



Massachusetts Division of Banks Revises Debt Collection and Servicing Regulation, Incorporating Reg F – With Some Tweaks

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The Massachusetts Division of Banks (“DOB”) has revised its regulation that governs the conduct of debt collectors, student loan servicers, and third-party loan servicers. The revised regulation became effective in late September. So, what’s new?

The revised regulation is now organized into five subparts, with the substantive rules governing the conduct of debt collectors and student loan/third-party loan servicers separate from the rules regarding licensing and registration, as well as from catch-all sections governing (among other things) office locations, change in control requirements, and annual reporting requirements. However, there are several substantive revisions to the regulation that should be brought to the attention of debt collectors and servicers.

First, the revised regulation now ties most of its conduct-regulating rules governing debt collection to the Consumer Financial Protection Bureau’s Regulation F. Under the revised regulation, debt collectors that comply with the enumerated sections of Reg. F are deemed to have complied with the corresponding provision of the Massachusetts regulation. There are three exceptions to the new incorporation of Reg. F:

- The Massachusetts regulation retains its prior limitation on call frequency, which is more consumer-protective than Reg. F’s 7-in-7 limitation. Under the Massachusetts regulation, a debt collector still may not place more than two telephone calls in connection with a particular debt within a 7-day period, nor within a period of seven consecutive days after having had a telephone conversation with a person in connection with the debt, even though Reg. F would allow up to seven call attempts in seven days.
- The Massachusetts regulation retains specific rules regarding the commingling and preserving the identity of client funds.
- The Massachusetts regulation does not incorporate the provision of Reg. F that addresses how to send required notices electronically (12 C.F.R. Part 1006.42).

Second, the revised regulation now codifies the passive debt buyer exception that had developed over the years via the DOB’s opinion letters. The regulation now includes a definition of “passive debt buyer” that aligns with the definition found in the DOB’s interpretive opinions and excludes passive debt buyers from the definition of the term “debt collector” in the regulation.

Finally, the revised regulation now makes it a UDAP violation to knowingly or willfully fail to provide a substantive response to the Student Loan Ombudsman unit within 30 days of being contacted by such unit. Student loan servicers must also include with the contact information for the Student Loan Ombudsman the web page URL for the Ombudsman's office when providing account statements and written or email communications to a student loan borrower about his/her student loan.

Please note that this revised regulation governs the conduct of third-party debt collectors. Massachusetts has a separate regulation (codified at 940 C.M.R. Part 7) issued by the state attorney general. The Massachusetts Attorney General regulation governs the conduct of creditors collecting their own debts, as well as the activities of the agents, servicers, employees, or attorneys engaged in collecting debts owed to the creditor. This regulation remains unchanged.