc.org/nclc/link/FDC.06.07.02.04
[6] https://library.nclc.org/nclc/link/FDC.05.09
[7] https://library.nclc.org/nclc/link/FDC.06.09
[8] https://library.nclc.org/nclc/link/FDC.08.11
[9] https://library.nclc.org/nclc/link/FDC.07.04.02
[10] https://library.nclc.org/nclc/link/FDC.07.04.03
[11] https://library.nclc.org/nclc/link/FDC.09.03.02.01
[12] https://library.nclc.org/nclc/link/FDC.09.03.02.02
[13] https://library.nclc.org/nclc/link/FDC.09.03.02.03
[14] https://library.nclc.org/nclc/link/FDC.09.05.03
[15] https://library.nclc.org/nclc/link/FDC.09.08.01
[16] https://library.nclc.org/nclc/link/FDC.09.10.02
[17] https://library.nclc.org/nclc/link/FDC.05.08.02
[18] https://library.nclc.org/nclc/link/FDC.04.07.01