



# pulse

## For the Record

### Record retention requirements under Regulation F.

In the accounts receivable management industry, good record keeping can prevent a lot of headaches. Yet, aside from some states that require debt collectors to keep their records for a certain amount of time, the Fair Debt Collection Practices Act does not impose any record retention time frames. In this article, we will delve into the Consumer Financial Protection Bureau's final debt collection rule (Regulation F) and its record retention and purging requirements for documents and telephone recordings.

With the recent amendments to Reg F, which at press time are now proposed to take effect Jan. 29, 2022, the CFPB broke the federal silence on this matter. Once the amendments to Reg F take effect, all debt collectors subject to the FDCPA will need to start keeping documents for a certain amount of time. In its commentary, the bureau stated that a debt collector need not create and maintain, for the sole purpose of evidencing compliance, additional records that the debt collector would not have created in the ordinary course of its business before the record retention requirement. But what does that really mean?

Under Section 1006.100 of Reg F, a debt collector must retain records that evidence compliance or noncompliance with the FDCPA. What kind of records include this type of information? According to the bureau, one type would

be records that reasonably substantiate a debt collector's claim that a consumer owes a debt.

Under this provision, debt collectors are not required to retain paper documents, but may use any method that reproduces them accurately and allows for easy access, including accessing records held by another entity, such as a creditor.

A debt collector must keep a record of documents from the date the collection activity began to the date of the last collection activity on the debt for three years after the last collection activity. According to the CFPB's section-by-section analysis, this means records must be retained until three years after "(1) the debt collector's last communication or attempted communication in connection with the collection of the debt; or the debt is settled, discharged, or transferred to the debt owner or to another debt collector."

Also, the bureau's Comment 100(a)-1 clarifies that, if a record is of a type that could evidence compliance or noncompliance depending on the conduct of the debt collector that is revealed within the record, then it must be retained.

An important point to consider when calculating the end of the three-year period is that restarting debt collection activity at any time would mean that the last collection activity on the debt had not yet occurred. If any documents

pertaining to an account where collection activity is resumed had been previously purged, it would be a violation of Reg F.

Reg F also has a provision for recorded phone calls. It states that if a debt collector records telephone calls made in connection with the collection of a debt, then the debt collector must retain the recordings for three years after the date of the call. Note that this provision of Reg F does not *require* debt collectors to record phone calls; it merely states that recorded calls be preserved for three years after the date of the call. So, *if* you record calls, then you *must* now preserve the recordings for three years.

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# CFPB Rescinds Additional Policy Statements on Credit Reporting and Supervisory Communications

The bureau is discontinuing supervisory recommendations and ending flexible options it put in place for consumer reporting agencies and data furnishers in response to the COVID-19 pandemic.

The Consumer Financial Protection Bureau rescinded additional policy statements with implications for Fair Credit Reporting Act compliance and resulting in changes to communications about supervisory actions.

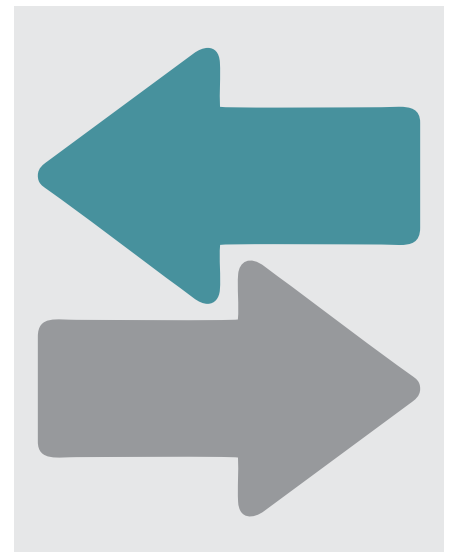
The CFPB announced it is rescinding seven policy statements issued in 2020 that provided temporary flexibilities to financial institutions in consumer financial markets including mortgages, credit reporting, credit cards and prepaid cards. The seven rescissions, effective April 1, provide guidance to financial institutions on complying with their legal and regulatory obligations.

The CFPB is also rescinding its 2018 bulletin on supervisory communications and replacing it with a revised bulletin describing its use of matters requiring attention (MRAs) to effectively convey supervisory expectations.

Effective immediately, the bureau reports in the revised bulletin that it will no longer issue formal written supervisory recommendations. The bureau believes that MRAs will more effectively convey its supervisory expectations.

Bureau examiners will also continue to provide informal feedback and suggestions to supervised entities as part of the supervisory process. While MRAs are not legally enforceable, the bureau expects supervised entities to correct the matters identified in MRAs promptly and effectively. The bureau will consider a supervised entity's response to MRAs when assessing its compliance rating or otherwise evaluating the risks that its activities pose to consumers and markets. These risk considerations may be used by the bureau for prioritizing future supervisory work and assessing the need for potential enforcement actions.

The bureau reported it is committed to using the full range of its authorities to promote compliance with the law and to ensure that supervised entities protect consumers. *continued on page 3*



## For the Record cont. from page 1

Finally, the bureau stated that debt collectors who are data furnishers under the Fair Credit Reporting Act must comply with the recordkeeping requirements of the FCRA in addition to the recordkeeping requirements imposed by Reg F.

For a debt collector that meets the definition of a furnisher, Regulation V provides that furnishers must maintain records “for a reasonable period of time, not less than any applicable recordkeeping requirement, in order to substantiate the accuracy of any information about consumers it furnishes that is subject to a direct dispute.”

Thus, Reg F as applied to furnishers under Regulation V would not require debt collectors, in order to meet their record-retention obligations as data furnishers, to adopt policies and procedures under which records are deleted no sooner than three years after

the last collection activity on an account.

Before Reg F becomes effective, debt collectors will want to have policies and procedures in place concerning document retention.

A few key elements to keep in mind when preparing a document retention program include deciding whether to keep hard copy documents or store documentation electronically; making sure that there will be no more collection activity on the account once the three-year period begins; and making sure to remove or change the purge date if collections recommence on an account.

Debt collectors who record phone calls will also want to make sure they are keeping the recordings for at least three years after the recordings were made.

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**A debt collector must keep a record of documents from the date the collection activity began to the date of the last collection activity on the debt for three years after the last collection activity.**

## CFPB Rescinds cont. from page 2

### **Statement on Supervisory and Enforcement Practices Regarding the Fair Credit Reporting Act and Regulation V**

The bureau also rescinds, as of April 1, the portion of the statement that sets forth its flexible supervisory and enforcement approach during the COVID-19 pandemic regarding compliance with the FCRA and Regulation V, and announces its intent to exercise its supervisory and enforcement authority consistent with the Dodd-Frank Act and FCRA and with the full authority afforded by Congress consistent with the statutory purpose and objectives of the bureau.

The rescission leaves intact the section titled “Furnishing Consumer Information Impacted by COVID-19,” which articulates the CFPB’s support for furnishers’ voluntary efforts to provide payment relief and that the CFPB does not intend to cite in examinations or take enforcement actions against those who furnish information to consumer reporting agencies that accurately reflect the payment relief measures they are employing.

The CFPB also recently rescinded its policy statement on Unfair, Deceptive, or Abusive Acts or Practices (UDAAP).

The rescinded policy statements and MRA Bulletin also include:

### **Statement on Supervisory and Enforcement Practices Regarding CFPB Information Collections for Credit Card and Prepaid Account Issuers (March 26, 2020)**

*The rescission provides guidance as to how entities should now meet the specified information collections requirements relating to credit card and prepaid accounts.*

### **Statement on Supervisory and Enforcement Practices Regarding the Fair Credit Reporting Act and Regulation V in Light of the CARES Act (April 1, 2020)**

*The rescission leaves intact the section entitled “Furnishing Consumer Information*

*Impacted by COVID-19,” which articulates the CFPB’s support for furnishers’ voluntary efforts to provide payment relief and that the CFPB does not intend to cite in examinations or take enforcement actions against those who furnish information to consumer reporting agencies that accurately reflect the payment relief measures they are employing.*

### **Statement on Supervisory and Enforcement Practices Regarding Electronic Credit Card Disclosures in Light of the COVID-19 Pandemic (June 3, 2020)**

#### **Bulletin 2018-01: Changes to Types of Supervisory Communications**

*The rescinded bulletin is replaced by Bulletin 2021-01 announcing changes to how CFPB examiners articulate supervisory expectations. The new bulletin states that the CFPB will continue to rely on MRAs, explains the circumstances under which it will do so, and announces that the CFPB will discontinue use of Supervisory Recommendations.*

ACA encourages members to read the bureau’s policy statement update (<https://bit.ly/3mp7wUV>).

# NEWS & NOTES

## **NACHA Announces New Electronic Payments Rule**

The National Automated Clearing House Association’s (NACHA) new WEB Debits Rule took effect March 19, 2021, although NACHA’s Board of Directors previously approved a no-action period through March 19, 2022, during which NACHA will not enforce the new rule against any covered entity working toward compliance. The rule will affect all organizations that allow consumers to make payments via the internet or mobile devices and that directly debit payment from consumers’ checking accounts.

<https://bit.ly/3dBWPul>

## **Health Care Consolidations Continue to Increase**

Health care mergers and acquisitions have increased over the past two decades, which reduces competition among providers and increases prices, according to The Commonwealth Fund. The trend is expected to continue due to the financial struggles that many health care providers have experienced during the COVID-19 pandemic. The report from The Commonwealth Fund says Congress and regulators “should take steps now to more fully assess the impact and curb those combinations that adversely impact payers and patients.” <https://bit.ly/3t7Qz3K>

## **We Want to Hear From You**

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# datawatch



is a monthly bulletin that contains information important to health care credit and collection personnel. Readers are invited to send comments and contributions to:

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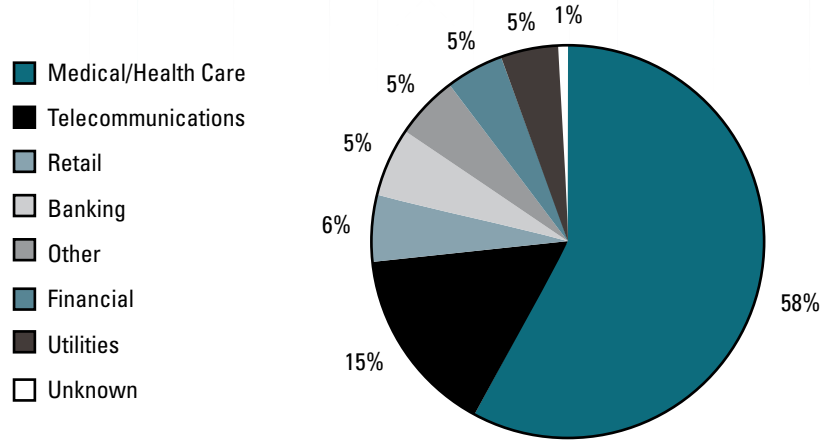
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## Third-Party Collection Tradelines

The Consumer Financial Protection Bureau, in its 2020 annual report to Congress released in March, found a majority of consumers with collection tradelines on their credit reports have medical, telecommunications, retail, or banking and financial services debt. In fact, according to the CFPB, in the second quarter of 2018 health care debt represented 58% of third-party collection tradelines. The bureau noted, however, that several types of debt may be “underreported because they are furnished by the creditor and hence do not appear as collections tradelines.”

**Distribution of Original Creditor Type Among Third-Party Collections Tradelines in Q2 2018**



Source: Consumer Financial Protection Bureau Report on Third-Party Debt Collections (July 2019): <https://bit.ly/3dCYik2>