



Debt Collection's New Landscape Under Regulation F & Impact of Licensing

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Why Now?



- Newly applicable federal regulation
- Newly applicable California licensing scheme
- Touted by DFPI & CFPB as most frequent subject of complaints
- Lots of questions from clients!



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Debt Collection Landscape: Roadmap



- Federal FDCPA
 - “debt collector” = non-lender
- California’s Rosenthal Act
 - “debt collector” includes lenders for most purposes
- State Licensing
 - Dozens of states
 - California the newest
- New Regulation F

High Level Summaries for Your Issue Spotting

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But First: New FDCPA Cases

- *Hunstein v Preferred Collection & Management Services*
 - 11th Circuit, April & November 2021
 - Debt collector provides information to printer/mail house
- FDCPA (1692c(b)) prohibits
 - Communicating consumers' personal information to third parties in connection with the collection of any debt
 - Ruling – no exception for vendors
- *En banc* hearing scheduled for Feb. 22, 2022
- *In re FDCPA Mailing Vendor Cases*
 - New York District Courts, July 2021
 - No standing because no "concrete, particularized injury" by provision to vendor

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Importance of California's Rosenthal Act

- Definition of Debt Collector
- Application to Consumers in California
 - Business location doesn't matter
- Tie-in to FDCPA
 - Civil Code 1788.17
 - Comply with Sections 1692b to 1692j
 - But not 1692e(11) (mini miranda) or 1692g (validation of debts)
 - All "as of" January 1, 2001
 - Note – 1692f (included in Rosenthal) prohibits unfair acts
- *Hunstein?*
 - California standing requirements may not help

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Regulation F

- In effect in November 2021
- More content to FDCPA standards
 - Solving for issues experienced by consumers
- Attempts to bring FDCPA into modern era
 - At enactment (1977), there were no text messages or email

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Regulation F (cont.)

- Highlights of Provisions
 - Limits on number of calls per week
 - “Safe harbor” messages to avoid making phones ring without leaving messages
 - Regulation of how to find consumers or ask third parties for contact info
 - Expansion on disclosure and debt validation requirements
 - Requirements for specific information to be conveyed at the outset of collections
 - Rights to opt out of types of communications
 - Prohibiting threats of litigation on time-barred debt

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Reg F's Relationship with Rosenthal



- As of January 1, 2001?
 - But statutes being interpreted are still the same
- Mixed regulatory justification
 - Some provisions provide content to “mini Miranda” & validation
 - Others unfair practices
- Note provisions which are Non-deception vs Disclosure
- Waiting for credit reporting under 1006.30(a)
 - Makes no sense in context of lenders
 - Based on unfair practices, but uses content from validation

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California Best Practices



- 01** Don't be unfair, deceptive, or abusive!
- 02** Rely on Safeharbor Communications
- 03** Comply with Call & other Contact Limitations
- 04** Don't credit report until sending a statement
- 05** Attempt to amend statement templates
 - Include as much as possible of 1006.34(c) elements
 - You already have most, if not all!
- 06** No active collection on time-barred debt

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New – CA Debt Collection Licensing



- Exemption for depository institutions
- Everyone else –
 - license required for regular business in debt collection
- What does this include?
 - Attorneys regularly collecting consumer debt
 - Forms vendors selling collections forms
 - Call center outsourcing?
 - No regulations defining this yet!

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CA Licensing... When?



- Applications opened 9-1-21
- License required as of 1-1-22
 - But remember, no regulations defining who needs one!
 - Request for legal opinion from DFPI by 12-31-21 can count until there are regulations
- Uses NMLS system
- Application processing promises to be slow

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Depository Exemption... Where's the Problem?

- “First Party” debt collection
 - Key vendors with history of “fast and loose”
 - Debt collection does not mean “delinquent 30+”
 - New requirements to disclose caller identity and license number
- Mainstream Collectors & Servicers
 - Need to check for license applications
 - And eventually receipt of licenses
- Other vendors?
 - Forms?
 - Which law firms count?

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Other Depository Institution Principles

- Limitation of Services
 - Recall Navy CFPB Penalty
 - NCUA standards in legal opinion letters
 - Keep limitations reasonably related to behavior, narrowly tailored
- Limitations on electronic access as “skip tracing”
 - More likely to call if they can't get their money?
 - How are they supposed to pay you?
- New California Credit Union Expulsion Process
 - More flexibility to declare inactive and a voluntary withdrawal
 - Note – needs Bylaws updates for most (or all) California state charters

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Questions?

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Thank you!

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