This document is scheduled to be published in the Federal Register on 01/19/2021 and available online at **federalregister.gov/d/2020-28422**, and on **govinfo.gov**

4810-AM-P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1006

[Docket No. CFPB-2019-0022]

RIN 3170-AA41

Debt Collection Practices (Regulation F)

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule; official interpretation.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is issuing this final rule to revise Regulation F, which implements the Fair Debt Collection Practices Act (FDCPA). The final rule governs certain activities by debt collectors, as that term is defined in the FDCPA. Among other things, the final rule clarifies the information that a debt collector must provide to a consumer at the outset of debt collection communications, prohibits debt collectors from bringing or threatening to bring a legal action against a consumer to collect a time-barred debt, and requires debt collectors to take certain actions before furnishing information about a consumer's debt to a consumer reporting agency.

DATES: This rule is effective on November 30, 2021.

FOR FURTHER INFORMATION CONTACT: Joel Singerman, Counsel, or Dania Ayoubi, Joseph Baressi, Seth Caffrey, Brandy Hood, David Jacobs, Courtney Jean, Adam Mayle, Kristin McPartland, Michael Silver, Senior Counsels, Office of Regulations, at 202–435–7700. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov*.

SUPPLEMENTARY INFORMATION:

I. Summary of the Final Rule

The Bureau is finalizing amendments to Regulation F, 12 CFR part 1006, which implements the FDCPA.[1] The amendments prescribe Federal rules governing the activities of debt collectors, as that term is defined in the FDCPA (debt collectors or FDCPA debt collectors). The final rule clarifies the information that a debt collector must provide to a consumer at the outset of debt collection communications and provides a model validation notice containing such information. The final rule also addresses consumer protection concerns related to passive collections (*i.e.*, the practice of furnishing information about a debt to a consumer reporting agency before communicating with the consumer about the debt) and the collection of debt that is beyond the statute of limitations (*i.e.*, time-barred debt). On November 30, 2020, the Bureau published a final rule in the *Federal Register* that focused on debt collection communications and related practices by debt collectors (November 2020 Final Rule). The November 2020 Final Rule reserved certain sections of Regulation F in anticipation of this final rule.

As discussed in the November 2020 Final Rule, in 1977, Congress passed the FDCPA to eliminate abusive debt collection practices by debt collectors, to ensure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses.[2] The statute was a response to "abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors."[3] According to Congress, these practices "contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy."[4]

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[1] 15 U.S.C. 1692 *et seq.*

[2] 15 U.S.C. 1692(e).

[3] 15 U.S.C. 1692(a).

[4] *Id.*

The FDCPA established specific consumer protections, enabling consumers to establish controls on when and how debt collectors contact them, establishing privacy protections surrounding the collection of debts, and protecting consumers from certain collection practices. The FDCPA also established broad consumer protections, prohibiting harassment or abuse, false or misleading representations, and unfair practices. In the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Congress provided the Bureau with authority under the FDCPA to prescribe substantive rules with respect to the collection of debts by debt collectors. The Bureau issues this final rule, like the November 2020 Final Rule, to implement and interpret the FDCPA.

A. Coverage and Organization of the Final Rule

The final rule is based primarily on the Bureau's authority to issue rules to implement the FDCPA and, consequently, covers debt collectors, as that term is defined in the FDCPA.

As revised in the November 2020 Final Rule, Regulation F contains four subparts. Subpart A contains generally applicable provisions, such as definitions that apply throughout the regulation. Subpart B contains rules for FDCPA debt collectors. Subpart C is reserved for any future debt collection rulemakings. Subpart D contains certain miscellaneous provisions. This final rule adds additional provisions in subparts A, B, and D.

B. Scope of the Final Rule

FDCPA section 809(a) requires that a debt collector send a written notice containing certain information about the debt and actions the consumer may take in response (the validation notice) to a consumer within five days of the initial communication, unless such validation information was provided in the initial communication or the consumer has paid the debt.[5] The final rule clarifies the information about the debt and the consumer's rights with respect to the debt that a debt collector must provide to a consumer at the outset of debt collection

[5] 15 U.S.C. 1692g(a).

communications, including (if applicable) on a validation notice. The final rule also requires a debt collector to provide prompts that a consumer can use to dispute the debt, request information about the original creditor, or take certain other actions. The final rule provides a safe harbor for compliance with these disclosure requirements for debt collectors who use the model validation notice or certain variations of the notice.

The final rule also prohibits a debt collector from suing or threatening to sue a consumer to collect time-barred debt. In addition, the final rule prohibits a debt collector from furnishing information about a debt to a consumer reporting agency before engaging in specific outreach to the consumer about the debt. The final rule also addresses certain other disclosure-focused provisions, such as clarifying how a debt collector may respond to a consumer's request for original-creditor information if the original creditor is the same as the current creditor. Additionally, the final rule interprets the definition of consumer under the FDCPA to include deceased natural persons and, relatedly, provides that, if a debt collector knows or should know that the a consumer is deceased, and the debt collector has not previously provided the validation information to the deceased consumer, the debt collector must provide that information to a person who is authorized to act on behalf of the deceased consumer's estate.

II. Background

A. Debt Collection Market Background

A consumer debt is commonly understood to be a consumer's obligation to pay money to another person or entity. Sometimes a debt arises out of a closed-end loan. Other times, a debt arises from a consumer's use of an open-end line of credit, commonly a credit card. And in other cases, a debt arises from a consumer's purchase of goods or services with payment due thereafter. Often there is an agreed-upon payment schedule or date by which the consumer must repay the debt.

For a variety of reasons, consumers sometimes are unable or unwilling to make payments when they are due. Collection efforts may directly recover some or all of the overdue amounts

owed to debt owners and thereby may indirectly help to keep consumer credit available and more affordable to consumers.[6] Collection activities also can lead to repayment plans or debt restructuring that may provide consumers with additional time to make payments or resolve their debts on more manageable terms.[7]

The November 2020 Final Rule provides an extensive overview of the debt collection market (including the roles of creditors, third-party debt collectors, debt buyers, and a variety of service providers in the market), methods of debt collection, and consumer protection concerns in debt collection.[8] Below the Bureau summarizes information regarding debt collection methods and consumer protection concerns specifically related to the topics addressed in this final rule.

B. Debt Collection Methods

If a consumer's payment obligations remain unmet, a creditor may send the account to a third-party debt collector to recover on the debt in the third-party debt collector's name. A creditor typically stops communicating with a consumer once responsibility for an account has moved to a third-party debt collector. Active debt collection efforts typically begin with the debt collector attempting to locate the consumer, usually by identifying a valid telephone number or mailing address, so that the debt collector can establish contact with the consumer. Once a debt collector has obtained contact information for a consumer, the debt collector typically will seek to communicate with the consumer to obtain payment on some or all of the debt.

As already noted, FDCPA section 809(a) generally requires a debt collector to provide certain information to a consumer either at the time that, or shortly after, the debt collector first communicates with the consumer in connection with the collection of a debt. The required

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[6] *See* Bureau of Consumer Fin. Prot., *Fair Debt Collection Practices Act: CFPB Annual Report 2013*, at 9 (Mar. 20, 2013), *https://www.consumerfinance.gov/data-research/research-reports/annual-report-on-the-fair-debt-collection-practices-act/* (2013 FDCPA Annual Report).

[7] *See id.*

[8] *See* 85 FR 76734, 76735-37 (Nov. 30, 2020).

information includes: (1) certain details about the debt, such as the amount of the debt and the name of the creditor to whom the debt is owed; and (2) a description of consumer protections, such as the consumer's rights to dispute the debt and to request information about the original creditor. A debt collector may send a validation notice containing the required information as the initial communication to the consumer or send the required information in a validation notice within five days after the initial communication. Currently, validation notices include little or no information about the debt beyond the information specifically listed in FDCPA section 809(a). This information may not be sufficient for the consumer to recognize the debt, particularly if, for example, the amount owed has changed over time due to interest, fees, payment, or credits, or if the debt collector has changed since an original collection attempt.

A debt collector may tailor the collection strategy depending on a variety of factors, including the size and age of the debt and the debt collector's assessment of the likelihood of obtaining money from the consumer. For example, rather than engage in active debt collection efforts by affirmatively locating and contacting consumers, some debt collectors collecting relatively small debts—such as many medical, utility, and telecommunications debts—report the debts to consumer reporting agencies and then wait for consumers to contact them after discovering the debts on their consumer reports.[9]

As discussed in the November 2020 Final Rule, a debt owner may also try to recover on a debt through litigation.[10] And debt collectors sometimes attempt to collect debt for which the applicable statute of limitations has expired. The length of the limitations period for debt collection claims usually varies by State and debt type; most limitations periods are between three and six years, although some are as long as 15 years. Currently, in most States, expiration of the statute of limitations, if raised by the consumer as an affirmative defense, precludes the

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[9] Bureau of Consumer Fin. Prot., *Consumer Credit Reports: A Study of Medical and Non-Medical Collections*, at 35-36 (Dec. 2014), *http://files.consumerfinance.gov/f/201412_cfpb_reports_consumer-credit-medical-and-non-medical-collections.pdf* (CFPB Medical Debt Report).

[10] *See* 85 FR 76735, 76736 (Nov. 30, 2020).

debt collector from recovering on the debt through litigation, but it does not extinguish the debt itself. If the debt is not extinguished, a debt collector may use non-litigation means, such as letters and telephone calls, to collect a time-barred debt, as long as those means do not violate the FDCPA or other laws.[11]

C. Consumer Protection Concerns

As discussed in the November 2020 Final Rule, each year consumers submit tens of thousands of complaints about debt collection to Federal regulators.[12] A significant proportion of those complaints involve debts that consumers believe they do not owe, which may be because the debt is being collected in error or because the consumer does not recognize the debt. Consumers also file thousands of private actions each year against debt collectors who allegedly have violated the FDCPA, including many cases alleging violations related to the validation notice. Since the Bureau began operations in 2011, it has brought numerous debt collection cases against third-party debt collectors, alleging both FDCPA violations and unfair, deceptive,

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[11] *See* 85 FR 12672, 12672-73 (Mar. 3, 2020).

[12] *See, e.g.*, Bureau of Consumer Fin. Prot., *Fair Debt Collection Practices Act: CFPB Annual Report 2020*, at 13 (Mar. 2020), *https://files.consumerfinance.gov/f/documents/cfpb_fdcpa_annual-report-congress_03-2020.pdf* (2020 FDCPA Annual Report); Fed. Trade Comm'n, *2019 Consumer Sentinel Network Databook*, at 7 (Jan. 2020), *https://www.ftc.gov/system/files/documents/reports/consumer-sentinel-network-data-book-2019/consumer_sentinel_network_data_book_2019.pdf*; Bureau of Consumer Fin. Prot., *Fair Debt Collection Practices Act: CFPB Annual Report 2019*, at 15-16 (Mar. 2019), *https://files.consumerfinance.gov/f/documents/cfpb_fdcpa_annual-report-congress_03-2019.pdf* (2019 FDCPA Annual Report); Fed. Trade Comm'n, *2018 Consumer Sentinel Network Databook*, at 4, 7 (Feb. 2019), *https://www.ftc.gov/system/files/documents/reports/consumer-sentinel-network-data-book-2018/consumer_sentinel_network_data_book_2018_0.pdf*; Bureau of Consumer Fin. Prot., *Fair Debt Collection Practices Act: CFPB Annual Report 2018*, at 14-15 (Mar. 2018), *https://files.consumerfinance.gov/f/documents/cfpb_fdcpa_annual-report-congress_03-2018.pdf* (2018 FDCPA Annual Report); Fed. Trade Comm'n, *2017 Consumer Sentinel Network Databook*, at 3, 6 (Mar. 2018), *https://www.ftc.gov/system/files/documents/reports/consumer-sentinel-network-data-book-2017/consumer_sentinel_data_book_2017.pdf*; Bureau of Consumer Fin. Prot., *2017 Fair Debt Collection Practices Act: CFPB Annual Report 2017*, at 15-16 (Mar. 2017), *https://files.consumerfinance.gov/f/documents/201703_cfpb_Fair-Debt-Collection-Practices-Act-Annual-Report.pdf* (2017 FDCPA Annual Report); Fed. Trade Comm'n, *Consumer Sentinel Network Data Book for January—December 2016*, at 3, 6 (Mar. 2017), *https://www.ftc.gov/system/files/documents/reports/consumer-sentinel-network-data-book-january-december-2016/csn_cy-2016_data_book.pdf*.

or abusive debt collection acts or practices in violation of the Dodd-Frank Act.[13] In many of these cases, the Bureau has obtained civil penalties, monetary compensation for consumers, and other relief. In its supervisory work, the Bureau similarly has identified many FDCPA violations during examinations of debt collectors. Over the past decade, the Federal Trade Commission (FTC) and State regulators also have brought numerous additional actions against debt collectors for violating Federal and State debt collection and consumer protection laws.

D. FDCPA and Dodd-Frank Act Protections for Consumers

Federal and State governments historically have sought to protect consumers from harmful debt collection practices. From 1938 to 1977, the Federal government primarily protected consumers through FTC enforcement actions against debt collectors who engaged in unfair or deceptive acts or practices in violation of section 5 of the FTC Act.[14] When Congress enacted the FDCPA in 1977, it found that "[e]xisting laws and procedures for redressing . . . injuries [were] inadequate to protect consumers."[15] Congress found that "[t]here [was] abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors" and that these practices "contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy."[16]

The FDCPA was enacted, in part, "to eliminate abusive debt collection practices by debt collectors, [and] to insure that those debt collectors who refrain from using abusive debt

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[13] *See, e.g.*, Stipulated Final Judgment and Consent Order, *Consumer Fin. Prot. Bureau v. Encore Capital Grp., Inc.*, 3:20-cv-01750 (S.D. Cal. Oct. 15, 2020), *https://www.courtlistener.com/recap/gov.uscourts.casd.686719/gov.uscourts.casd.686719.5.1.pdf*; Consent Order, *In re Asset Recovery Assocs.*, 2019-BCFP-0009 (Aug. 28, 2019), *https://www.consumerfinance.gov/documents/7938/cfpb_asset-recovery-associates_consent-order_2019-08.pdf*; Consent Order, *In re Encore Capital Grp., Inc.*, 2015-CFPB-0022 (Sept. 9, 2015), *http://files.consumerfinance.gov/f/201509_cfpb_consent-order-encore-capital-group.pdf*; Consent Order, *In re Portfolio Recovery Assocs., LLC*, 2015-CFPB-0023 (Sept. 9, 2015), *http://files.consumerfinance.gov/f/201509_cfpb_consent-order-portfolio-recovery-associates-llc.pdf*; Complaint, *Consumer Fin. Prot. Bureau v. Nat'l Corrective Grp., Inc.*, 1:15-cv-00899-RDB (D. Md. Mar. 30, 2015), *http://files.consumerfinance.gov/f/201503_cfpb_complaint-national-corrective-group.pdf*.

[14] 15 U.S.C. 45.

[15] 15 U.S.C. 1692(b).

[16] 15 U.S.C. 1692(a).

collection practices are not competitively disadvantaged."[17] Among other things, the FDCPA: (1) prohibits debt collectors from engaging in harassment or abuse, making false or misleading representations, and engaging in unfair practices in debt collection; (2) restricts debt collectors' communications with consumers and others; and (3) requires debt collectors to provide consumers with disclosures concerning the debts they owe or allegedly owe.

The FDCPA, in general, applies to debt collectors as that term is defined under the statute. As discussed further in the section-by-section analysis of § 1006.2(i) of the November 2020 Final Rule, the FDCPA generally provides that a debt collector is any person: (1) who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts (*i.e.*, the "principal purpose" prong), or (2) who regularly collects, or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due to another (*i.e.*, the "regularly collects" prong). FDCPA section 803(6) also sets forth several exclusions from the general definition.

Until the creation of the Bureau, no Federal agency was authorized to issue regulations to implement the substantive provisions of the FDCPA. Courts have issued opinions providing differing interpretations of various FDCPA provisions, and there is considerable uncertainty with respect to how the FDCPA applies to communication technologies that have developed since 1977. The Dodd-Frank Act amended the FDCPA to provide the Bureau with authority to "prescribe rules with respect to the collection of debts by debt collectors."[18]

III. Summary of the Rulemaking Process

A. The November 2020 Final Rule

The Bureau issued the November 2020 Final Rule to finalize certain provisions of the proposed rule that the Bureau published in the *Federal Register* on May 21, 2019, to amend

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[17] 15 U.S.C. 1692(e).

[18] FDCPA section 814(d), 15 U.S.C. 1692*l*(d).

Regulation F.[19] Specifically, the November 2020 Final Rule primarily addressed debt collection communications and related practices by debt collectors. The November 2020 Final Rule reserved certain sections of Regulation F in anticipation of this final rule.

B. The 2019 Proposal and 2020 Supplemental Proposal

As noted, on May 21, 2019, the Bureau published a proposed rule (the May 2019 proposal or proposal) in the *Federal Register* to amend Regulation F.[20] The proposal provided a 90-day comment period that would have closed on August 19, 2019. To allow interested persons more time to consider and submit their comments, the Bureau issued an extension of the comment period until September 18, 2019.[21] In response to the May 2019 proposal, the Bureau received more than 14,000 comments from consumers, consumer groups, members of Congress, other government agencies, creditors, debt collectors, industry trade associations, and others. As discussed below, the Bureau has considered those comments in deciding to issue this final rule.

As relevant to this final rule, in the May 2019 proposal, the Bureau proposed to implement and interpret FDCPA section 809(a) and (b) regarding the information that debt collectors must provide to consumers at the outset of debt collection communications and debt collectors' obligations to respond to consumers' disputes and requests for original-creditor information, including if the consumer obligated or allegedly obligated to pay the debt has died. The Bureau also proposed to prohibit debt collectors from bringing or threatening to bring a legal action against a consumer to collect a debt that the debt collector knows or should know is a time-barred debt. And the Bureau proposed to prohibit debt collectors from furnishing information regarding a debt to a consumer reporting agency before communicating with the consumer about the debt.

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[19] *See* 84 FR 23274 (May 21, 2019).

[20] *Id.*

[21] 84 FR 37806 (Aug. 2, 2019).

On February 21, 2020, the Bureau released a supplemental notice of proposed rulemaking to amend Regulation F to require debt collectors to make certain disclosures when collecting time-barred debts (the February 2020 proposal).[22] The February 2020 proposal provided a 60-day comment period that would have closed on May 4, 2020. To allow interested persons more time to consider and submit their comments, the Bureau issued two extensions of the comment period, the first until June 5, 2020, and the second until August 4, 2020.[23] In response to the February 2020 proposal, the Bureau received approximately 90 comments from consumers, consumer groups, members of Congress, other government agencies, creditors, debt collectors, industry trade associations, and others. As discussed below, the Bureau has considered those comments in adopting this final rule.

C. Consumer Testing

The Bureau has undertaken two rounds of qualitative disclosure testing and one round of quantitative disclosure testing, all of which have informed this final rule.

First, as discussed in more detail in the May 2019 proposal, the Bureau in 2014 contracted with a third-party vendor, Fors Marsh Group (FMG), to assist with developing, and to conduct qualitative consumer testing of the model validation notice.[24] This initial qualitative testing included focus group testing, cognitive testing, and usability testing conducted by FMG.[25] Through the testing, the Bureau sought insight into consumers' understanding of debt collection protections and how consumers would interact with the forms if the forms were incorporated into a final rule. Specific findings from the consumer testing are discussed in more detail in part V

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[22] *See* 85 FR 12672 (Mar. 3, 2020).

[23] *See* 85 FR 17299 (Mar. 27, 2020) (first extension); 85 FR 30890 (May 21, 2020) (second extension).

[24] The Bureau also tested a statement of consumer rights disclosure, but the Bureau decided not to propose to require debt collectors to provide such a disclosure to consumers. Instead, the Bureau proposed in the May 2019 proposal to require certain debt collectors to provide with the validation information a statement referring consumers to a Bureau-provided website that would describe certain consumer protections in debt collection. *See* the section-by-section analysis of § 1006.34(c)(3)(iv). Because the Bureau did not propose to require debt collectors to provide consumers with a statement of consumer rights disclosure, the Bureau did not summarize testing related to that disclosure in the May 2019 proposal.

[25] *See* 84 FR 23274, 23279 (May 21, 2019).

where relevant. In conjunction with the release of the May 2019 proposal, the Bureau made available a report prepared by FMG regarding the focus group testing,[26] the cognitive testing,[27] the usability testing,[28] and a report prepared by FMG summarizing the focus group testing, cognitive testing, and usability testing.[29]

Second, to obtain additional information about consumer comprehension and decision-making in response to sample debt collection disclosures relating to time-barred debt, in 2017 the Bureau contracted with ICF International, Inc. (ICF) to conduct a web survey of approximately 8,000 individuals possessing a broad range of demographic characteristics.[30] This quantitative testing concluded in late September 2019, and, in conjunction with the release of the February 2020 proposal, the Bureau[31] and ICF[32] published detailed reports summarizing the testing

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[26] *See generally* Fors Marsh Grp., *Debt Collection Focus Groups* (Aug. 2014), *https://files.consumerfinance.gov/f/documents/cfpb_debt-collection_fmg-focus-group-report.pdf* (FMG Focus Group Report). The focus group testing was conducted in accordance with OMB control number 3170–0022, Generic Information Collection Plan for the Development and/or Testing of Model Forms, Disclosures, Tools, and Other Similar Related Materials.

[27] *See generally* Fors Marsh Grp., *Debt Collection Cognitive Interviews* (n.d.), *https://files.consumerfinance.gov/f/documents/cfpb_debt-collection_fmg-cognitive-report.pdf* (FMG Cognitive Report). The cognitive testing was conducted in accordance with OMB control number 3170–0022, Generic Information Collection Plan for the Development and/or Testing of Model Forms, Disclosures, Tools, and Other Similar Related Materials.

[28] *See generally* Fors Marsh Grp., *Debt Collection User Experience Study* (Feb. 2016), *https://files.consumerfinance.gov/f/documents/cfpb_debt-collection_fmg-usability-report.pdf* (FMG Usability Report). Like the other testing, the usability testing was conducted in accordance with OMB control number 3170–0022, Generic Information Collection Plan for the Development and/or Testing of Model Forms, Disclosures, Tools, and Other Similar Related Materials.

[29] *See generally* Fors Marsh Grp., *Debt Collection Validation Notice Research: Summary of Focus Groups, Cognitive Interviews, and User Experience Testing* (Feb. 2016), *https://files.consumerfinance.gov/f/documents/cfpb_debt-collection_fmg-summary-report.pdf* (FMG Summary Report).

[30] OMB approved the Bureau's request to conduct the survey on May 7, 2019. *See* Office of Information & Regulatory Affairs, Office of Mgmt. & Budget, *ICR—OIRA Conclusion*, *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201902-3170-001#* (last visited Feb. 18, 2020).

[31] *See* Bureau of Consumer Fin. Prot., *Disclosure of Time-Barred Debt and Revival: Findings from the CFPB's Quantitative Disclosure Testing* (Feb. 2020), *https://files.consumerfinance.gov/f/documents/cfpb_debt-collection-quantitative-disclosure-testing_report.pdf* (CFPB Quantitative Testing Report).

[32] *See* ICF Int'l, Inc., *Quantitative Survey Testing of Model Disclosure Clauses and Forms for Debt Collection: Methodology Report* (Jan. 21, 2020), *https://files.consumerfinance.gov/f/documents/cfpb_icf_debt-survey_methodology-report.pdf*.

methodology and results. The February 2020 proposal provides an extensive overview of the quantitative testing.[33]

Third, to further evaluate the effectiveness of the model validation notice, the Bureau contracted with FMG again in 2019 to conduct an additional round of qualitative testing. Because of the COVID-19 pandemic, FMG conducted this consumer testing by telephone, completing 51 one-on-one usability interviews between October 5 and October 15, 2020. The qualitative testing showed, among other things, that 80 percent of participants shared positive initial reactions to the model validation notice and indicated that the information in the notice was clear and available actions were obvious. In addition, 88 percent of participants rated the overall model validation notice as "very easy" or "easy" to understand, and no participants rated the notice as "difficult" or "very difficult" to understand. Finally, 77 percent of participants answered correctly over 90 percent of the time when, after reviewing the notice, they were asked to answer certain questions about information included on the notice. In conjunction with release of this final rule, the Bureau is making available a report prepared by FMG regarding the qualitative testing.[34]

D. Other Outreach[35]

In November 2013, the Bureau began the rulemaking process with the publication of an Advance Notice of Proposed Rulemaking (ANPRM) regarding debt collection.[36] As discussed in the May 2019 proposal, the ANPRM sought information about a wide variety of both first- and third-party debt collection practices. The Bureau received more than 23,000 comments in response to the ANPRM, which the Bureau considered when developing the proposals.

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[33] *See* 85 FR 12672, 12676-77 (Mar. 3, 2020).

[34] *See generally* Fors Marsh Grp., *Consumer Financial Protection Bureau (CFPB) Usability Testing Report: Model Validation Notice* (Nov. 20, 2020), *https://files.consumerfinance.gov/f/documents/cfpb_model-validation-notice_report_2020-12.pdf* (November 2020 Qualitative Testing Report).

[35] The preamble to the May 2019 proposal includes a more thorough discussion of the outreach the Bureau conducted prior to issuing the proposal. *See* 84 FR 23274, 23278-80 (May 21, 2019).

[36] 78 FR 67848 (Nov. 12, 2013).

To better understand the operational costs of debt collection firms, including law firms, the Bureau also surveyed debt collection firms and vendors and published a report based on that study in July 2016 (CFPB Debt Collection Operations Study or Operations Study).[37] The Operations Study focused on understanding how debt collection firms obtain information about delinquent consumer accounts and attempt to collect on those accounts.

In August 2016, the Bureau convened a Small Business Review Panel (Small Business Review Panel or Panel) with the Chief Counsel for Advocacy of the Small Business Administration (SBA) and the Administrator of the Office of Information and Regulatory Affairs with the Office of Management and Budget (OMB).[38] As part of this process, the Bureau prepared an outline of proposals under consideration and the alternatives considered (Small Business Review Panel Outline or Outline),[39] which the Bureau posted on its website for review by the small entity representatives participating in the Panel process and by the general public. The Panel gathered information from the small entity representatives and made findings and recommendations regarding the potential compliance costs and other impacts on those entities of the proposals under consideration. Those findings and recommendations are set forth in the Small Business Review Panel Report, which is part of the administrative record in this

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[37] *See generally* Bureau of Consumer Fin. Prot., *Study of Third-Party Debt Collection Operations* (July 2016), *https://www.consumerfinance.gov/documents/755/20160727_cfpb_Third_Party_Debt_Collection_Operations_Study.pdf* (CFPB Debt Collection Operations Study).

[38] The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), as amended by section 1100G(a) of the Dodd-Frank Act, requires the Bureau to convene a Small Business Review Panel before proposing a rule that may have a substantial economic impact on a significant number of small entities. *See* Pub. L. 104-121, tit. II, 110 Stat. 857 (1996) (as amended by the Small Business and Work Opportunity Act of 2007, Pub. L. 110-28, tit. VIII, subtit. C, sec. 8302, 121 Stat. 204 (2007)).

[39] Bureau of Consumer Fin. Prot., *Small Business Review Panel for Debt Collector and Debt Buyer Rulemaking: Outline of Proposals Under Consideration and Alternatives Considered* (July 28, 2016), *https://files.consumerfinance.gov/f/documents/20160727_cfpb_Outline_of_proposals.pdf* (Small Business Review Panel Outline). The Bureau also gathered feedback on the Small Business Review Panel Outline from other stakeholders, members of the public, and the Bureau's Consumer Advisory Board and Community Bank Advisory Council.

rulemaking and is available to the public.[40] The Bureau considered these findings and recommendations in preparing the proposals and this final rule.

The Bureau has also met on many occasions with various stakeholders, including consumer advocates, debt collection trade associations, industry participants, academics with expertise in debt collection, Federal prudential regulators, and other Federal and State consumer protection regulators. The Bureau also received a number of comments specific to the debt collection rulemaking in response to its Request for Information Regarding the Bureau's Adopted Regulations and New Rulemaking Authorities[41] and its Request for Information Regarding the Bureau's Inherited Regulations and Inherited Rulemaking Authorities;[42] the Bureau considered these comments in developing the proposals and this final rule. In addition, the Bureau has engaged in general outreach, speaking at consumer advocate and industry events and visiting consumer organizations and industry stakeholders. The Bureau has provided other regulators with information about the proposals and this final rule, has sought their input, and has received feedback that has helped the Bureau to prepare this final rule.

Under the Dodd-Frank Act, the Bureau is required to conduct an assessment of significant rules within five years of the rule's effective date. The Bureau anticipates that this final rule may be significant and therefore may require an assessment within five years of the rule's effective date. The Bureau is preparing now for this possible assessment. Specifically, the Bureau is considering how best to obtain information now to serve as a baseline for evaluation of the costs, benefits, and other effects of the final rule. The Bureau expects to collect data and other information from consumers, debt collectors, and other stakeholders to understand whether the rule is achieving its goals under the FDCPA and the Dodd-Frank Act, and to help the Bureau

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[40] Bureau of Consumer Fin. Prot., U.S. Small Bus. Admin. & Office of Mgmt. & Budget, *Final Report of the Small Business Review Panel on the CFPB's Proposals Under Consideration for the Debt Collector and Debt Buying Rulemaking* (Oct. 2016), *https://files.consumerfinance.gov/f/documents/cfpb_debt-collector-debt-buyer_SBREFA-report.pdf* (Small Business Review Panel Report).

[41] 83 FR 12286 (Mar. 21, 2018).

[42] 83 FR 12881 (Mar. 26, 2018).

measure the costs and benefits of the rule. Topics of data collection could include: whether consumers are better able to identify a debt when receiving validation information after the rule compared to before the rule; whether debt collectors are receiving higher or lower rates of consumer disputes after the rule compared to before the rule; whether greater clarity about FDCPA requirements helps reduce litigation related to the validation notice after the rule compared to before the rule; and costs of the rule, both anticipated and unexpected, for consumers or for industry. The Bureau expects to conduct outreach in 2021 to explore how best to obtain such data, including potentially through surveying consumers or firms or by collecting operational data.

IV. Legal Authority

The Bureau is issuing this final rule primarily pursuant to its authority under the FDCPA and the Dodd-Frank Act. As amended by the Dodd-Frank Act, FDCPA section 814(d) provides that the Bureau "may prescribe rules with respect to the collection of debts by debt collectors," as defined in the FDCPA.[43] Section 1022(a) of the Dodd-Frank Act provides that "[t]he Bureau is authorized to exercise its authorities under Federal consumer financial law to administer, enforce, and otherwise implement the provisions of Federal consumer financial law."[44] Section 1022(b)(1) of the Dodd-Frank Act provides that the Director may prescribe rules and issue orders and guidance, as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions

[43] 15 U.S.C. 1692*l*(d). As noted, the Bureau is the first Federal agency with authority to prescribe substantive debt collection rules under the FDCPA. Prior to the Dodd-Frank Act's grant of rulemaking authority to the Bureau, no agency had authority to issue substantive rules with respect to the collection of debts by debt collectors under the FDCPA, but the FTC published various materials providing guidance on the FDCPA. The FTC's materials have informed the Bureau's rulemaking and, if relevant to particular provisions, are discussed in part V.

[44] 12 U.S.C. 5512(a).

thereof.[45] "Federal consumer financial law" includes title X of the Dodd-Frank Act and the FDCPA.[46] No provisions in this final rule are based on section 1031 of the Dodd-Frank Act.[47]

These and other authorities are discussed in greater detail in parts IV.A through C below. Part IV.A discusses the Bureau's authority under sections 806 through 808 of the FDCPA. Parts IV.B through C discuss the Bureau's relevant authorities under the Dodd-Frank Act.

A. FDCPA Sections 806 through 808

As discussed in part V, the Bureau is finalizing several provisions, in whole or in part, pursuant to its authority to interpret FDCPA sections 806 through 808, which set forth general prohibitions on, and requirements relating to, debt collectors' conduct and are accompanied by non-exhaustive lists of examples of unlawful conduct. The November 2020 Final Rule provides an overview of how the Bureau interprets FDCPA sections 806 through 808.

FDCPA section 806 generally prohibits a debt collector from "engag[ing] in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt."[48] Then, "[w]ithout limiting the general application of the foregoing," it lists six examples of conduct that violate that section.[49] Similarly, FDCPA section 807 generally prohibits a debt collector from "us[ing] any false, deceptive, or misleading representation or means in connection with the collection of any debt."[50] Then, "[w]ithout limiting the general application of the foregoing," section 807 lists 16 examples of conduct that violate that section.[51] Finally, FDCPA section 808 prohibits a debt collector from "us[ing] unfair or unconscionable

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[45] 12 U.S.C. 5512(b)(1).

[46] 12 U.S.C. 5481(12)(H), (14).

[47] The Bureau proposed to rely on its Dodd-Frank Act section 1031 authority (relating to unfair, deceptive, or abusive acts or practices in connection with consumer financial products or services) to support two interventions in the May 2019 proposal. The Bureau has not finalized any provisions of this final rule (or, as discussed in the November 2020 Final Rule, of that final rule), pursuant to its authority under Dodd-Frank Act section 1031.

[48] 15 U.S.C. 1692d.

[49] 15 U.S.C. 1692d(1)-(6).

[50] 15 U.S.C. 1692e.

[51] 15 U.S.C. 1692e(1)-(16).

means to collect or attempt to collect any debt."[52] Then, "[w]ithout limiting the general application of the foregoing," FDCPA section 808 lists eight examples of conduct that violate that section.[53] Consistent with the approach in the November 2020 Final Rule[54] and as proposed in the May 2019 proposal,[55] the Bureau interprets FDCPA sections 806 through 808 in light of: (1) the FDCPA's language and purpose; (2) the general types of conduct prohibited by those sections and, where relevant, the specific examples enumerated in those sections; and (3) judicial decisions.[56]

In particular, the Bureau notes that, by their plain terms, FDCPA sections 806 through 808 make clear that their examples of prohibited conduct do not "limit[ ] the general application" of those sections' general prohibitions. The FDCPA's legislative history is consistent with this understanding,[57] as are opinions by courts that have addressed this issue.[58] Accordingly, the Bureau may interpret the general provisions of FDCPA sections 806 to 808 to prohibit conduct that the specific examples in FDCPA sections 806 through 808 do not address if the conduct violates the general prohibitions. In addition, the Bureau uses the specific examples to inform its understanding of the general prohibitions. The Bureau also interprets FDCPA sections 806 through 808 in light of the significant body of existing court decisions interpreting those

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[52] 15 U.S.C. 1692f.

[53] 15 U.S.C. 1692f(1)-(8).

[54] *See* 85 FR 76734, 76738 (Nov. 30, 2020).

[55] 84 FR 23274, 23281-82 (May 21, 2019).

[56] Where the Bureau prescribes requirements pursuant only to its authority to implement and interpret sections 806 through 808 of the FDCPA, the Bureau does not take a position on whether such practices also would constitute an unfair, deceptive, or abusive act or practice under section 1031 of the Dodd-Frank Act.

[57] *See, e.g.*, S. Rep. No. 382, 95th Cong., 1st Sess. 2, 4 (1977), *reprinted in* 1977 U.S.C.C.A.N. 1695, 1698 (S. Rep. No. 382) ("[T]his bill prohibits in general terms any harassing, unfair, or deceptive collection practice. This will enable the courts, where appropriate, to proscribe other improper conduct which is not specifically addressed."). Courts have also cited legislative history in noting that, "in passing the FDCPA, Congress identified abusive collection attempts as primary motivations for the Act's passage." *Hart v. FCI Lender Servs., Inc.*, 797 F.3d 219, 226 (2d Cir. 2015).

[58] *See, e.g.*, *Stratton v. Portfolio Recovery Assocs., LLC*, 770 F.3d 443, 450 (6th Cir. 2014) ("[T]he listed examples of illegal acts are just that—examples.").

sections, including, where applicable, cases discussing the collection of time-barred debt.[59] Finally, consistent with the majority of courts, the Bureau interprets FDCPA sections 806 through 808 to incorporate an objective, "unsophisticated" or "least sophisticated" consumer standard.[60]

B. Dodd-Frank Act Section 1032

Dodd-Frank Act section 1032(a) provides that the Bureau may prescribe rules to ensure that the features of any consumer financial product or service, "both initially and over the term of the product or service," are "fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances."[61] Under Dodd-Frank Act section 1032(a), the Bureau is empowered to prescribe rules regarding the disclosure of the "features" of consumer financial products and services generally. Accordingly, the Bureau may prescribe rules containing disclosure requirements even if other Federal consumer financial laws do not specifically require disclosure of such features. Dodd-Frank Act section 1032(c) provides that, in prescribing rules pursuant to Dodd-Frank Act section 1032, the Bureau "shall consider available evidence about consumer awareness, understanding of, and responses to disclosures or communications about the risks, costs, and benefits of consumer financial products or services."[62] The Bureau is finalizing §§ 1006.34 and 1006.38 based in part on its authority under Dodd-Frank Act section 1032.

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[59] *Id. See, e.g.*, *Holzman v. Malcolm S. Gerald & Assocs.*, 920 F.3d 1264 (11th Cir. 2019); *Tatis v. Allied Interstate, LLC*, 882 F.3d 422 (3d Cir. 2018); *Pantoja v. Portfolio Recovery Assocs., LLC*, 852 F.3d 679 (7th Cir. 2017), cert. denied, 138 S. Ct. 736 (2018); *Daugherty v. Convergent Outsourcing Inc.*, 836 F.3d 507 (5th Cir. 2016); *Buchanan v. Northland Grp., Inc.*, 776 F.3d 393 (6th Cir. 2015); *McMahon v. LVNV Funding, LLC*, 744 F.3d 1010, 1020 (7th Cir. 2014).

[60] 85 FR 76734, 76740 (Nov. 30, 2020); 84 FR 23274, 23282-83 (May 21, 2019).

[61] 12 U.S.C. 5532(a).

[62] 12 U.S.C. 5532(c).

C. Other Authorities Under the Dodd-Frank Act

Section 1022(b)(1) of the Dodd-Frank Act provides that the Bureau's Director "may prescribe rules and issue orders and guidance, as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof."[63] "Federal consumer financial laws" include the FDCPA and title X of the Dodd-Frank Act.[64] Section 1022(b)(2) of the Dodd-Frank Act prescribes certain standards for rulemaking that the Bureau must follow in exercising its authority under Dodd-Frank Act section 1022(b)(1).[65] See part VII for a discussion of the Bureau's standards for rulemaking under Dodd-Frank Act section 1022(b)(2).

V. Section-by-Section Analysis

Subpart A—General

Section 1006.1 Authority, Purpose, and Coverage

1(c) Coverage

In the November 2020 Final Rule, the Bureau adopted § 1006.1(c)(1) to specify that, except as provided in § 1006.108 and appendix A, Regulation F applies to debt collectors, as defined in § 1006.2(i), other than a person excluded from coverage by section 1029(a) of the Consumer Financial Protection Act of 2010, title X of the Dodd-Frank Act (12 U.S.C. 5519(a)).[66] The Bureau also noted that it was not finalizing, as part of the November 2020 Final Rule, proposed § 1006.1(c)(2), which provided that certain provisions of Regulation F applied to debt collectors only when they were collecting consumer financial product or service debt, as defined in § 1006.2(f). The Bureau explained that it was not finalizing § 1006.1(c)(2) as part of the November 2020 Final Rule because all of the provisions of that final rule apply to debt collectors as defined in § 1006.2(i). The Bureau nevertheless reserved § 1006.1(c)(2) so that the

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[63] 12 U.S.C. 5512(b)(1).

[64] 12 U.S.C. 5481(14).

[65] 12 U.S.C. 5512(b)(2).

[66] 85 FR 76734, 76742 (Nov. 30, 2020).

Bureau could clarify which provisions of this final rule, if any, apply to debt collectors only if they are collecting debt related to a consumer financial product or service.

For the reasons discussed in the section-by-section analysis of § 1006.34, two provisions of that section (§ 1006.34(c)(2)(iii) and (3)(iv)) apply to debt collectors only if they are collecting debt related to a consumer financial produce or service as defined in § 1006.2(f). Therefore, the Bureau is finalizing § 1006.1(c)(2) to provide that certain provisions of Regulation F apply to debt collectors only if they are collecting debt related to a consumer financial product or service as defined in § 1006.2(f), and to specify that those provisions are § 1006.34(c)(2)(iii) and (3)(iv).

Section 1006.2 Definitions

2(e) Consumer

FDCPA section 803(3) defines a consumer as any natural person obligated or allegedly obligated to pay any debt.[67] The Bureau proposed § 1006.2(e) to implement this definition and to interpret it to include a deceased natural person who is obligated or allegedly obligated to pay a debt.[68] The Bureau explained that this interpretation would ensure that individuals trying to resolve a deceased consumer's debts have the same legal right to receive the validation notice, and to dispute the debt and request information about the original creditor, as the deceased consumer would have had.

As the Bureau noted in the November 2020 Final Rule, the Bureau received a number of comments regarding its proposal to interpret the term consumer to include deceased natural persons. The Bureau also noted that it had proposed that interpretation, in large part, to facilitate delivery of validation notices under proposed § 1006.34 if the consumer obligated, or allegedly obligated, on the debt has died. Further, the Bureau noted that it planned to address comments received regarding that interpretation, and to determine whether to finalize that interpretation, as

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[67] 15 U.S.C. 1692a(3).

[68] *See* 84 FR 23274, 23288 (May 21, 2019).

part of this final rule. Thus, as finalized in the November 2020 Final Rule, § 1006.2(e) provides that the term consumer means any natural person obligated or allegedly obligated to pay any debt.[69] The Bureau now addresses comments received regarding its proposal to interpret the definition to include deceased natural persons.

Several commenters supported the Bureau's proposed interpretation. One industry commenter stated that, in the decedent debt context, the person acting on behalf of a deceased consumer's estate should have the same rights regarding validation notices and disputes as the consumer would have had if the consumer were still living. Another industry commenter reported that many debt collectors currently attempt to treat deceased consumers as "consumers" under the FDCPA and explained that the proposal would provide additional clarity that would benefit both consumers and debt collectors in resolving the debts of deceased consumers. A group of consumer advocates supported clarifying the rights of executors, administrators, and personal representatives regarding validation notices and disputes. However, as discussed below, these consumer advocate commenters opposed the proposed interpretation and suggested a different way to address the issue.

Other commenters opposed interpreting the term consumer to include deceased natural persons who are obligated or allegedly obligated to pay a debt. One industry commenter asserted that the proposed interpretation would serve no purpose because deceased consumers lacked privacy interests. A trade group commenter stated that no evidence of confusion existed in the decedent debt context, and that the Bureau's interpretation would expand the class of individuals entitled to sue debt collectors for violations of the FDCPA and the final rule. Finally, a group of consumer advocates suggested that the Bureau's interpretation was unnecessary because proposed comments 34(a)(1)–1 and 38–1 would clarify that a person who is authorized to act on

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[69] For the reasons discussed in the November 2020 Final Rule, § 1006.2(e) as finalized in that rule also provides that, for purposes of § 1006.6, the term consumer includes the persons described in § 1006.6(a). To account for any revisions adopted in this final rule, it also specifies that the Bureau may further define the term in Regulation F to clarify its application when the consumer is deceased. *See* 85 FR 76734, 76744-45, 76888 (Nov. 30, 2020).

behalf of the deceased consumer's estate operates as the consumer for purposes of §§ 1006.34(a)(1) and 1006.38.[70] These commenters also stated that, if the Bureau were attempting to change the class of individuals who may bring civil actions against debt collectors, the FDCPA already allows any "person" to bring such claims.

For the reasons discussed below, the Bureau is revising § 1006.2(e), as set forth in the November 2020 Final Rule, to clarify that the definition of consumer includes deceased natural persons. As explained in the May 2019 proposal, the FDCPA does not specify whether a consumer, as defined in section 803(3), includes a deceased consumer (or whether a natural person, as that term is used in section 803(3), includes a deceased natural person).[71] Because the definition of consumer in FDCPA section 803(3) is silent with respect to deceased consumers, other FDCPA provisions that refer to a debt collector's obligations to a consumer lack clarity in the decedent debt context. For example, FDCPA provisions requiring debt collectors to provide validation information, and to respond to disputes and requests for original-creditor information, do not address situations in which the person obligated or allegedly obligated to pay the debt is deceased. Uncertainty surrounding these provisions increases the risk of consumer harm in the decedent debt context. Specifically, without validation information and an opportunity to dispute the debt, individuals trying to resolve debts in a deceased consumer's estate will lack information needed to determine whether they are being asked to pay the right debt, in the right amount, and to the right debt collector, and, consequently, whether they should assert dispute rights.

Accordingly, to increase clarity and to decrease the risk of consumer harm, the Bureau is revising § 1006.2(e) to provide that the term consumer means any natural person, whether living or deceased, obligated or allegedly obligated to pay any debt. The Bureau also is revising § 1006.2(e) to delete the statement that the Bureau may further define the term to clarify its

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[70] *See* the section-by-section analyses of §§ 1006.34 and 1006.38.

[71] *See* 84 FR 23274, 23288 (May 21, 2019).

application when the consumer is deceased, since this final rule contains that further definition.[72] Relatedly, the Bureau is finalizing the commentary to §§ 1006.34(a)(1) and 1006.38 that clarifies that a person who is authorized to act on behalf of the deceased consumer's estate, such as the executor, administrator, or personal representative, operates as the consumer for purposes of §§ 1006.34(a)(1) and 1006.38.

Regarding the comment that deceased consumers have no privacy rights, the Bureau disagrees. In its Policy Statement on Decedent Debt, the FTC prohibited debt collectors from openly referring to a deceased consumer's debts in communications with third parties, instead adopting an approach that "balance[d] the legitimate needs of the collector with the privacy interests of the decedent."[73] In the November 2020 Final Rule, the Bureau took a similar approach regarding location communications for decedent debt.[74]

Moreover, interpreting the term consumer in § 1006.2(e) to include deceased natural persons is supported by more than concern for a decedent's privacy; it also clarifies debt collector's obligations to a consumer and, in turn, to those authorized to act on the consumer's behalf, if the consumer has died. This includes clarifying a debt collector's obligations under the FDCPA's provisions, as implemented in this final rule and in the November 2020 Final Rule, regarding validation information and disputes and requests for original-creditor information, which help to ensure that consumers are not paying the wrong debt, in the wrong amount, to the wrong debt collector.

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[72] In the proposal, the Bureau explained that its interpretation was "consistent with a modern trend in the law that favors recognizing, as a default, the continued existence of a natural person after death." 84 FR 23274, 23288 (May 21, 2019). Consumer advocates pointed out that the authority cited for this proposition comes from contexts other than the FDCPA. But these commenters do not explain why this fact undermines the existence of the trend described by the Bureau.

[73] Fed. Trade Comm'n, *Statement of Policy Regarding Communications in Connection with the Collection of Decedents' Debts* at 44921 (July 27, 2011), *https://www.ftc.gov/sites/default/files/documents/federal_register_notices/statement-policy-regarding-communications-connection-collection-decedents-debts-policy-statement/110720fdcpa.pdf* (FTC Policy Statement on Decedent Debt).

[74] *See* 85 FR 76734, 76797-00, 76890, 76900 (Nov. 30, 2020).

This interpretation also clarifies the application of § 1006.22(f)(4), which the Bureau adopted in the November 2020 Final Rule to prohibit debt collectors from communicating or attempting to communicate with a person in connection with the collection of a debt through a social media platform if the communication or attempt to communicate is viewable by the general public or the person's social media contacts.[75] In adopting that provision, the Bureau discussed that a consumer advocate commenter had stated that the Bureau should broaden the prohibition to apply to deceased consumers, such that debt collectors would be prohibited from posting publicly about a deceased consumer's alleged debt on the consumer's social media page. The consumer advocate commenter stated that a debt collector's only reason for doing so would be to pressure surviving relatives to pay the debt, either to protect the deceased consumer's reputation or out of a sense of moral obligation.[76]

In finalizing § 1006.22(f)(4) in the November 2020 Final Rule, Bureau noted that the prohibition applied to communications and attempts to communicate with "a person," and that person, as defined in § 1006.2(k), includes a consumer. The Bureau again noted that it had received a number of comments regarding its proposal to interpret the term consumer to include deceased natural persons and that it would address such comments in this final rule. In determining to revise § 1006.2(e) to include a deceased natural person who is obligated or allegedly obligated to pay a debt, the Bureau thus also clarifies that the prohibition in § 1006.22(f)(4) includes deceased consumers.

The Bureau disagrees with the industry commenter that there is no evidence of confusion about the definition of consumer in the decedent debt context. As explained above, the FDCPA's current lack of clarity in the decedent debt context creates uncertainty in several situations arising during the collection of debts belonging to deceased consumers. Therefore, the Bureau determines that additional clarity will improve the debt collection system for all parties.

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[75] *See id.* at 76836-39, 76892.

[76] *See id.* at 76836-39.

Nor does § 1006.2(e) expand the class of potential plaintiffs who may bring suit under the FDCPA and Regulation F, as an industry commenter alleged. The civil liability provision of the FDCPA already creates liability for violations committed against any person.[77] As noted in the proposal, the trend in the law has been to recognize, as a default, the continued existence of a natural person after death for purposes of bringing civil actions, particularly for remedial statutes like the FDCPA.[78] This commenter did not explain how the Bureau's interpretation would result in a lawsuit by someone other than a "person" under the statute.

Finally, the Bureau disagrees, as suggested by certain commenters, that the commentary to §§ 1006.34(a)(1) and 1006.38 (final comments 34(a)(1)–1 and 38–3) provide adequate clarity without interpreting the term consumer to include deceased natural persons. In fact, interpreting the term consumer to include deceased natural persons is a necessary predicate to provide that the persons identified in those comments operate as the consumer for purposes of the requirements relating to validation information, disputes, and requests for original-creditor information.

Commenters raised additional issues related to § 1006.2(e). A few industry commenters suggested that the Bureau's proposed interpretation was inconsistent with the Bureau's mortgage servicing rules regarding successors in interest. One trade group commenter stated that allowing any individual authorized to act on behalf of a deceased consumer's estate to meet Regulation F's definition of consumer under § 1006.2(e) will complicate and potentially impede the existing successor in interest process under Regulations X and Z. The commenter explained that, under proposed comment 34(a)(1)–1, mortgage servicers who are also debt collectors under Regulation F would have to send validation information to the person authorized to act on behalf of the deceased consumer's estate but would not be able to send foreclosure-related disclosures required under State law to the same person, unless that person had assumed ownership of the

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[77] 15 U.S.C. 1692k.

[78] *See* 84 FR 23274, 23288 (May 21, 2019).

obligation. The commenter also suggested that, under proposed comment 38–1, debt collectors would be required to focus resources on verifying the identify of an individual asserting to be a person authorized to act on behalf of the deceased consumer's estate, which would take away from legitimate efforts to respond to disputes and requests for original-creditor information.

Another trade group commenter stated that the clarification in proposed comment 34(a)(1)–1 to send the validation notice to the person authorized to act on behalf of the deceased consumer's estate if the debt collector knows or should know that the consumer is deceased would, unlike the Bureau's mortgage servicing rules, appear to create an affirmative obligation for mortgage servicers to track down information about potential successors in interest and cloud requirements for mortgage servicers under Regulation X. For this reason, a third trade group commenter suggested that, if a required notice must be sent and no individual has come forward as a potential or confirmed successor in interest, the Bureau should permit mortgage servicers to address a validation notice to the deceased consumer or "the estate of" the deceased consumer rather than require a search for an individual to whom to address the notice.

As the Bureau has previously explained, while many mortgage servicers are not subject to the FDCPA, mortgage servicers that acquired a mortgage loan at the time that it was in default may be subject to the FDCPA with respect to that mortgage loan.[79] As discussed below, the Bureau concludes that including a deceased natural person who is obligated or allegedly obligated to pay a debt within the definition of consumer under § 1006.2(e) is not inconsistent with the Bureau's mortgage servicing rules on successors in interest. Although one commenter asserted that finalizing this definition as proposed would complicate and potentially impede the existing successor in interest process, the commenter failed to explain why that would be the case and the Bureau does not believe that to be the case.

[79] *See* 85 FR 76734, 76758 (Nov. 30, 2020); 81 FR 71977, 71978 (Oct. 19, 2016).

Regarding delivery of validation information, as discussed below, comment 34(a)(1)–1 clarifies that, if a debt collector knows or should know that a consumer is deceased, and if the debt collector has not previously provided the validation information to the deceased consumer, then in such circumstances, to comply with § 1006.34(a)(1), a debt collector must provide the validation information to an individual whom the debt collector identifies by name and who is authorized to act on behalf of the deceased consumer's estate.[80] A person who is authorized to act on behalf of a deceased consumer's estate may include the executor, administrator, or personal representative. However, as discussed in the November 2020 Final Rule, for purposes of Regulations X and Z, a successor in interest is, in general, a person to whom an ownership interest either in a property securing a mortgage loan subject to subpart C of Regulation X, or in a dwelling securing a closed-end consumer credit transaction under Regulation Z, is transferred under specified circumstances including, for example, after a consumer's death or as part of a divorce.[81] Therefore, a person who is authorized to act on behalf of a deceased consumer's estate for purposes of Regulation F may or may not also be a successor in interest under Regulations X and Z, depending on whether an ownership interest in a property securing a mortgage loan or a dwelling securing a closed-end consumer credit transaction is transferred to that person under the circumstances specified in Regulations X and Z.[82]

Comment 34(a)(1)–1 provides debt collectors clarity regarding to whom the validation information must be provided in the narrow circumstance in which the debt collector knows or should know that a consumer is deceased and the debt collector has not previously provided the validation information to the deceased consumer. According to the comment, under these circumstances, a debt collector who is collecting the debt of a deceased consumer must

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[80] *See* the section-by-section analysis of § 1006.34(a)(1).

[81] *See* 85 FR 76734, 76758-59 (Nov. 30, 2020). *See also* 12 CFR 1024.31, 1026.2(a)(27)(i). A confirmed successor in interest, in turn, means a successor in interest once a mortgage servicer has confirmed the successor in interest's identity and ownership interest in the property that secures the mortgage loan or in the dwelling. *See* 12 CFR 1024.31, 1026.2(a)(27)(ii).

[82] 12 CFR 1024.31, 1026.2(a)(27).

determine who is authorized to act on behalf of a deceased consumer's estate. These efforts, however, do not create an affirmative obligation under the Bureau's mortgage servicing rule for a mortgage servicer that is subject to the FDCPA with respect to a mortgage loan to seek out potential successors in interest within the meaning of the mortgage servicing rules. Under the mortgage servicing rules, a mortgage servicer is not required to conduct a search for potential successors in interest if the mortgage servicer has not received actual notice of their existence.[83] If, in the course of determining who is authorized to act on behalf of a deceased consumer's estate for purposes of § 1006.34(a)(1), a mortgage servicer receives actual notice of the existence of a potential successor in interest, the mortgage servicer must, as required under Regulation X, maintain policies and procedures reasonably designed to ensure that the servicer can retain this information and promptly facilitate communication with the potential successor in interest.[84] However, because a mortgage servicer that is subject to the FDCPA with respect to a mortgage loan may comply with both this final rule and the applicable successor in interest provisions under Regulations X and Z, the Bureau concludes there is no conflict with the mortgage servicing rules. Additionally, nothing in this final rule is intended to alter the successor in interest provisions in Regulations X and Z or to impose additional requirements under Regulations X and Z.

In response to the commenter's concern regarding the burdens under comment 38–1 of determining who is authorized to act on behalf of a deceased consumer's estate before responding to a dispute or request for original-creditor information, the potential burdens associated with responding to such incoming disputes and requests will be significantly reduced once a debt collector has procedures in place to make that threshold determination or has already

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[83] 12 CFR 1024.38(b)(1)(vi); comment 38(b)(1)(vi)–1.

[84] *Id.* The general servicing policies, procedures, and requirements in 12 CFR 1024.38 do not apply to a mortgage servicer that qualifies as a small servicer pursuant to 12 CFR 1026.41(e). *See* 12 CFR 1024.30(b)(1).

made that determination for purposes of providing the validation information as described in comment 34(a)(1)–1.

The Bureau declines to adopt the suggestion to allow mortgage servicers to address a validation notice to the deceased consumer or to "the estate of" the deceased consumer. As discussed in the proposal, the Bureau shares the view of the FTC, which stated in its Policy Statement on Decedent Debt that individuals who lack the authority to resolve the estate but who wish to be helpful are likely to open communications addressed to the decedent's estate, or to an unnamed executor or administrator, which makes such communications insufficiently targeted to a consumer with whom the debt collector may generally discuss the debt.[85] The Bureau, therefore, shares the view of the FTC that "communication[s] addressed to the decedent's estate, or an unnamed executor or administrator, [are] location communication[s] and must not refer to the decedent's debts."[86] Accordingly, comment 34(a)(1)–1 specifies that a debt collector must provide the validation information to an individual that the debt collector identifies by name who is authorized to act on behalf of the deceased consumer's estate.

A group of consumer advocates stated that certain other provisions of the Bureau's proposal, such as § 1006.14(e)'s prohibition on publishing lists of consumers who allegedly refuse to pay debts and § 1006.18(b)(1)(iv)'s prohibition on falsely representing or implying that the consumer committed any crime or other conduct in order to disgrace the consumer, should apply to deceased consumers. But, these commenters claimed, other provisions, like § 1006.6(b)(1)'s restrictions on communicating at inconvenient times or places, were nonsensical as applied to deceased consumers. Therefore, these commenters argued, the Bureau's interpretation in proposed § 1006.2(e) was overbroad.

The Bureau acknowledges that there may be certain provisions in the November 2020 Final Rule and in this final rule that refer to a consumer that simply will be inapplicable in the

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[85] *See* 84 FR 23274, 23334 (May 21, 2019).

[86] FTC Policy Statement on Decedent Debt, *supra* note 73, at 44920.

context of a deceased consumer.[87] Nevertheless, as consumer advocates acknowledged, other provisions that refer to a consumer will apply to deceased consumers. For example, as discussed above, interpreting the term consumer in § 1006.2(e) to include deceased natural persons means that, as applied to § 1006.22(f)(4), debt collectors are prohibited from posting publicly about a deceased consumer's alleged debt on a deceased consumer's public-facing social media page. In situations that are currently unclear, such as delivery of validation information, the final rule adopts commentary clarifying debt collectors' obligations.

This group of consumer advocates also recommended that the Bureau require debt collectors to provide a validation notice to the person authorized to act on behalf of the deceased consumer's estate even if validation information already was provided to the consumer. These commenters also asked the Bureau to provide that the validation period starts from the date the person authorized to act on behalf of the deceased consumer's estate receives the validation notice, and to require debt collectors to respond to disputes and requests for original-creditor information submitted by this person, even if a response already was provided to the consumer. The Bureau declines to adopt these suggestions because the Bureau finds that, in the scenario described, the debt collector has already satisfied the debt collector's obligations to the consumer as set forth in FDCPA section 809 and §§ 1006.34 and 1006.38. Depending on the facts, the debt collector could be required to provide a validation notice or dispute response to the person authorized to act on behalf of the deceased consumer's estate,[88] but the Bureau declines to require debt collectors to do so in all cases. Nevertheless, the Bureau notes that debt collectors who voluntarily provide validation notices after a consumer dies (as some industry commenters

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[87] For example, § 1006.6(b) restricts, among other things, the times at which debt collectors can communicate or attempt to communicate with consumers. *See* 85 FR 76734, 76889 (Nov. 30, 2020). To the extent that "communicate" includes having a conversation, the Bureau believes it is obvious that this prohibition is simply inapplicable in the case of a deceased consumer (but does apply to having a conversation with the executor or administrator of the consumer's estate).

[88] *See* the section-by-section analysis of § 1006.34(b)(5).

reported is done), and who, in doing so, start a new validation period, do not thereby violate the FDCPA or Regulation F.

For the reasons discussed above, and pursuant to its authority under FDCPA section 814(d) to prescribe rules with respect to the collection of debts by debt collectors, the Bureau is finalizing § 1006.2(e) as proposed to interpret the definition of consumer in FDCPA section 803(3) to mean any natural person, whether living or deceased, who is obligated or allegedly obligated to pay any debt.

2(f) Consumer Financial Product or Service

As discussed in the November 2020 Final Rule, the Bureau proposed § 1006.2(f) to define consumer financial product or service debt to mean any debt related to any consumer financial product or service, as consumer financial product or service is defined in section 1002(5) of the Dodd-Frank Act.[89] As also discussed in the November 2020 Final Rule, the Bureau did not finalize § 1006.2(f) as part of that rulemaking because the Bureau did not finalize in that rulemaking any provisions for which the definition in proposed § 1006.2(f) would have been relevant.

For the reasons discussed in the section-by-section analyses of §§ 1006.1(c) and 1006.34, the Bureau is adopting in this final rule two provisions (§ 1006.34(c)(2)(iii) and (3)(iv)) that apply to debt collectors only if they are collecting debt related to a consumer financial product or service. This includes, for example, debt collectors collecting debts related to consumer mortgage loans or credit cards.[90] To facilitate compliance with those provisions, the Bureau is adopting § 1006.2(f) to provide that consumer financial product or service has the meaning in section 1002(5) of the Dodd-Frank Act (12 U.S.C. 5481(5)).

The Bureau notes that it originally proposed § 1006.2(f) to define the term "consumer financial product or service debt." However, because the relevant defined term in the Dodd-

[89] 85 FR 76734, 76745 (Nov. 30, 2020).

[90] *See* 84 FR 23274, 23286 (May 21, 2019).

Frank Act is "consumer financial product or service," and because certain commenters observed that including two definitions of the term "debt" in the rule would be confusing, the Bureau is finalizing § 1006.2(f) to provide that the defined term in the rule is "consumer financial product or service" and that the term has the same meaning given to it in section 1002(5) of the Dodd-Frank Act.

Subpart B—Rules for FDCPA Debt Collectors

Section 1006.26 Collection of Time-Barred Debts

The May 2019 proposal and the February 2020 proposal both addressed the collection of time-barred debt. In the May 2019 proposal, the Bureau proposed to define several terms (proposed § 1006.26(a)) and to prohibit debt collectors from bringing or threatening to bring legal actions against consumers to collect certain time-barred debts (proposed § 1006.26(b)). In the February 2020 proposal, the Bureau proposed to require debt collectors to provide disclosures if collecting certain time-barred debts (proposed § 1006.26(c)). The February 2020 proposal also included model language and forms that debt collectors could use to comply with the proposed disclosure requirements. In the November 2020 Final Rule, the Bureau noted that it planned to address its proposals regarding time-barred debt in this final rule, and the Bureau reserved § 1006.26 for that purpose. After considering the comments received in response to both the May 2019 and February 2020 proposals, the Bureau is now finalizing proposed § 1006.26(a) and (b) with modifications as described below. The Bureau is not finalizing proposed § 1006.26(c).

26(a) Definitions

Proposed § 1006.26(a) defined two terms not defined in the FDCPA: statute of limitations and time-barred debt. The Bureau proposed to define these terms to facilitate compliance with proposed § 1006.26(b) and (c). As discussed below, the Bureau is finalizing § 1006.26(a) as proposed. The Bureau is finalizing § 1006.26(a) pursuant to its authority under

FDCPA section 814(d) to prescribe rules with respect to the collection of debts by debt collectors.

26(a)(1) Statute of Limitations

Proposed § 1006.26(a)(1) defined the term statute of limitations to mean the period prescribed by applicable law for bringing a legal action against the consumer to collect a debt.[91]

Statutes of limitation, which typically are established by State law, provide time limits for bringing suit on legal claims. As the Bureau explained in the May 2019 proposal, statutes of limitation serve several purposes.[92] First, statutes of limitations advance a defendant's interest in repose. That is, they reflect a legislative judgment that it is "unjust to fail to put the adversary on notice to defend within a specified period of time."[93] Second, statutes of limitations eliminate stale claims. That is, they protect defendants and the courts from having to deal with cases in which "the search for truth may be seriously impaired by the loss of evidence, whether by death or disappearance of witnesses, fading memories, disappearance of documents, or otherwise."[94] Third, statutes of limitations provide "certainty about a plaintiff's opportunity for recovery and a defendant's potential liabilities."[95] For debt collection claims, the length of the applicable statute of limitations often varies by State and, within each State, by debt type. Although most statutes of limitations applicable to debt collection claims are between three and six years, some are as long as 15 years.

Several commenters addressed proposed § 1006.26(a)(1). One industry commenter confirmed that the proposed definition of statute of limitations comported with debt collectors' understanding of the term. A number of other industry commenters requested that the Bureau modify the definition to account for the fact that it can be challenging to determine the applicable

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[91] *See* 84 FR 23274, 23327-28 (May 21, 2019).

[92] *See generally Rotella v. Wood*, 528 U.S. 549, 555 (2000) (identifying "the basic policies of all limitations provisions" as "repose, elimination of stale claims, and certainty").

[93] *United States v. Kubrick*, 444 U.S. 111, 117 (1979).

[94] *Id.*

[95] *Young v. United States*, 535 U.S. 43, 47 (2002) (quoting *Rotella*, 528 U.S. at 555).

statute of limitations in certain circumstances. For example, two industry commenters requested that the Bureau clarify that, in determining the applicable statute of limitations, a debt collector need only conduct a reasonable investigation based on objectively ascertainable facts, and that a debt collector would only be charged with knowing that the statute of limitations has expired if the law is clearly established. The commenters also requested that the Bureau more specifically define certain elements of the term statute of limitations to lessen the burden on debt collectors of determining whether a debt is time barred. For example, they suggested defining "applicable law" as the law of the jurisdiction where the consumer resides or is believed to reside at the time collections begin, or the law of the jurisdiction in which the consumer signed any underlying contract. Commenters suggested that these changes would make it easier for a debt collector to determine the statute of limitations applicable to a particular debt while protecting a debt collector from liability when it is difficult determine the exact date on which a debt becomes time barred.

The Bureau is finalizing § 1006.26(a)(1) as proposed. As industry commenters confirmed, the definition of statute of limitations in § 1006.26(a)(1) is consistent with debt collectors' understanding of the term. The Bureau declines to modify the definition to identify the type of investigation a debt collector must or should undertake to ascertain the applicable statute of limitations. The Bureau also declines to define the term "applicable law" in the manner requested by commenters. The Bureau recognizes that, in some cases, it can be challenging and costly for a debt collector to determine what statute of limitations applies to a legal action against the consumer to collect a particular debt, and that, in some cases, the commenters' suggestions could reduce those challenges and costs. The Bureau declines, however, to address the challenges and costs associated with determining whether a debt is time barred by modifying the definition of statute of limitations, a term with a meaning widely understood by debt collectors, or by defining new terms. Comments relating to the difficulty of

determining whether a debt is time barred are discussed further in the section-by-section analysis of § 1006.26(b).

26(a)(2) Time-Barred Debt

Proposed § 1006.26(a)(2) defined the term time-barred debt to mean a debt for which the applicable statute of limitations has expired.[96]

As the Bureau explained in the May 2019 proposal, many debt collectors already determine whether the statute of limitations applicable to a debt has expired. Some do so to comply with State and local disclosure laws that require them to inform consumers when debts are time barred.[97] Others do so to assess whether they can sue to collect the debt, which may affect their collection strategy. In addition, the information that debt buyers generally receive when bidding on and purchasing debts, and the information that other debt collectors generally receive at placement, may allow them to determine whether the applicable statute of limitations has expired.[98]

Several commenters addressed proposed § 1006.26(a)(2). An industry commenter confirmed that the proposed definition comported with debt collectors' understanding of the term. Two other industry commenters expressed concern that the term time-barred debt may imply that a debt collector has no right at all to collect the debt, whereas in most jurisdictions a debt's time-barred status only limits the debt collector's right to recover on the debt through a lawsuit. Several industry commenters expressed concern that the proposal seemed to

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[96] *See* 84 FR 23274, 23328 (May 21, 2019).

[97] *See, e.g.*, Cal. Civ. Code sec. 1788.52(d)(3); Conn. Gen. Stat. sec. 36a-805(a)(14); Mass. Code Regs., tit. 940, § 7.07(24); N.M. Code. R. sec. 12.2.12.9(A); N.Y. Comp. Codes R. & Regs., tit. 23, sec. 1.3; New York City, N.Y., Rules, tit. 6, sec. 2-191(a); W. Va. Code sec. 46a-2-128(f).

[98] *See* Fed. Trade Comm'n, *The Structure and Practices of the Debt Buying Industry*, at 49 (Jan. 2013), *https://www.ftc.gov/sites/default/files/documents/reports/structure-and-practices-debt-buying-industry/debtbuyingreport.pdf* (FTC Debt Buying Report) ("The data the Commission received from debt buyers suggests that debt buyers usually are likely to know or be able to determine whether the debts on which they are collecting are beyond the statute of limitations."). Similarly, the majority of respondents to the Bureau's Debt Collection Operations Study reported always or often receiving certain information and documentation that may be relevant to determining whether a debt is time barred, such as debt balance at charge off, account agreement documentation, and billing statements. *See* CFPB Debt Collection Operations Study, *supra* note 37, at 23.

contemplate that a debt is a single amount that becomes time barred at a single moment in time and noted that not all debts operate in that manner. For example, these commenters stated that an installment loan could become time barred on a rolling basis depending on when each installment was due. In addition, according to some commenters, a legal action to collect a debt may be based on more than one legal theory or involve more than one cause of action, and each theory or cause of action may be subject to a different statute of limitations. Similarly, according to some commenters, certain secured debts may be subject to more than one method of suit and more than one statute of limitations. For example, these commenters asserted, in some States a mortgagee may choose whether to pursue a remedy at law on the note, a remedy in equity on the mortgage, or both, and the statute of limitations applicable to these claims may differ. Relatedly, one industry commenter asked the Bureau to clarify that debt collectors are not prohibited from taking legal action to enforce a lien even if a claim on the underlying obligation is time barred. Alternatively, the commenter asked the Bureau to clarify that the requirements of proposed § 1006.26 would apply only when all causes of action associated with the underlying note and with the security instrument are time barred.[99]

The Bureau is finalizing § 1006.26(a)(2) as proposed. As industry commenters confirmed, the definition of time-barred debt in § 1006.26(a)(2) is consistent with debt collectors' understanding of the term. In response to commenters' concerns that the term time-barred debt might imply that a debt collector has no right to collect the debt, the Bureau notes that, in most jurisdictions, as commenters observed and as is discussed in the section-by-section analysis of § 1006.26(b), a debt is not extinguished when the statute of limitations expires. Rather, in these jurisdictions, a debt collector still may collect the debt using non-litigation

[99] Another commenter seeking clarification on the scope of proposed § 1006.26(b) asserted that *in rem* enforcement of a security instrument is not inherently debt collection. The Bureau notes that § 1006.26, like the rest of this final rule, applies only to FDCPA debt collectors. The Supreme Court recently held that a business engaged in no more than nonjudicial foreclosure proceedings is not an FDCPA debt collector, except for the limited purpose of FDCPA section 808(6). *See Obduskey v. McCarthy & Holthus LLP*, 139 S. Ct. 1029 (2019). FDCPA section 808(6) specifically prohibits taking or threatening to take any nonjudicial action in certain circumstances, such as where there is no present right to possession through an enforceable security instrument.

means, such as telephone calls and letters, and the Bureau's use of the term time-barred debt neither changes that fact nor is meant to imply otherwise. With respect to industry commenters' concern about debts for which multiple statutes of limitation may be relevant, the Bureau notes that a debt is a time-barred debt under § 1006.26(a)(2) if the applicable statute of limitations has expired. The applicable statute of limitations depends on the specific legal action the debt collector takes or represents that it will take. For some debts, such as certain installment loans and secured debts, it may be the case that one claim associated with a debt is time barred while another claim associated with the debt is not. In such a case, the prohibitions in § 1006.26(b) apply to the time-barred claim only.

26(b) Legal Actions and Threats of Legal Actions Prohibited

The Bureau proposed § 1006.26(b) to prohibit a debt collector from bringing or threatening to bring a legal action against a consumer to collect a debt that the debt collector knows or should know is a time-barred debt.[100] In response to comments, the Bureau is finalizing proposed § 1006.26(b) with two principal changes. First, the Bureau is not adopting the proposed knows-or-should-know standard; instead, a debt collector may violate final § 1006.26(b) even if the debt collector neither knew nor should have known that a debt was time barred. Second, consistent with the Supreme Court's decision in *Midland Funding, LLC v. Johnson*, the final rule clarifies that the prohibitions in § 1006.26(b) do not apply to proofs of claim filed in bankruptcy proceedings.[101]

Prohibitions

As the Bureau explained in the May 2019 proposal, in most States the expiration of the applicable statute of limitations, if raised by the consumer as an affirmative defense, precludes the debt collector from recovering on the debt using judicial processes, but it does not extinguish

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[100] *See* 84 FR 23274, 23328-29 (May 21, 2019).

[101] 137 S. Ct. 1407 (2017).

the debt itself.[102] In other words, in most States a debt collector may use non-litigation means to collect a time-barred debt, as long as those means do not violate the FDCPA or other laws. If a debt collector does sue to collect a time-barred debt, and if the consumer proves the expiration of the statute of limitations as an affirmative defense, the court will dismiss the suit.

Suits and threats of suit on time-barred debts can harm consumers in multiple ways. A debt collector's threat to sue on a time-barred debt may prompt some consumers to pay or prioritize that debt over others in the mistaken belief that doing so is necessary to avoid litigation. In some jurisdictions, a consumer's payment on or acknowledgement of a debt can revive the debt collector's right to sue for the entire amount, opening the consumer to new legal liability.[103] Similarly, suits on time-barred debts may lead to judgments against consumers on claims for which those consumers had meritorious defenses, including defenses based on the statute of limitations. Few consumers who are sued for allegedly unpaid debts—whether time barred or not—actually defend themselves in court, and those who do often are unrepresented. As a result, the vast majority of judgments on unpaid debts, including on time-barred debts, are

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[102] *See generally Midland Funding, LLC v. Johnson*, 137 S. Ct. 1407, 1411-12 (2017) (noting that under "the law of many States . . . a creditor has the right to payment of a debt even after the limitations period expires," and collecting State laws). In Mississippi and Wisconsin, however, debts are extinguished when the applicable statute of limitations expires. *See* Miss. Code Ann. sec. 15-1-3 ("The completion of the period of limitation prescribed to bar any action, shall defeat and extinguish the right as well as the remedy."); Wis. Stat. Ann. sec. 893.05 ("When the period within which an action may be commenced on a Wisconsin cause of action has expired, the right is extinguished as well as the remedy.").

[103] Revival extinguishes the consumer's right to raise the expiration of the statute of limitations as an affirmative defense to litigation; that is, it revives the debt collector's right to sue to collect the debt. Although State revival laws vary, there are generally several circumstances in which revival occurs. First, in some States, a consumer's partial payment on a time-barred debt revives the debt collector's right to sue. Second, in some States, a consumer's written acknowledgement of a time-barred debt revives the debt collector's right to sue. Third, a consumer's oral acknowledgement of a time-barred debt may revive the debt collector's right to sue in some States. *See, e.g.*, *Lima v. Schmidt*, 595 So. 2d 624, 631 (La. 1992) ("Our courts have consistently held that renunciation must be clear, direct, and absolute and manifested by words or actions of the party in whose favor prescription has run.") (citations omitted); 22 Tenn. Pract. Contract Law and Practice § 12:88 (rev. Aug. 2020) ("[T]he defendant may revive a plaintiff's remedy that has been barred by the statute of limitations. This event can occur either when the defendant expressly promises to pay a debt or when the defendant acknowledges the debt *and* expresses a willingness to pay it . . . . The expression of a defendant's willingness to pay might be implied from the words or action of a debtor . . . .") (citations and internal quotation marks omitted).

default judgments, entered solely on the representations contained in the debt collector's complaint.[104]

Consumer and consumer advocate commenters generally supported the prohibitions in proposed § 1006.26(b). Many of these commenters also argued that, to prevent deception, the Bureau should prohibit the collection of time-barred debt altogether, even though the Bureau did not propose such a prohibition in the May 2019 proposal or the February 2020 proposal. The Bureau certainly supports measures to prevent deception because of the harm it causes to consumers. However, the Bureau concludes that is not necessary to ban the collection of time-barred debt to prevent potential deception. As discussed in the February 2020 proposal, the Bureau's quantitative testing generally indicates that disclosures, in certain situations, can be effective in curing the potential deception associated with the collection of time-barred debt.[105] The Bureau concludes that a prohibition on the collection of time-barred debt would impose significant burden on debt collectors to identify such debts and would decrease the value of time-barred debts to little or nothing; a debt has little or no value if the owner cannot collect the debt either in litigation or outside of litigation. The Bureau declines to impose such extraordinarily large costs because much less costly measures—namely, disclosures—can be effective in preventing potential deception.

Moreover, the Bureau emphasizes that prohibiting the collection of time-barred debt when doing so is unnecessary to prevent potential deception is inconsistent with the First

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[104] *See* FTC Debt Buying Report, *supra* note 98, at 45 (observing that "90 percent or more of consumers sued in [debt collection actions] do not appear in court to defend," which "creates a risk that consumer will be subject to a default judgment on a time-barred debt"); Peter A. Holland, *The One Hundred Billion Dollar Problem in Small Claims Court: Robo-Signing and Lack of Proof in Debt Buyer Cases*, 6 J. Bus. & Tech. L. 259, 265 (2011) ("In the majority of debt buyer cases, the courts grant the debt buyer a default judgment because the consumer has failed to appear for trial. . . . Debtors who do receive notice usually appear without legal representation."); CFPB Debt Collection Operations Study, *supra* note 37, at 18 (observing that respondents reported obtaining default judgments in 60 to 90 percent of their filed suits); *cf. Kimber v. Fed. Fin. Corp.*, 668 F. Supp. 1480, 1478 (M.D. Ala. 1987) ("Because few unsophisticated consumers would be aware that a statute of limitations could be used to defend against lawsuits based on stale debts, such consumers would unwittingly acquiesce to such lawsuits. And, even if the consumer realizes that she can use time as a defense, she will more than likely still give in rather than fight the lawsuit because she must still expend energy and resources and subject herself to the embarrassment of going into court to present the defense; this is particularly true in light of the costs of attorneys today.").

[105] *See* 85 FR 12672, 12677-79 (Mar. 3, 2020).

Amendment limitations on the Bureau's authority to ban commercial speech. Courts have held that a debt collector who asks a consumer to pay a debt is engaging in commercial speech.[106] Prohibiting the collection of time-barred debt therefore would restrict commercial speech. The Supreme Court has held that restrictions on commercial speech are permissible when they: (1) are supported by a substantial government interest; (2) directly advance that interest; and (3) are no more extensive than necessary to serve that interest.[107] If the potential deception associated with the collection of time-barred debt can be cured by a disclosure, then prohibiting the collection of time-barred debt would impose a restriction that is more extensive than necessary.[108] As noted above, the Bureau's quantitative testing generally indicates that, in certain situations involving the collection of time-barred debt, disclosures can be effective in curing potential deception. Therefore, the Bureau declines to finalize a prohibition on the collection of time-barred debt.

In addition to consumers and consumer advocates, several industry commenters, Federal agency staff, and one local government commenter expressed support for the proposed prohibitions. Commenters who supported the proposed prohibitions asserted that suits and threats of suit on time-barred debts may induce consumers to make payments they otherwise would not make. Some consumer advocate commenters noted that these payments can revive the debt collector's right to sue in certain jurisdictions. Additionally, consumer advocate commenters asserted that consumers often assume that the mere filing of a lawsuit means that they owe the debt, that the amount owed is accurately stated, and that the debt collector has the legal right to collect the debt, whereas in fact the debt collector may lack support for its claims. These commenters also asserted that consumers generally lack the knowledge and resources to defend their rights in court, and, as a consequence, many claims result in default judgments on

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[106] *See, e.g.*, *ACA Int'l v. Healey*, 457 F. Supp. 3d 17, 25-26 (D. Mass. 2020); *Stover v. Fingerhut Direct Mktg.*, 709 F. Supp. 2d 473, 479 (S.D. W.Va. 2009).

[107] *See Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n*, 447 U.S. 557, 566 (1980).

[108] *In re R.M.J.*, 455 U.S. 191, 203 (1982); *see also Pearson v. Shalala*, 164 F.3d 650 (D.C. Cir. 1999).

debts that were not legally enforceable. Consumer advocate commenters also provided anecdotes and pointed to recent enforcement actions to show that debt collectors continue to sue and threaten to sue on time-barred debt.[109] One industry commenter who supported elements of proposed § 1006.26(b) acknowledged that proposed § 1006.26(b) is consistent with long-standing FDCPA case law.

Several industry commenters who opposed proposed § 1006.26(b) argued that the Bureau should not prohibit suits and threats of suit on time-barred debt because, in most jurisdictions, expiration of the statute of limitations does not prohibit a debt collector from bringing suit but rather provides the consumer with an affirmative defense to liability. According to these commenters, proposed § 1006.26(b) would effectively preempt State affirmative defense laws by making expiration of the statute of limitations a total bar to suit, thereby interfering with debt collectors' right to legal recourse under State law. Relatedly, an industry commenter argued that State courts are capable of addressing situations in which a debt collector sues to collect a time-barred debt, including by dismissing the debt collector's claim and awarding sanctions if appropriate. Another industry commenter asserted that consumers should be responsible for tracking the legal obligations associated with their debts, and that it would be unduly burdensome to require debt collectors to determine whether a debt is time barred, particularly for debt collectors who are small businesses.

Some industry commenters argued that the Bureau lacks the authority to prohibit suits and threats of suit on time-barred debts. For example, several industry commenters argued that proposed § 1006.26(b) exceeds the Bureau's authority because, in their view, nothing in the FDCPA permits the Bureau to preempt State laws relating to debt collection or access to courts

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[109] *See, e.g.*, Consent Order ¶¶ 65-69, *In re Encore Capital Grp., Inc.*, No. 2015-CFPB-0022 (Sept. 9, 2015), *http://files.consumerfinance.gov/f/201509_cfpb_consent-order-encore-capital-group.pdf*; Consent Order ¶¶ 56-59, *In re Portfolio Recovery Assocs. LLC*, No. 2015-CFPB-0023 (Sept. 9, 2015), *http://files.consumerfinance.gov/f/201509_cfpb_consent-order-portfolio-recovery-associates-llc.pdf*; *see also* Complaint ¶¶ 30-35, *Bureau of Consumer Fin. Prot. v. Encore Capital Grp., Inc.*, No. 2020CV1750 (S.D. Cal. Sept. 8, 2020), *https://www.consumerfinance.gov/documents/9167/cfpb_encore-capital-group-et-al_complaint_2020-08.pdf*.

or establishes a Federal role in determining State law defenses. Similarly, one industry commenter asserted that proposed § 1006.26(b) contradicts the Federal Rules of Civil Procedure and State-law equivalents and abridges a debt collector's right to petition the courts. The commenter pointed to Federal Rule of Civil Procedure 11, pursuant to which an attorney's claims, defenses, and other legal contentions must be warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law. According to this commenter, the proposed prohibitions conflict with Rule 11 and its equivalents by discouraging debt collectors from filing legitimate lawsuits that argue in good faith for the modification or reversal of existing law.

Final § 1006.26(b) prohibits a debt collector from bringing or threatening to bring a legal action against a consumer to collect a time-barred debt. A debt collector who sues or threatens to sue a consumer to collect a time-barred debt explicitly or implicitly misrepresents to the consumer that the debt is legally enforceable, and that misrepresentation is material to consumers because it may affect their conduct with regard to the collection of that debt, including whether to pay it.[110] The Bureau's consumer testing suggests that consumers often are uncertain about their rights concerning time-barred debt.[111] Consumers sued or threatened with suit on a time-barred debt generally do not recognize that the debt is time barred, that time-barred debts are unenforceable in court, or that they must raise the expiration of the statute of limitations as an affirmative defense.

The prohibitions in final § 1006.26(b) generally are consistent with the current state of the law. Multiple courts have held that suits and threats of suit on time-barred debt violate the FDCPA, reasoning that such practices violate FDCPA section 807's prohibition on false or

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[110] *See, e.g.*, *Kimber*, 668 F. Supp. at 1489 ("By threatening to sue Kimber on her alleged debt . . . FFC implicit[ly] represented that it could recover in a lawsuit, when in fact it cannot properly do so.").

[111] *See* FMG Focus Group Report, *supra* note 26, at 9-10; FMG Cognitive Report, *supra* note 27, at 36-37; FMG Summary Report, *supra* note 29, at 35-36; *see also* Fed. Trade Comm'n, *Repairing a Broken System: Protecting Consumers in Debt Collection Litigation and Arbitration* at iii, 26 (July 2010), *https://www.ftc.gov/sites/default/files/documents/reports/federal-trade-commission-bureau-consumer-protection-staff-report-repairing-broken-system-protecting/debtcollectionreport.pdf* (FTC Litigation Report).

misleading representations, FDCPA section 808's prohibition on unfair practices, or both.[112] The FTC also has concluded that the FDCPA bars actual and threatened suits on time-barred debt.[113] In addition, the prohibitions in final § 1006.26(b) generally are consistent with current industry practice. For example, a number of industry commenters stated they do not sue or threaten to sue on time-barred debt as a matter of policy, and one trade group commenter stated that it requires its members to refrain from suing or threatening to sue on time-barred debts.

The Bureau recognizes that, in most jurisdictions, expiration of the statute of limitations provides the consumer with an affirmative defense to liability, but it does not bar a debt collector from bringing suit. The Bureau concludes, however, that consumers are unlikely to know whether the applicable statute of limitations has expired or that the expiration of the statute of limitations provides an affirmative defense. Suits and threats of suit on time-barred debts therefore imply to the least sophisticated consumer not simply that the debt collector may sue or has sued the consumer but also that the debt collector's claim is legally enforceable. For time-barred debts, this is misleading because expiration of the statute of limitations provides the consumer with a complete defense.[114] Accordingly, the Bureau concludes that bringing or threatening to bring a legal action to collect a time-barred debt is a deceptive practice under FDCPA section 807 even if expiration of the statute of limitations is an affirmative defense rather than a categorical bar to suit.

As explained below, the Bureau is finalizing § 1006.26(b) as an interpretation of FDCPA section 807's prohibition on deception; such an interpretation is squarely within the Bureau's authority under FDCPA section 814(d) to prescribe rules with respect to the collection of debts

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[112] *See, e.g.*, *Pantoja v. Portfolio Recovery Assocs., LLC*, 852 F.3d 679, 683-84 (7th Cir. 2017); *McMahon v. LVNV Funding, LLC*, 744 F.3d 1010, 1020 (7th Cir. 2014); *Phillips v. Asset Acceptance, LLC*, 736 F.3d 1076, 1079 (7th Cir. 2013); *Huertas v. Galaxy Asset Mgmt.*, 641 F.3d 28, 33 (3d Cir. 2011) (per curiam); *Goins v. JBC & Assocs., P.C.*, 352 F. Supp. 2d 262, 273 (D. Conn. 2005); *Kimber*, 668 F. Supp. at 1487-89.

[113] FTC Litigation Report, *supra* note 111, at 23.

[114] *See, e.g.*, *Goins*, 352 F. Supp. 2d at 272 (holding that, although the statute of limitations is an affirmative defense, threatening to bring suit on time-barred debt "can at best be described as a 'misleading' representation, in violation of § 1692e," because the statute of limitations is a complete defense to any suit).

by debt collectors. Contrary to commenters' claims, § 1006.26(b) does not preempt State laws relating to when a debt collector may bring a lawsuit in State court. Rather, it provides that a debt collector who sues or threatens to sue a consumer to collect a time-barred debt violates the FDCPA even if applicable State law permits the suit. In addition, contrary to commenters' assertions, § 1006.26(b) does not exceed the Bureau's authority by regulating access to the courts or litigation activities. Debt collectors have repeatedly argued that they cannot be held liable under the FDCPA for actions taken in litigation because, for example, the United States Constitution allows debt collectors to petition the courts, or because the Federal Rules of Civil Procedure (or their State equivalents) allow debt collectors to argue for the modification or reversal of existing law. Many courts have rejected such arguments, generally reasoning that the FDCPA unquestionably applies to litigation activities.[115] The fact that expiration of a State's statute of limitations may not extinguish a debt under State law or bar a lawsuit in State court unless an affirmative defense is raised and proven does not render the FDCPA's prohibition on using deceptive or misleading representations or means in debt collection inapplicable. There is nothing unusual about the proposition that some behavior permitted by State law may nevertheless violate Federal law. Moreover, nothing in § 1006.26(b) prohibits a debt collector from bringing a legal action against a consumer in which the debt collector argues for an extension, modification, or reversal of existing law or the establishment of new law—including a legal action in which the debt collector argues that a debt is not time barred. Debt collectors remain free to do so. But a debt collector who brings such an action may violate § 1006.26(b) if a court ultimately determines that the debt was time barred.

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[115] *See, e.g.*, *Aguilar v. LVNV Funding LLC*, No. 2:19-cv-105, 2019 WL 3369706, at *3-4 (M.D. Fla. July 26, 2019); *Tobing v. Parker McCay, P.A.*, No. 3:17-cv-00474, 2018 WL 2002799, at *9 (D.N.J. Apr. 30, 2018); *Consumer Fin. Prot. Bureau v. Frederick J. Hanna & Assocs., P.C.*, 114 F. Supp. 3d 1342, 1359-61 (N.D. Ga. 2015); *Johnson v. Riddle*, 305 F.3d 1107, 1118 (10th Cir. 2002).

Liability Standard

Proposed § 1006.26(b) would have prohibited a debt collector from bringing or threatening to bring a legal action against a consumer to collect a time-barred debt only if the debt collector knew or should have known the debt was time barred.

In proposing a knows-or-should-know standard, the Bureau explained that determining whether a debt is time barred may involve analyzing which State law applies, which statute of limitations applies, when the statute of limitations began to run, and whether the statute of limitations has been tolled or reset. In many cases, a debt collector will know, or will be able to readily determine, whether the statute of limitations has expired. In some instances, however, a debt collector may be genuinely uncertain even after undertaking a reasonable investigation, such as if the case law in a State is unclear as to which statute of limitations applies to a particular type of debt. The proposed knows-or-should-know standard was meant to address this concern by not imposing liability on a debt collector if it had no way of knowing that a particular debt was time barred. But the Bureau also acknowledged that it sometimes may be difficult to determine whether a knows-or-should-know standard has been met. Such uncertainty could increase litigation costs and make it difficult for consumers and government agencies to bring actions against debt collectors. To address this concern, the Bureau sought comment on an alternative strict liability standard pursuant to which a debt collector would be liable for suing or threatening to sue on a time-barred debt even if the debt collector neither knew nor should have known that the debt was time barred.

Industry commenters generally did not support a strict liability standard. These commenters generally agreed that it can be difficult for a debt collector to determine whether a debt is time barred and asserted that holding debt collectors strictly liable for good faith errors would be unduly harsh. These commenters stated, for example, that determining the applicable statute of limitations and whether it has expired may require analyzing a variety of factual and legal questions specific to the debt, and that, in many cases, a debt collector may reach the wrong

conclusion even after undertaking a reasonable investigation and analysis. Industry commenters asserted that debt collectors may be unable to reliably determine the statute of limitations before filing suit because the law is unclear, because some information relevant to the analysis may be unavailable, or both. Some industry commenters also asserted that the analysis may change over time. For example, according to these commenters, a consumer's decision to move to a different State after signing a loan agreement could affect a debt collector's analysis of which State law applies and whether the statute of limitations has been tolled. As another example, an industry commenter stated that, in certain jurisdictions, the statute of limitations applicable to mortgage debt is in flux because of unprecedented access by consumers to loss mitigation and an increase in bankruptcy filings in the wake of the foreclosure crisis. Several industry commenters also expressed concern that debt collectors who are not attorneys may have particular difficulty making an accurate time-barred debt determination. For these reasons, industry commenters asserted that a strict liability standard, which would leave no room for error, would expose debt collectors to liability even though it would be challenging or very costly in many circumstances to determine if a debt is time barred.

Some industry commenters supported the proposed knows-or-should-know standard. These commenters generally asserted that the proposed standard would help debt collectors avoid liability for good-faith mistakes in determining whether a debt is time barred—something industry commenters argued is important given the complexity and uncertainty of certain time-barred debt analyses. One industry commenter asserted that the proposed standard also would adequately protect consumers from harm. However, several industry commenters who expressed general support for the proposed standard also asked the Bureau to provide additional guidance, including examples of circumstances in which a debt collector neither knows nor should know that a debt is time barred.

Not all industry commenters supported the proposed knows-or-should-know standard. Some industry commenters argued that the proposed standard was vague and subjective and

could increase litigation risk rather than mitigating it. Other industry commenters asked the Bureau to clarify that the knows-or-should-know standard depends on the specific understanding and sophistication of the particular debt collector. They asserted, for example, that what an attorney debt collector knows or should know about a debt's time-barred status may differ from what a non-attorney debt collector knows or should know.

Some industry commenters who opposed the proposed knows-or-should-know standard offered alternative standards. For example, several industry commenters recommended that the Bureau finalize a reasonable investigation standard such that a debt collector who sued or threatened to sue to collect a time-barred debt would not be liable if the debt collector undertook a reasonable investigation before doing so. Similarly, some industry commenters argued that a debt collector who acts in good faith should not be liable for suits and threats of suit on time-barred debts. Other industry commenters suggested that the Bureau finalize a liability standard akin to qualified immunity such that a debt collector who sued or threatened to sue to collect a time-barred debt would not be liable unless the applicable statute of limitations was clearly established. Other industry commenters suggested that the Bureau finalize an actual knowledge standard such that a debt collector who sued or threatened to sue on a time-barred debt would be liable only if the debt collector knew the debt was time barred.

Some commenters suggested that the Bureau finalize various safe harbors for debt collectors. For example, industry commenters recommended safe harbors for debt collectors collecting debts of a certain age and for debt collectors who rely on information provided by the creditor. Other industry commenters suggested that a debt collector who maintains and follows reasonable procedures for determining whether a debt is time barred should receive a safe harbor from liability in the event that the debt collector inadvertently sues or threatens to sue on a time-barred debt. One industry commenter requested that the Bureau specifically confirm that FDCPA section 813(c)'s bona fide error defense would apply to violations of § 1006.26(b).

Other commenters, including consumers, consumer advocates, academics, some members of Congress, a group of State Attorneys General, and several local governments, urged the Bureau to adopt a strict liability standard. Although some of these commenters acknowledged that determining whether a debt is time barred can be complicated,[116] others argued that determining whether a debt is time barred is relatively straightforward in most cases. One commenter suggested that, if the Bureau finalizes the proposed knows-or-should-know standard, the Bureau should clarify that in most cases a debt collector will know (or should know) whether the statute of limitations has run because in most cases debt collectors have the necessary information to make the determination.

Some consumer advocate commenters who argued for a strict liability standard stated that it would incentivize debt collectors to determine whether a debt is time barred before threatening or filing suit. Some consumer advocate commenters suggested that this would help reduce the consumer protection risks associated with the collection of time-barred debt, including the risk that consumers may be unable to adequately protect their rights in court and the risk that consumers may make a payment on the debt under the misimpression that the debt is legally enforceable, which could revive the debt collector's right to sue. Some commenters expressed concern that the proposed knows-or-should-know standard would not adequately incentivize debt collectors to determine the time-barred status of debts. Around two dozen members of Congress asserted that finalizing a knows-or-should-know standard without additional protections could encourage willful ignorance on the part of a debt collector about the time-barred status of a debt. A group of State Attorneys General and some consumer advocate commenters similarly argued that a knows-or-should-know standard would promote willful ignorance by debt collectors.

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[116] A group of academic commenters challenged the Bureau's assertion that debt buyers generally receive enough information to determine whether a debt is time barred. These commenters noted that fewer than half of respondents to the Bureau's industry survey reported receiving account agreement documentation or billing statements, information that the commenters believed would help a debt collector calculate the applicable statute of limitations and whether it has expired.

A number of commenters, including consumer advocate commenters and a group of State Attorneys General, advocated a strict liability standard because, in their view, debt collectors generally have more resources and expertise and better access to information than consumers. These commenters generally asserted that it would often be difficult for a consumer to establish that a debt was time barred and that the debt collector knew or should have known that fact.

Many of these commenters also argued that the proposed knows-or-should-know standard was inconsistent with the FDCPA (which some commenters described as a strict liability statute) and with FDCPA section 807's prohibition on deception (which does not include a knowledge element). Some commenters pointed out that, because FDCPA section 813(c) provides debt collectors with a bona fide error defense to liability in certain circumstances, a strict liability standard would not expose debt collectors to undue liability. Commenters also argued that the proposed knows-or-should-know standard was inconsistent with case law imposing or implying a strict liability standard when evaluating claims that a debt collector sued or threatened to sue to collect a time-barred debt. Several commenters agreed with the Bureau that a strict liability standard generally would reduce ambiguity and be easier to enforce than the proposed knows-or-should-know standard. Federal government agency staff encouraged the Bureau to consider further whether a knows-or-should-know standard would place an unnecessary burden on law enforcement agencies.

The Bureau is not finalizing the proposed knows-or-should-know standard and is instead finalizing a strict liability standard. Although determining whether a debt is time barred can be challenging or costly in certain circumstances, the Bureau concludes that the proposed knows-or-should-know standard is generally inconsistent with FDCPA section 807, which does not include an exception or exclusion for debt collectors whose deceptive statements are unintentional or for whom ensuring that a statement is not deceptive is burdensome.[117] The Bureau also concludes

[117] For the same reasons, the Bureau concludes that the alternative standards proposed by industry commenters—including, for example, an actual knowledge standard, a reasonable-investigation standard, or a clearly-established-law standard—are generally inconsistent with FDCPA section 807.

that a strict liability standard is more consistent with FDCPA section 807's prohibition on deception, as well as case law imposing or implying such a standard when evaluating claims under FDCPA section 807 generally and claims related to suits and threats of suit on time-barred debt specifically.[118]

Moreover, the Bureau notes that a knows-or-should-know standard could, in some circumstances, shift the risk that a claim is deceptive from debt collectors to consumers. As explained above, suits and threats of suit on time-barred debt can cause consumer harm. In a case in which it is difficult or costly to determine whether a debt is time barred, a knows-or-should-know standard could allow debt collectors to avoid liability for causing such harm. In other consumer protection contexts, courts and the FTC have recognized that an advertiser who makes an unsubstantiated claim may be liable for deception even if the cost of substantiating the claim is high or prohibitively expensive.[119] The Bureau's decision to finalize a strict liability standard is generally consistent with this principle.

The Bureau emphasizes that, although a strict liability standard might create some risk for debt collectors if a debt's time-barred status is unclear, debt collectors have multiple ways to manage such risk. In particular, a debt collector can avoid liability under § 1006.26(b) by confirming that the statute of limitations has not expired before bringing or threatening to bring a legal action. Similarly, a debt collector who is ultimately unable to determine with certainty whether a debt is time barred can avoid liability under § 1006.26(b) by refraining from bringing

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[118] *See, e.g.*, *Pantoja, v. Portfolio Recovery Assocs., LLC*, 852 F.3d 679, 683 (7th Cir. 2017); *Buchanan v. Northland Grp., Inc.*, 776 F.3d 393, 399 (6th Cir. 2015); *Phillips v. Asset Acceptance, LLC*, 736 F.3d 1076, 1083-84 (7th Cir. 2013); *Clark v. Capital Credit & Collection Servs.*, 460 F.3d 1162, 1176 (9th Cir. 2006); *Gearing v. Check Brokerage Corp.*, 233 F.3d 469, 472 (7th Cir. 2000).

[119] *See, e.g.*, *POM Wonderful, LLC v. FTC*, 777 F.3d 478, 497 (D.C. Cir. 2015) ("We acknowledge that RCTs [*i.e.*, randomized clinical trials] may be costly . . . . Yet if the cost of an RCT proves prohibitive, petitioners can choose to specify a lower level of substantiation for their claims. As the Commission observed, the need for RCTs is driven by the claims petitioners have chosen to make.") (internal brackets and quotation marks omitted); *In re POM Wonderful LLC*, 2013 WL 268926, at *50 (F.T.C. Jan. 16, 2013) (rejecting argument that an advertiser may "make particular claims that go beyond the substantiation it possesses and then ask the Commission to excuse the inadequacy of its support by asserting that [the] advertiser did the best it could because the proper substantiation for the actual claim would be too expensive"); *In re Kroger Co.*, 98 F.T.C. 639, 737 (1981) ("Where the demands of the purse require such compromises, the advertiser must generally limit the claims it makes for its data or make appropriate disclosures to insure proper consumer understanding of the survey's results.").

or threatening to bring a legal action while, in most States, continuing with non-litigation collection activities. Moreover, a debt collector who brings or threatens to bring a legal action against a consumer to collect a time-barred debt may, depending upon the reason for the debt collector's error, have a defense to civil liability under FDCPA section 813 if the debt collector shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.[120] For these reasons, the Bureau concludes that finalizing a strict liability standard under § 1006.26(b) does not pose an undue risk of liability for debt collectors, even in cases in which a debt collector is unable to determine with certainty whether a debt is time barred.

Requests for Clarification

Several commenters asked the Bureau to clarify the scope of proposed § 1006.26(b)'s prohibitions.[121] Two industry commenters suggested that the term "legal action" is unclear and could be interpreted to encompass any action in any court of law or equity. These commenters suggested replacing "legal action" with "lawsuit," asserting that, although "legal action" and "lawsuit" have overlapping meanings, "lawsuit" has a narrower connotation that excludes certain legal actions, such as bankruptcy proceedings. Alternatively, these commenters argued that, if the Bureau declines to change the term legal action, the prohibitions in proposed § 1006.26(b) should be adjusted to specifically exclude certain types of legal actions, such as garnishment actions, probate actions, and the filing of proofs of claim in bankruptcy proceedings.[122] Another commenter asked the Bureau to clarify that, for purposes of proposed § 1006.26(b), the term

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[120] *See Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich LPA*, 559 U.S. 573 (2010) (holding that bona fide error defense is not available when FDCPA violation arises from a debt collector's mistaken interpretation of FDCPA's legal requirements but noting that bona fide error defense is available when FDCPA violation arises from certain other types of errors).

[121] Commenters also asked the Bureau to adopt a number of interventions that the Bureau did not propose, such as a prohibition on revival and a prohibition on perpetual tolling, which commenters asserted prevents a statute of limitations from ever expiring in certain circumstances. The Bureau did not propose these interventions and it is not finalizing them.

[122] A consumer advocate commenter argued that the rule should expressly prohibit filing a bankruptcy proof of claim to recover a time-barred debt.

"legal action" does not include "non-original complaints," such as amended complaints, supplemental complaints, complaints re-filed after a prior dismissal without prejudice, post-judgment court filings, or post-judgment communications (such as executions or garnishments).

Final § 1006.26(b) uses the term "legal action." In *Midland Funding, LLC v. Johnson*, the Supreme Court held that filing a proof of claim on a time-barred debt in a bankruptcy proceeding does not violate the FDCPA sections 807 or 808.[123] Consistent with *Midland*, the final rule clarifies that § 1006.26(b) does not prohibit the filing of proofs of claim in a bankruptcy proceeding. The Bureau does not see a basis to categorically exclude other types of legal actions, such as garnishment and probate actions, from the prohibitions in § 1006.26(b). No other section of the FDCPA pertaining to legal actions contains a similar exclusion, and the commenters did not explain why they believe an exclusion is merited here.

At least one industry commenter asked the Bureau to clarify the types of actions and statements that qualify as a threat of legal action or that could be interpreted by a consumer as a threat of legal action. The Bureau declines to do so at this time. Whether a particular action or statement constitutes a threat of legal action depends on the facts and circumstances of the particular case. Nevertheless, the Bureau notes that § 1006.26(b) prohibits not only explicit threats of legal action but also implicit ones.

For the reasons discussed above, the Bureau is finalizing § 1006.26(b), which provides that a debt collector must not bring or threaten to bring a legal action against a consumer to collect a time-barred debt. Section 1006.26(b) also states that these prohibitions do not apply to proofs of claim filed in connection with a bankruptcy proceeding. The Bureau is finalizing § 1006.26(b) as an interpretation of FDCPA section 807. FDCPA section 807 generally prohibits debt collectors from using "any false, deceptive, or misleading representation or means in connection with the collection of any debt," and FDCPA section 807(2)(A) specifically

[123] 137 S. Ct. 1407 (2017).

prohibits falsely representing "the character, amount, or legal status of any debt." The Bureau interprets FDCPA section 807 and 807(2)(A) to prohibit debt collectors from suing or threatening to sue consumers on time-barred debts because such suits and threats of suit explicitly or implicitly misrepresent, and cause consumers to believe, that the debts are legally enforceable. In addition, threats to sue consumers on time-barred debts are similar to threats to take actions that cannot legally be taken, which FDCPA section 807(5) specifically prohibits, because both involve the threat of action to which the consumer has a complete legal defense.[124] The Bureau's interpretation of FDCPA section 807 is generally consistent with well-established case law holding that suits and threats of suits on time-barred debt violate FDCPA section 807.[125]

Proposed Provision Not Finalized

In the February 2020 proposal, the Bureau proposed to require a debt collector collecting a debt that the debt collector knows or should know is a time-barred debt to provide time-barred debt disclosures and, if applicable, revival disclosures (proposed § 1006.26(c)(1) and (2)).[126] The Bureau proposed to require these disclosures in the debt collector's initial communication with the consumer, on any validation notice, and in certain situations if the debt became time barred during collections. The February 2020 proposal also included, among other things, model forms and language a debt collector could have used to comply with the proposed disclosure requirements (proposed Model Forms B–4 through B–7), and it provided a safe harbor to a debt collector who used the model forms or language (proposed § 1006.26(c)(3)). In support of

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[124] A consumer advocate commenter requested that the Bureau clarify that a debt collector who brings or threatens to bring a legal action against a consumer to collect a time-barred debt also violates the Dodd-Frank Act. The Bureau is finalizing § 1006.26(b) as an interpretation of FDCPA section 807 only.

[125] *See, e.g.*, *Pantoja*, 852 F.3d at 683; *McMahon*, 744 F.3d at 1020; *Phillips*, 736 F.3d at 1079; *Kimber*, 668 F. Supp. at 1488-89.

[126] Specifically, proposed § 1006.26(c)(1) would have required a debt collector collecting a debt that the debt collector knows or should know is a time-barred debt to disclose (i) that the law limits how long a consumer can be sued for a debt and that, because of the age of the debt, the debt collector will not sue the consumer to collect it; and (ii) if, under applicable law, the debt collector's right to bring a legal action against the consumer can be revived, then the fact that revival can occur and the circumstances in which it can occur. 85 FR 12672, 12696 (Mar. 3, 2020).

proposed § 1006.26(c), the Bureau cited, among other things, the results of its quantitative testing survey.[127]

Although some commenters expressed general support for the idea of addressing the risk of deception associated with the collection of time-barred debts by requiring time-barred debt and revival disclosures, many commenters opposed the Bureau's specific proposal. According to industry commenters, the proposal would have imposed a significant burden on debt collectors by requiring them to conduct time-barred debt and revival analyses for each debt in collection. These commenters also reported that they would face a significant risk of liability given uncertainty about the statute of limitations and revival law in at least some States. Industry commenters stated that most debt collectors lack the legal training to determine whether a debt is time barred or the circumstances in which it can be revived. To comply with the disclosure requirements, these commenters asserted that debt collectors would need to engage an attorney or otherwise incur substantial costs. Industry commenters particularly objected to imposing these costs on debt collectors who never sue to collect debts, or never sue to collect revived debts. Industry commenters also raised concerns about being required to respond to legal questions from consumers as a result of providing the disclosures.

Among consumer, consumer advocate, academic, and State Attorneys General commenters who opposed the Bureau's proposal, many doubted that disclosures can effectively convey information about topics as complicated and unfamiliar to consumers as time-barred debt and revival. These commenters also raised concerns about the Bureau's proposed model disclosures, characterizing them as confusing, vague, and ineffective—particularly for the least sophisticated consumer.[128] Some consumer advocate commenters also expressed concern about

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[127] *See id.* at 12678-79.

[128] Courts have applied an objective standard of an "unsophisticated" or "least sophisticated" consumer to claims brought under FDCPA section 807. *Jensen v. Pressler & Pressler*, 791 F.3d 413, 419 (3d Cir. 2015) ("The standard is an objective one, meaning that the specific plaintiff need not prove that *she* was actually confused or misled, only that the objective least sophisticated debtor would be."); *Hartman v. Great Seneca Fin. Corp.*, 569 F.3d 606, 613

the accuracy of the proposed disclosures and the frequency with which the Bureau proposed to require them. These commenters urged the Bureau to reconsider or significantly revise the proposal.

Given industry commenters' concerns about the burden on debt collectors of the Bureau's specific proposal, and consumer advocate commenters' concerns about whether the Bureau's specific proposal would effectively cure consumer deception, the Bureau has decided not to finalize proposed § 1006.26(c). In deciding not to finalize proposed § 1006.26(c), the Bureau determines only that the specific disclosure requirements described in the February 2020 proposal may not sufficiently accommodate the concerns raised by different stakeholders. However, the Bureau concludes, as discussed in the February 2020 proposal, that, in many circumstances, disclosures can effectively cure the potential deception associated with the collection of time-barred debt.

Finally, the Bureau emphasizes that the FDCPA, the November 2020 Final Rule, and this final rule nevertheless apply to debt collectors' activities involving the collection of time-barred debts, including debt collectors' communications when collecting such debts. Accordingly, a debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of a time-barred debt. Nor may a debt collector use unfair or unconscionable means to collect or attempt to collect a time-barred debt. Depending on the circumstances associated with the collection of a specific time-barred debt, a debt collector may decide that, to avoid violating the FDCPA and the final rule, the debt collector needs to disclose information to consumers about the debt collector's ability to sue and the possibility of revival and, in that case, the debt collector may do so.

(6th Cir. 2009) (applying least sophisticated consumer standard to section 807 claim); *Bentley v. Great Lakes Collection Bureau*, 6 F.3d 60, 62 (2d Cir. 1993) (same); *Swanson v. S. Or. Credit Serv., Inc.*, 869 F.2d 1222, 1227 (9th Cir. 1988) (per curiam) (same). This standard "protects the consumer who is uninformed, naive, or trusting, yet it admits an objective element of reasonableness." *Gammon v. GC Servs. Ltd. P'ship*, 27 F.3d 1254, 1257 (7th Cir. 1994). As discussed in part IV, the Bureau interprets FDCPA sections 807 to incorporate an objective, "unsophisticated" or "least sophisticated" consumer standard.

Section 1006.30 Other Prohibited Practices

30(a) Required Actions Prior to Furnishing Information

The Bureau proposed in § 1006.30(a) to prohibit so-called passive collections, *i.e.*, the practice of a debt collector furnishing to a consumer reporting agency, as defined in section 603(f) of the Fair Credit Reporting Act (FCRA),[129] information regarding a debt before communicating with the consumer about the debt. The Bureau proposed § 1006.30(a) pursuant to its authority under FDCPA section 814(d) to prescribe rules with respect to the collection of debts by debt collectors; pursuant to its authority to interpret FDCPA section 806, which prohibits a debt collector from engaging in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt; and pursuant to its authority to interpret FDCPA section 808, which prohibits a debt collector from using unfair or unconscionable means to collect or attempt to collect any debt. Courts have interpreted FDCPA sections 806 and 808 to prohibit certain coercive collection methods that may cause consumers to pay debts not actually owed.[130]

For the reasons discussed below, the Bureau is: (1) finalizing § 1006.30(a) as § 1006.30(a)(1), with changes to specify the required actions that a debt collector generally must take before furnishing information to a consumer reporting agency; and (2) finalizing in § 1006.30(a)(2) a special rule for information furnished to certain specialty consumer reporting agencies.

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[129] 15 U.S.C. 1681a(f).

[130] *See, e.g.*, *Fox v. Citicorp Credit Servs., Inc.*, 15 F.3d 1507, 1517 (9th Cir. 1994) (reversing grant of summary judgment to debt collector in part because "a jury could rationally find" that filing writ of garnishment was unfair or unconscionable under section 808 when debt was not delinquent); *Ferrell v. Midland Funding, LLC*, No. 2:15-cv-00126-JHE, 2015 WL 2450615, at *3-4 (N.D. Ala. May 22, 2015) (denying debt collector's motion to dismiss section 806 claim where debt collector allegedly initiated collection lawsuit even though it knew plaintiff did not owe debt); *Pittman v. J.J. Mac Intyre Co. of Nev., Inc.*, 969 F. Supp. 609, 612-13 (D. Nev. 1997) (denying debt collector's motion to dismiss claims under sections 807 and 808 where debt collector allegedly attempted to collect fully satisfied debt).

30(a)(1) In General

The Bureau received comments on proposed § 1006.30(a) from consumer advocates and individuals, nonprofits, industry commenters, and government agencies. Many commenters supported the proposed prohibition on passive collections. A consumer group emphasized the consumer harms identified in the proposal and agreed that, because with passive collections a consumer does not know a debt is in collection, the practice can cause a consumer's credit score to decrease, increase the cost of future credit for the consumer, make it more difficult for a consumer to obtain affordable housing, and jeopardize some job opportunities, all without the consumer's knowledge. Three government commenters also supported the proposed prohibition; one of them reported receiving consumer complaints regarding passive collections. An industry commenter supporting the proposal noted that the commenter provides consumers with a 90-day grace period before furnishing information to consumer reporting agencies.

A number of comments, primarily from industry or industry trade groups, opposed the prohibition or suggested changes or clarifications. Two industry trade groups and a law firm commenter argued that proposed § 1006.30(a) should not be finalized because it conflicts with the FCRA, including section 623(a)(7), which requires certain financial institutions to provide written notice to customers if they furnish negative information to a consumer reporting agency, and section 623(a)(5), which requires furnishers to provide certain information about a reported delinquency to the consumer reporting agency no later than 90 days after furnishing information.[131] Other industry commenters argued that the proposal would encourage consumers to ignore communications, provide inaccurate forwarding information to the creditor, or falsely mark mail as undeliverable to avoid having collection items furnished to consumer reporting agencies. In addition, several industry commenters stated that locating consumers for certain debts, such as medical debt, telecommunications debt, or rental debt, is costly and may not be

[131] 15 U.S.C. 1681s-2(a)(5) and (7).

justified for small amounts. If debt collectors cannot passively collect these debts, the commenters argued, then the debts are effectively uncollectible. One industry trade group similarly argued that passive collections benefits consumers who otherwise cannot be located, rather than harming them, because the collection item on their credit report will provide them contact information for the debt collector, which the consumer can then use to make payment arrangements.

A number of commenters suggested changing or clarifying the proposed requirement to "communicate" before furnishing information to a consumer reporting agency. Some urged the Bureau to adopt a stricter requirement, such as by requiring written notice to the consumer before reporting, mandating specific disclosure language, imposing across-the-board waiting periods before reporting, or prohibiting indirect communications. Others expressed concern that the proposal would impose more stringent communication requirements than the FDCPA otherwise requires and asked the Bureau to relax the proposal, such as by clarifying that proof of receipt of a communication is not required, by allowing debt collectors to satisfy the proposed requirement by leaving limited-content messages (as defined in § 1006.2(j) of the November 2020 Final Rule), or by permitting debt collectors to presume receipt of a communication after a waiting period expires.

After considering all of the comments, the Bureau is finalizing proposed § 1006.30(a) and its related commentary with substantial revisions, as follows.

Subject to § 1006.30(a)(2) (discussed below), final § 1006.30(a)(1) requires a debt collector to take certain actions before furnishing information about a debt to a consumer reporting agency, as defined in section 603(f) of the FCRA. Specifically, the debt collector must either: (1) speak to the consumer about the debt in person or by telephone, or (2) place a letter in the mail or send an electronic message to the consumer about the debt and wait a reasonable period of time to receive a notice of undeliverability. During the reasonable period, the debt collector must permit receipt of, and monitor for, notifications of undeliverability from

communications providers. If the debt collector receives such a notification during the reasonable period, the debt collector must not furnish information about the debt to a consumer reporting agency until the debt collector otherwise satisfies § 1006.30(a)(1). The Bureau is finalizing commentary to clarify these requirements as discussed below.

The Bureau finalizes the requirements under § 1006.30(a)(1) to address consumer harms that may arise if a debt collector furnishes information about a debt to a consumer reporting agency without first informing the consumer about the debt. As discussed in the proposal, consumers who have not been informed about the debt are likely to be unaware that they have a debt in collection unless they obtain and review their consumer report. In turn, many consumers may not obtain their consumer reports until they apply for credit, housing, employment, or another product or service provided by an entity that reviews consumer reports during the application process. At that point, consumers may feel pressure to pay debts that they otherwise would dispute, including debts they do not owe, or may face the denial of an application, a higher interest rate, or other negative consequences.

In addition, as discussed in the proposal, debt collectors may attempt to collect debts passively if the expected return from that technique exceeds the cost of attempting to collect the debt by communicating with consumers.[132] The Bureau understands that imposing a requirement intended to inform the consumer about a debt before furnishing information about a debt to consumer reporting agencies will increase costs for debt collectors who do not currently attempt to do so. However, passive collection practices can harm consumers for the reasons discussed above. The Bureau has determined that the final rule best balances debt collectors' cost concerns with protections for consumers against the harms imposed by passive collection practices. Final § 1006.30(a)(1) gives a debt collector flexibility to contact consumers in a variety of ways,

[132] 84 FR 23274, 23330 (May 21, 2019).

including in person, by telephone, by mail, or by electronic message.[133] This gives debt collectors flexibility to contact the consumer in a manner that works best for their operations, and debt collectors need not confirm receipt of mail or electronic messages.

Although proposed § 1006.30(a) used the term "communicate," the proposal did not clearly specify a debt collector's obligations if the debt collector learned after furnishing information to a consumer reporting agency that no communication actually occurred (because, *e.g.*, the communication was sent by mail to the consumer's current address but the debt collector later received a notification that the letter was not delivered). Some commenters raised concerns that the proposal's use of the term "communicate" could be construed to require debt collectors to confirm a consumer's receipt of the information before furnishing information about a debt to a consumer reporting agency.

To respond to such comments, and because the proposal was designed to increase the likelihood that consumers would learn that a debt attributed to them is in collection but was not intended to be a broader limitation on furnishing valid information about debts to consumer reporting agencies, the Bureau finalizes specific requirements a debt collector must take before furnishing. The actions specified in the final rule are ones that increase the likelihood that a consumer will learn about a debt before a debt collector begins furnishing information about that debt to a consumer reporting agency. For this reason, after a debt collector has complied with § 1006.30(a)(1) and furnished information to a consumer reporting agency, the debt collector may furnish additional information with respect to that debt without having to repeat the actions specified in § 1006.30(a)(1). Accordingly, the Bureau does not incorporate a receipt requirement in final § 1006.30(a)(1) and, instead of using the term "communicate," sets forth the specific actions that a debt collector must take before furnishing.

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[133] Because medical offices, telecommunications companies, and rental offices typically have contact information for their customers, and because a variety of options to verify and forward mail to a consumer's new address exist, a debt collector of such debts should be able to satisfy § 1006.30(a)'s requirements without incurring significant costs.

The Bureau has also determined that final § 1006.30(a)(1) does not conflict with FCRA section 623(a)(7) or (5) because those provisions have different requirements and goals than § 1006.30(a)(1). FCRA section 623(a)(7) applies only to "financial institutions" as defined in FCRA section 603(t), which will cover few, if any, FDCPA debt collectors. Final § 1006.30(a)(1) does not prevent debt collectors from complying with the FCRA, and the FCRA does not prevent debt collectors from complying with final § 1006.30(a)(1).[134] The FCRA also does not state that it is the exclusive Federal law governing credit reporting and, indeed, the FDCPA also references a debt collector's interactions with consumer reporting agencies.[135]

Because final § 1006.30(a)(1) clearly describes the specific actions that a debt collector must take before furnishing information about a debt to a consumer reporting agency, a debt collector may ensure compliance with the final rule based on the debt collector's own actions, such as by placing a letter about the debt in the mail to the consumer and waiting a reasonable period of time to receive a notice of undeliverability. Therefore, the final rule also resolves concerns about consumers avoiding a debt collector's communications to prevent the debt collector from furnishing information to a consumer reporting agency.

The final rule specifies in § 1006.30(a)(1)(i) and (ii) the methods by which a debt collector may meet its obligation to take certain actions before furnishing information about a debt to a consumer reporting agency. All of the methods require that information "about the debt" be conveyed to the consumer. Although the final rule does not specify the particular information required to meet the "about the debt" requirement, the final rule adds comment 30(a)(1)–1 to clarify that the validation information required by § 1006.34(c), including such information if provided in a validation notice, is information "about the debt."

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[134] For example, FCRA section 623(a)(7) requires certain financial institutions that furnish negative information to a consumer reporting agency, as defined in FCRA section 603(p), to provide a written notice to consumers prior to, or no later than 30 days after, furnishing the negative information. A financial institution that is required to provide a written notice under FCRA section 623(a)(7) and that is also acting as an FDCPA debt collector could comply with both requirements by, for example, placing a letter in the mail to the consumer that contains sufficient information to satisfy both requirements before furnishing information to a consumer reporting agency.

[135] *See, e.g.*, 15 U.S.C. 1692c(b), 1692d(3).

Under § 1006.30(a)(1), information about a debt must be transmitted "to the consumer" as defined in § 1006.2(e). A debt collector who sends information about the debt that reaches a "consumer" as defined in § 1006.6(a), which includes additional persons,[136] may not have communicated with the consumer as defined in § 1006.2(e).

The Bureau notes that, in taking any of the actions specified in § 1006.30(a)(1), a debt collector must comply with the FDCPA and the November 2020 Final Rule, including the prohibition on communicating, in connection with the collection of any debt, with a third party.[137]

Proposed comment 30(a)–1 provided clarifications regarding the term "communicate" in proposed § 1006.30(a)(1). Because final § 1006.30(a)(1) does not use the term "communicate" and instead states the specific actions the debt collector must take before furnishing information about a debt to a consumer reporting agency, proposed comment 30(a)–1 is no longer necessary and the Bureau is not finalizing it.

The final rule specifies in § 1006.30(a)(1)(ii) that a debt collector who places a letter in the mail or sends an electronic message to the consumer about the debt to satisfy § 1006.30(a)(1) must wait a reasonable period of time to receive a notice of undeliverability before furnishing information about a debt to a consumer reporting agency. New comment 30(a)(1)–2 clarifies that the reasonable period of time begins on the date that the debt collector places the letter in the mail or sends the electronic message. Comment 30(a)(1)–2 also provides a safe harbor for waiting a reasonable period of time by clarifying that a period of 14 consecutive days after the date that the debt collector places a letter in the mail or sends an electronic message is a reasonable period of time.

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[136] For purposes of § 1006.6(a), the term "consumer" also includes the consumer's spouse, parent (if the consumer is a minor), legal guardian, executor or administrator of the consumer's estate, if the consumer is deceased, and a confirmed successor in interest. *See* 85 FR 76734, 76889 (Nov. 30, 2020).

[137] A debt collector sending an email or text message who uses the procedures provided for in § 1006.6(d)(4) or (5) as finalized in the November 2020 Final Rule does not violate the prohibition on third-party disclosure under § 1006.6(d)(1).

Comment 30(a)(1)–3 clarifies that a debt collector who places a letter in the mail or sends an electronic message to the consumer about the debt to satisfy § 1006.30(a)(1) and does not receive a notice of undeliverability during the reasonable period of time, and who thereafter furnishes information about the debt to a consumer reporting agency, does not violate § 1006.30(a)(1) even if the debt collector subsequently receives a notice of undeliverability. Comment 30(a)(1)–3 also provides three examples illustrating this requirement.

The Bureau determines that these provisions clarify the proposal with respect to pre-furnishing outreach by mail or electronic message and provide protection for consumers.[138] The Bureau understands that the U.S. Postal Service typically notifies senders of most undeliverable-as-addressed mail within 14 days. The amount of time it takes a communications provider to return a notice of undeliverability with respect to electronic messages is less clear. While an undeliverability notice is typically received soon after sending an electronic message, the Bureau understands that the time for receiving a notice of undeliverability with respect to such electronic messages may vary by provider, and the Bureau does not have sufficient information to determine a uniform time period for electronic messages. Nevertheless, the Bureau has no reason to believe that notices of undeliverability are typically received more than 14 days after an electronic message is sent. Therefore, the Bureau is finalizing the same safe harbor time period (*i.e.*, 14 consecutive days) for electronic messages as for mailed letters.[139] The Bureau may consider revising the safe harbor for electronic messages in the future based on actual stakeholder experience with this provision.

The Bureau recognizes that the final rule may result in instances in which debt collectors furnish information about a debt to a consumer reporting agency even though the consumer has

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[138] The Bureau does not impose a similar period when a debt collector speaks to a consumer about the debt in person or by telephone because these scenarios do not have the potential for an equivalent undeliverable notice outcome.

[139] The Bureau notes that the 14-consecutive-day period is a safe harbor. To comply with the rule, a debt collector only needs to wait a "reasonable period of time" to receive a notice of undeliverability. Therefore, a debt collector who shows that the debt collector waited a reasonable time period to receive notices of undeliverability for electronic messages may be able to satisfy the requirements of the final rule without waiting 14 days.

not been made aware of the collection item, either because the mail or electronic message is returned as undeliverable after the reasonable period has passed or is not received but is also not returned. These consumers will not have the same opportunity to receive a message about their debt as those consumers for whom the mail or electronic message is delivered. Nevertheless, the Bureau determines that establishing a requirement that debt collectors wait a reasonable period of time after placing a letter in the mail or sending an electronic message provides sufficient consumer protection without unduly prohibiting a debt collector from furnishing information about a valid debt to a consumer reporting agency.

The Bureau declines commenters' other suggestions, such as those to require communications in writing, dictate specific language, apply longer waiting periods (*e.g.*, 180 days), or establish other safe harbors because the suggestions are unnecessary to achieve the purpose of the passive collections ban. For example, requiring written communications and specific disclosure language is unnecessary to put the consumer on notice that a debt is in collections. Additional safe harbors are unnecessary and unwarranted at this time because the final rule clarifies the specific actions that must occur before furnishing information to a consumer reporting agency.

30(a)(2) Special Rule—Information Furnished to Certain Specialty Consumer Reporting Agencies

The Bureau did not propose a special rule regarding furnishing to specialty consumer reporting agencies. An industry commenter and a consumer reporting agency argued in a joint comment that the final rule should exempt from § 1006.30(a) information furnished to certain nationwide specialty consumer reporting agencies described in FCRA section 603(x)(3), *i.e.*, consumer reporting agencies that maintain and compile files on consumers on a nationwide basis relating to check writing history ("check verification consumer reporting agencies").

The commenters explained that merchants use check verification consumer reporting agencies to determine whether they should accept a particular check. When a merchant seeks

check verification information, the check verification consumer reporting agency issues a check verification report with a code that will indicate if the check appears acceptable, the check is potentially fraudulent, or the checking account is likely overdrawn. These inquiries are usually completed in real time, while a transaction is occurring in a checkout lane or in remote retailing. The commenters expressed concern that proposed § 1006.30(a) would degrade the timely content of check verification reports issued by check verification consumer reporting agencies because debt collectors would be required to delay or refrain from reporting altogether, which would undermine the accuracy of check verification reports and reduce the willingness of merchants to accept checks.

The commenters argued that the current system benefits consumers by alerting them to potential fraud or that their account may be overdrawn. Requiring contact before furnishing information would harm these consumers because the fraud or overdrawn status of the account may never be detected and, thus, consumers may not be alerted to potential fraud or may unknowingly continue writing checks on an overdrawn account. Further, the commenters stated that these requirements could harm consumers by decreasing the number of merchants that accept checks or increasing prices at merchants who continue to accept checks.

The commenters also expressly recognized the harm that can occur if a debt unexpectedly appears on a credit-related consumer reporting agency report if the consumer is applying for credit, a job, or rental housing, and cannot move forward with the transaction. However, they noted that check verification reporting does not present comparable risk of harm because (1) such reports are used to determine whether a particular check should be accepted, not to evaluate a consumer's creditworthiness for credit, a job, or rental housing; and (2) any harm caused by refusal to accept a check is outweighed by benefits, including alerting the consumer to potential fraud and preventing them from incurring additional overdraft or non-sufficient funds fees.

After carefully considering the comment, the Bureau has determined that § 1006.30(a) should not apply to a debt collector's furnishing of information about a debt to a check verification consumer reporting agency. The Bureau finds that a debt collector's furnishing of information about a debt to a check verification consumer reporting agency before engaging in outreach to the consumer about the debt is unlikely to undermine the ability of consumers to decide whether to pay debts in the same manner as the furnishing of information about debts to other consumer reporting agencies. As a result, the Bureau has not found that furnishing information about a debt to a check verification consumer reporting agency before engaging in outreach to the consumer about the debt constitutes conduct that may have the natural consequence of harassment, oppression, or abuse in violation of FDCPA section 806, or that is an unfair or unconscionable means to collect or attempt to collect a debt under FDCPA section 808.

Immediate and frequent reporting appears to be a critical aspect of check verification consumer reporting, and it appears that imposing a requirement that debt collectors inform consumers about debts before furnishing information to those check verification consumer reporting agencies would require significant operational changes and could significantly reduce the effectiveness of those reports. This is unlike credit-related reporting, which typically involves less immediate furnishing. The Bureau also finds that the consumer harm that § 1006.30(a)(1) is designed to address is not present for check verification consumer reporting because these reports are unlikely to be used in making credit, employment, or rental housing decisions. While consumers could also be harmed if they are unaware of checking account report items, the harm of reducing the effectiveness of the check verification system, including the potential harm to consumers if checks are accepted by fewer merchants, outweighs the benefits of requiring communication before furnishing. In addition, the immediacy of the current check verification system provides countervailing benefits to consumers who are alerted to potential fraud or to discontinue writing checks on an overdrawn account. Further, a special rule

for check verification consumer reporting agencies is consistent with several State laws regulating passive collections.[140] For these reasons, the Bureau concludes that furnishing of information to a check verification consumer reporting agency before engaging in outreach to the consumer does not raise concerns under FDCPA sections 806 and 808 similar to furnishing to other types of consumer reporting agencies.

Therefore, the final rule adds § 1006.30(a)(2) to state that § 1006.30(a)(1) does not apply to a debt collector's furnishing of information about a debt to a nationwide specialty consumer reporting agency that compiles and maintains information on a consumer's check writing history, as described in FCRA section 603(x)(3).[141]

For the reasons discussed above, the Bureau is adopting final § 1006.30(a) pursuant to its authority under FDCPA section 814(d) to prescribe rules with respect to the collection of debts by debt collectors. The Bureau is also adopting final § 1006.30(a) pursuant to its authority to interpret FDCPA section 806, which prohibits a debt collector from engaging in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt, and FDCPA section 808, which prohibits a debt collector from using unfair or unconscionable means to collect or attempt to collect any debt.

Section 1006.34 Notice for Validation of Debts

FDCPA section 809(a) generally requires a debt collector to provide certain information to a consumer either at the time that, or shortly after, the debt collector first communicates with the consumer in connection with the collection of a debt.[142] The required information—*i.e.*, the validation information—includes details about the debt and about consumer protections, such as

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[140] Colo. Rev. Stat. sec. 12-14-108 limits when "debt collectors" may furnish information to a consumer reporting agency, but exempts checks, negotiable instruments, or credit card drafts. California and Utah also limit when information can be furnished to a consumer reporting agency, but those laws only apply to "creditors." Cal. Civ. Code sec. 1785.26; Utah Code sec. 70C-7-107.

[141] If and to the extent a check verification consumer reporting agency compiles and maintains other types of information specified in FCRA section 603(x) (*e.g.*, residential or tenant history), the special rule in § 1006.30(a)(2) does not apply with respect to a debt collector's furnishing of that information to the check verification consumer reporting agency.

[142] *See* 15 U.S.C. 1692g(a).

the consumer's rights to dispute and receive verification of the debt and to request information about the original creditor. When this validation information is provided in writing, the document containing the information is commonly referred to as a "validation notice."

The requirement to provide validation information is an important component of the FDCPA and was intended to improve the debt collection process by helping consumers to recognize debts that they owe and raise concerns about debts that are unfamiliar. Congress in 1977 considered the requirement a "significant feature" of the FDCPA, explaining that it was designed to "eliminate the recurring problem of debt collectors dunning the wrong person or attempting to collect debts which the consumer has already paid."[143] Congress provided the Bureau with rulemaking authority in 2010 apparently to address continuing inadequacies around validation information and verification, among other things.[144] In addition, debt collectors have sought clarification about how to provide information consistent with the FDCPA, noting, for instance, that a significant number of lawsuits are filed each year alleging deficiencies in their validation notices.

For these reasons, the Bureau proposed § 1006.34 to require debt collectors to provide certain validation information to consumers and to specify when and how the information must be provided. As discussed in more detail below, the Bureau is finalizing § 1006.34 with modifications in response to feedback and for clarity and consistency with other provisions in this final rule and the November 2020 Final Rule.

Final § 1006.34(a) sets forth the general requirement to provide validation information and describes how such information may be provided on a validation notice. Section 1006.34(b) sets forth definitions for purposes of § 1006.34. Section 1006.34(c) sets forth the validation

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[143] S. Rep. No. 382, *supra* note 57; *see also Jacobson v. Healthcare Fin. Servs., Inc*., 516 F.3d 85, 95 (2d Cir. 2008) (validation notices "make the rights and obligations of a potentially hapless debtor as pellucid as possible"); *Wilson v. Quadramed Corp*., 225 F.3d 350, 354 (3d Cir. 2000); *Miller v. Payco-Gen. Am. Credits, Inc*., 943 F.2d 482, 484 (4th Cir. 1991); *Swanson v. S. Oregon Credit Serv., Inc*., 869 F.2d 1222, 1225 (9th Cir. 1988).

[144] *See* S. Rep. No. 111-176, at 19 ("In addition to concerns about debt collection tactics, the Committee is concerned that consumers have little ability to dispute the validity of a debt that is being collected in error.").

information, and § 1006.34(d) sets forth a general requirement that such information be clear and conspicuous. Section 1006.34(d) also provides safe harbors for use of Model Form B–1 in appendix B to Regulation F, specified variations of the model notice, or a substantially similar form, and describes optional disclosures that debt collectors may, but are not required to, provide with the validation information.[145] Section 1006.34(e) affirmatively permits debt collectors to provide validation notices translated into other languages and requires debt collectors who offer to provide consumers translated notices to provide them to consumers who request them.

As discussed in further detail in the section-by-section analysis of § 1006.34(d), the Bureau proposed to require that validation notices must be the same as, or substantially similar to, the proposed model validation notice. The Bureau is not finalizing that requirement. Instead, the final rule provides certain safe harbors for compliance with the information and form requirements in § 1006.34(c) and (d)(1) for debt collectors who use the model validation notice, specified variations of the model notice, or a substantially similar notice.

34(a) Validation Information Required

34(a)(1) In General

FDCPA section 809(a) provides, in relevant part, that, within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall send the consumer a written notice containing the validation information, unless that information is contained in the initial communication or the consumer has paid the debt. The Bureau proposed § 1006.34(a)(1) to implement and interpret this general requirement.[146] Specifically, proposed § 1006.34(a)(1) provided that, subject to a limited exception for if a

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[145] The Bureau proposed a model validation notice as Model Form B–3. The Bureau is finalizing that form, with revisions, as Model Form B–1. This Notice refers to proposed Model Form B–3 as the "proposed model validation notice" or the "proposed model notice" and final Model Form B–1 as the "model validation notice" or "model notice." This Notice uses the phrase "specified variations of the model notice" to refer to the specifically enumerated versions of the model notice that receive a safe harbor pursuant to § 1006.34(d)(2)(i) and (ii) (*i.e.*, notices that are the same as, or substantially similar to, the model notice but for: omitting some or all of the optional disclosures that appear on the model notice; including optional disclosures that do not appear on the model notice; or including certain disclosures on a separate page as permitted by § 1006.34(c)(2)(viii) and (5)).

[146] *See* 84 FR 23274, 23333-34 (May 21, 2019).

consumer has already paid a debt, a debt collector must provide a consumer the required validation information either: (1) by sending the consumer a validation notice (*i.e.*, a written or electronic notice)[147] in the manner permitted by § 1006.42[148] in the initial communication with the consumer in connection with the collection of the debt (proposed § 1006.34(a)(1)(i)(A)) or within five days of that initial communication (proposed § 1006.34(a)(1)(i)(B)); or (2) by providing the validation information orally in the initial communication (proposed § 1006.34(a)(1)(ii)).[149] As discussed below, the Bureau is adopting § 1006.34(a)(1) with certain minor revisions.

Some commenters recommended that the Bureau modify proposed § 1006.34(a)(1) generally. Some consumer advocate commenters stated that the Bureau should require debt collectors to provide non-electronic, written validation notices to all consumers. According to at least one commenter, the Bureau should require a written validation notice even if a debt collector also provides the validation information electronically. Another consumer advocate commenter asked the Bureau to require debt collectors to provide a consumer a validation notice in every communication.

The Bureau declines to require debt collectors to always provide written, non-electronic validation notices to consumers. For the reasons set forth in the November 2020 Final Rule, the Bureau interprets FDCPA section 809(a) as not requiring that the notice of debt be provided in writing when it is contained in the initial communication.[150] Moreover, if FDCPA section 809(a) does require that the notice of debt be provided in writing—*i.e.*, if the validation information is

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[147] Proposed § 1006.34(b)(4) defined a validation notice as any written or electronic notice that provides the validation information described in § 1006.34(c).

[148] As finalized, § 1006.42 generally requires debt collectors to send written disclosures in a manner that is reasonably expected to provide actual notice, and in a form that the consumer may keep and access later. 85 FR 76734, 76893 (Nov. 30, 2020).

[149] Proposed § 1006.34(b)(2) provided that, with limited exceptions, initial communication means the first time that, in connection with the collection of a debt, a debt collector conveys information, directly or indirectly, to the consumer regarding the debt.

[150] 85 FR 76734, 76854 (Nov. 30, 2020).

not contained within the initial communication—nothing in the FDCPA prohibits a debt collector from providing the required written validation notice electronically in accordance with the consumer-consent provisions of section 101(c) of the E-SIGN Act. In turn, if a statute (here, the FDCPA) requires a written disclosure, the E-SIGN Act's consumer-consent provisions specify requirements pursuant to which debt collectors may send the required written disclosures electronically. Accordingly, pursuant to § 1006.42, a debt collector may send the validation notice electronically under § 1006.34(a)(1)(i)(A) (*i.e.*, within the initial communication) if the debt collector complies with § 1006.42(a)(1), which requires that the debt collector send the notice in a manner that is reasonably expected to provide actual notice, and in a form that the consumer may keep and access later. A debt collector may send the validation notice electronically under § 1006.34(a)(1)(i)(B) (*i.e.*, not within the initial communication) if the debt collector complies with § 1006.42(a)(1) and also complies with § 1006.42(b), which requires that the debt collector send the notice in accordance with section 101(c) of the E-SIGN Act. The Bureau concludes that, if debt collectors send validation notices electronically as described above, there is a reasonable likelihood that consumers will receive and be able to retain the notices.

The Bureau determines, therefore, that it is unnecessary and unwarranted to impose the burden on debt collectors that would result from a requirement to always provide the validation notice in written, non-electronic form; to provide a validation notice in written form even if the debt collector also provides the validation notice electronically; or to provide a validation notice or validation information with every consumer communication.[151] Such requirements would go beyond the FDCPA's provisions and would be unduly burdensome on debt collectors, because, as stated above, the Bureau concludes that the Regulation F provisions that the Bureau is

[151] The Bureau additionally notes that, if a statute (here, FDCPA section 809(a)) requires a written disclosure, E-SIGN Act section 104(c)(1) states that Federal agencies' authority to interpret E-SIGN Act section 101 (including the consumer-consent provisions in E-SIGN Act section 101(c)) does not include the "authority to impose or reimpose any requirement that a record be in a tangible printed or paper form." *See* 15 U.S.C. 7004(c)(1).

adopting provide sufficient consumer protection. Accordingly, the Bureau does not impose such requirements.

The Bureau received few comments specifically about proposed § 1006.34(a)(1)(i). Commenters who provided feedback supported the Bureau's proposal. Thus, the Bureau is adopting § 1006.34(a)(1)(i) largely as proposed.

A large number of commenters responded to the clarification in proposed § 1006.34(a)(1)(ii) that debt collectors may provide validation information orally in the initial communication. Commenters, including most consumer advocates who addressed the topic, urged the Bureau to prohibit debt collectors from providing validation information orally. These commenters stated that debt collectors could not effectively convey orally to consumers the amount of validation information that the Bureau proposed.[152] Commenters argued that, if validation information were conveyed orally, a consumer would be unable to review the information at a later time, unless the consumer transcribed or recorded the communication with the debt collector. Commenters stated that this dynamic would place an unreasonable burden on consumers and would be atypical compared to other consumer law disclosure regimes, which mandate that required notices be provided in written form. At least one commenter stated that oral delivery would be incompatible with the formatting requirements in proposed § 1006.34(d).

On the other hand, some industry commenters supported the Bureau's clarification that debt collectors may provide validation information orally. These commenters asked the Bureau to provide additional guidance about oral delivery of validation information, including, for example, specific content for an oral notice, such as a script.

As proposed, the Bureau is finalizing the provision in § 1006.34(a)(1)(ii) that debt collectors may provide the required validation information orally in the initial communication. The Bureau agrees that there may be significant challenges to conveying the required validation

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[152] Proposed § 1006.34(c) described the validation information that proposed § 1006.34(a)(1) would have required debt collectors to provide. As discussed in the section-by-section analysis of § 1006.34(c), the final rule requires debt collectors to provide up to 18 items of validation information.

information orally.[153] Nevertheless, FDCPA section 809(a) does not prohibit oral delivery. FDCPA section 809(a) states that the required validation information may be "contained in the initial communication" and that a written notice is mandatory only if that required information is *not* contained in the initial communication. Further, FDCPA section 807(11) indicates that the initial communication may be oral.[154] Accordingly, the Bureau concludes that the most reasonable interpretation of FDCPA sections 809(a) and 807(11) is that the FDCPA permits the required validation information to be conveyed orally if it is contained in the initial communication.

Moreover, debt collectors providing validation information orally will not be able to use the model validation notice and therefore will not receive a safe harbor for compliance under § 1006.34(d)(2). The Bureau declines to provide additional guidance about oral delivery of validation information. The Bureau is not aware of debt collectors providing validation information orally today, and, for the reasons discussed, the Bureau believes they will be unlikely to do so in the future. As a result, the Bureau concludes that such additional guidance is not necessary or warranted at this time.

The Bureau proposed comment 34(a)(1)–1 to clarify the provision of validation notices if the consumer is deceased. Proposed comment 34(a)(1)–1 explained that, if the debt collector knows or should know that the consumer is deceased, and if the debt collector has not previously provided the deceased consumer the validation information, a person who is authorized to act on behalf of the deceased consumer's estate operates as the consumer for purposes of providing validation information under § 1006.34(a)(1). Under proposed comment 34(a)(1)–1, a debt

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[153] Section 1006.34(c) requires a significant amount of validation information that debt collectors may not currently include in the validation information they provide to consumers. It might be difficult for a debt collector to convey all of the required information orally, particularly in an initial communication, which is the only context in which a debt collector could comply with its legal obligation by providing the validation information orally. Further, real-time communications with consumers are unpredictable. Accordingly, even if the required components of the validation information are contained in the oral communication, the debt collector might not convey them in a way that meets the requirements of the regulation; for example, as commenters noted the debt collector might not convey the required information clearly and conspicuously.

[154] *See* 15 U.S.C. 1692e(11).

collector attempting to collect a debt from a deceased consumer's estate generally would provide the validation information to the named person who is authorized to act on behalf of the deceased consumer's estate, if the debt collector had not already provided that information to the consumer.

As discussed in the section-by-section analysis of § 1006.2(e), the Bureau is interpreting the term consumer to mean any natural person, whether living or deceased, who is obligated or allegedly obligated to pay any debt. And the Bureau is adopting commentary clarifying how this definition operates in the decedent debt context, including with respect to debt collectors' obligations to provide the validation information and respond to disputes and requests for original-creditor information. Accordingly, the Bureau is finalizing comment 34(a)(1)–1 as proposed.

For all of these reasons, and pursuant to its authority under FDCPA section 814(d) to prescribe rules with respect to the collection of debts by debt collectors, the Bureau is finalizing § 1006.34(a)(1) to implement and interpret the FDCPA section 809(a) requirement that debt collectors provide validation information to consumers.

34(a)(2) Exception

FDCPA section 809(a) contains a limited exception that provides that, if required validation information is not contained in the initial communication, a debt collector need not send the consumer a written validation notice within five days of that communication if the consumer has paid the debt prior to the time that the notice is required to be sent. The Bureau proposed in § 1006.34(a)(2) to implement this exception by providing that a debt collector who otherwise would be required to send a validation notice pursuant to § 1006.34(a)(1)(i)(B) is not required to do so if the consumer has paid the debt prior to the time that § 1006.34(a)(1)(i)(B)

would require the validation notice to be sent. Proposed § 1006.34(a)(2) generally restated the statute, except for minor changes for organization and clarity.[155]

At least two consumer advocate commenters recommended that debt collectors be required to provide a validation notice even if a consumer has already paid the debt. According to these commenters, some consumers, including seniors, will pay a debt that they do not owe or recognize because they "pay first and ask questions later." These commenters suggested that validation information would help such consumers assess after the fact whether they paid a debt that they owed. An industry trade group commenter stated that, for open-end credit, a debt collector should be permitted to satisfy § 1006.34(a)(1) by providing a periodic statement pursuant to Regulation Z, 12 CFR 1026.7, because periodic statements disclose sufficient account information to consumers.

The Bureau declines to require debt collectors to provide a validation notice if a consumer has already paid the debt. FDCPA section 809(a) explicitly provides that a debt collector is not required to send the validation notice if the consumer has paid the debt, and the Bureau has determined that it is neither necessary nor warranted to adopt a rule requiring otherwise.

The Bureau also declines to adopt recommendations to include an exception to § 1006.34(a)(1) for open-end credit, because a periodic statement provided in accordance with Regulation Z, 12 CFR 1026.7, is not an adequate substitute for the validation information. While such a periodic statement discloses some information about the debt, it typically does not disclose other information required under the final rule, such as the information about consumer protections required by FDCPA section 809(a)(3) through (5) and the corresponding provisions of final § 1006.34.

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[155] *See* 84 FR 23274, 23334-35 (May 21, 2019).

Accordingly, pursuant to its authority under FDCPA section 814(d) to prescribe rules with respect to the collection of debts by debt collectors, and to implement and interpret FDCPA section 809(a), the Bureau is finalizing § 1006.34(a)(2) as proposed.

34(b) Definitions

To facilitate compliance with § 1006.34, proposed § 1006.34(b) defined several terms that appear throughout the section. As discussed below, the Bureau is finalizing those definitions and related commentary with certain modifications in response to feedback. Consistent with the proposal, unless noted otherwise below, the Bureau is finalizing the definitions to implement and interpret FDCPA section 809(a) and pursuant to its authority under FDCPA section 814(d) to prescribe rules with respect to the collection of debts by debt collectors.

34(b)(1) Clear and Conspicuous

The Bureau proposed § 1006.34(b)(1) to define the term clear and conspicuous for purposes of Regulation F consistent with the standards used in other consumer financial services laws and their implementing regulations, including, for example, Regulation E, subpart B (Remittance Transfers).[156] Proposed § 1006.34(b)(1) thus provided that disclosures are clear and conspicuous if they are readily understandable. The proposal provided that, in the case of written and electronic disclosures, the location and type size also must be readily noticeable to consumers and that, in the case of oral disclosures, the disclosures must be given at a volume and speed sufficient for a consumer to hear and comprehend them.[157] For the reasons discussed below, the Bureau is adopting § 1006.34(b)(1) largely as proposed but with minor modifications for clarity and in response to feedback.

An industry commenter objected to the clear and conspicuous definition in proposed § 1006.34(b)(1). This commenter stated that a clear-and-conspicuous requirement is unnecessary in the debt collection context because consumers have an ongoing relationship with

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[156] *See* 12 CFR 1005.31(a)(1), comment 31(a)(1)–1.

[157] *See* 84 FR 23274, 23335 (May 21, 2019).

debt collectors, and a consumer therefore has the ability to ask a debt collector to explain a particular disclosure or communication if the consumer does not understand it.

Other commenters asked the Bureau to clarify the proposed definition. For instance, industry trade group and consumer advocate commenters offered various suggestions for specific font size or disclosure placement requirements. At least one industry commenter suggested that the Bureau explain how proposed § 1006.34(b)(1) would interact with State disclosure laws, which may have their own clear-and-conspicuous standards that dictate font size or disclosure placement. An industry trade group commenter asked the Bureau to provide additional guidance about oral delivery of the validation information because, in the commenter's view, the proposal that oral communications be "given at a volume and speed sufficient for a consumer to hear and comprehend them" was ambiguous.

The Bureau disagrees that ongoing relationships between debt collectors and consumers make a clear and conspicuous definition unnecessary or unwarranted in the debt collection context. Consumer financial services laws and their implementing regulations commonly include standards for clear and conspicuous disclosures provided in the context of ongoing customer and business relationships between consumers and consumer financial services providers.[158] Additionally, validation information is provided at the outset of collection communications. If a consumer chooses not to engage with the debt collector, no ongoing communications will be established.

The Bureau declines to further clarify the clear and conspicuous definition in § 1006.34(b)(1) by, for example, dictating font sizes or requirements regarding disclosure placement as requested by some commenters. Different debt collectors may design their

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[158] *See, e.g.*, 12 CFR 1026.5(a)(1)(i) (disclosures for open-end credit) and 12 CFR 1026.17(a)(1) (disclosures for closed-end credit). Moreover, a consumer does not typically get to choose which debt collector collects the consumer's debt, whereas a consumer does choose his or her financial services providers. Further, some customer relationships between consumers and debt collectors may be of shorter duration than customer relationships between consumers and other types of consumer financial services providers. These factors suggest that a standard for clear and conspicuous disclosures may be even more important in the debt collection context than in other consumer financial services contexts.

communications in different ways, and the Bureau does not believe it is necessary or warranted to specify such details, as long as the disclosure satisfies the clear and conspicuous standard. In addition, the definition is consistent with, and provides the same level of specificity as, standards in some other consumer financial services laws and their implementing regulations, including but not limited to the Bureau's Remittance Transfers rule,[159] which do not specify font size or disclosure placement requirements. Moreover, the Bureau concludes that the lack of more prescriptive guidance will not impose material burden on debt collectors. As discussed in the section-by-section analysis of § 1006.34(d)(2), a debt collector who uses the model validation notice, specified variations of the model notice, or a substantially similar form, receives a safe harbor for the information requirements in § 1006.34(c) and for the clear-and-conspicuous requirement in § 1006.34(d)(1). Because debt collectors may use the model validation notice, specified variations of the model notice, or a substantially similar form if providing validation notices, debt collectors need not incur significant expenses ascertaining what meets the clear-and-conspicuous standard. Nevertheless, the final rule does clarify that, in the case of written and electronic disclosures, although no minimum font size is required, the location and type size must be both readily noticeable and legible to consumers.[160]

The Bureau declines to revise § 1006.34(b)(1) to clarify how the definition of clear and conspicuous interrelates with State disclosure laws. A debt collector can comply with both § 1006.34(b)(1) and State disclosure requirements that specify font size or disclosure placement. With respect to font size, the Bureau concludes, in general, that debt collectors satisfying State-law minimum-font-size requirements will also satisfy the standard in § 1006.34(b)(1) for a type size that is readily noticeable and legible to consumers. With respect to disclosure placement, as discussed in the section-by-section analysis of § 1006.34(d)(3)(iv), a debt collector may place

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[159] *See* 12 CFR 1005.31(a)(1), comment 31(a)(1)–1. *See also, e.g.*, the general disclosure requirements for open-end and closed-end credit in, respectively, 12 CFR 1026.5(a)(1) and 1026.17(a)(1) and their commentary.

[160] The section-by-section analysis of § 1006.38(b)(2) discusses a new safe harbor from the overshadowing prohibition in § 1006.38(b)(1) for a debt collector who uses the model validation notice.

disclosures specifically required under other applicable law, which includes disclosures specifically required by State law, on the reverse (or, in certain specified circumstances, on the front) of the validation notice. The Bureau believes that § 1006.34(d)(3)(iv) will permit debt collectors to provide State law disclosures in a manner that is clear and conspicuous under applicable law.

The Bureau also declines to further clarify the meaning of clear and conspicuous in the context of oral delivery of validation information. The Bureau determines that the proposed and final regulatory text is sufficiently clear and that the final rule will not impose an undue burden on debt collectors, particularly in light of the Bureau's expectation that few, if any, oral disclosures will be provided.

For the reasons discussed above, the Bureau is finalizing § 1006.34(b)(1) to provide that clear and conspicuous means readily understandable and that, in the case of written and electronic disclosures, the location and type size also must be readily noticeable and legible to consumers, although no minimum type size is mandated. Final § 1006.34(b)(1) also provides that oral disclosures must be given at a volume and speed sufficient for the consumer to hear and comprehend them.

34(b)(2) Initial Communication

FDCPA section 809(a) requires debt collectors to provide consumers with certain validation information either in the debt collector's initial communication with the consumer in connection with the collection of the debt, or within five days after that initial communication. FDCPA section 803(2) defines the term communication broadly to mean the conveying of information regarding a debt directly or indirectly to any person through any medium.[161] FDCPA section 809(d) and (e) identifies particular communications that are not initial communications for purposes of FDCPA section 809(a) and that therefore do not trigger the

[161] *See* 15 U.S.C. 1692a(2). The November 2020 Final Rule implemented this definition in § 1006.2(d). 85 FR 76734, 76888 (Nov. 30, 2020).

validation notice requirement.[162] Pursuant to FDCPA section 809(d), an initial communication excludes a communication in the form of a formal pleading in a civil action. Pursuant to FDCPA section 809(e), an initial communication also excludes the sending or delivery of any form or notice that does not relate to the collection of the debt and is expressly required by the Internal Revenue Code of 1986, title V of the Gramm-Leach-Bliley Act, or any provision of Federal or State law relating to notice of a data security breach or privacy, or any regulation prescribed under any such provision of law.

The Bureau proposed § 1006.34(b)(2) to implement FDCPA section 809(a), (d), and (e) by defining the term initial communication. The proposed definition largely restated the FDCPA and defined initial communication as the first time that, in connection with the collection of a debt, a debt collector conveys information, directly or indirectly, regarding the debt to the consumer, other than a communication in the form of a formal pleading in a civil action, or a communication in any form or notice that does not relate to the collection of the debt and is expressly required by any of the laws referenced in FDCPA section 809(e).[163]

An industry trade group recommended a bankruptcy-specific exception to the definition of initial communication for debt collectors collecting debts owed by consumers in bankruptcy. The commenter expressed concern that certain actions by a debt collector in the context of a consumer's bankruptcy proceeding, in particular filing a proof of claim, may be construed to be an initial communication and therefore trigger the FDCPA section 809(a) validation notice requirement.[164] Additionally, according to the commenter, content on the validation notice, including the debt collection communication disclosure required by FDCPA section 807(11), could be construed as a demand for payment that violates the automatic stay provisions of the

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[162] *See* 15 U.S.C. 1692g(d), (e).

[163] *See* 84 FR 23274, 23335 (May 21, 2019).

[164] To receive a distribution from a bankruptcy estate, a creditor generally must file with the bankruptcy court a proof of claim, which includes details about an alleged debt or interest. *See* Fed. R. Bankr. P. 3002.

United States Bankruptcy Code (Bankruptcy Code)[165] or, if the consumer has been relieved of personal liability, the discharge injunction.[166] According to the commenter, some courts have opined that a debt collector would face an irreconcilable conflict between complying with the FDCPA and the Bankruptcy Code if the debt collector were required to provide a validation notice to a consumer in bankruptcy.[167]

The Bureau has determined to interpret the term initial communication not to include proofs of claim filed in bankruptcy proceedings. Courts have reached different conclusions about whether the FDCPA conflicts with the Bankruptcy Code.[168] The Bureau is unaware of any case definitively holding that a proof of claim is an initial communication and that a debt collector therefore must provide a validation notice after filing a proof of claim. On the other hand, some courts have held that proofs of claim are not initial communications because, under FDCPA section 809(d), they are communications in the form of a formal pleading in a civil action.[169] Further, the Bureau has decided to permit a debt collector to file a proof of claim in a bankruptcy proceeding as required by the Bankruptcy Code without thereby triggering the debt collector's obligation to provide a validation notice under the FDCPA, because the Bureau finds it unlikely that consumer harm will result if a consumer does not receive a validation notice subsequent to a proof of claim in bankruptcy. The bankruptcy proof-of-claim form is filed under

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[165] *See* 11 U.S.C. 362.

[166] A debtor's bankruptcy petition operates as an automatic stay that, among other things, prohibits "any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case." 11 U.S.C. 362(a)(6). When a debtor's liability is discharged through bankruptcy, the discharge "operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived." 11 U.S.C. 524(a)(2).

[167] *See, e.g.*, *In re Chaussee*, 399 B.R. 225, 238 (B.A.P. 9th Cir. 2008) ("In our opinion, the debt validation provisions required by the FDCPA clearly conflict with the claims processing procedures contemplated by the [Bankruptcy] Code and Rules.").

[168] *See Walls v. Wells Fargo Bank*, 276 F.3d 502, 511 (9th Cir. 2002) (holding that the Bankruptcy Code precludes application of FDCPA requirements in bankruptcy cases); *Chaussee*, 399 B.R. at 239 (same); *contra Simon v. FIA Card Servs., N.A.*, 732 F.3d 259, 274 (3d Cir. 2013) (stating that when "FDCPA claims arise from communications a debt collector sends a bankruptcy debtor in a pending bankruptcy proceeding, and the communications are alleged to violate the Bankruptcy Code or Rules, there is no categorical preclusion of the FDCPA claims").

[169] *See Simon*, 732 F.3d at 273; *Townsend v. Quantum3 Grp., LLC*, 535 B.R. 415, 423 (M.D. Fla. 2015); *In re Brimmage*, 523 B.R. 134, 141-42 (Bankr. N.D. Ill. 2015).

penalty of perjury, and a person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both.[170] Thus, the Bureau concludes that bankruptcy proof-of-claim forms generally are likely to contain accurate information about the debt.

Accordingly, to provide clarity for debt collectors while maintaining protections for consumers, the Bureau is interpreting the term initial communication not to include proofs of claim filed in bankruptcy. Specifically, the Bureau is adopting new comment 34(b)(2)–1, which clarifies that a proof of claim that a debt collector files in a bankruptcy proceeding in accordance with the requirements of the Bankruptcy Code is a communication in the form of a formal pleading in a civil action and therefore is not an initial communication for purposes of § 1006.34. The Bureau adopts this comment as an interpretation of the phrase "[a] communication in the form of a formal pleading in a civil action" in FDCPA section 809(d). The Bureau interprets that phrase to include a proof of claim that a debt collector files in a bankruptcy proceeding in accordance with the requirements of the Bankruptcy Code.

The Bureau acknowledges that other scenarios may exist in which a debt collector communicates with a consumer in bankruptcy and subsequently may be required to provide a validation notice. To the extent that debt collectors do provide validation notices to consumers in bankruptcy, § 1006.34(a)(1) implements an existing FDCPA disclosure requirement and does not create a new tension between the FDCPA and the Bankruptcy Code. In addition, nothing in the final rule requires debt collectors to include payment requests in the validation information; instead, payment requests are optional disclosures that § 1006.34(d)(3)(iii) permits debt collectors to include along with the validation information. Consequently, a debt collector concerned that a payment request would violate the Bankruptcy Code's automatic stay or discharge injunction is not required to include a payment request and, additionally, could use the

[170] The official bankruptcy proof-of-claim form is available here: *https://www.uscourts.gov/forms/bankruptcy-forms/proof-claim-0*.

model validation notice, specified variations of the model notice, or a substantially similar form, without a payment request and receive a safe harbor under § 1006.34(d)(2).

An industry trade group recommended that the Bureau exclude from the § 1006.34(b)(2) definition of initial communication the notice of transfer of loan servicing required by Regulation X.[171] According to the commenter, after an FDCPA-covered mortgage debt is transferred and a consumer receives a servicing transfer notice, the transferee may not have received all the information necessary to send a validation notice within the five-day timeframe required by FDCPA section 809(a). For this reason, the commenter suggested that Regulation X servicing transfer notices should not trigger the validation information requirement.

The Bureau declines to interpret the term initial communication to exclude servicing transfer notices required by Regulation X. Section 1006.34(b)(2) largely mirrors existing language in FDCPA sections 803(2) and 809(a), (d), and (e) and does not impose new substantive requirements or obligations on covered entities. As discussed in the section-by-section analysis of § 1006.34(c), Regulation F will result in validation notices containing more information about the debt than they typically do today, but that information is, generally, either routine account information that owners of debts currently provide to debt collectors or that owners of debts can include without significant additional expense. Although the commenter argues that there may be timing considerations unique to mortgage servicing transfer notices, the Bureau determines that such timing concerns do not warrant an exception that would deem a mortgage servicing transfer notice, even one that does convey information, directly or indirectly, regarding the debt to the consumer to be excluded from the definition of an "initial communication."

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[171] Generally, under Regulation X, each transferor servicer and transferee servicer of any mortgage loan shall provide to the borrower a notice of transfer for any assignment, sale, or transfer of the servicing of the mortgage loan. 12 CFR 1024.33(b)(1). Generally, the transferor servicer shall provide the notice of transfer to the borrower not less than 15 days before the effective date of the transfer of the servicing of the mortgage loan. The transferee servicer shall provide the notice of transfer to the borrower not more than 15 days after the effective date of the transfer. The transferor and transferee servicers may provide a single notice, in which case the notice shall be provided not less than 15 days before the effective date of the transfer of the servicing of the mortgage loan. 12 CFR 1024.33(b)(3)(i).

Other commenters asked the Bureau to clarify whether a consumer-initiated communication, such as a consumer visiting a debt collector's website or a consumer leaving a voicemail with a debt collector, would constitute an initial communication under proposed § 1006.34(b)(2). The Bureau notes that, under § 1006.34(b)(2), for an initial communication to occur, a debt collector must "convey[] information, directly or indirectly, regarding the debt . . . ." Section 1006.34(b)(2) is clear that, if a debt collector conveys no information, directly or indirectly, regarding the debt, an initial communication has not occurred and, consequently, the validation notice requirement has not been triggered. Thus, a consumer's voicemail left with a debt collector generally would not qualify as an initial communication. Similarly, an initial communication generally would not include a consumer's visit to a debt collector's website, unless during that visit the debt collector conveyed information regarding the consumer's specific debt.[172]

For the reasons discussed above, the Bureau is finalizing § 1006.34(b)(2) largely as proposed but with a revision to clarify that proofs of claim filed in bankruptcy proceedings are not initial communications.

34(b)(3) Itemization Date

FDCPA section 809(a)(1) requires debt collectors to disclose to consumers, either in the debt collector's initial communication in connection with the collection of the debt, or within five days after that communication, the amount of the debt.[173] The Bureau proposed in § 1006.34(c)(2)(vii) through (ix) to interpret the phrase "amount of the debt" to mean that debt collectors must disclose the amount of the debt as of a particular "itemization date."[174] To

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[172] For example, a debt collector potentially could convey information regarding the debt during a consumer's visit to a website through a website chat feature.

[173] *See* 15 U.S.C. 1692g(a)(1).

[174] Proposed § 1006.34(c)(2)(vii) and (viii) would have required debt collectors to disclose, respectively, the itemization date and the amount of the debt on the itemization date. Proposed § 1006.34(c)(2)(ix) would have required debt collectors to disclose an itemization of the debt reflecting interest, fees, payments, and credits since the itemization date. For additional discussion of these provisions, which have been renumbered in the final rule, see the section-by-section analysis of § 1006.34(c)(2)(vi) through (viii).

facilitate compliance with proposed § 1006.34(c)(2), the Bureau proposed § 1006.34(b)(3) to define itemization date as one of four reference dates for which a debt collector can ascertain the amount of the debt. The proposed reference dates were the last statement date, the charge-off date, the last payment date, and the transaction date.[175]

The proposed definition of itemization date was designed to allow the use of dates that debt collectors could identify with relative ease because they reflect routine and recurring events, and that correspond to notable events in the debt's history that consumers may recall or be able to verify with records. The proposed definition also was intended to include dates for which debt collectors typically may receive account information from debt owners and that, therefore, debt collectors would be able to use to provide the disclosures proposed in § 1006.34(c)(viii) and (ix).

Proposed comment 34(b)(3)–1 explained that a debt collector could select any of the four reference dates as the itemization date. Once a debt collector used one of the reference dates for a specific debt in a communication with a consumer, however, the debt collector would be required to use that reference date for that debt consistently when providing disclosures pursuant to § 1006.34 to that consumer.

For the reasons discussed below, the Bureau is adopting § 1006.34(b)(3) and its related commentary largely as proposed but with minor wording changes and to include an additional reference date in response to feedback: the judgment date. The Bureau also is adopting new comment 34(b)(3)–2, which provides that a debt collector may use a different reference date than a prior debt collector used for the same debt.

Some industry commenters supported the itemization date definition in proposed § 1006.34(b)(3). At least two industry commenters supported providing debt collectors with a choice of several reference dates because a debt collector might not be able ascertain the amount of the debt on a single reference date. According to an industry trade group commenter, the

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[175] *See* 84 FR 23274, 23335-37 (May 21, 2019). The reference dates were set forth in proposed § 1006.34(b)(3)(i) through (iv) and are discussed in the section-by-section analysis of those paragraphs below.

proposed reference dates would provide adequate flexibility, as a creditor's information systems will have recorded at least one of those dates for any given debt. Another industry trade group commenter stated that the proposal's standardization of account information would allow debt collectors to build better internal procedures and improve consumer communication practices. An industry commenter stated that proposed § 1006.34(b)(3) would require significant client education and information technology investment but ultimately concluded that the framework was feasible.

Other commenters objected to proposed § 1006.34(b)(3). An industry commenter stated that creditors may provide debt collectors information about multiple reference dates. According to this commenter, analyzing creditor records to identify and organize account information as of a single reference date would be complicated, costly, and increase the likelihood of validation notice errors. A group of consumer advocate commenters stated that, instead of permitting debt collectors to choose between reference dates, § 1006.34(b)(3) should define the itemization date as a single reference date supported by consumer testing.

The Bureau determines that § 1006.34(b)(3) will facilitate compliance with the itemization date-related requirements in final § 1006.34(c)(2)(vi) through (viii). Account information available to debt collectors may vary by debt type because some account information is not universally tracked or used across product markets. To facilitate the ability of debt collectors across debt markets to comply with Regulation F, the final rule permits debt collectors to determine the itemization date by selecting from one of five reference dates for which they can ascertain the amount of the debt.

The Bureau finds that this framework will not result in undue industry burden. Debt collectors today routinely analyze and organize account information included in files from creditors when creditors place accounts for collection. Debt collectors should be able to use or build on these existing functions to select an itemization date based on the definition in § 1006.34(b)(3). Therefore, even if creditors provide or retain account information based on

multiple reference dates, debt collectors should not face substantial new costs or litigation risks from complying with § 1006.34(b)(3).

The Bureau declines consumer advocates' suggestion to specify a single reference date. As discussed in the proposal, the Bureau considered requiring debt collectors to provide an itemization of the debt based on a single reference date but rejected that approach because of the infeasibility of identifying a single reference date that applies to all debt types across all relevant markets.[176] The group of consumer advocate commenters that recommended a single reference date did not suggest or provide evidence that it would be feasible to identify a single date that would be appropriate for all types of debt. The Bureau also declines to exercise its discretion to conduct consumer testing to attempt to determine an optimal itemization date for debt collectors to use within each debt collection market (*e.g.*, mortgage debt, credit card debt, student loan debt, medical debt, and so on). The Bureau determines that such testing is not necessary or warranted, because the Bureau finds that debt collectors' use of any one of the five itemization dates set forth in § 1006.34(b)(3) should correspond, in most cases, to events in the debt's history that consumers may recall or be able to verify with records.

In the proposal, the Bureau requested comment on whether the itemization date should be structured as a prescriptive ordering of reference dates, such as a hierarchy that would permit a debt collector to use a date listed later in the hierarchy only if the debt collector did not have information about any dates earlier in the hierarchy. Industry and industry trade group commenters generally favored the proposed flexible approach. According to commenters, a prescriptive ordering would significantly increase costs and litigation risk for debt collectors. As noted above, consumer advocates expressed concern that the proposed approach would result in disclosure of itemization dates that are not meaningful to consumers and urged the Bureau to use consumer testing to determine a date that would be meaningful.

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[176] *See* 84 FR 23274, 23336 (May 21, 2019).

The Bureau agrees that a prescriptive ordering could impose undue costs and litigation risks for debt collectors. In addition, as discussed below in the section-by-section analysis of § 1006.34(b)(3)(i) through (v), each reference date may be meaningful to consumers because it corresponds to a notable event in the debt's history that consumers may recall or be able to verify with records. Because each reference date may be meaningful to a consumer, and because each reference date may be more or less meaningful to the consumer than one of the other reference dates depending on the circumstances surrounding the debt, there may not be a benefit to consumers if the Bureau were to structure the dates as a hierarchy. The Bureau therefore declines to adopt a prescriptive ordering of the reference dates.

Some commenters who did not object to the proposed itemization date framework in principle either raised concerns that the proposed reference dates would not accommodate debts in all product markets or recommended additional reference dates. At least one industry trade group commenter asked the Bureau to clarify what reference date debt collectors should use for debts in bankruptcy. An industry commenter stated that the proposal might not accommodate a debt a consumer owes to a government, such as a tax debt. According to this commenter, although the FDCPA does not cover many debts consumers owe to governments,[177] some debt collectors who collect debts on behalf of Federal government agencies are legally or contractually obliged to abide by the FDCPA.[178] This commenter stated that the proposed reference dates might not accommodate tax debt because, in some instances, it will be the case that no previous statement was provided, no prior payment was made, and there was no transaction per se between the consumer and the government creditor.

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[177] FDCPA section 803(5) defines a "debt" as any obligation arising out of a transaction "primarily for personal, family, or household purposes." 15 U.S.C. 1692a(5). According to the commenter, a debt a consumer owes to a government in many cases does not meet this definition.

[178] For example, debt collectors who collect on behalf of the Internal Revenue Service under a "qualified tax collection contract" generally are required by statute to comply with the FDCPA. *See* 26 U.S.C. 6306(g) ("The provisions of the [FDCPA] shall apply to any qualified tax collection contract, except to the extent superseded by section 6304, section 7602(c), or by any other provision of this title.").

According to another commenter, an additional reference date for student loan debt is necessary because debt collectors collecting Federal student loans do not receive any of the proposed reference dates at the time of placement. Some commenters suggested that the Bureau permit debt collectors to use the date of default as defined by the Higher Education Act of 1965; commenters argued that this date is a widely used reference date in the student loan market.[179] By contrast, an FTC commissioner urged the Bureau not to use the Higher Education Act's definition of default and instead to use the date a student loan borrower becomes 90 days past due.

In addition, an industry commenter recommended that § 1006.34(b)(3) incorporate: (1) the date a creditor places a debt with the debt collector, or (2) the date the debt collector provides validation information to the consumer. Another industry commenter suggested that § 1006.34(b)(3) incorporate the date of a previously obtained court judgment.

The Bureau determines that § 1006.34(b)(3)—in conjunction with the five reference dates described in § 1006.34(b)(3)(i) through (v)—provides adequate flexibility for debts in all product markets, including for debts in bankruptcy. A debt collector may choose which of the five reference dates to use based on the facts and circumstances surrounding the history of the debt—*e.g.*, whether a creditor provided statements, whether the consumer made payments—and the information available to the debt collector.

With respect to which reference date a debt collector should use to itemize a tax obligation a consumer owes to a government, the date the tax was assessed may be a transaction date for tax debt, as discussed in the section-by-section analysis of § 1006.34(b)(3)(iv). In addition, a date on which the government provided a written invoice or tax bill may constitute a last statement date for tax debt under § 1006.34(b)(3)(i).

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[179] The Higher Education Act defines "default" as "the failure of a borrower . . . to make an installment payment when due, or to meet other terms of the promissory note, the Act, or regulations as applicable, if the Secretary or guaranty agency finds it reasonable to conclude that the borrower and endorser, if any, no longer intend to honor the obligation to repay, provided that this failure persists for—(1) 270 days for a loan repayable in monthly installments; or (2) 330 days for a loan repayable in less frequent installments." 34 CFR 682.200(b).

The Bureau determines that a reference date specific to student loan debt is unnecessary and unwarranted because the reference dates in § 1006.34(b)(3) are sufficient. For virtually any student loan debt, there will be a last statement date as described in § 1006.34(b)(3)(i), a last payment date as described in § 1006.34(b)(3)(ii), or a transaction date as described in § 1006.34(b)(3)(iv). For many student loan debts, all three reference dates will exist.

The Bureau also declines to incorporate into § 1006.34(b)(3) the date of placement or the date the debt collector provides the validation notice. From a consumer's perspective, these dates do not correspond to notable events in a debt's history that the consumer may recall or be able to verify. As noted above, however, in response to feedback, the Bureau is adding a new reference date called the "judgment date," which is the date of a final court judgment that determines the amount of the debt owed by the consumer. The judgment date is discussed in the section-by-section analysis of final § 1006.34(b)(3)(v).

With respect to the Bureau's request for comment about whether a subsequent debt collector should be permitted to use a different itemization date than a prior debt collector used for the same debt, industry and industry trade group commenters generally agreed that requiring debt collectors to use the same reference date as a prior collector would be burdensome and impractical. These commenters stated that debt collectors would be unable to ensure compliance with such a requirement because a creditor might not disclose the reference date that a prior debt collector used. By contrast, an academic and a consumer advocate commenter stated that a debt collector should be required to use the same itemization date the prior debt collector used because a consumer may not be able to assess the amount owed if the subsequent debt collector uses a different reference date.

The final rule permits a debt collector to use a different itemization date than a prior debt collector used for the same debt. The availability of account information, including about a prior debt collector's activities, to a subsequent debt collector depends on the creditor or debt buyer who places the debt with the subsequent debt collector. If the creditor or debt buyer does not

provide the previously used itemization date, the subsequent debt collector may be unable to determine that date, and therefore fail to comply with a requirement to use it. It is conceivable that, were the rule to require use of the same itemization date previously used, debt collectors and creditors could begin to structure their contracts and processes to enable creditors and debt collectors to transfer a previously used itemization date. However, establishing such contracts and processes would likely impose costs on creditors and debt collectors,[180] and those costs would likely be passed on to consumers. Further, the Bureau finds that the costs are not warranted because permitting a subsequent debt collector to use a different itemization date will maintain protections for consumers, as long as the debt collector uses one of the five itemization dates specified in the rule. As stated above, the Bureau finds that the five itemization dates are all dates that should result in reasonably meaningful and recognizable debt amounts for consumers. Accordingly, the Bureau is adopting new comment 34(b)(3)–2 to clarify that, when selecting an itemization date pursuant to § 1006.34(b)(3), a debt collector may use a different reference date than a prior debt collector who attempted to collect the debt.

For the reasons set forth above, the Bureau is finalizing § 1006.34(b)(3) and its related commentary with minor wording changes and to include a new reference date, the judgment date, in § 1006.34(b)(3)(v). In addition, the Bureau is adopting new comment 34(b)(3)–2 to explain that a debt collector may use a different reference date than a prior debt collector. The Bureau is finalizing § 1006.34(b)(3) and § 1006.34(b)(3)(i) through (v), discussed below, pursuant to its authority under FDCPA section 814(d) to prescribe rules with respect to the collection of debts by debt collectors and pursuant to its authority under Dodd-Frank Act section 1032(a) to prescribe rules to ensure that the features of consumer financial products and services are disclosed to consumers fully, accurately, and effectively.

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[180] In order for the contractual framework and processes to achieve the desired result of a creditor passing the previously used itemization date to the current debt collector, creditors would have to structure contracts to require the previous debt collectors to pass back to the creditors the previously used itemization dates so that the creditors, in turn, can pass them on to the current debt collectors. Developing and implementing such contractual provisions and processes across the debt collection industry would likely impose potentially significant costs.

34(b)(3)(i)

The Bureau proposed in § 1006.34(b)(3)(i) to permit debt collectors to use as the itemization date the date of the last periodic statement or written account statement or invoice provided to the consumer. Proposed comment 34(b)(3)(i)–1 explained that a statement provided by a creditor or a third party acting on the creditor's behalf, including a creditor's service provider, may constitute the last statement provided to the consumer for purposes of § 1006.34(b)(3)(i).

Commenters disagreed about whether the Bureau should adopt the last statement date as a permissible reference date. Several industry and industry trade group commenters supported the proposal, stating that, for some debts, the last statement date is readily available to debt collectors and recognizable to consumers. Some commenters stated that, even when creditors do not initially provide periodic statements to debt collectors, such statements are available upon request. However, some consumer advocate commenters stated that the last statement date may not be meaningful to some consumers and may not help them recognize a debt. For example, a commenter stated that a creditor may send duplicates of the same periodic statement or invoice to a consumer multiple times, even when the balance is changing due to interest or fees. In this scenario, the commenter said, the last statement a consumer received would not reflect the actual amount owed and would not be helpful to the consumer.

At least two commenters stated that a validation notice provided by a prior debt collector should not constitute a last statement for purposes of § 1006.34(b)(3)(i). According to a consumer advocate commenter, the date of a prior validation notice will not be meaningful to consumers and, consequently, an itemization as of that date will not help consumers recognize an alleged debt. An industry trade group commenter advised against relying on a validation notice provided by a prior debt collector because creditors generally do not provide previously sent validation notices to subsequent debt collectors.

The Bureau determines that the last statement date may be used as a reference date. Many creditors or third parties acting on a creditor's behalf routinely provide consumers with account statements, such as periodic statements or invoices. If a consumer has received an account statement from a creditor, the consumer either may recognize the date that they last received a statement or may be able to verify that date in their records.[181] Further, last statement information is often readily available to debt collectors, as debt collectors frequently receive, or have the ability to request, last statement information or records from creditors.

The Bureau determines that only a last statement or invoice provided to a consumer by a creditor, as opposed to a statement, such as a validation notice, provided by a debt collector, should serve as a basis for a last statement date as defined in § 1006.34(b)(3)(i) because consumers may be more likely to recall or be able to verify a statement sent by a creditor than by a debt collector. This may be true even if a creditor issues a statement after the debt has gone into collection. Under § 1006.34(b)(3)(i), such a new statement may serve as the last statement for purposes of the itemization date.

For these reasons, the Bureau is finalizing § 1006.34(b)(3)(i) and its related commentary with revisions to provide that only a statement or invoice provided by a creditor qualifies as a last statement for purposes of § 1006.34(b)(3)(i). Specifically, the Bureau is revising § 1006.34(b)(3)(i) to state that the last statement date is the date of the last periodic statement or written account statement or invoice provided to the consumer by a creditor. The Bureau also is revising comment 34(b)(3)(i)–1 to provide that a statement or invoice provided by a debt collector is not a last statement for purposes of § 1006.34(b)(3)(i), unless the debt collector is also a creditor.

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[181] This is likely to be true even if the consumer has received a duplicative statement as the last statement. In that scenario, under § 1006.34(c)(2)(vii), which requires a debt collector to disclose the amount of the debt on the itemization date, the debt amount that the debt collector discloses to the consumer must be the debt amount as of that last statement date.

34(b)(3)(ii)

The Bureau proposed in § 1006.34(b)(3)(ii) to permit debt collectors to use the date that the debt was charged off as the itemization date.

An industry trade group and an industry commenter supported the use of the charge-off date, particularly for debts associated with open-end credit, such as credit cards. The commenters stated that charge off is a regulated Federal standard for consumer credit[182] and would be a reliable reference date for itemization-related disclosures in some circumstances. An industry trade group commenter stated that creditors frequently provide debt collectors account information as of the charge-off date. Commenters stated that consumers may recognize the amount due as of the charge-off date because some creditors provide charge-off statements that reflect the charge-off balance and, they said, consumers have the ability to review these charge-off statements.

Other commenters objected to including the charge-off date as a permissible reference date. An industry commenter stated that not all creditors maintain account information as of the charge-off date or communicate that information to debt collectors at placement. Consumer advocates and at least two industry trade group commenters stated that, although the charge-off date may be widely used for some financial products, it may not resonate with consumers or help them recognize a debt because consumers might not know the charge-off date.[183]

The Bureau determines that the charge-off date may be used as a reference date. Creditors frequently provide account information as of the charge-off date for various types of debts, including credit card debt, to debt collectors. The Bureau acknowledges that not all creditors maintain account information as of the charge-off date or provide such information to debt collectors, but the charge-off date is only one of five reference dates specified in the final

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[182] 65 FR 36903 (June 12, 2000); Off. of the Comptroller of the Currency, Bulletin 2000-20, *Uniform Retail Credit Classification and Account Management Policy* (June 20, 2000).

[183] An individual commenter requested clarification whether, for medical debt, the date of charge off is the date a creditor places the account for collection. The Bureau is not aware that such a definition is commonly used.

rule. Further, account information at charge off is readily available to a sufficiently large number of debt collectors—including collectors of credit card debt—to justify its adoption as a reference date. In addition, while consumers might not know the specific charge-off date, they may, in fact, recognize account information as of approximately the charge-off date because charge off often occurs at around the time the creditor provided a last account statement. Further, as noted by commenters, some creditors may provide consumers with charge-off statements that reflect the balance as of the charge-off date.

Accordingly, the Bureau is finalizing § 1006.34(b)(3)(ii) as proposed.

34(b)(3)(iii)

The Bureau proposed in § 1006.34(b)(3)(iii) to permit debt collectors to use the date the last payment was applied to the debt as the itemization date.

Industry and consumer advocate commenters generally supported proposed § 1006.34(b)(3)(iii). These commenters agreed that account information as of the last payment date is readily available to debt collectors and recognizable to consumers. According to one consumer advocate, a consumer may have a general idea of when a bill was last paid, especially if the consumer's delinquency was related to a significant life event, such as a job loss, a divorce, or an illness. Accordingly, the Bureau determines that the last payment date as defined in § 1006.34(b)(3)(iii) is an appropriate reference date.

Commenters asked the Bureau to clarify whether a third-party payment could serve as the basis for the last payment date. For example, several trade group commenters stated that, if a consumer's car is repossessed, the sale of the collateral may be applied to the consumer's balance after receipt of the consumer's last payment. Another commenter raised the possibility of third-party payments and insurance adjustments in the medical debt context. A group of consumer advocates recommended that only a payment from a consumer to a creditor should serve as the basis for a last payment date. According to this commenter, a last consumer payment to a prior debt collector may not be significant or recognizable to a consumer.

The Bureau determines that third-party payments may serve as the basis for the last payment date under § 1006.34(b)(3)(iii). The Bureau finds that the date of a third-party payment on the debt, such as a payment from an auto repossession agent or an insurance company, may be meaningful to a consumer because such payments may be accompanied by a notice to the consumer, and therefore the consumer could recognize or verify with records the date of such payments.

The Bureau also determines that a consumer's payment to a prior debt collector may serve as the last payment date. The Bureau finds that consumers are at least as likely to recognize or be able to verify with records the status of the debt as of the consumer's last payment to a prior debt collector as consumers are able to recognize or verify an earlier (perhaps much earlier) payment to the creditor, particularly if the debt has been outstanding for a long time.

For these reasons, the Bureau is finalizing § 1006.34(b)(3)(iii) as proposed to provide that the last payment date is the date the last payment was applied to the debt. The Bureau also is adopting new comment 34(b)(3)(iii)–1, which clarifies that a third-party payment applied to the debt, such as a payment from an auto repossession agent or an insurance company, can be a last payment for purposes of § 1006.34(b)(3)(iii).

34(b)(3)(iv)

The Bureau proposed in § 1006.34(b)(3)(iv) to permit debt collectors to use as the itemization date the date of the transaction that gave rise to the debt. Proposed comment 34(b)(3)(iv)–1 explained that the transaction date is the date that a creditor provided, or made available, a good or service to a consumer, and it included examples of transaction dates. The comment also explained that, if a debt has more than one potential transaction date, a debt collector may use any such date as the transaction date but must use whichever transaction date it selects consistently.

A number of commenters, including consumer advocates, industry trade groups, and at least one industry commenter, supported including the transaction date in the itemization date definition. According to several commenters, consumers likely would recognize the transaction date as defined by proposed § 1006.34(b)(3)(iv). At least one commenter stated that creditors provide account information as of the transaction date for some debt types.

With respect to proposed comment 34(b)(3)(iv)–1, a consumer advocate commenter stated that, if a debt has more than one potential transaction date, the debt collector should not be permitted to choose which date to use as the transaction date for purposes of § 1006.34(b)(3)(iv). The commenter urged the Bureau to develop a prescriptive standard for identifying the appropriate transaction date for scenarios where multiple transaction dates exist.

Several commenters also stated that determining the transaction date may be problematic in some circumstances. For example, a consumer advocate commenter explained that, while determining the transaction date is straightforward with one-time transactions, identifying the transaction date may be more difficult with respect to contracts for ongoing services, such as gym memberships, cellular telephone contracts, or lawn care service contracts. In addition, an industry commenter stated that medical providers may combine multiple dates of service into one account or use family billing that combines separate bills for family members into one account. The commenter suggested that, if an account in collection reflects services on multiple dates or for multiple individuals, identifying a transaction date may be difficult for the debt collector.

The Bureau finds that, for some debts, creditors may provide debt collectors with account information related to the transaction date. In addition, consumers may recognize the amount of a debt on the transaction date, which may be reflected on a copy of a contract or a bill provided by a creditor. For this reason, the Bureau is finalizing § 1006.34(b)(3)(iv) as proposed to provide that the transaction date, which is the date of the transaction that gave rise to the debt, can be the itemization date for purposes of § 1006.34(b)(3).

As commenters noted, various dates may serve as potential transaction dates under § 1006.34(b)(3)(iv). For example, potential transaction dates may include the date a service or good was provided to a consumer or the date that a consumer signed a contract for a service or good. In the case of a consumer's tax debt, the date a government assessed the tax may be a transaction date for purposes of § 1006.34(b)(3)(iv).[184] Nevertheless, the Bureau declines to adopt a prescriptive standard for identifying the only transaction date debt collectors may use. Both the contract date and the service date are significant dates that may resonate with a consumer. Because the consumer may recognize the amount of the debt on those dates, the Bureau finds that either date may serve as the transaction date. Further, the Bureau determines that developing a more prescriptive standard that would apply to all debt types is not feasible. For this reason, the Bureau is finalizing comment 34(b)(3)(iv)–1, with minor changes for clarity, to provide that, if a debt has more than one transaction date, a debt collector may use any such date as the transaction date, but the debt collector must use whichever date the debt collector selects consistently, as described in comment 34(b)(3)–1. Comment 34(b)(3)(iv)–1 also addresses concerns regarding identifying the transaction date for medical debt that includes services on multiple dates or for multiple individuals.[185]

The Bureau recognizes that the transaction date may be difficult to determine in some circumstances. However, under the framework in § 1006.34(b)(3) for determining the itemization date, the transaction date is one of five reference dates from which a debt collector may choose. Section 1006.34(b)(3) does not require a debt collector to use the transaction date as the reference date for itemization-related disclosures. If a debt collector cannot determine the transaction date, the debt collector may use another reference date.

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[184] See the discussion of tax debts in the introductory section-by-section analysis of § 1006.34(b)(3).

[185] Because of differences between various debt types and the particular facts and circumstances of any given transaction, § 1006.34(b)(3)(iv) provides debt collectors flexibility when selecting a transaction date. However, if the total amount of a debt in collection includes amounts incurred on different dates of service, the Bureau believes that, even though § 1006.34(b)(3)(iv) does not require it, debt collectors generally will select the last date of service as the transaction date. This date may be most recognizable to consumers. Further, disclosing itemization-related information as of the last date, as opposed to an earlier date, likely would be easier for a debt collector.

34(b)(3)(v)

As discussed above, the proposed definition of itemization date included four reference dates. In response to the proposed definition, an industry commenter suggested that the Bureau add a fifth date—the date of a court judgment. The Bureau has determined to adopt this recommendation. As a general matter, debt collectors will know if a court judgment against a consumer exists and consumers are likely to recognize the date of a court judgment against them or be able to verify the date with records. Further, the amount of the debt as of the date of a court judgment is verifiable as it will have been memorialized in court records. Accordingly, the Bureau is finalizing § 1006.34(b)(3)(v) to permit debt collectors to use as the itemization date the judgment date, which is the date of a final court judgment that determines the amount of the debt owed by the consumer.

34(b)(4) Validation Notice

FDCPA section 809(a) provides, in relevant part, that, within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall send the consumer a written notice containing specified information (*i.e.*, validation information), unless that information is contained in the initial communication or the consumer has paid the debt. Debt collectors and others commonly refer to the written notice required by FDCPA section 809(a) as a "validation notice" or a "g notice." The Bureau proposed in § 1006.34(b)(4) to define validation notice to mean a written or electronic notice that provides the validation information described in § 1006.34(c).[186] The Bureau received no comments regarding proposed § 1006.34(b)(4) and is finalizing it with a minor wording change for consistency with final § 1006.34(c).

[186] *See* 84 FR 23274, 23337 (May 21, 2019).

34(b)(5) Validation Period

FDCPA section 809(b) contains certain requirements that a debt collector must satisfy if a consumer disputes a debt or requests the name and address of the original creditor.[187] If a consumer disputes a debt in writing within 30 days of receiving the validation information, a debt collector must stop collection of the debt until the debt collector obtains verification of the debt or a copy of a judgment against the consumer and mails it to the consumer. Similarly, if a consumer requests the name and address of the original creditor in writing within 30 days of receiving the validation information, the debt collector must cease collection of the debt until the debt collector obtains and mails such information to the consumer. FDCPA section 809(b) also prohibits a debt collector, during the 30-day period for written disputes and original-creditor information requests, from engaging in collection activities and communications that overshadow, or are inconsistent with, the disclosure of the consumer's rights to dispute the debt and request original-creditor information, which are sometimes referred to as "verification rights."

As described in the section-by-section analysis of § 1006.34(c)(3)(i) through (iii), the Bureau proposed to require debt collectors to disclose to a consumer the date certain on which the consumer's verification rights under FDCPA section 809(b) expire. To facilitate compliance with that proposed requirement, proposed § 1006.34(b)(5) defined the term validation period to mean the period starting on the date that a debt collector provides the validation information described in § 1006.34(c) and ending 30 days after the consumer receives or is assumed to receive the validation information.[188] To clarify how to calculate the end of the validation period—including how debt collectors may disclose a period that provides consumers additional time beyond the required 30 days to exercise their validation rights—proposed § 1006.34(b)(5) provided that a debt collector may assume that a consumer receives the validation information on

[187] 15 U.S.C. 1692g(b).

[188] 84 FR 23274, 23337-38 (May 21, 2019).

any day that is at least five days (excluding legal public holidays, Saturdays, and Sundays) after the debt collector provides it. Proposed comment 34(b)(5)–1 clarified that, if a debt collector sends an initial validation notice that was not received and then sends a subsequent validation notice, the validation period ends 30 days after the consumer receives or is assumed to receive the subsequent validation notice.

For the reasons discussed below, the Bureau is finalizing proposed § 1006.34(b)(5) and proposed comment 34(b)(5)–1 (which is renumbered as comment 34(b)(5)–2) with minor wording changes for clarity and consistency with other provisions of Regulation F. The Bureau is adopting new comment 34(b)(5)–1 to illustrate how a debt collector may calculate the end of the validation period before sending the validation notice.

A number of commenters, including industry commenters, supported proposed § 1006.34(b)(5). According to several commenters, the proposed definition is consistent with current industry practices. For example, with respect to the proposed five-day delivery timing assumption, industry commenters stated that debt collectors generally assume that a consumer receives a validation notice five to eight days after mailing. Consumer advocate commenters objected to the proposed definition, stating that debt collectors should be obligated to honor consumer verification requests at any time, not only during the validation period.

Some commenters recommended lengthening the proposed five-day delivery timing assumption. A consumer advocate commenter and an industry trade group commenter suggested that the validation period definition should assume that the consumer receives the validation notice seven days after the debt collector mails it to account for delays or bulk mail delivery.[189]

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[189] United States Postal Service (USPS) delivery times for Standard Mail, commonly referred to as bulk mail, are typically longer than delivery times for first-class mail. For example, based on the USPS Originating Service Standards, bulk mail originated in Washington, DC takes six days to reach New York City, seven days to reach Denver, and nine days to reach Seattle. By contrast, first-class mail from Washington, DC reaches New York City in two days and Denver and Seattle in three days. *See* U.S. Postal Serv., *Service Standards Maps*, *https://postalpro.usps.com/ppro-tools/service-standards-maps* (last visited Nov. 16, 2020).

Another trade group commenter recommended a fixed ten-day assumption that omits consideration of weekends and holidays.

Other commenters recommended shortening the delivery timing assumption. For example, an industry trade group commenter recommended that the Bureau eliminate the assumption entirely and clarify that the validation period commences upon mailing of a validation notice. Other industry commenters urged the Bureau to shorten the assumption for near-instantaneous communication methods, such as electronic or oral delivery. In contrast, at least two industry trade groups commenters and a consumer advocate commenter recommended a uniform validation period across delivery methods. According to an industry trade group commenter, if the validation period is not the same for all delivery methods, consumers may be confused if they receive validation notices through different delivery methods with different due dates.

After considering this feedback, the Bureau determines that a validation period definition will facilitate debt collectors' compliance with the requirement in § 1006.34(c)(3) to disclose to a consumer the date certain on which the consumer's FDCPA section 809(b) verification rights expire. The Bureau declines, as requested by consumer advocate commenters, to require a debt collector to comply with a verification request that a consumer submits after the 30-day period provided by the statute has expired. FDCPA section 809(b) establishes a 30-day period for consumers to exercise their verification rights.[190]

The Bureau also declines to modify the length of the five-day delivery timing assumption. The Bureau proposed § 1006.34(b)(5) on the basis that a consumer typically receives a validation notice no more than five days (excluding legal public holidays, Saturdays, and Sundays) after the debt collector provides the notice. Based on its market monitoring

[190] Although the FDCPA and this implementing regulation do not require a debt collector to provide verification after the validation period expires, a debt collector nevertheless may choose to do so. The Bureau has received feedback from debt collectors and at least one industry trade group that many debt collectors respond to disputes with verification, and to original-creditor-information requests, after the validation period has expired.

activities, the Bureau understands that debt collectors typically send consumer communications by first-class mail, which generally is delivered in three business days or less.[191] The Bureau is unaware that debt collectors typically use bulk mail to deliver validation notices, and commenters offered no evidence otherwise. For these reasons, the Bureau declines to extend the five-day delivery timing assumption.

The Bureau also declines to shorten the validation period's five-day delivery timing assumption. The FDCPA's 30-day validation period begins to run when the consumer receives the validation information.[192] If the 30-day clock began to run upon the debt collector's mailing of the validation notice, as some commenters suggested, the consumer would be deprived of the full 30-day period provided by the FDCPA to respond to the notice. Further, the Bureau declines to shorten the length of the validation period for validation information provided by communication methods such as electronic delivery. A delivery timing assumption that varied by delivery method could pose compliance challenges and incentivize use of one communication method over another. Therefore, as proposed, the five-day delivery timing assumption applies uniformly to all validation information delivery methods.

A group of consumer advocates asked the Bureau to define the validation period based solely on when the consumer is assumed to receive the validation information. In other words, this commenter requested that the rule not permit the date that a consumer actually received the validation notice to serve as the basis of the validation period. According to this commenter, relying solely on the date that the consumer is assumed to receive the information would prevent confusion if the date the consumer received the notice and the date the debt collector assumed the consumer received it are different.

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[191] *See* U.S. Postal Serv., *Service Standards Maps*, *https://postalpro.usps.com/ppro-tools/service-standards-maps* (last visited Dec. 1, 2020).

[192] FDCPA section 809(a)(3) requires the validation notice to include "a statement that unless the consumer, within thirty days *after receipt of the notice*, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector." 15 U.S.C. 1692g(a)(3) (emphasis added).

The Bureau declines to adopt this suggestion. The FDCPA's 30-day validation period begins to run when the consumer receives the validation information. Nevertheless, the Bureau determines that, at least in certain contexts, the date that the consumer is assumed to receive the validation notice is the only date information that a debt collector will have at the time the validation information is generated. Specifically, a debt collector who sends a written or electronic validation notice will not know, at the time the notice is generated, the date on which the consumer will receive the notice and, therefore, must be able to use the date of assumed receipt to calculate the validation period end date. The Bureau is adding new comment 34(b)(5)–1 to clarify that, in such circumstances, debt collectors may rely on the date of assumed receipt, even if they learn after sending the notice that the consumer received the validation information on a different date.

Several industry and industry trade group commenters expressed concern about the use of the term "legal public holiday" in proposed § 1006.34(b)(5). According to these commenters, legal public holidays may include State and local holidays that the debt collector is not aware of and cannot reasonably ascertain. In response to these concerns, and consistent with § 1006.22(c)(1) in the November 2020 Final Rule,[193] the Bureau is revising § 1006.34(b)(5) to provide that a debt collector may assume that a consumer receives the validation information on any date that is at least five days (excluding legal public holidays identified in 5 U.S.C. 6103(a), Saturdays, and Sundays) after the debt collector provides it.

Several industry commenters asked the Bureau to clarify whether a debt collector must receive a consumer's verification request before the validation period end date, or whether the consumer need only send the request by the validation period end date for the request to be effective. The Bureau determines that a consumer's verification request—whether an original-creditor information request or a dispute—is effective if the consumer sends or submits the

[193] 85 FR 76734, 76833-34, 76892 (Nov. 30, 2020).

request within the 30-day period established in § 1006.34(b)(5), even if the debt collector does not receive the request until after the 30-day period. In specifying requirements for debt collectors' responses to consumers' verification requests, § 1006.38(c) and (d)(2) of the Bureau's November 2020 Final Rule implemented FDCPA section 809(b) by providing that, upon receipt of an original-creditor information request (§ 1006.38(c)) or a dispute (§ 1006.38(d)(2)) "*submitted by the consumer* in writing within the validation period, a debt collector must cease collection of the debt . . . ." (emphasis added). The Bureau determines that a consumer's original-creditor information request or dispute has been "submitted by the consumer" for purposes of § 1006.38(c) and (d)(2) if the consumer sends or submits the request within the 30-day period established in § 1006.34(b)(5), even if the debt collector does not receive the request until after the 30-day period.

For the reasons discussed above, the Bureau is adopting § 1006.34(b)(5) to provide that validation period means the period starting on the date that a debt collector provides the validation information and ending 30 days after the consumer receives or is assumed to receive it. Section 1006.34(b)(5) also specifies that a debt collector may assume that a consumer receives the validation information on any date that is at least five days (excluding legal public holidays identified in 5 U.S.C. 6103(a) (*i.e.*, federally recognized public holidays), Saturdays, and Sundays) after the debt collector provides it.

Proposed comment 34(b)(5)–1 clarified that, if a debt collector sends a subsequent validation notice to a consumer because the consumer did not receive the original validation notice and the consumer has not otherwise received the validation information, the debt collector must calculate the end of the validation period based on the date the consumer receives or is assumed to receive the subsequent validation notice.

At least two industry trade group commenters stated that proposed comment 34(b)(5)–1 was consistent with current industry practice. According to these commenters, if a validation notice is returned as undeliverable, debt collectors typically send a new validation notice and

provide a new period for consumers to exercise their verification rights. A law firm commenter asked the Bureau to provide additional guidance on a debt collector's duties if a validation notice is returned as undeliverable after the validation period has expired.

The Bureau concludes based on feedback received and its own market-monitoring, supervision, and enforcement experience that proposed comment 34(b)(5)–1 is consistent with existing industry practice and therefore is adopting it largely as proposed but renumbered as comment 34(b)(5)–2. If a validation notice is returned as undeliverable after the validation period has expired and the debt collector sends a subsequent notice, then, as stated in the comment, the debt collector must calculate the end of the validation period based on the date the consumer receives or is assumed to receive the subsequent validation notice.

34(c) Validation Information

Proposed § 1006.34(c) set forth the validation information that proposed § 1006.34(a)(1) would have required debt collectors to disclose. The validation information consisted of four general categories: information to help consumers identify debts (including the information specifically referenced in FDCPA section 809(a)); information about consumers' protections in debt collection; information to facilitate consumers' ability to exercise their rights with respect to debt collection; and certain other statutorily required information. Each of those categories is addressed separately in the section-by-section analysis of § 1006.34(c)(1) through (4).

34(c)(1) Debt Collector Communication Disclosure

FDCPA section 807(11) requires a debt collector to disclose in its initial written communication with a consumer—and, if the initial communication is oral, in that oral communication as well—that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose.[194] A debt collector must also disclose in each subsequent communication that the communication is from a debt collector. If a debt collector

[194] *See* 15 U.S.C. 1692e(11).

provides validation information, the debt collector engages in a debt collection communication and must make an appropriate FDCPA section 807(11) disclosure.[195]

The Bureau proposed to implement the FDCPA section 807(11) disclosures in § 1006.18(e).[196] In turn, the Bureau proposed in § 1006.34(c)(1) that the § 1006.18(e) disclosure is required validation information. The Bureau finalized § 1006.18(e) in the November 2020 Final Rule.[197] Section 1006.18(e)(1) requires a debt collector to disclose in its initial communication that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose. Section 1006.18(e)(2) requires a debt collector to disclose in each subsequent communication that the communication is from a debt collector.

At least one industry trade group supported proposed § 1006.34(c)(1)'s cross-reference to the FDCPA section 807(11) requirement. A consumer advocate commenter asked the Bureau to clarify what version of the FDCPA section 807(11) disclosure should appear on the validation notice: the longer, initial disclosure described in § 1006.18(e)(1) or the shorter, subsequent disclosure described in § 1006.18(e)(2).

The Bureau is adopting new comment 34(c)(1)–1 to clarify that a debt collector who provides the validation notice required by § 1006.34(a)(1)(i)(A)—*i.e.*, a debt collector who provides the validation notice in the initial communication—complies with § 1006.34(c)(1) by providing the disclosure described in § 1006.18(e)(1). The disclosure described in § 1006.18(e)(1) is broader than, and incorporates the content of, the disclosure described in § 1006.18(e)(2). Accordingly, new comment 34(c)(1)–1 also clarifies that a debt collector who provides the validation notice required by § 1006.34(a)(1)(i)(B)—*i.e.*, a debt collector who provides the validation notice within five days of the initial communication—complies with § 1006.34(c)(1) by providing either the disclosure required by § 1006.18(e)(1) or the disclosure

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[195] *See, e.g.*, *Dorsey v. Morgan*, 760 F. Supp. 509 (D. Md. 1991).

[196] *See* 84 FR 23274, 23322-23, 23402 (May 21, 2019).

[197] *See* 85 FR 76734, 76830-31, 76891-92 (Nov. 30, 2020).

required by § 1006.18(e)(2).[198] The Bureau determines that this clarification will facilitate compliance, encourage use of the model validation notice, and protect consumers.

The consumer advocate commenter also recommended that the Bureau require every validation notice to include a Spanish translation of the FDCPA section 807(11) disclosure to assist Spanish-speaking consumers. The Bureau declines to do so. Mandating that every debt collector provide a Spanish translation of the disclosure is unnecessary for the majority of consumers, who are not Spanish speakers. Further, a mandatory translation could undermine the effectiveness of the other validation information disclosures. Moreover, the November 2020 Final Rule contained a targeted language access intervention on this topic. Pursuant to § 1006.18(e)(4) in that rule, debt collectors will be required to make the FDCPA section 807(11) disclosure in the same language or languages used for the rest of the communication in which the disclosures are conveyed. Thus, if a debt collector provides a consumer a validation notice in Spanish pursuant to § 1006.34(e), the debt collector must include on that notice a Spanish translation of the FDCPA section 807(11) disclosure.

Accordingly, the Bureau is finalizing § 1006.34(c)(1) as proposed and is finalizing new comment 34(c)(1)–1 as described above.

34(c)(2) Information About the Debt

Proposed § 1006.34(c)(2) specified that certain information about the debt and the parties related to the debt was required validation information.[199] The section-by-section analysis of proposed § 1006.34(c)(2)(i) through (x) discussed the specific items of information, which were designed to help consumers recognize debts and included existing disclosures. The Bureau addresses comments related to specific disclosures in the section-by-section analysis of

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[198] The model validation notice includes the disclosure required by § 1006.18(e)(1). As explained in the section-by-section analysis of § 1006.34(d)(2), new comment 34(d)(2)(i)–1 clarifies that a debt collector who uses the model notice to provide a validation notice as described in § 1006.34(a)(1)(i)(B) may replace the disclosure required by § 1006.18(e)(1) with the disclosure required by § 1006.18(e)(2) without losing the safe harbor provided by use of the model notice.

[199] 84 FR 23274, 23338-42, 23404 (May 21, 2019). Proposed § 1006.34(c)(5) set forth a special rule for information about the debt for certain residential mortgage debt.

§ 1006.34(c)(2)(i) through (x). In this section-by-section analysis, the Bureau addresses comments related to § 1006.34(c)(2) more generally.

Some commenters supported proposed § 1006.34(c)(2). A consumer advocate and a municipal government commenter stated that the proposed validation information would help consumers determine whether they owe a debt. A group of State Attorneys General stated that consumers today do not consistently receive the information they need to identify debts. According to these commenters, consumers routinely submit complaints that they do not recognize the debts or creditors disclosed on validation notices. An industry trade group stated that it would be feasible for debt collectors to disclose the proposed information because debt buyers routinely obtain such information at purchase.

Other commenters objected to proposed § 1006.34(c)(2) and suggested that consumers do not need information beyond what the FDCPA expressly requires. An industry trade group stated, without providing verifiable evidence, that most debts are valid and asserted that less than one-half of 1 percent of debts lack a contractual basis or are miscalculated. According to this commenter, the small number of debts that are problematic can be resolved by consumers invoking their FDCPA verification rights.

Other commenters who objected to proposed § 1006.34(c)(2) cited industry burden. For example, one industry commenter stated that requiring debt collectors to disclose the proposed information about the debt and parties related to the debt would increase costs for debt collectors as well as for creditors. Another industry commenter suggested that proposed § 1006.34(c)(2) was not feasible because debt collectors rely on creditors for account information and records. According to this commenter, if creditors did not provide the information, debt collectors would be unable to comply with § 1006.34(c)(2).

Some commenters stated that the information proposed § 1006.34(c)(2) would require might confuse consumers and questioned whether it was supported by the Bureau's consumer testing.

Some commenters recommended that the Bureau revise proposed § 1006.34(c)(2) to require additional validation information. Federal government agency staff, a group of State Attorneys General, and a government commenter suggested that the name of the original creditor and the date of the original transaction should be required validation information. A group of State Attorneys General suggested that the Bureau require debt collectors to provide information about the debt as of the charge-off date. Two associations representing State regulatory agencies recommended that the Bureau require disclosure of a debt collector's State license or registration number, such as the Nationwide Multi-State Licensing System identification. According to these commenters, requiring debt collectors to disclose license or registration information would assist regulators examining for compliance with State debt collection laws. In addition, a consumer advocate, an industry trade group, and an industry commenter recommended that, for medical debt, validation information should include the facility name associated with the debt. According to these commenters, a consumer may be more likely to recognize a facility where treatment was provided than the name of the physician or healthcare provider to whom the consumer owes the debt.

After considering the feedback, the Bureau has determined to finalize § 1006.34(c)(2). The Bureau determines that validation notices in use today frequently lack sufficient information about the debt and the parties related to the debt, and this lack of information undermines the ability of consumers to determine whether they owe an alleged debt. This conclusion is consistent with feedback from Federal and State government commenters, including the FTC and a group of State Attorneys General. The Bureau's testing also supports this conclusion.[200]

The Bureau determines that requiring debt collectors to disclose the information about the debt and parties related to the debt in § 1006.34(c)(2) is necessary. Industry commenters did not support their claims about the relative infrequency of problematic debts with verifiable

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[200] Certain information that Bureau qualitative testing indicates helps consumers to recognize a debt—including a debt's original account number or an itemization of interest and fees—may not consistently appear on validation notices. *See* FMG Cognitive Report, *supra* note 27, at 8-11.

evidence.[201] In addition, a group of State Attorneys General stated that consumers routinely complain that they do not recognize debts being collected, and the Bureau's complaint statistics indicate similar concerns about debts among consumers.[202] Thus, the Bureau is finalizing § 1006.34(c)(2) to require information about the debt and parties related to the debt.

The Bureau also determines that § 1006.34(c)(2) will not impose undue industry burden. As discussed in part VII, while § 1006.34(c)(2) may increase some costs for debt collectors, as well as cause some indirect costs for creditors, the Bureau does not expect these costs to be substantial. The Bureau disagrees that a significant number of debt collectors will be unable to comply with § 1006.34(c)(2). The Bureau acknowledges that debt collectors depend on creditors to provide account information and that creditors will not be required by the final rule to provide the information that § 1006.34(c)(2) will require. Notwithstanding this fact, the Bureau has received feedback that many creditors today make available much of the information mandated by § 1006.34(c)(2). To the extent that creditors do not already provide debt collectors with this information, the Bureau determines that creditors will be incentivized to do so after § 1006.34(c)(2)'s effective date because the debt collectors they hire or sell debts to will be unable to legally collect without it.

The Bureau determines that the information required by § 1006.34(c)(2) will not confuse consumers. As discussed in part III.C, the Bureau has validated the model validation notice and the validation information contained therein through four rounds of consumer testing.

The Bureau declines the recommendation to add certain disclosures to § 1006.34(c)(2). First, the Bureau declines to require the name of the original creditor and the date of the original

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[201] Even assuming one commenter's claim that only one-half of 1 percent of debts lack a contractual basis or are miscalculated, this error rate would impact hundreds of thousands of consumers annually. As the proposal noted, 49 million consumers are contacted by debt collectors every year. *See* 84 FR 23274, 23382 n.656 (May 21, 2019). If one-half of 1 percent of these consumers received validation notices for debts they did not owe, 245,000 consumers could be impacted.

[202] The most common debt collection complaint received by the Bureau continues to be about attempts to collect a debt that the consumer reports is not owed. *See* 2020 FDCPA Annual Report, *supra* note 12, at 14. Consumers may report that a debt is not owed for a variety of reasons including, but not limited to, that the debt is being collected in error or that the consumer does not recognize the debt.

transaction. Requiring this additional information on validation notices may overwhelm consumers, may be repetitive, or may otherwise not add to consumer understanding because the validation information already includes items such as the debt collector's name (§ 1006.34(c)(2)(i)), the name of the creditor to whom the debt was owed on the itemization date (§ 1006.34(c)(2)(iii)), and the name of the creditor to whom debt is currently owed (§ 1006.34(c)(2)(v)).

The Bureau also declines to tie information disclosure requirements to the date that a debt was charged off because charge off is not relevant to all debt types. However, as discussed in the section-by-section analysis of § 1006.34(b)(3)(ii), a debt collector may use the charge-off date as the itemization date, in which case consumers will receive information about the amount of the date as of the charge-off date, as well as information about interest, fees, payments, and credits since that date.[203]

The Bureau also declines to require a debt collector to disclose a State license or registration number. If a debt collector is specifically required by applicable law to disclose such information, a debt collector may do so as an optional disclosure under final § 1006.34(d)(3)(iv)(A).

The Bureau does agree that a facility name associated with a debt may be helpful to consumers in the medical debt context. The Bureau is not modifying § 1006.34(c)(2) to require this information, but final § 1006.34(d)(3)(vii) permits debt collectors to include facility name as an optional disclosure.

Accordingly, as noted above, the Bureau is finalizing § 1006.34(c)(2) to require debt collectors to provide certain information about the debt and the parties related to the debt. Except with respect to final § 1006.34(c)(2)(iii), the Bureau is finalizing § 1006.34(c)(2) pursuant to its authority under FDCPA section 814(d) to prescribe rules with respect to the

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[203] *See* the section-by-section analysis of § 1006.34(c)(2)(vii) and (viii).

collection of debts by debt collectors and, as described more fully below, its authority to implement and interpret FDCPA section 809. In addition, except with respect to final § 1006.34(c)(2)(v) and (ix), the Bureau is finalizing § 1006.34(c)(2) pursuant to its authority under section 1032(a) of the Dodd-Frank Act, on the basis that the validation information describes the debt, which is a feature of debt collection.

34(c)(2)(i)

FDCPA section 809(b) provides that a consumer may notify a debt collector in writing, within 30 days after receipt of the information required by FDCPA section 809(a), that the consumer is exercising certain verification rights, including the right to dispute the debt.[204] FDCPA section 809(a)(3) through (5), in turn, requires debt collectors to disclose how consumers may exercise their verification rights. The proposal stated that to notify a debt collector in writing that the consumer is exercising the consumer's verification rights, the consumer must have the debt collector's name and address.[205] Proposed § 1006.34(c)(2)(i) therefore provided that the debt collector's name and mailing address are required validation information.

Industry and industry trade group commenters recommended various revisions to proposed § 1006.34(c)(2)(i). First, some industry trade group commenters suggested that the Bureau permit a debt collector to disclose a trade name or doing-business-as name (DBA), in lieu of the debt collector's legal name. According to these commenters, because a debt collector may not use its legal name when communicating with consumers, a consumer may be more likely to recognize the debt collector's trade name or DBA.

Next, one industry trade group commenter recommended that the Bureau permit a debt collector to disclose a vendor's mailing address because some debt collectors do not receive mail from consumers at their office locations and instead use letter vendors.

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[204] 15 U.S.C. 1692g(b).

[205] 84 FR 23274, 23339, 23404 (May 21, 2019).

Finally, some industry and industry trade group commenters recommended that the Bureau permit debt collectors to disclose multiple addresses. Some of these commenters stated that debt collectors may use separate addresses for payments and other correspondence, including disputes. For example, an industry trade group stated that some clients of debt collectors, including the Department of Education, do not permit debt collectors to receive payments at their office locations and instead require debt collectors to direct payments to a "lockbox," which is a post office box administered by a third party for the receipt of payments.

A consumer advocate asked the Bureau to modify proposed § 1006.34(c)(2)(i) to require debt collectors to also disclose a telephone number, an email address, and any other method the debt collector uses for consumer communications.

After considering the feedback, the Bureau is adopting § 1006.34(c)(2)(i) with a revision for clarity and is also adopting two new comments to incorporate certain suggestions made by commenters.

As noted, some commenters suggested that debt collectors who use multiple mailing addresses be permitted to include more than one mailing address as validation information. The Bureau declines to affirmatively permit the use of more than one mailing address as validation information. As discussed in the proposal, the purpose of validation information is to facilitate a consumer's exercise of their rights in debt collection, namely, the right to dispute the debt or to request original-creditor information. Accordingly, the mailing address included in the validation information must be an address at which the debt collector accepts disputes and original-creditor information requests. The Bureau is revising § 1006.34(c)(2)(i) to affirmatively state this requirement. If a debt collector only accepts payments at a different address than the address at which it accepts disputes and original-creditor information requests, the Bureau notes that the debt collector need not include payment disclosures with the validation information; they

are optional disclosures under § 1006.34(d)(3)(iii).[206] Moreover, if a debt collector omits the optional payment disclosures, the validation notice will continue to contain contact information for the debt collector, including, at the debt collector's option, the debt collector's telephone number pursuant to § 1006.34(d)(3)(i), should the consumer wish to reach out for payment information or to make a payment.

The Bureau is also adopting new comment 34(c)(2)(i)–1 to clarify that a debt collector may disclose the debt collector's trade name or DBA in lieu of the debt collector's legal name. The Bureau observes that, in some cases, a debt collector's trade name or DBA may be more recognizable to consumers than the debt collector's legal name. The Bureau therefore determines that a debt collector may use its trade name or DBA when communicating with consumers. However, when disclosing a trade name or DBA, the debt collector may not do so in a manner that violates the FDCPA section 807 prohibition on false or misleading representations. For example, a debt collector may violate the FDCPA and this final rule if the debt collector discloses a trade name or DBA that falsely represents or implies that the debt collector is an attorney, when that is not the case.[207]

Second, the Bureau is adopting new comment 34(c)(2)(i)–2 to clarify that a debt collector may disclose a vendor's mailing address, if that is an address at which the debt collector accepts disputes and requests for original-creditor information. As one commenter observed, some debt collectors may use a vendor to receive mail from consumers. The Bureau is finalizing comment 34(c)(2)(i)–2 to accommodate this business practice.

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[206] The Bureau also notes that nothing in Regulation F prevents a debt collector from using a different mailing address in communications that do not contain the validation information. For example, if a debt collector accepts payments at a different address, the payment address may be included in a separate communication seeking payment. Additionally, as noted at the outset of the section-by-section analysis of § 1006.34, the Bureau is not finalizing the proposed requirement that all validation notices be substantially similar to the Bureau's model validation notice. Therefore, a debt collector may include a separate payment address on a validation notice, but a debt collector who does so will not receive safe harbors pursuant to §§ 1006.34(d)(2) and 1006.38(b)(2) and must otherwise comply with the FDCPA and Regulation F.

[207] *See* 15 U.S.C. 1692e(3).

The Bureau declines to adopt the recommendation of some commenters to require debt collectors to disclose other contact methods, including a telephone number or an email address. The FDCPA does not require debt collectors to communicate by telephone or email. However, as noted, § 1006.34(d)(3)(i) permits a debt collector to disclose the debt collector's telephone number. Likewise, § 1006.34(d)(3)(v)(A), permits a debt collector to disclose the debt collector's website and email address.

34(c)(2)(ii)

FDCPA section 809(a) requires debt collectors to disclose information about the debt that helps consumers identify the debt and facilitates resolution of the debt. The proposal stated that, like the information FDCPA section 809(a) expressly requires, the consumer's name and address is essential information about the debt that may help a consumer determine whether the consumer owes a debt and is the intended recipient of a validation notice.[208] The Bureau therefore proposed § 1006.34(c)(2)(ii) to provide that the consumer's name and mailing address is required validation information. As discussed below, proposed comment 34(c)(2)(ii)–1 clarified the meaning of the term "consumer's name."

A consumer advocate and an industry trade group expressed overall support for the proposed provision. The consumer advocate stated that consumer name information would help a consumer identify an alleged debt. The consumer advocate also stated that complete name information—such as a first name, middle name, last name, and suffix—would help consumers determine whether a debt collector is seeking a different consumer with a similar name. According to the industry trade group, it would be unreasonable for a debt collector to omit known name information. For the reasons discussed in the proposal, the Bureau is finalizing § 1006.34(c)(2)(ii) as proposed.

[208] 84 FR 23274, 23339 (May 21, 2019).

Proposed comment 34(c)(2)(ii)–1 clarified that the consumer's name should reflect what the debt collector reasonably determines is the most complete version of the name information about which the debt collector has knowledge, whether obtained from the creditor or another source. Proposed comment 34(c)(2)(ii)–1 further explained that a debt collector would not be able to omit name information in a manner that would create a false, misleading, or confusing impression about the consumer's identity and provided an example.

Some commenters raised concerns about proposed comment 34(c)(2)(ii)–1. A number of industry and industry trade group commenters objected to the statement that debt collectors would be required to determine the most complete version of the name about which the debt collector has knowledge, whether obtained from the creditor or another source. These commenters stated that the reference to "another source" was ambiguous and would create litigation risk and compel debt collectors to conduct open-ended research about a consumer's name. Several commenters urged the Bureau to omit the reference to "another source."

The Bureau is finalizing comment 34(c)(2)–1 with revisions in response to feedback and for clarity. First, the Bureau is deleting the phrase "whether obtained from the creditor or another source." This phrase is unnecessary as it does not alter the fundamental expectation that a debt collector will disclose the most complete and accurate name about which the debt collector has knowledge. In addition, the Bureau determines that the reference to "another source" is ambiguous and may create unjustified litigation risk and industry burden.

Second, the Bureau is revising the comment to clarify that a debt collector must reasonably determine "the most complete and accurate version" of a consumer's name. The Bureau intended that a debt collector would be required to disclose "accurate" consumer name information, but proposed comment 34(c)(2)–1 only referred to "the most complete version" of the consumer's name. Finally, the Bureau has elaborated on the example of a debt collector omitting a consumer's name information.

34(c)(2)(iii)[209]

FDCPA section 809(a)(2), which requires debt collectors to disclose to consumers the name of the creditor to whom the debt is owed, typically is understood to refer to the current creditor.[210] As the proposal stated, if the original creditor (or the creditor as of the itemization date) and the current creditor are the same, a consumer is more likely to recognize the creditor's name. If they are different, however, a consumer may be less likely to recognize the current creditor than the name of the creditor as of the itemization date. Proposed § 1006.34(c)(2)(iv) provided that, if a debt collector is collecting a consumer financial product or service debt (as that term was defined in proposed § 1006.2(f)), the name of the creditor to whom the debt was owed on the itemization date is required validation information.[211] For the reasons discussed below, the Bureau is finalizing proposed § 1006.34(c)(2)(iv) with minor wording changes and renumbered as § 1006.34(c)(2)(iii), and is adopting new comment 34(c)(2)(iii)–1 to clarify that a debt collector may disclose the trade name or DBA of the creditor to whom the debt was owed on the itemization date.

An industry trade group commenter expressed support for requiring debt collectors to disclose the creditor to whom the debt was owed on the itemization date but asked the Bureau to clarify that a debt collector may disclose this creditor's trade name or DBA, as opposed to its legal name, which a consumer may not recognize.

A consumer advocate objected to the proposal because a consumer may not recognize the creditor to whom the debt was owed on the itemization date. According to the commenter, in some cases, the itemization date may have occurred years after the debt was incurred. And, particularly if the debt was transferred before the itemization date, the consumer may not

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[209] Proposed § 1006.34(c)(2)(iii) generally provided that the merchant brand, if any, associated with a credit card debt was required validation information. The Bureau is finalizing merchant brand information as an optional disclosure. *See* the section-by-section analysis of § 1006.34(d)(3)(vii). The Bureau therefore is finalizing proposed § 1006.34(c)(2)(iv) through (x) as § 1006.34(c)(2)(iii) through (ix).

[210] *See* 15 U.S.C. 1692g(a)(2). *See* the section-by-section analysis of § 1006.34(c)(2)(v).

[211] 84 FR 23274, 23404 (May 21, 2019).

recognize the creditor as of that date. As an alternative, the commenter suggested that a debt collector be required to disclose the name of the original creditor.

As discussed in the section-by-section analysis of § 1006.34(c)(2)(i), an entity's trade name or DBA may be more recognizable to consumers than an entity's legal name. It may be appropriate for a debt collector to disclose a creditor's trade name or DBA, in lieu of the creditor's legal name, when communicating with consumers. Thus, the Bureau is adopting new comment 34(c)(2)(iii)–1 to clarify that a debt collector may disclose as validation information the trade name or DBA of the creditor to whom the debt was owed on the itemization date.

The Bureau declines to require a debt collector to disclose the name of the original creditor as validation information under § 1006.34(c). FDCPA section 809(a)(5) and (b) require a debt collector to provide the name and address of the original creditor in response to a consumer request. While the Bureau acknowledges that, in some cases, a consumer may not recognize the creditor to whom the debt was owed on the itemization date, this information will still benefit some consumers. For an older debt or a debt that has been transferred, consumers may be more likely to recognize the creditor as of the itemization date than the current creditor.

Accordingly, the Bureau is finalizing § 1006.34(c)(2)(iii) to provide that, if the debt collector is collecting debt related to a consumer financial product or service as defined in § 1006.2(f), the name of the creditor to whom the debt was owed on the itemization date is required validation information. In addition, the Bureau is finalizing comment 34(c)(2)(iii)–1 to clarify that a debt collector may disclose the trade name or DBA of the creditor to whom the debt was owed on the itemization date.

34(c)(2)(iv)

The purpose of FDCPA section 809 is to "eliminate the recurring problem of debt collectors dunning the wrong person or attempting to collect debts which the consumer has

already paid."[212] Consistent with the FDCPA's purpose, FDCPA section 809(a) requires debt collectors to disclose to consumers certain information, such as the amount of the debt, to help consumers identify debts. According to the proposal, an account number associated with a debt on the itemization date may be integral information that a consumer uses to identify the debt.[213] The Bureau proposed § 1006.34(c)(2)(v) to provide that the account number, if any, associated with the debt on the itemization date, or a truncated version of that number, is required validation information. Proposed comment 34(c)(2)(v)–1 explained that a debt collector may truncate an account number provided that the account number remains recognizable. For the reasons discussed below, the Bureau is adopting proposed § 1006.34(c)(2)(v), renumbered as § 1006.34(c)(2)(iv), and its related commentary with minor wording changes.

Industry commenters, a consumer advocate, and a group of State Attorneys General, expressed overall support for proposed § 1006.34(c)(2)(v). However, one industry commenter recommended that the Bureau exempt debt collectors collecting residential mortgage debt from the requirement to disclose an account number. According to the commenter, the account number for a residential mortgage that has had a servicing transfer may not be the current account number, which might confuse consumers.

The Bureau concludes that an account number associated with a debt on the itemization date may help some consumers recognize the debt. The Bureau declines to adopt the recommendation to exempt debt collectors collecting residential mortgage debt from disclosing an account number. As discussed in the section-by-section analysis of § 1006.34(b)(3), the Bureau has determined that the reference dates that a debt collector may use to determine the itemization date may be meaningful to consumers because they correspond to a notable event in the debt's history that consumers may recall or be able to verify with records. By extension, the

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[212] S. Rep. No. 382, *supra* note 57, at 4.

[213] 84 FR 23274, 23340 (May 21, 2019).

Bureau determines that an account number associated with a debt as of one of those dates will also likely resonate with a consumer, even if it is not the current account number.

Accordingly, the Bureau is finalizing § 1006.34(c)(2)(iv) and its related commentary largely as proposed, with only minor wording changes to the commentary for clarity. No substantive change is intended.

34(c)(2)(v)

FDCPA section 809(a)(2) requires debt collectors to disclose to consumers the name of the creditor to whom the debt is owed.[214] By using the present tense "is owed," the statute appears to refer to the creditor to whom the debt is owed when the debt collector makes the disclosure.[215] The Bureau proposed § 1006.34(c)(2)(vi) to provide that the name of the current creditor is required validation information. For the reasons discussed below, the Bureau is finalizing the proposal, renumbered as § 1006.34(c)(2)(v), and is adopting new comment 34(c)(2)(v)–1 to clarify that a debt collector may disclose the trade name or DBA of the creditor to whom the debt is currently owed, instead of its legal name.

The Bureau received no comments specifically addressing proposed § 1006.34(c)(2)(vi) and is finalizing it as proposed but renumbered as § 1006.34(c)(2)(v). An industry trade group commenter recommended that the Bureau permit debt collectors to disclose, along with the required validation information, all current and past creditors associated with the debt. According to the commenter, some creditors, such as healthcare and financial services providers, may have multiple sub-entities with different corporate names. This commenter suggested that disclosing more names of creditors will increase the likelihood that a consumer will recognize one of them.

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[214] *See* 15 U.S.C. 1692g(a)(2).

[215] 84 FR 23274, 23341 (May 21, 2019).

The Bureau declines to adopt this recommendation. Disclosing all current and past creditors along with the validation information could overwhelm and confuse consumers.[216] Thus, as discussed in the section-by-section analysis of § 1006.34(c), the Bureau is requiring debt collectors to disclose as validation information only two creditors: the creditor to whom the debt was owed on the itemization date (§ 1006.34(c)(2)(iii)) and the creditor to whom the debt is currently owed (§ 1006.34(c)(2)(v)). Nothing in the final rule prohibits a debt collector from including the name of another creditor on a validation notice, but a debt collector who does so will not receive the § 1006.34(d)(2) safe harbor and will risk not complying with the requirements of § 1006.34, including the § 1006.34(b)(1) clear and conspicuous standard.

As discussed in the section-by-section analysis of § 1006.34(c)(2)(i) and (iii), the Bureau is finalizing new comments 34(c)(2)(i)–1 and 34(c)(2)(iii)–1 to clarify that a debt collector may disclose an entity's trade name or DBA, instead of its legal name. The Bureau concludes that it is also appropriate to permit a debt collector to disclose the trade name or DBA of a current creditor. Thus, the Bureau is adopting new comment 34(c)(2)(v)–1 to clarify that a debt collector may disclose the trade name or a DBA of the creditor to whom the debt is currently owed, instead of its legal name.

34(c)(2)(vi)

FDCPA section 809(a)(1) requires debt collectors to disclose to consumers the amount of the debt.[217] In § 1006.34(c)(2)(viii), the Bureau proposed to interpret FDCPA section 809(a)(1), and to use its authority under Dodd-Frank Act section 1032(a), to provide that the amount of the debt on the itemization date is required validation information.[218] Consistent with proposed § 1006.34(c)(2)(viii), the Bureau proposed § 1006.34(c)(2)(vii) to provide that the itemization

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[216] During one round of cognitive testing, participants were shown disclosure language that included a list of prior creditors. Confusion was observed when participants tried to explain the difference between prior and current creditors. The unclear relationship between creditors was highlighted when participants attempted to identify the creditor that currently owned the debt. *See* FMG Cognitive Report, *supra* note 27, at 3-4.

[217] *See* 15 U.S.C. 1692g(a)(1).

[218] 84 FR 23274, 23341 (May 21, 2019).

date, as defined in § 1006.34(b)(3), also is required validation information. For the reasons discussed below, the Bureau is finalizing § 1006.34(c)(2)(vii) as proposed but renumbered as § 1006.34(c)(2)(vi).

Several commenters, including an industry commenter, an industry trade group commenter, and a group of consumer advocates, stated that the itemization date may not be meaningful to consumers or help them recognize debts, if disclosed without an explanation of its relevance. These commenters, along with Federal government agency staff, recommended requiring debt collectors to disclose with the itemization date a statement explaining which reference date the debt collector used to determine that date.[219]

The Bureau declines to adopt this recommendation. As discussed in the section-by-section analysis of § 1006.34(b)(3), the Bureau determines that the reference dates that a debt collector may use to determine the itemization date have a significant likelihood of being meaningful to consumers because they correspond to notable events in a debt's history that consumers may recall or be able to verify with records. Because each of the reference dates may be meaningful to consumers, the Bureau determines that no additional disclosure explaining their relevance is necessary. Moreover, the Bureau determines that an additional disclosure explaining the reference date may confuse or overwhelm some consumers. While a debt collector likely could describe some reference dates (*e.g.*, a last statement date) in a straightforward manner, other reference dates (*e.g.*, the charge-off date and the transaction date) do not lend themselves to a succinct explanation. That is because some reference dates reflect financial concepts that are inherently complex (*i.e.*, charge off) or that could vary by debt type and the facts and circumstances surrounding a particular debt (*i.e.*, transaction dates). For such reference dates, a statement explaining their relevance could distract or confuse consumers, thereby undermining the efficacy of the other validation information.

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[219] As discussed in the section-by-section analysis of § 1006.34(b)(3), the Bureau defines itemization date to mean one of five reference dates for which a debt collector can ascertain the amount of the debt.

34(c)(2)(vii)

As noted, FDCPA section 809(a)(1) requires debt collectors to disclose to consumers the amount of the debt. As discussed in the proposal, the phrase "the amount of the debt" is ambiguous; it does not specify which debt amount is being referred to, even though the debt amount may change over time. As also discussed in the proposal, consumers may recognize the amount of the debt as of the itemization date (as the Bureau proposed to define that term in § 1006.34(b)(3)). Because the amount of the debt on the itemization date may help a consumer recognize a debt and determine whether the amount of a debt is accurate, the Bureau proposed to interpret FDCPA section 809(a)(1), and to use its authority under Dodd-Frank Act section 1032(a), to provide in proposed § 1006.34(c)(2)(viii) that the amount of the debt on the itemization date is required validation information.[220] Proposed comment 34(c)(2)(viii)–1 explained that this amount includes any fees, interest, or other charges owed as of the itemization date.

An industry commenter questioned whether proposed § 1006.34(c)(2)(viii) would significantly improve consumer understanding. According to the commenter, if a debt collector determines the itemization date based on the last statement date pursuant to § 1006.34(b)(3)(i), and if the debt is placed for collection shortly after the last statement was provided, the current amount of the debt (which the Bureau proposed as a separate item of required validation information) and the amount of the debt on the itemization date would be approximately the same. The commenter stated that, in this scenario, disclosing the amount of the debt on the itemization date would not benefit the consumer.

The Bureau acknowledges that, for a given debt, the amount owed on the itemization date and the current amount of the debt may be similar or even the same. However, as discussed below in the section-by-section analysis of final § 1006.34(c)(2)(viii), even in these cases, the

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[220] 84 FR 23274, 23341 (May 21, 2019). As proposed, the Bureau is finalizing § 1006.34(c)(2)(ix) (renumbered from proposed § 1006.34(c)(2)(x)) separately to provide that the current amount of the debt also is required validation information.

itemization of the debt will still be required, and, as clarified in final comment 34(c)(2)(viii)–1, the itemization (if the amounts are the same) will show $0 in interest, fees, payments, and credits. As such, it should be clear to the consumer why the two amounts are the same. In many other cases, these amounts will differ, sometimes substantially. In these cases, the amount of the debt on the itemization date will help consumers recognize or evaluate the debt.

For these reasons, the Bureau is finalizing § 1006.34(c)(2)(viii) and its related commentary as proposed but renumbered as § 1006.34(c)(2)(vii).

34(c)(2)(viii)

As noted, FDCPA section 809(a)(1) requires a debt collector to disclose to consumers the amount of the debt. As discussed, the Bureau proposed to implement and interpret FDCPA section 809(a)(1) to provide that debt collectors must disclose to consumers both the amount of the debt on the itemization date and the current amount of the debt (*i.e.*, the amount of the debt on the date that the validation information is provided).[221] In conjunction with the amount of the debt on the itemization date and the current amount of the debt, the Bureau proposed § 1006.34(c)(2)(ix) to provide that an itemization of the current amount of the debt, in a tabular format reflecting interest, fees, payments, and credits since the itemization date, is required validation information. Proposed comment 34(c)(2)(ix)–1 clarified how debt collectors could disclose that no interest, fees, payments, or credits were assessed or applied to a debt.

For the reasons discussed below, the Bureau is finalizing the proposal, renumbered as § 1006.34(c)(2)(viii), with revisions to permit debt collectors to disclose the itemization on a separate page provided in the same communication with a validation notice, if the debt collector includes on the validation notice, where the itemization would have appeared, a statement referring to that separate page. The Bureau also is finalizing comment 34(c)(2)(ix)–1 with a

[221] 84 FR 23274, 23341 (May 21, 2019).

substantive modification and renumbered as comment 34(c)(2)(viii)–1, and is adopting new comments 34(c)(2)(viii)–2 through–4 to clarify other aspects of final § 1006.34(c)(2)(viii).

Commenters offered differing opinions regarding proposed § 1006.34(c)(2)(ix). A group of State Attorneys General, Federal government agency staff, consumer advocate commenters, some industry trade group commenters, and at least one industry commenter supported the proposed provision. These commenters generally agreed that an itemization of the debt would help consumers recognize an alleged debt and understand how the debt had evolved over time due to interest, fees, payments, and credits. Further, the Bureau received feedback that the proposal was consistent with some industry practice. For instance, a commenter noted an industry certification standard that, during the sales of certain debt types, requires debt buyers to obtain or provide the unpaid balance due on the account, with a breakdown of the post-charge-off balance, interest, fees, payments, and credits or adjustments.[222]

The majority of industry and industry trade group commenters objected to proposed § 1006.34(c)(2)(ix). Some such commenters stated that the proposed itemization requirement would be burdensome. According to several industry commenters, debt collectors would either have to manually access itemization information in creditor files or implement costly information technology solutions to comply with the proposed requirement. Some industry commenters, industry trade groups, and the SBA argued that the proposed requirement would impose burdens on creditors. Commenters stated that some creditors may not maintain all of the itemization information that the proposal would require or do not typically provide itemization information at placement and that to do so would involve significant expense. Some commenters speculated that, to avoid such costs, creditors might refer fewer accounts for collection or file more collections lawsuits against consumers. The SBA, an industry trade group, and industry commenters argued that compliance costs could be onerous for smaller creditors and debt

[222] *See* Receivables Mgmt. Ass'n Int'l, *Receivables Management Certification Program*, at 41-45 (Mar. 1, 2020), *https://rmaintl.org/RMCP* (last visited Dec. 9, 2020).

collectors. For the most part, commenters offered qualitative assessments of industry burden, but one industry trade group did estimate that proposed § 1006.34(c)(2)(ix) would impose billions of dollars in compliance costs on industry.[223]

Some commenters stated that proposed § 1006.34(c)(2)(ix) is unnecessary or unhelpful. Multiple industry commenters asserted that an itemization is superfluous because consumers can exercise their FDCPA section 809 verification rights to receive more account information if desired. With respect to medical debt, an industry trade group stated that proposed § 1006.34(c)(2)(ix) is unnecessary because the Internal Revenue Service (IRS) requires non-profit hospitals to send letters with itemized information to consumers, and health insurance companies routinely mail to responsible parties "Explanation of Benefits" documents that provide details about coverage, payments, and co-pays. Some commenters expressed concern that proposed § 1006.34(c)(2)(ix) could increase legal risk for debt collectors if the itemization information confused consumers. At least one industry commenter stated that the Bureau's consumer testing did not support proposed § 1006.34(c)(2)(ix) because the testing did not involve actual consumers assessing debts in a real-world setting.

A few industry commenters objected to proposed § 1006.34(c)(2)(ix) because the FDCPA does not expressly require an itemization of the current amount of the debt.

Some industry and industry trade group commenters objected to proposed § 1006.34(c)(2)(ix) because the itemization that appears on the model validation notice is formatted for a single debt. According to commenters, the proposal would not accommodate debt collectors who combine multiple debts in a single validation notice. Several commenters stated that not permitting debt collectors to include multiple debts in one validation notice would

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[223] One industry trade group estimated that an itemization requirement would cost $600 million in professional fees to conduct legal analyses of HIPAA compliance for medical debt, $30 million for one-time system reprogramming for debt collectors, and $3 billion for one-time system reprogramming for creditors. The proposal allegedly would also result in billions of dollars in ongoing support costs and uncompensated medical care because, according to the commenter, the proposed requirement, if adopted, would increase the risks that hospitals might be unable to use debt collectors.

dramatically increase the volume of mail sent to consumers and would require consumers to exercise their verification rights for each individual debt in the event that a consumer has a global dispute. Industry and industry trade group commenters stated that the inability to combine multiple debts would be particularly challenging for medical debt collectors. According to some commenters, healthcare providers routinely combine multiple debts, in part because they utilize family billing, which involves combining the separate bills for family members of a primary insured party. Commenters stated that itemizations for medical debt may be further complicated by the fact that healthcare providers typically do not maintain a rolling total of charges for a general service and instead individually bill for each good or service provided. At least one trade group stated that student loan debt presents comparable itemization-related challenges because student loan debt may be provided through multiple disbursements with separate account numbers.

An industry trade group suggested that proposed § 1006.34(c)(2)(ix) would not accommodate debts in bankruptcy. According to the commenter, the proposal did not have the specificity necessary to account for how the Bankruptcy Code permits a debtor to cure pre-bankruptcy defaults over the term of the bankruptcy plan while maintaining regular post-bankruptcy payments. In addition, the commenter argued, the proposal would not accommodate the nuances that arise in the context of certain bankruptcy scenarios, such as a cramdown plan or a lien strip.[224]

With regard to medical debt, industry commenters, an industry trade group, and the SBA stated that healthcare providers might violate the Health Insurance Portability and Accountability Act of 1996 (HIPAA)[225] Privacy Rule if they provided the proposed itemization.[226] According to

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[224] Pursuant to 11 U.S.C. 1322(b)(5), a bankruptcy court may change the underlying terms of a debt, which is referred to as a "cramdown." Pursuant to 11 U.S.C. 1322(c)(2), a secured claim can be converted to an unsecured claim, which is referred to as a "lien strip."

[225] Pub. L. 104-191, 110 Stat. 1936 (1996).

[226] 45 CFR part 160 and part 164 subparts A and E.

these commenters, proposed § 1006.34(c)(2)(ix) would require debt collectors to disclose more information than the minimum necessary for treatment of the patient, payment of the bill, or healthcare operations, in violation of HIPAA.

Commenters recommended various modifications to proposed § 1006.34(c)(2)(ix). Industry and industry trade group commenters suggested that debt collectors should not need to comply with proposed § 1006.34(c)(2)(ix) if interest and fees are not charged on an account.[227] An industry commenter stated that debt collectors should be permitted to indicate "U" for "unknown" or "unavailable" in fields for which a creditor did not provide the relevant information.

Several commenters asked the Bureau to clarify the proposal. An industry commenter asked how a debt collector could disclose third-party payments or insurance adjustments, particularly in the context of medical debt. An industry trade group sought additional guidance about how to disclose balance increases that are not caused by interest or fees, such as a balance increase caused by a returned payment. Noting the existence of validation notice itemization requirements imposed by other applicable law, such as New York State regulations, two industry trade groups requested guidance about how a debt collector should simultaneously comply with those requirements and proposed § 1006.34(c)(2)(ix).[228]

With respect to the Bureau's request for comment about whether the proposed itemization should be more detailed—for example, by reflecting each fee charged and each payment received—or whether certain itemization categories should be combined as proposed, industry commenters suggested that the Bureau not deviate from the proposal. For instance, a commenter stated that, in the context of medical debts, listing all payments and credits

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[227] In addition, an industry trade group suggested that debt collectors should not be required to comply with the itemization requirement for pre-charge-off debts, particularly if periodic statements continue to be provided. The Bureau notes that, in many cases, a person collecting a debt that was not in default at the time it was obtained by such person will not be a debt collector subject to the FDCPA or Regulation F. *See* FDCPA section 803(6)(F)(iii), 15 U.S.C. 1692a(6)(F)(iii).

[228] *See* 23 NYCRR 1.2(b)(2).

individually could result in multiple additional pages because of the number of third-party payments. In contrast, citing the Bureau's consumer testing, an academic commenter argued that the itemization should be more detailed because consumers prefer to see penalties and fees broken down into individual charges.[229]

After considering these comments, and for the reasons discussed below, the Bureau is adopting the proposed requirement, renumbered as § 1006.34(c)(2)(viii), with revisions to provide that validation information includes an itemization of the current amount of the debt reflecting interest, fees, payments, and credits since the itemization date. Final § 1006.34(c)(2)(viii) further provides that a debt collector may disclose the itemization on a separate page provided in the same communication with a validation notice, if the debt collector includes on the validation notice, where the itemization would have appeared, a statement referring to that separate page.

The Bureau determines that an itemization of the debt will help a significant number of consumers recognize whether they owe a debt and evaluate whether the debt is accurate, because the itemization will disclose how the amount may have changed over time due, for example, to interest, fees, payments, and credits that have been assessed or applied to the debt.

The Bureau determines that § 1006.34(c)(2)(viii) will not create undue industry burden in light of modifications made in response to comments.[230] The Bureau acknowledges that complying with the itemization requirement may result in some additional costs to debt collectors, particularly if they do not currently provide itemization information at placement or on validation notices, as well as in some indirect costs to creditors. However, the Bureau concludes that these costs will not substantially impact companies' business operations because the final rule provides sufficient flexibility to debt collectors to tailor the itemization to specific

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[229] FMG Summary Report, *supra* note 29.

[230] For example, as noted in the section-by-section analysis of § 1006.34(b)(3)(i), a creditor or a third-party servicer acting on the creditor's behalf may issue a statement even after the debt has gone into collection. In that case, under § 1006.34(b)(3)(i), that new statement may serve as the last statement for purposes of the itemization date.

business practices and types of debt. Accordingly, the Bureau does not conclude, as some commenters suggested, that the itemization requirement will result in creditors referring significantly fewer accounts for collections or filing more lawsuits against consumers.[231]

Although several commenters stated that the required itemization information may not be available for every debt, the Bureau notes that the itemization of the debt is based on the type of routine account information that debt collectors typically provide in response to consumer verification requests and that, as such, debt collectors should be able to obtain such information to comply with the final rule. While some debt collectors do not currently provide this itemized information at the outset of collection communications, providing such itemization information to consumers already is considered a best practice in some segments of the debt buying industry, including for credit card debt and student loan debt.[232] Further, debt collectors are already required to disclose an itemization for some types of debt in at least one jurisdiction, New York State.[233]

In addition, as discussed in the section-by-section analysis of § 1006.34(b)(3), the final rule's itemization date definition permits debt collectors to select an itemization date that is feasible for the type of debt in collection and the information debt collectors receive. And § 1006.34(c)(2)(viii) requires itemization of fees, interest, and credits only subsequent to the selected itemization date. Thus, for example, if a debt collector selects the last statement date as the itemization date under § 1006.34(b)(3), and if the creditor has recently issued a statement to the consumer, the debt collector need only obtain and provide to the consumer an itemization

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[231] An industry trade group cited an article to suggest that collection lawsuits nearly doubled in New York City since 2015 because of New York State's debt collection rules, which mandate an itemization. *See* Yuka Hayashi, *Debt Collectors Wage a Comeback*, Wall Street Journal (July 5, 2019). The Bureau notes that the article did not cite a connection between higher rates of lawsuits and the itemization requirement. Instead, the article discussed the phenomenon of increasing lawsuits nationwide, including in States like Texas, which had not recently introduced a significant debt collection rule.

[232] *See* Receivables Mgmt. Ass'n Int'l, *Receivables Management Certification Program*, at 41-45 (Mar. 1, 2020), *https://rmaintl.org/RMCP* (last visited Dec. 9, 2020).

[233] *See* 23 NYCRR 1.2(b) (requiring debt collectors to provide an itemized accounting of the debt within five days after the initial communication with a consumer in connection with the collection of certain types of charged-off debt, such as credit card debt).

with fees, interest, and credits subsequent to that last statement date. And, as discussed in the section-by-section analysis of § 1006.34(d)(2), a debt collector may provide the itemization on a separate page and retain the safe harbor for the rest of the validation notice. For all of these reasons, the Bureau concludes that the final rule will not impose undue burdens on debt collectors and will provide consumers with useful information. The Bureau will monitor whether the itemization date definition, including the last statement date definition, meets these goals.

The Bureau disagrees that § 1006.34(c)(2)(viii) is unnecessary or unhelpful. The verification rights afforded by FDCPA section 809 are an important statutory protection; however, they do not serve the same purpose or provide an adequate substitute to the itemization of the debt that § 1006.34(c)(2)(viii) will require. The Bureau disagrees that an itemization of the current amount of the debt is unnecessary for medical debt, as some commenters argued. Although some non-profit hospitals or insurance companies may provide itemization information to some consumers, commenters did not suggest, and the Bureau is not aware of other evidence indicating, that all consumers with medical debt receive itemization information such that § 1006.34(c)(2)(viii) would be unnecessary. The Bureau also disagrees with comments that an itemization will confuse consumers. As the proposal noted, the Bureau's qualitative consumer testing indicates that an itemization improves consumer understanding about the debt.[234]

The Bureau also disagrees that the FDCPA's not expressly requiring an itemization is a sufficient reason for the Bureau not to require it by rule. The Bureau proposed and is finalizing the itemization requirement pursuant to its authority to interpret FDCPA section 809(a), as well as pursuant to its authority under Dodd-Frank Act section 1032(a) to prescribe rules to ensure that the features of debt collection are fully, accurately, and effectively disclosed to consumers.

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[234] *See* 84 FR 23274, 23341 (May 21, 2019); FMG Usability Report, *supra* note 28, at 16-19.

The Bureau is revising § 1006.34(c)(2)(viii) to permit debt collectors to disclose the itemization on a separate page.[235] The itemization that appears on the model validation notice may not accommodate all debt types in every instance. Some debt collectors may have legitimate reasons to combine multiple debts on a single validation notice. This may be the case with respect to medical debt (for instance, owing to healthcare provider billing practices) and student loan debt (because consumers may receive loans through multiple disbursements with separate account numbers). As finalized, § 1006.34(c)(2)(viii) states that a debt collector may disclose the itemization on a separate page provided in the same communication with a validation notice, if the debt collector includes on the validation notice, where the itemization would have appeared, a statement referring to that separate page.[236] New comment 34(c)(2)(viii)–3 clarifies that a debt collector may comply with the requirement to refer to the separate page by, for example, including on the validation notice the statement, "See the enclosed separate page for an itemization of the debt," situated next to the information about the current amount of the debt required by § 1006.34(c)(2)(ix).[237]

The Bureau is making an additional change to § 1006.34(c)(2)(viii). As finalized, § 1006.34(c)(2)(viii) omits the proposed language that an itemization must be "in a tabular format." The Bureau determined that it is unnecessary and unwarranted to mandate the use of a tabular format because, if the itemization information is provided on a separate page or orally, using a tabular format may be impractical or infeasible and, if the itemization information is provided on a validation notice, debt collectors likely will use the tabular format shown on the

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[235] Under § 1006.34(d)(2)(ii), a debt collector who otherwise uses the model validation notice or a substantially similar form, but who provides the itemization of the current amount of the debt on separate page, receives a safe harbor for compliance with the information and form requirements of § 1006.34(c) and (d)(1) except with respect to the itemization that appears on the separate page.

[236] For example, when delivering a validation notice by mail, a debt collector may include the separate itemization in the same envelope as the validation notice. Similarly, when delivering a validation notice electronically, a debt collector may include the separate itemization in the same email as the validation notice.

[237] Section 1006.34(d)(2)(iii) establishes that a debt collector who uses the model validation notice and who provides an itemization on a separate page receives a safe harbor for compliance with the information and form requirements of § 1006.34(c) and (d)(1), except with respect to the disclosures that appear on the separate page.

model notice such that they may receive a safe harbor for compliance with the information and form requirements of § 1006.34(c) and (d)(1).

To accommodate debt collectors who wish to combine multiple debts on a single validation notice, the Bureau is adopting new comment 34(c)(2)(viii)–4 to clarify that a debt collector who combines multiple debts on a single validation notice complies with § 1006.34(c)(2)(viii) by disclosing either a single, cumulative itemization on the validation notice or a separate itemization of each debt on a separate page or pages provided in the same communication as the validation notice.[238]

The Bureau concludes that the itemization requirement will not cause healthcare providers or debt collectors to violate the HIPAA Privacy Rule. HHS staff has advised the Bureau that the HIPAA Privacy Rule generally permits covered entities to disclose protected health information required by applicable law.[239] Because disclosure of itemization information will be necessary to comply with § 1006.34(c)(2)(viii), this guidance indicates that the HIPAA Privacy Rule will permit its disclosure.

The Bureau declines to modify § 1006.34(c)(2)(viii) as commenters otherwise recommended. An itemization, even if no interest and fees have been assessed or charged on an account, remains relevant information about the debt. Further, complying with § 1006.34(c)(2)(viii) if no interest and fees have been assessed or charged is relatively straightforward, and comment 34(c)(2)(viii)–1 clarifies how debt collectors may do so.

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[238] Relatedly, as discussed in the section-by-section analysis of § 1006.34(c)(2)(ix), the Bureau is adopting new comment 34(c)(2)(ix)–2 to clarify that a debt collector who combines multiple debts on a single validation notice complies with § 1006.34(c)(2)(ix)'s requirement to disclose the "current amount of the debt" by disclosing on the validation notice a single, cumulative figure that is the sum of the current amount of all the debts.

[239] *See* 45 CFR 164.512(a)(1) ("A covered entity may use or disclose protected health information to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law."); *see also* U.S. Dep't of Health & Human Servs., *Does the HIPAA Privacy Rule prevent health plans and providers from using debt collection agencies? Does the Privacy Rule conflict with the Fair Debt Collection Practices Act?, https://www.hhs.gov/hipaa/for-professionals/faq/268/does-the-hipaa-privacy-rule-prevent-health-care-providers-from-using-debt-collection-agencies/index.html* (last visited Dec. 1, 2020) (noting that the HIPAA Privacy Rule permits healthcare providers to provide the minimum necessary patient information to debt collectors for the purpose of receiving payment).

However, the Bureau is finalizing proposed comment 34(c)(2)(viii)–1 with a modification to delete language stating that debt collectors may indicate "N/A" in a required field when no interest, fees, payments, or creditors have been assessed or applied to the account because different consumers may interpret "N/A" differently. For example, some consumers might understand it as indicating "not available," and others might construe it as meaning "not applicable." To eliminate this potential ambiguity, the Bureau is revising comment 34(c)(2)(viii)–1 to provide that a debt collector may indicate that the value of a required field is "0," "none," or may state that no interest, fees, payments, or credits have been assessed or applied to the debt. The Bureau also is revising the comment to clarify, as was intended in the proposal, that a debt collector may not leave a required field blank.

The Bureau declines the recommendation that debt collectors be permitted to indicate "U" for "unknown" or "unavailable" in the itemization if a creditor did not provide the relevant information. Allowing debt collectors to omit specific itemization information in this manner could incentivize debt collectors to avoid receiving it, thereby undermining the effectiveness of § 1006.34(c)(2)(viii).

Debt collectors sought clarification as to how they should comply with § 1006.34(c)(2)(viii) in various scenarios. Depending on the facts and circumstances, a third-party payment or insurance adjustment may be disclosed as a "payment" or a "credit" in the itemization. Also depending on the facts and circumstances, a payment that is returned may be omitted from the itemization provided that the payment and the return offset each other, and provided that the amount of the debt owed on the itemization date pursuant to § 1006.34(c)(2)(vii) and the current amount of the debt pursuant to § 1006.34(c)(2)(ix) are accurately disclosed.

Regarding § 1006.34(c)(2)(viii)'s interaction with itemization requirements in other applicable law, the Bureau is finalizing new comment 34(c)(2)(viii)–2, which states that, if a debt collector is required by other applicable law to provide an itemization of the current amount

of the debt with the validation information, the debt collector may comply with § 1006.34(c)(2)(viii) by disclosing the itemization required by other applicable law in lieu of the itemization described in § 1006.34(c)(2)(viii), if the itemization required by other applicable law is substantially similar to the itemization that appears on the model validation notice. The Bureau is aware of only one jurisdiction that requires debt collectors to provide an itemization with the validation information, and that itemization is substantially similar to the itemization required by § 1006.34(c)(2)(viii).[240] Further, consumers likely would not benefit—and, in fact, may be disadvantaged—by receiving multiple itemizations with the validation information. For instance, although a debt collector could include both the itemization required by § 1006.34(c)(2)(viii) on the front of a validation notice, and, on the reverse, an itemization specifically required by other applicable law (as an optional disclosure pursuant to § 1006.34(d)(3)(iv)), a consumer would be unlikely to benefit from receiving two itemizations. In addition, permitting debt collectors to simultaneously satisfy the Bureau's itemization requirement and a substantially similar requirement under other applicable law with one itemization avoids burdening debt collectors with the costs of creating redundant disclosures.

The Bureau determines that the itemization of the current amount of the debt should not be more detailed (*e.g.*, it should not include a detailed list of all payments). The itemization that appears on the model validation notice has been validated through four rounds of consumer testing and is effective, and the Bureau agrees with commenters who observed that a detailed disclosure of, for example, all payments could be overwhelming and not logistically feasible.

For all of these reasons, the Bureau is finalizing proposed § 1006.34(c)(2)(ix), renumbered as § 1006.34(c)(2)(viii), to provide that required validation information includes an itemization of the current amount of the debt reflecting interest, fees, payments, and credits since the itemization date. Final § 1006.34(c)(2)(viii) also provides that a debt collector may disclose

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[240] *See* 23 NYCRR 1.2(b)(2).

the itemization on a separate page provided in the same communication with a validation notice if the debt collector includes on the validation notice, where the itemization would have appeared, a statement referring to that separate page. The Bureau is finalizing comment 34(c)(2)(ix)–1 with revisions and renumbered as comment 34(c)(2)(viii)–1 and is adding comments 34(c)(2)(viii)–2 through –4 to clarify various aspects of final § 1006.34(c)(2)(viii), as discussed above. The Bureau is finalizing § 1006.34(c)(2)(viii) and its related commentary pursuant to its authority to interpret FDCPA section 809(a), as well as its authority under Dodd-Frank Act section 1032(a).

34(c)(2)(ix)

FDCPA section 809(a)(1) requires debt collectors to disclose to consumers the amount of the debt. Proposed § 1006.34(c)(2)(x) provided that the current amount of the debt is required validation information.[241] Proposed comment 34(c)(2)(x)–1 explained that, for residential mortgage debt subject to Regulation Z, 12 CFR 1026.41, a debt collector could comply with § 1006.34(c)(2)(x) by including in the validation notice the total balance of the outstanding mortgage, including principal, interest, fees, and other charges.

Some commenters raised concerns about how proposed § 1006.34(c)(2)(x) would disclose the current amount of the debt. Industry and industry trade group commenters stated that, if interest and fees are increasing, the current amount of the debt that appears on a validation notice may no longer be accurate by the time the consumer receives the notice. Some commenters stated that some State laws and court decisions require debt collectors to disclose if the current amount of the debt may change due to interest and fees.[242] To address these concerns, industry and industry trade group commenters suggested that the Bureau should either develop a stand-alone increasing-interest-and-fee disclosure or structure § 1006.34(c)(2)(x) to

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[241] 84 FR 23274, 23342, 23415 (May 21, 2019).

[242] *See Avila v. Riexinger & Assocs., LLC*, 817 F.3d 72, 76 (2d Cir. 2016) (holding that 15 U.S.C. 1692e requires debt collectors to disclose if the amount of a debt may increase due to interest and fees).

permit debt collectors to disclose that the itemized current amount of the debt may increase or decrease.[243]

An industry trade group stated that disclosing the current amount of the debt as proposed would present challenges for some reverse mortgage debt because that amount might differ from the amount disclosed in monthly statements.[244] The commenter recommended that, to avoid potential confusion in the context of reverse mortgage debt, a debt collector should be permitted to provide the last monthly account statement in lieu of disclosing the current amount of the debt.

A group of consumer advocates recommended that, for residential mortgage debt, the Bureau should require debt collectors to disclose the current amount of the total unpaid balance owed as well as the arrearage owed. According to this commenter, the arrearage owed is important information because, in many jurisdictions, homeowners in default can pay the arrearage to stop a foreclosure and reinstate a mortgage.

After considering these comments, the Bureau is finalizing § 1006.34(c)(2)(x) as proposed but renumbered as § 1006.34(c)(2)(ix). In addition, the Bureau is finalizing comment 34(c)(2)(x)–1 as proposed and is adopting new comment 34(c)(2)(ix)–2 to clarify how a debt collector who combines multiple debts on a single validation notice complies with § 1006.34(c)(2)(ix).

With respect to interest and fee accrual when disclosing the current amount of the debt, the Bureau declines to incorporate an increasing-interest-or-fee disclosure or to structure the current amount of the debt as a dynamic balance in § 1006.34(c)(2)(ix). The Bureau notes, however, that comment 34(c)(2)(ix)–1 (proposed as comment 34(c)(2)(x)–1) clarifies that the

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[243] A trade group commenter recommended the following dynamic balance disclosure: "As of the date of this letter, the balance due on the account is <current>. Because interest, fees, and/or other charges may change the total owed from day to day, the amount due on the day you pay may be greater. If you pay the amount shown above, an adjustment may be necessary after we receive your payment, in which event you may be informed of any other amount due."

[244] The Bureau understands that, for some reverse mortgages, including Home Equity Conversion Mortgages insured by the FHA, when the reverse mortgage is due and payable, the amount due from the borrower may not be the amount of outstanding debt because these reverse mortgages are non-recourse loans and a borrower will never owe more than a portion of the appraised value of the home. *See* 24 CFR 206.125.

current amount of the debt is the amount of the debt as of the date that the validation information is provided. Therefore, a debt collector satisfies the requirement in § 1006.34(c)(2)(ix) without providing a dynamic balance or increasing-interest-or-fee disclosure. Additionally, as discussed in the section-by-section analysis of § 1006.34(d)(3)(iv), the final rule affirmatively permits debt collectors to include along with the required validation information other disclosures specifically required by applicable law. As such, debt collectors may include a disclosure pursuant to a judicial decision or order that the current amount of the debt may increase or vary due to interest, fees, or other charges. This modification addresses the challenges debt collectors face related to interest and fee accrual in disclosing the current amount of the debt.

The Bureau declines to permit debt collectors collecting reverse mortgage debt to include a last monthly account statement in place of disclosing the current amount of the debt. Unlike the special rule for certain residential mortgage debt discussed in the section-by-section analysis of § 1006.34(c)(5), reverse mortgages are not generally subject to a separate disclosure requirement, such as 12 CFR 1026.41(b)'s periodic statement requirement, that is functionally equivalent to, or as useful to consumers as, certain disclosures required by § 1006.34(c)(2). Reverse mortgages generally are exempt from providing periodic statements under the Truth in Lending Act (TILA)[245] and its implementing Regulation Z.[246] While reverse mortgages may be subject to a monthly statement requirement that would require entities to disclose the "total outstanding loan balance," this regulatory requirement is not as prescriptive as the Bureau's periodic statement requirement for other residential mortgage debt.[247] Thus, the Bureau

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[245] 15 U.S.C. 1601 *et seq.*

[246] *See* 12 CFR 1026.41(e)(1).

[247] The regulation provides: "The mortgagee shall provide to the borrower a monthly statement regarding the activity of the mortgage for each month, as well as for the calendar year. The statement shall summarize the total principal amount which has been paid to the borrower under the mortgage during that calendar year, the MIP paid to the Commissioner and charged to the borrower, the total amount of deferred interest added to the outstanding loan balance, the total outstanding loan balance, and the current principal limit. The mortgagee shall include an accounting of all payments for property charges. The statement shall be provided to the borrower monthly until the mortgage is paid in full by the borrower. The mortgagee shall provide the borrower with a new payment plan every time it recalculates monthly payments or the payment option is changed. The statements shall be in a format acceptable to the Commissioner." *See* 24 CFR 206.203(a).

determines that a last monthly statement for a reverse mortgage debt is not an adequate substitute for § 1006.34(c)(2)(ix).

The Bureau declines to require debt collectors to separately disclose an arrearage owed for residential mortgage debt. Because the Bureau did not propose this disclosure, it lacks the benefit of public comment and concludes that additional information, including through public comment, would be advisable before adopting any such interpretation. However, the Bureau notes that a debt collector who utilizes the special rule for certain residential mortgage debt described in § 1006.34(c)(5) to comply with § 1006.34(c)(2)(vi) through (viii) will provide a periodic statement that may disclose such information.[248] Although a mortgage servicer is not required to use the special rule for certain residential mortgage debt, a mortgage servicer who does so and who otherwise uses the model validation notice or a substantially similar form receives a safe harbor for compliance pursuant to § 1006.34(d)(2)(ii). The Bureau therefore expects that, in many circumstances, a debt collector who is also a mortgage servicer that is required to provide periodic statements under Regulation Z, 12 CFR 1026.41 will disclose arrearage information.

As noted in the section-by-section analysis of § 1006.34(c)(2)(viii), industry commenters requested further guidance about how to combine multiple debts on a single validation notice. The Bureau is adopting new comment 34(c)(2)(ix)–2 to clarify that a debt collector who combines multiple debts on a single validation notice complies with § 1006.34(c)(2)(ix) by disclosing on the validation notice a single, cumulative figure that is the sum of the current amount of all the debts.

Proposed Provision Not Finalized

As discussed in the section-by-section analysis of § 1006.26(c), in the February 2020 proposal, the Bureau proposed to require debt collectors collecting time-barred debt to include

[248] 12 CFR 1026.41(d)(8)(vi) requires a periodic statement to include, if the consumer is more than 45 days delinquent, the total payment amount needed to bring the account current.

time-barred debt and revival disclosures on the validation notice.[249] Proposed § 1006.34(c)(2)(xi) provided that validation information included those disclosures, as applicable, if the debt collector determined after a reasonable investigation that such disclosures were required by § 1006.26(c).[250] For the reasons discussed in the section-by-section analysis of § 1006.26(c), the Bureau is not finalizing the proposed time-barred debt disclosure requirements and, accordingly, the Bureau is not finalizing proposed § 1006.34(c)(2)(xi). However, as discussed in the section-by-section analysis of § 1006.34(d)(3)(iv)(B), any disclosures relating to time-barred debt that are specifically required by applicable law or that provide safe harbors under applicable law are optional disclosures that the final rule affirmatively permits debt collectors to include on the validation notice.

34(c)(3) Information About Consumer Protections

The disclosures in FDCPA section 809(a) help consumers to determine if a particular debt is theirs and to facilitate action in response to the receipt of validation information. However, as the proposal stated, debt collectors typically disclose only the information that FDCPA section 809(a) specifically references and provide the FDCPA section 809 information using statutory language, rather than plain language that consumers can more easily comprehend.[251] To address these concerns, proposed § 1006.34(c)(3) provided that certain information about a consumer's rights with respect to debt collection is required validation information. This information, which is discussed in the section-by-section analysis of § 1006.34(c)(3)(i) through (vi) below, included disclosures specifically referenced in FDCPA section 809(a)(4) and (5), as well as additional disclosures intended to help consumers understand their debt collection rights.[252]

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[249] *See* 85 FR 12672 (Mar. 3, 2020).

[250] *Id.* at 12685, 12696.

[251] 84 FR 23274, 23342 (May 21, 2019).

[252] *See* 15 U.S.C. 1692g(a)(4) and (5).

Commenters generally supported requiring debt collectors to disclose information about a consumer's rights with respect to debt collection. Federal government agency staff and a consumer advocate commenter stated that proposed § 1006.34(c)(3) would improve consumers' understanding of their rights in debt collection. Some industry and industry trade group commenters supported using plain language disclosures to explain consumer protections in debt collection.

Some commenters recommended that the Bureau require additional disclosures about consumers' rights with respect to debt collection. Federal government agency staff, a group of 28 State Attorneys General, and a number of consumer advocate commenters recommended that debt collectors be required to disclose the FDCPA section 805(c) cease communication right.[253] A State regulatory agency recommended that the Bureau require debt collectors to disclose that a consumer's failure to act or to dispute a debt may have credit reporting implications. This commenter also recommended that § 1006.34(c)(3) require debt collectors to disclose how consumers may obtain an annual credit report, which consumers are entitled to under the FCRA and its implementing Regulation V.[254]

The Bureau determines, as discussed in the proposal, that consumers will benefit from receiving additional information about their rights in debt collection and from plain language disclosures rather than disclosures that parrot the FDCPA's statutory text.[255] The Bureau therefore is adopting § 1006.34(c)(3). Specifically, as discussed further in the section-by-section analysis below, the Bureau is adopting § 1006.34(c)(3)(i) through (v) and its related commentary with minor modifications, but is not finalizing proposed § 1006.34(c)(3)(vi), which addressed the

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[253] In the November 2020 Final Rule, the Bureau finalized § 1006.6(c)(1) to implement FDCPA section 805(c) and to provide that, "if a consumer notifies a debt collector in writing that the consumer refuses to pay a debt or that the consumer wants the debt collector to cease further communication with the consumer, the debt collector must not communicate or attempt to communicate further with the consumer with respect to such debt." 85 FR 76734, 78889 (Nov. 30, 2020).

[254] *See* 15 U.S.C. 1681j(a); 12 CFR 1022.136.

[255] 84 FR 23274, 23342 (May 21, 2019).

opt-out notice required by § 1006.6(e) for electronic communications or attempts to communicate.

The Bureau declines to require additional disclosures about consumer protections in debt collection, as some commenters suggested. In particular, the Bureau concludes that, although consumers may benefit from understanding the rights the commenters discussed, those rights are not sufficiently related to the purposes of FDCPA section 809—*i.e.*, helping consumers to determine if a debt is theirs and to facilitate action in response to the receipt of validation information—to require debt collectors to include them as validation information.[256] In addition, as discussed in the section-by-section analysis of § 1006.34(c)(3)(iv), the final rule generally requires debt collectors to include a statement that informs consumers that additional information regarding consumer protections in debt collection is available on the Bureau's website, with a link to the information.[257] The Bureau's website will disclose more information about consumer protections in debt collection, including about the cease communication right.

The Bureau is finalizing § 1006.34(c)(3)(i) through (iii) and (v) pursuant to its authority under FDCPA section 814(d) to prescribe rules with respect to the collection of debts by debt collectors and, as described more fully below, its authority to implement and interpret FDCPA section 809. The Bureau also is finalizing § 1006.34(c)(3) pursuant to its authority under section 1032(a) of the Dodd-Frank Act, on the basis that a consumer's rights are a feature of debt collection.

34(c)(3)(i)

FDCPA section 809(a)(4) requires debt collectors to disclose to consumers their right under FDCPA section 809(b) to dispute the validity of the debt within 30 days after receipt of the

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[256] For example, when Congress established the cease communication right pursuant to FDCPA section 805(c), Congress did not require its disclosure pursuant to FDCPA section 809. The Bureau concludes that was intentional. Thus, the Bureau declines to include the cease communication right as validation information that debt collectors must disclose.

[257] Section 1006.34(c)(3)(iv) requires debt collectors to include the disclosure if they are collecting debt related to a consumer financial product or service, as defined in § 1006.2(f). Otherwise, debt collectors can optionally include the disclosure under § 1006.34(d)(3)(viii).

validation information (*i.e.*, during the validation period).[258] If a consumer disputes a debt in accordance with FDCPA section 809(b), a debt collector must cease collecting the debt until the debt collector provides verification to the consumer; this is sometimes referred to as the collections pause. FDCPA section 809(a)(4) does not expressly indicate that a debt collector must disclose to consumers that a dispute triggers FDCPA section 809(b)'s collections pause, or whether a debt collector must disclose the end date of the validation period.

The Bureau proposed § 1006.34(c)(3)(i) to provide that validation information includes a statement that specifies the end date of the validation period and states that, if the consumer notifies the debt collector in writing before the end of the validation period that the debt, or any portion of the debt, is disputed, the debt collector must cease collection of the debt until the debt collector sends the consumer either the verification of the debt or a copy of a judgment.[259]

The Bureau received a variety of comments in response to proposed § 1006.34(c)(3)(i)'s incorporation of the validation period end date.[260] On the one hand, an industry trade group and a group of consumer advocate commenters supported the inclusion, asserting the validation period end date would provide certainty to consumers about the timeframe within which to exercise their verification rights.

However, other commenters opposed the inclusion because, if delivery of a validation notice is delayed and the consumer receives the notice later than the debt collector presumed, the validation period end date would be inaccurate. Commenters suggested this could pose legal risk to debt collectors. To address this concern, an industry commenter recommended that the Bureau modify proposed § 1006.34(c)(3)(i) to replace the validation period end date with a

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[258] *See* 15 U.S.C. 1692g(a)(4).

[259] 84 FR 23274, 23343, 23404 (May 21, 2019).

[260] The discussion under the "Model Validation Notice" heading in the section-by-section analysis of § 1006.34(d)(2) provides details about how the statement required by § 1006.34(c)(3)(i) is disclosed on the model validation notice.

generic statement that a consumer may request verification within 30 days after receiving the validation notice.

Some commenters, including consumer advocate commenters and an industry trade group, stated that disclosing the validation period end date might leave consumers with the false impression that they could not raise concerns about a debt after the validation period expires. A group of academic commenters argued that a study suggested that a significant number of consumers believed that, if they did not dispute a debt during the validation period, they would be unable to assert later that they did not owe the debt.[261] Similarly, an industry commenter stated that disclosing the validation period end date might dissuade consumers from making verification requests after that date even though debt collectors sometimes honor such requests. To address this potential misunderstanding, some commenters recommended that the final rule require debt collectors to inform consumers that they can raise concerns about a debt after the validation period end date.

Commenters also addressed the Bureau's proposal to require debt collectors to disclose FDCPA section 809(b)'s collections pause. Federal government agency staff and a group of consumer advocate commenters supported the collections pause disclosure. However, industry commenters stated that the disclosure would be burdensome because it would encourage consumers to dispute the debt for the purpose of delaying or avoiding debt collection. According to an industry commenter, consumers do not need to be informed about FDCPA section 809(b)'s collections pause because debt collectors are aware of it and observe it.

The Bureau determines that consumers will benefit from § 1006.34(c)(3)(i)'s disclosure of the validation period end date. As discussed in the proposal, the validation period end date is an integral feature of consumers' dispute right. Among other things, the validation period end

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[261] Jeff Sovern & Kate Walton, *Are Validation Notices Valid? An Empirical Evaluation of Consumer Understanding of Debt Collection Validation Notices*, 70 SMU L. Rev. 63, 128 (2017) ("Our study indicated that more than a third of the respondents believed that if they failed to meet the thirty-day deadline, they would either have to pay a debt they did not owe or would not be able to argue in court that they didn't owe the debt.").

date will provide certainty to consumers about the timeframe provided by the FDCPA to exercise their verification rights.

The Bureau disagrees that a validation period end date that is inaccurate because a validation notice was delayed will present significant legal risk to debt collectors. Final § 1006.34(b)(5) and comment 34(b)(5)–1 provide that, for purposes of determining the end of the validation period, a debt collector who provides the validation information in writing or electronically may assume that a consumer receives the validation information on any date that is at least five business days after the debt collector provides it. If a debt collector calculates the validation period end date in accordance with this presumption, the debt collector will not violate the FDCPA or its implementing Regulation F, even if, as final comment 34(b)(5)–1 clarifies, the consumer receives the validation notice later than the debt collector assumed. Further, the Bureau determines that a generic statement that a consumer may request verification within 30 days after receiving the validation notice is not an adequate substitute for disclosing the validation period end date. Such a generic statement could leave many consumers unsure about when the validation period ends. For example, consumers might receive a validation notice in the mail but not open it immediately, or they might open it and return to it later without keeping track of how much time has passed. In these and similar scenarios, consumers would not be able to determine the validation period end date.

Regarding commenters' suggestion that the Bureau require debt collectors to inform consumers that they can raise concerns about a debt after the validation period end date, the Bureau concludes that it is not necessary to require such a disclosure. FDCPA section 809(a) requires specific consumer disclosures, including statements about the consumer's rights within 30 days of receipt of the notice, but does not require any additional statement addressing consumer actions after the expiration of that period. The Bureau determines that a specific end date will not increase consumer confusion more than general language such as "within 30 days." The Bureau's testing shows that, while some confusion does occur, about 40 percent of

participants said they could still dispute the debt after the validation period end date.[262] Of the remaining 60 percent of participants, about 40 percent were unclear what would happen if they wrote to dispute the debt, and only about 20 percent specifically said that they could not write to dispute the debt.[263] When asked whether the debt collector would be required to send information saying they owe the debt if they wrote to dispute after the validation period end date, a small majority of consumers assumed that the debt collector would be required to do so.[264] Thus, although consumers may not be certain of the effect of writing to dispute the debt after the validation period end date, the Bureau's testing indicates that a sizeable majority of consumers would not be inhibited about raising general concerns about the debt after the validation notice end date. As discussed above, the final rule's enhanced and plain-language disclosures should improve overall consumer understanding and empower consumers to respond, should they choose, to debt collectors. The Bureau therefore declines to require as part of the validation information an explicit statement informing consumers that they may continue to raise concerns about the debt after the validation period end date.

The Bureau also determines that § 1006.34(c)(3)(i) should not omit the collections pause disclosure. As the proposal noted, consumer testing indicates that knowing about the collections pause was important to consumers and would encourage them to exercise their dispute right if they questioned a debt's validity.[265] Debt collectors have not provided evidence to support the premise that a significant number of consumers exercise their FDCPA section 809 verification rights solely to evade or delay paying debts that they owe. Absent such evidence, the Bureau declines to conclude that consumers will exercise their rights for such purposes. Further, regardless of whether debt collectors are aware of and comply with FDCPA section 809(b)'s

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[262] *See* November 2020 Qualitative Testing Report, *supra* note 34, at 13. Similarly, the Bureau's prior testing suggested that "[o]verall, participants' comments suggest that they understood the difference between writing before the specified date [and] writing after that date." FMG Usability Report, *supra* note 28, at 56.

[263] *Id.*

[264] *Id.* at 13-14.

[265] FMG Cognitive Report, *supra* note 27, at 30; *see also* FMG Summary Report, *supra* note 29, at 25.

collections pause requirement, the Bureau concludes that consumers will benefit from this disclosure because it will provide them with more complete information about the actions that debt collectors must take if consumers notify them that the debt is disputed.

For all of these reasons, the Bureau is finalizing § 1006.34(c)(3)(i) as proposed, with minor wording changes to clarify the content of the required disclosure, including by specifying that the consumer must notify the debt collector in writing "on or before" the end of the validation period, as opposed to "before" the end of the validation period, as proposed.[266]

34(c)(3)(ii)

FDCPA section 809(a)(5) requires debt collectors to disclose to consumers their right under FDCPA section 809(b) to request, within 30 days after receipt of the validation information, the name and address of the original creditor, if different from the current creditor.[267] FDCPA section 809(a)(5) does not expressly indicate that a debt collector must disclose to consumers that an original-creditor information request invokes FDCPA section 809(b)'s collections pause, or whether a debt collector must disclose the end date of the validation period. The Bureau proposed § 1006.34(c)(3)(ii) to provide that validation information includes a statement that specifies the end date of the validation period and states that, if the consumer requests in writing before the end of the validation period the name and address of the original creditor, the debt collector must cease collection of the debt until the debt collector sends the consumer the name and address of the original creditor, if different from the current creditor.[268]

Some industry and industry trade group commenters recommended that the Bureau not finalize proposed § 1006.34(c)(3)(ii).[269] Some commenters stated that the validation information

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[266] The model validation notice uses the term "by" instead of "on or before" for plain language purposes.

[267] *See* 15 U.S.C. 1692g(a)(5).

[268] 84 FR 23274, 23343, 23404 (May 21, 2019).

[269] See the "Model Validation Notice" discussion in the section-by-section analysis of § 1006.34(d)(2) for additional details about how the statement required by § 1006.34(c)(3)(ii) is disclosed on the model validation notice.

need not include a statement informing consumers of their right to request original-creditor information because, under the Bureau's rule, the validation information will include the creditor as of the itemization date and, according to the commenters, that creditor and the original creditor often will be the same. Relatedly, some commenters suggested that, because the validation information will include the names of the itemization-date creditor and the current creditor, debt collectors should be permitted to omit the statement informing consumers of their right to request original-creditor information if the original creditor is the same as either of those creditors.[270]

Some commenters recommended that the Bureau modify proposed § 1006.34(c)(3)(ii) to omit the validation period end date and the collections pause disclosures. These comments were substantially similar to comments discussed in the section-by-section analysis of § 1006.34(c)(3)(i).

After considering the feedback, the Bureau has determined to finalize § 1006.34(c)(3)(ii). FDCPA section 809(a)(5) expressly requires debt collectors to include in the validation information a statement that, upon the consumer's written request within 30 days after receipt of the validation information, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor. The Bureau proposed § 1006.34(c)(3)(ii) to implement that requirement and to clarify the content of the disclosures for debt collectors. The Bureau did not propose an exception to this disclosure requirement if the original creditor and the current creditor are the same and therefore does not have information regarding the costs or benefits of finalizing such an exception. To the extent that commenters were concerned about the burden of responding to original-creditor information requests when the original creditor and the current creditor are the same, the Bureau is finalizing a special rule

[270] As an alternative to complying with § 1006.34(c)(3)(ii), an industry trade group commenter recommended that debt collectors be permitted to proactively disclose the original-creditor information that a consumer would receive in response to an FDCPA section 809(b) request. This comment is addressed in the section-by-section analysis of § 1006.38.

for that scenario in § 1006.38(c)(2).[271] For these reasons, the Bureau is finalizing § 1006.34(c)(3)(ii) as proposed, with minor wording changes to clarify the content of the required disclosure, including by specifying that the consumer must notify the debt collector in writing "on or before" the end date of the validation period, as opposed to "before" the end of the validation period, as proposed.[272]

The Bureau declines to omit the validation period end date and the collections pause disclosures from § 1006.34(c)(3)(ii) for the same reasons discussed in the section-by-section analysis of § 1006.34(c)(3)(i).

34(c)(3)(iii)

FDCPA section 809(a)(3) requires a debt collector to disclose to a consumer that, unless the consumer disputes the validity of the debt within 30 days of receipt of the validation information, the debt collector will assume the debt to be valid.[273] The Bureau proposed § 1006.34(c)(3)(iii) to provide that validation information includes a statement that specifies the end date of the validation period and states that, unless the consumer contacts the debt collector to dispute the validity of the debt, or any portion of the debt, before the end of the validation period, the debt collector will assume that the debt is valid.[274]

At the time of the proposal, courts in various jurisdictions had reached different conclusions about whether FDCPA section 809(a)(3) requires debt collectors to recognize oral disputes about the validity of a debt.[275] These differing decisions principally arose from the fact that, whereas FDCPA section 809(a)(4) and (5) explicitly state that a consumer must notify a

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[271] *See* the section-by-section analysis of § 1006.38(c)(2).

[272] The model validation notice uses the term "by" instead of "on or before" for plain language purposes.

[273] 15 U.S.C. 1692g(a)(3).

[274] 84 FR 23274, 23343-44, 23404 (May 21, 2019).

[275] *Compare Clark v. Absolute Collection Serv., Inc*., 741 F.3d 487, 490 (4th Cir. 2014) (per curiam) (holding that oral disputes trigger certain FDCPA protections, including under FDCPA section 809(a)(3)), *Hooks v. Forman, Holt, Eliades & Ravin, LLC*, 717 F.3d 282, 286 (2d Cir. 2013) (same), and *Camacho v. Bridgeport Fin. Inc*., 430 F.3d 1078, 1082 (9th Cir. 2005) (same), *with Graziano v. Harrison*, 950 F.2d 107, 112 (3d Cir. 1991) ("[A] dispute, to be effective, must be in writing.").

debt collector in writing, FDCPA section 809(a)(3) does not refer to a writing requirement. In the absence of an express writing requirement in FDCPA section 809(a)(3), the majority of circuit courts that considered the issue had determined that a consumer's oral dispute triggers certain FDCPA protections, including, for example, FDCPA section 810's payment application requirement.[276] Consistent with this majority position, and pursuant to its authority to implement and interpret FDCPA section 809(a)(3) as well as its authority under Dodd-Frank Act section 1032(a), the Bureau proposed to interpret FDCPA section 809(a)(3) to allow oral disputes.[277]

Industry commenters, industry trade group commenters, and a group of academic commenters supported the Bureau's proposed interpretation that FDCPA section 809(a)(3) permits consumers to dispute the validity of a debt orally or in writing.

Several industry and industry trade group commenters expressed concerns about how proposed § 1006.34(c)(3)(iii) was disclosed on the proposed model validation notice, perceiving a tension between the regulatory text and the proposed model notice text. Specifically, whereas the proposed model validation notice stated that a consumer may "call or write" to dispute all or part of the debt, proposed § 1006.34(c)(3)(iii) did not specify the manner in which a consumer must contact the debt collector and instead used the general term "contact."

As proposed, the Bureau determines that FDCPA section 809(a)(3) permits both oral and written disputes. The Bureau agrees with every circuit court that has addressed this issue and interprets the absence of a reference to a writing requirement in FDCPA section 809(a)(3) to mean that a writing is not required. Further, commenters overall supported this interpretation.

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[276] FDCPA section 810 is implemented by § 1006.30(c). *See* 85 FR 76734, 76843 (Nov. 30, 2020); *see also Camacho*, 430 F.3d at 1081-82 (holding that oral disputes trigger certain FDCPA protections, including under FDCPA sections 807(8) and 810).

[277] After the proposal was published, the circuit split was resolved. In *Riccio v. Sentry Credit, Inc.*, the Third Circuit sitting en banc overruled its prior decision and determined that FDCPA section 809(a)(3) does not require a dispute to be in writing. *Riccio v. Sentry Credit, Inc.*, 954 F.3d 582, 594 (3d Cir. 2020) (en banc) ("In short, we conclude that debt collection notices sent under § 1692g need not require that disputes be expressed in writing. In doing so, we overrule *Graziano*'s contrary holding.").

The Bureau declines to modify how § 1006.34(c)(3)(iii) is phrased on the model validation notice. The Bureau developed the phrase "call or write" for comprehension purposes. The model notice's language is intended to be plain language and consumer-friendly and was validated through multiple rounds of qualitative and quantitative consumer testing.[278] Regulatory text and the model notice language reflecting that regulatory text need not be identical in every case. For instance, if consumers may not understand a requirement as described in regulatory text, it is appropriate to express that requirement in plain language in consumer disclosures.[279]

For these reasons, the Bureau is finalizing § 1006.34(c)(3)(iii) as proposed, with minor wording changes to clarify the content of the required disclosure, including by specifying that the consumer must notify the debt collector in writing "on or before" the end of the validation period, rather than "before" the end of the validation period, as proposed.[280]

34(c)(3)(iv)

Dodd-Frank Act section 1032(a) permits the Bureau to prescribe rules to ensure that the features of any consumer financial product or service, both initially and over the term of the product or service, are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances. To enhance consumer understanding of protections available during the debt collection process, and pursuant to its authority under Dodd-Frank Act section 1032(a), the Bureau proposed § 1006.34(c)(3)(iv) to provide that, if a debt collector is collecting a consumer financial product or service debt, as defined in § 1006.2(f), then validation information includes a statement that informs the consumer that

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[278] *See* part III.C.

[279] See the "Model Validation Notice" discussion in the section-by-section analysis of § 1006.34(d)(2) for additional details about how the statement required by § 1006.34(c)(3)(iii) is disclosed on the model validation notice.

[280] The model validation notice uses the term "by" instead of "on or before" for plain language purposes.

additional information regarding consumer rights in debt collection is available on the Bureau's website at *https://www.consumerfinance.gov*.

Commenters generally agreed that consumers would benefit from information about additional protections available to consumers experiencing debt collection. However, commenters disagreed about the best way to provide that information.

A large number of consumer advocate and academic commenters recommended that, rather than a statement that additional information is available on the Bureau's website, the Bureau should require debt collectors to provide consumers, along with the validation notice, a reference document describing consumer protections in debt collection, similar to the document that the Bureau developed prior to the SBREFA process.[281] Commenters stated that a reference document would be more useful to consumers than a statement appearing on a validation notice. Further, some such commenters stated that proposed § 1006.34(c)(3)(iv) would not help consumers without internet access who are unable to visit the Bureau's website.

Consumer advocate commenters and a group of academics also stated that, if the Bureau does not require a reference document, the Bureau should revise proposed § 1006.34(c)(3)(iv) to require debt collectors to include a web address that directs consumers to a Bureau page dedicated to consumer protections in debt collection, instead of to the Bureau's general website landing page.[282] Other commenters stated that requiring consumers to click on a hyperlink if the validation notice is delivered electronically would create procedural hurdles that reduce consumer follow through and would pose security risks to consumers.

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[281] For additional detail about information that the Bureau considered including in the reference document, see appendix G of the Small Business Review Panel Outline, *supra* note 39.

[282] Also, in response to proposed § 1006.34(d)(4)(ii), a consumer advocate commenter recommended that the Bureau permit debt collectors to embed a hyperlink that directs consumers to the Bureau's website address described in proposed § 1006.34(c)(3)(iv). As discussed in the section-by-section analysis of § 1006.34(d)(4)(ii), the Bureau is adopting this recommendation to permit debt collectors to include a hyperlink without losing the safe harbor in § 1006.34(d)(2).

At least one industry trade group commenter disagreed and supported proposed § 1006.34(c)(3)(iv) on the grounds that including a reference document with the validation notice would overwhelm consumers.

For the reasons discussed below, the Bureau is finalizing § 1006.34(c)(3)(iv) as proposed with a revision in response to feedback.

The Bureau declines to require debt collectors to provide consumers a reference document describing consumer protections in debt collection. Because the Bureau did not propose such a requirement, the Bureau did not receive robust feedback in response to the proposal about what such a required form should look like and how a requirement to provide it might operate. Further, the Bureau expects that most consumers will receive the disclosure referring to the Bureau's website and will be able to access the website; most consumers use the internet and have experience navigating to websites.[283]

The Bureau determines that consumers would benefit from being directed to a page dedicated to consumer protections in debt collection instead of the Bureau's website landing page. Accordingly, the Bureau is modifying § 1006.34(c)(3)(iv) to specifically reference the webpage *www.cfpb.gov/debt-collection* instead of the Bureau's general landing page. The Bureau is also making a conforming change to how the statement described in § 1006.34(c)(3)(iv) is disclosed on the model validation notice.

The Bureau determines that consumers will not face significant security risks when accessing the Bureau's website. The vast majority of validation notices today are delivered by mail, so an active hyperlink is not possible. In the case of electronic communications, the Bureau recognizes that active hyperlinks can present security concerns to consumers, including, among other things, phishing risks.[284] But the Bureau is not requiring debt collectors to include

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[283] For example, a Pew Research Center study in 2019 found that 90 percent of U.S. adults use the internet. *See* Pew Research Ctr., *Internet/Broadband Fact Sheet*, *https://www.pewresearch.org/internet/fact-sheet/internet-broadband/#who-uses-the-internet* (last visited Dec. 1, 2020).

[284] *See, e.g.*, Fed. Trade Comm'n, *How to Recognize and Avoid Phishing Scams* (May 2019), *https://www.consumer.ftc.gov/articles/how-recognize-and-avoid-phishing-scams* (last visited Dec. 1, 2020).

an active hyperlink to the Bureau's website in validation notices. In other words, even if the validation information is provided electronically, § 1006.34(c)(3)(iv) only requires that the text "*www.cfpb.gov/debt-collection*" be displayed in the information. As discussed in the section-by-section analysis of § 1006.34(d)(4)(ii), a debt collector is permitted, but not required, to include an active hyperlink to the Bureau's website. This is because hyperlinks are a common feature of electronic commercial communications. A validation notice that includes a hyperlink to the Bureau's website may be safe and convenient for a consumer. This would particularly be the case if the debt collector had prior contact with the consumer and the consumer recognizes that the validation notice was sent by a familiar source. If a consumer is unfamiliar with the debt collector or otherwise has concerns about clicking on an active hyperlink, the consumer could choose, rather than clicking on the hyperlink, to navigate independently to the Bureau's website to obtain more information about consumer protections in debt collection.

Accordingly, the Bureau is finalizing § 1006.34(c)(3)(iv) to provide that, if a debt collector is collecting debt related to a consumer financial product or service as defined in § 1006.2(f), validation information includes a statement that informs the consumer that additional information regarding consumer protections in debt collection is available on the Bureau's website at *www.cfpb.gov/debt-collection*.

34(c)(3)(v)

Proposed § 1006.34(c)(4) provided that validation information includes information that a consumer can use to take certain actions, including disputing a debt or requesting original-creditor information.[285] As discussed in the section-by-section analysis of § 1006.34(c)(3)(i) and (ii), FDCPA section 809(b) provides that consumers must notify a debt collector "in writing" to dispute a debt or request original-creditor information. Under § 1006.38, this writing requirement is satisfied if a consumer provides a dispute or request for original-creditor

[285] Proposed § 1006.34(c)(4) set forth required consumer-response information. Proposed § 1006.34(d)(3)(iii)(B) and (vi)(B) set forth certain other consumer-response information related to payment requests and requests for Spanish-language validation notices.

information to the debt collector using a medium of electronic communication through which a debt collector accepts electronic communications from consumers, such as an email address or a website portal.[286] Thus, debt collectors are required to give legal effect to consumer disputes or requests for original-creditor information submitted electronically only if a debt collector chooses to accept electronic communications from consumers. The Bureau proposed § 1006.34(c)(3)(v) to provide that validation information includes a statement explaining how a consumer can take the actions described in proposed § 1006.34(c)(4) and (d)(3), as applicable, electronically, if the debt collector sends a validation notice electronically.

Proposed comment 34(c)(3)(v)–1 explained that a debt collector may provide the information described in § 1006.34(c)(3)(v) by including the statements, "We accept disputes electronically," using that phrase or a substantially similar phrase, followed by an email address or website portal that a consumer can use to take the action described in § 1006.34(c)(4)(i), and "We accept original-creditor information requests electronically," using that phrase or a substantially similar phrase, followed by an email address or website portal that a consumer can use to take the action described in § 1006.34(c)(4)(ii).[287] Proposed comment 34(c)(3)(v)–1 also clarified that, if a debt collector accepts electronic communications from consumers through more than one medium, such as by email and through a website portal, the debt collector is only required to provide information regarding one of these media but may provide information about additional media.

An industry commenter and an industry trade group commenter supported proposed § 1006.34(c)(3)(v) because it would inform consumers about alternative methods to contact debt collectors and would increase the likelihood that consumers would engage with debt collectors. However, another industry commenter objected to the proposal because, the commenter argued,

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[286] *See* the section-by-section analysis of § 1006.38 and comment 38–1.

[287] On the model validation notice, this phrase appears as "We accept such requests electronically." This wording deviates from the regulatory text due to space considerations and the context of surrounding disclosures.

allowing consumers to exercise verification rights electronically would encourage consumers to submit verification requests for the purpose of delaying or avoiding paying a debt.

The Bureau determines that requiring debt collectors who provide validation notices electronically to include statements on the validation notice explaining how consumers can dispute the debt or request original-creditor information electronically will benefit consumers by facilitating their ability to exercise those verification rights electronically. The Bureau agrees that such disclosures will increase the likelihood of engagement between consumers and debt collectors but does not agree that they will encourage consumers to submit disputes or original-creditor-information requests to delay or avoid paying the debt. As discussed in the section-by-section analysis of § 1006.34(c)(3)(i), commenters have not provided evidence demonstrating that a significant number of consumers exercise their verification rights with the principal purpose of avoiding paying debts that they owe. Absent such evidence, the Bureau declines to conclude that consumers will exercise verification rights for this purpose.

Accordingly, the Bureau is finalizing § 1006.34(c)(3)(v) and its related commentary largely as proposed, except that the final rule does not require debt collectors who provide validation notices electronically to include statements stating how consumers can take the actions described in § 1006.34(d)(3) (*i.e.*, responding to a payment prompt (§ 1006.34(d)(3)(iii)) or requesting a Spanish-language translation (§ 1006.34(d)(3)(vi))) electronically.

The Bureau notes that § 1006.34(d)(3)(vi)(A) affirmatively permits a debt collector to include supplemental information in Spanish specifying how a consumer may request a Spanish-language validation notice, and such information could include how the consumer may do so electronically. In addition, as discussed at the outset of the section-by-section analysis of § 1006.34, the Bureau is not finalizing the proposed requirement that all validation notices must be substantially similar to the model validation notice in order to avoid violating the rule. Therefore, under the final rule, a debt collector who chooses to include either or both of the optional payment disclosures in § 1006.34(d)(3)(iii) is not prohibited by Regulation F from

including a statement about how the consumer can make a payment electronically (although including such a statement will take the debt collector out of the safe harbor in § 1006.34(d)(2)). The Bureau is finalizing § 1006.34(c)(3)(v) pursuant to its authority to interpret FDCPA section 809(a) and (b), as well as its authority under Dodd-Frank Act section 1032(a).

34(c)(3)(vi)

The Bureau proposed § 1006.34(c)(3)(vi) to provide that, for a validation notice delivered in the body of an email pursuant to procedures set forth in the proposal, validation information includes the opt-out statement required by § 1006.6(e).[288] Proposed comment 34(c)(3)(vi)–1 clarified certain details, including that the requirement would not apply in the case of validation notices delivered by hyperlink and that electronic delivery of a validation notice is not rendered ineffective if a consumer opts out of future electronic communications pursuant to § 1006.6(e).

Although no commenters objected to proposed § 1006.34(c)(3)(vi), the Bureau is not finalizing it. The Bureau has determined that it is not necessary to require debt collectors to include the § 1006.6(e) opt-out instructions on validation notices sent electronically because § 1006.6(e) itself already requires those instructions in every electronic communication or communication attempt, which will includes every electronic communication transmitting a validation notice. Thus, § 1006.34(c)(3)(vi) would be redundant.

A debt collector who sends a validation notice electronically may provide the § 1006.6(e) disclosure in the electronic communication outside of the validation notice. A debt collector who provides the model validation notice electronically will not lose the safe harbor described in § 1006.34(d)(2) by including the § 1006.6(e) disclosure in the electronic communication outside the model notice. Accordingly, the Bureau determines that the § 1006.6(e) opt-out disclosure is

[288] As finalized in the November 2020 Final Rule, § 1006.6(e) requires a debt collector who communicates or attempts to communicate with a consumer electronically in connection with the collection of a debt using a specific email address, telephone number for text messages, or other electronic-medium address to include in such communication or attempt to communicate a clear and conspicuous statement describing a reasonable and simple method by which the consumer can opt out of further electronic communications or attempts to communicate by the debt collector to that address or telephone number. *See* 85 FR 76734, 76890 (Nov. 30, 2020).

not necessary to include as validation information. Although the Bureau is not finalizing proposed § 1006.34(c)(3)(vi), the Bureau reaffirms the clarification in proposed comment 34(c)(3)(vi)–1 that electronic delivery of a validation notice is not rendered ineffective merely because a consumer opts out of future electronic communications pursuant to the instructions in § 1006.6(e).

34(c)(4) Consumer-Response Information

FDCPA section 809(b) contains certain requirements that a debt collector must satisfy if a consumer exercises the consumer's right to dispute the validity of the debt or request the name and address of the original creditor. If a consumer disputes a debt in writing within 30 days of receiving the validation information, a debt collector must stop collection of the debt until the debt collector obtains verification of the debt or a copy of a judgment against the consumer and mails it to the consumer. Similarly, if a consumer requests the name and address of the original creditor in writing within 30 days of receiving the validation information, FDCPA section 809(b) requires the debt collector to cease collection of the debt until the debt collector obtains and mails such information to the consumer. FDCPA section 809(b) also prohibits a debt collector, during the 30-day period consumers have to dispute a debt or request information about the original creditor, from engaging in collection activities and communications that overshadow, or are inconsistent with, the disclosure of the right to dispute the debt or request original-creditor information, which the Bureau collectively refers to as "verification rights."

The Bureau proposed § 1006.34(c)(4) to require a consumer-response information section to help consumers exercise their FDCPA section 809(b) verification rights.[289] Specifically, proposed § 1006.34(c)(4) provided that required validation information includes certain consumer-response information situated next to prompts that consumers could use to indicate that they want to take action or make a request. The proposed information, which is discussed in

[289] 84 FR 23275, 23404 (May 21, 2019).

the section-by-section analysis of § 1006.34(c)(4)(i) through (iii), included statements describing certain actions that a consumer could take, including submitting a dispute, identifying the reason for the dispute, providing additional detail about the dispute, and requesting original-creditor information.[290] Proposed § 1006.34(c)(4) provided that the consumer-response information section must be segregated from the validation information described in § 1006.34(c)(1) through (3) and from any optional information included pursuant to proposed § 1006.34(d)(3)(i), (ii), (iv), or (v) and, if the validation information is provided in writing or electronically, located at the bottom of the notice and under the headings, "How do you want to respond?" and "Check all that apply:". As shown on the proposed model validation notice, the consumer-response information section appeared as a tear-off portion of the form. Proposed comment 34(c)(4)–1 clarified that, if the validation information is provided in writing or electronically, a prompt described in § 1006.34(c)(4) may be formatted as a checkbox, as shown on the model validation notice.

A group of academic commenters expressed general support for proposed § 1006.34(c)(4). However, some industry commenters objected to the proposed consumer-response information section. According to a depository institution, the proposed consumer-response information formatted as a tear-off is an obsolete approach because physical mail is increasingly less relevant as consumers prefer electronic communications. An industry commenter stated that the proposed consumer-response information section would encourage consumers to communicate through mail, which is more expensive and time-intensive than other communication methods, such as email.

Several commenters raised concerns about proposed § 1006.34(c)(4)'s use of the heading "How do you want to respond?" A group of State Attorneys General and at least one industry commenter stated that consumers may incorrectly infer from this phrase that they must use the

[290] As discussed in the section-by-section analysis of § 1006.34(d)(3), proposed § 1006.34(d)(3)(iii)(B) and (vi)(B) provided that a debt collector also could include a payment disclosure and Spanish-language validation notice request disclosure as consumer-response information.

consumer-response information section to respond to a debt collector. Some commenters suggested that this phrase created the false impression that consumers must engage with the debt collector, even if they prefer not to. To address this concern, consumer advocate commenters and a group of State Attorneys General recommended that the consumer-response information section include "Do Nothing" as a response option.

Some industry trade group commenters objected to proposed § 1006.34(c)(4) being formatted for use with a return envelope. According to these commenters, some debt collectors do not include return envelopes with validation notices and instituting such a practice would entail significant costs. However, a consumer group commenter disagreed and stated that the Bureau should require debt collectors to include a return envelope with prepaid postage to facilitate use of the proposed consumer-response information section.

After considering comments, the Bureau is adopting § 1006.34(c)(4) with minor wording changes to conform to changes in § 1006.34(d).

The Bureau acknowledges that electronic communications are increasingly prevalent in society at large; however, most debt collectors do not presently communicate with consumers electronically, particularly to provide validation notices.[291] Further, many consumers still prefer to communicate with debt collectors via mail instead of email or other electronic media.[292] Given communication practices in the debt collection industry and consumer preferences, the Bureau determines that formatting the model validation notice consumer-response information section as a tear-off so that a consumer can return that portion of the form by mail if the consumer so chooses will benefit both debt collectors and consumers. Thus, if debt collectors

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[291] *See* 85 FR 76734, 76852 (Nov. 30, 2020).

[292] According to the CFPB Debt Collection Consumer Survey, 71 percent of consumers preferred to be contacted by a debt collector by mail. Only 12 percent of consumers preferred email. Bureau of Consumer Fin. Prot., *Consumer Experience with Debt Collection: Findings from CFPB's Survey of Consumer Views on Debt*, at 29-30 (Jan. 12, 2017), *http://files.consumerfinance.gov/f/documents/201701_cfpb_Debt-Collection-Survey-Report.pdf* (CFPB Debt Collection Consumer Survey).

opt not to format the consumer-response information section as a tear-off, the § 1006.34(d)(2) safe harbor will not apply to their validation notices.

The Bureau concludes that the heading "How do you want to respond?" likely will not lead consumers to believe that they must respond to the debt collector or use the consumer-response information section to do so. Consumer testing indicated that consumers paid relatively little attention to this heading.[293] Further, consumers generally grasped the consequences of not responding to a validation notice.[294] These findings suggest that the heading will not induce otherwise unwilling consumers to engage with debt collectors. This conclusion is bolstered by findings from the Bureau's most recent qualitative consumer testing. The Bureau's consumer testing suggests that consumers understand that they have the option of not engaging with a debt collector in response to a validation notice.[295] This testing also indicates that consumers understand that, if they choose to communicate with a debt collector, they do not have to use the consumer-response information section to do so.[296] The Bureau therefore determines that it is unnecessary to include a "Do Nothing" response option, as some commenters suggested.

The consumer-response information section should be formatted for use with a return envelope. The fact that the consumer-response information established by § 1006.34(c)(4) is formatted on the model validation notice for use with a return envelope does not require debt collectors to include return envelopes with validation notices, even if they use the model notice.

Accordingly, the Bureau is finalizing § 1006.34(c)(4) with minor wording changes

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[293] "The 'You Have Rights' and 'How do you want to respond to this notice?' sections had a comparatively low number of fixations (*i.e.*, a testing participant's eyes resting on a piece of information) compared to other parts of the notice. These two sections were often discussed during the interview as being important so the fewer number of fixations suggests that this information might have been easy to read and comprehend. Participants also commented that these sections only needed to be scanned, further suggesting that fewer fixations on this section might have been due to ease of processing the information rather than a disinterest in the information. *See* FMG Usability Report, *supra* note 28, at 7.

[294] *See id.* at 83-84.

[295] When asked about whether they were legally required respond to the model validation notice, approximately 90 percent of participants reported that they were not. *See* November 2020 Qualitative Testing Report, *supra* note 34, at 11.

[296] During testing, participants generally understood that they could dispute the debt by telephone, electronically, or writing with or without the "tear-off." *See id.* at 15.

to conform to changes in § 1006.34(d). The Bureau also is finalizing § 1006.34(c)(4)(i) through (iii) and their related commentary with certain modifications that are discussed in the section-by-section analysis below.

The Bureau is finalizing § 1006.34(c)(4) pursuant to its authority under FDCPA section 814(d) to prescribe rules with respect to the collection of debts by debt collectors and, as described more fully below, its authority to implement and interpret FDCPA section 809. The Bureau is also finalizing § 1006.34(c)(4) pursuant to its authority under section 1032(a) of the Dodd-Frank Act, on the basis that the information in § 1006.34(c)(4)(i) through (iii) informs consumers how to exercise their rights under FDCPA section 809(b) and therefore is a feature of debt collection. Requiring disclosure of consumer-response information will help to ensure that the features of debt collection are fully, accurately, and effectively disclosed to consumers, such that consumers may better understand the costs, benefits and risks associated with debt collection.

34(c)(4)(i) Dispute Prompts

FDCPA section 809(a)(4) requires a debt collector to disclose to consumers their right under FDCPA section 809(b) to dispute the validity of the debt within 30 days after receipt of the validation notice.[297] Proposed § 1006.34(c)(4)(i) provided that consumer-response information includes statements, situated next to prompts, that the consumer can use to dispute the validity of a debt and to specify a reason for that dispute.[298] Proposed § 1006.34(c)(4)(i), which was designed to work in tandem with § 1006.34(c)(3)(i),[299] provided that consumer-response information includes the following four statements, listed in the following order, using the following phrasing or substantially similar phrasing, each next to a prompt: "I want to dispute the

[297] 15 U.S.C. 1692g(a)(4).

[298] 84 FR 23274, 23404-05 (May 21, 2019).

[299] As finalized, § 1006.34(c)(3)(i) provides that validation information includes the date the debt collector will consider the end date of the validation period and a statement that, if the consumer notifies the debt collector in writing on or before that date that the debt, or any portion of the debt, is disputed, the debt collector must cease collection of the debt, or the disputed portion of the debt, until the debt collector sends the consumer either the verification of the debt or a copy of a judgment.

debt because I think:"; "This is not my debt."; "The amount is wrong."; and "Other: (please describe on reverse or attach additional information)."

A group of academic commenters and some consumer advocate commenters supported the dispute prompts described in proposed § 1006.34(c)(4)(i). The academic commenters stated that the prompts would facilitate consumer disputes because consumers are accustomed to using forms with prompts, such as drop-down menus in online transactions. According to these commenters, the Bureau should facilitate consumer disputes given the low consumer literacy levels in the United States—particularly among consumers with limited English proficiency (LEP consumers)—and the FDCPA's least-sophisticated-consumer standard.[300] These commenters stated that facilitating disputes will also benefit industry because consumer disputes may lead to questionable or invalid debts being removed from the market.

Other commenters objected to proposed § 1006.34(c)(4)(i). Industry trade group commenters stated that the proposed dispute prompts would increase dispute volume and, consequently, debt collectors would incur additional costs responding to disputes. Industry commenters stated that higher dispute volumes would overwhelm debt collectors, making it difficult to identify and process valid disputes. Industry and industry trade group commenters stated that the proposed dispute prompts would lead consumers to believe that they had to dispute the debt, even if they recognized the debt as valid. Industry and industry trade groups argued that streamlining the dispute process would encourage frivolous disputes. One industry trade group stated that requiring a lawyer engaged in debt collection to include the proposed dispute prompts on a validation notice would constitute providing legal advice to unrepresented persons, which is a violation of attorney rules of professional conduct.

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[300] *See, e.g.*, *Rosenau v. Unifund Corp.*, 539 F.3d 218, 221 (3d Cir. 2008) ("We use the 'least sophisticated debtor' standard in order to effectuate the basic purpose of the FDCPA: to protect all consumers, the gullible as well as the shrewd.") (citations and some internal quotation marks omitted); *Clomon v. Jackson*, 988 F.2d 1314, 1319 (2d Cir. 1993) ("To serve the purposes of the consumer-protection laws, courts have attempted to articulate a standard for evaluating deceptiveness that does not rely on assumptions about the 'average' or 'normal' consumer. This effort is grounded, quite sensibly, in the assumption that consumers of below-average sophistication or intelligence are especially vulnerable to fraudulent schemes. The least-sophisticated-consumer standard protects these consumers in a variety of ways.").

Industry and industry trade group commenters stated the proposed dispute prompts would not solicit enough information for debt collectors to evaluate disputes. According to commenters, the proposed dispute prompts are too general and would result in generic disputes that would increase compliance costs, frustrate dispute investigation, undermine consumer communication, and increase litigation risk. To address these concerns, commenters recommended modifications to proposed § 1006.34(c)(4)(i). Some commenters suggested that the validation notice provide additional space where a consumer could include additional dispute detail, update contact information, or provide communication preferences. Other commenters recommended replacing the proposed dispute prompts with narrative instructions that solicit dispute detail and supporting documentation.

As discussed in the section-by-section analysis of § 1006.34(c)(2)(i), commenters stated that some debt collectors receive payments and other correspondence, including disputes, at separate addresses. Industry commenters stated that proposed § 1006.34(c)(4)(i) would effectively combine a dispute form with a payment coupon. According to commenters, a consumer's dispute may not be processed in a timely fashion if a consumer returns a consumer-response information form with a dispute to a dedicated payment address.

Several consumer advocate commenters recommended combining the proposed dispute prompts into a single prompt. According to these commenters, a single dispute prompt would be appropriate because the FDCPA does not require a consumer to specify a reason for a dispute and a consumer may make unintentional admissions against their interest by providing details.

Some commenters suggested additional dispute-related prompts. Consumer advocate commenters recommended prompts for debts discharged in bankruptcy, debts resulting from identity theft, and debts that were previously paid or settled. Industry commenters urged the Bureau to add a general account inquiry prompt. According to one industry commenter, consumers with an account inquiry may perceive that they have no alternative but to select a dispute prompt if proposed § 1006.34(c)(4)(i) does not include a general account inquiry prompt.

An industry commenter asked for additional guidance about how the proposed dispute prompts should be formatted when validation information is provided on a website.

Consistent with the rationale discussed in the proposal and for the following reasons, the Bureau is adopting proposed § 1006.34(c)(4)(i).

The Bureau determines that § 1006.34(c)(4)(i) will help consumers exercise their FDCPA section 809 dispute rights, in part because prompts are a common feature in written and electronic communications and most consumers are familiar with the concept. The Bureau determines that facilitating consumer disputes under FDCPA section 809 is beneficial, particularly for less sophisticated consumers. Further, to the extent consumer disputes help remove invalid debts from circulation, § 1006.34(c)(4)(i) will improve the efficiency of debt markets.

It is also not clear that finalizing the dispute prompts will result in a significant increase in consumer disputes compared to current dispute rates. Section 1006.34(c)(2) will require debt collectors to disclose more information about the debt and will help consumers recognize debts they owe. Thus, § 1006.34(c)(2) may reduce the number of disputes arising from lack of consumer recognition.

The Bureau disagrees that § 1006.34(c)(4)(i) will make it more difficult for debt collectors to identify and process valid disputes. As noted above, § 1006.34(c)(2) should reduce the number of disputes arising from lack of consumer recognition. Therefore, the disputes debt collectors receive will be more likely to reflect problems with the underlying debt. Further, § 1006.34(c)(4)(i)'s dispute prompts—including § 1006.34(c)(4)(i)(D)'s free-form dispute prompt—may help consumers articulate and provide more detailed information about the nature of their disputes. Thus, debt collectors may better understand the nature of a consumer's dispute and be able to respond more efficiently than if consumers had provided generic disputes.

Further, dispute prompts likely will not lead consumers to believe that they must dispute the debt. The Bureau's consumer testing indicates that consumers who receive a validation

notice understand that they are not required to dispute a debt.[301] Further, the Bureau disagrees that streamlining the dispute process will significantly increase the frequency of frivolous disputes. As discussed in the section-by-section analysis of § 1006.34(c)(3)(i) and (v), debt collectors have not provided evidence that supports the premise that a significant number of consumers exercise their FDCPA section 809 verification rights solely to evade or avoid paying debts that they owe. Absent such evidence, the Bureau declines to conclude that consumers will dispute for such purposes.

The Bureau determines that requiring debt collectors who are attorneys to include dispute prompts in the consumer-response information will not cause those debt collectors to violate the professional rule of conduct against providing legal advice to an unrepresented person.[302] The FDCPA requires all debt collectors, including debt collectors who are attorneys, to include in the validation information statements relating to the consumer's right to dispute the debt. The dispute prompt merely provides consumers a simple way to exercise that right if the consumer so chooses; it does not advise the consumer whether to do so. In addition, the commenter that raised this concern cited no case law, legal interpretation, or comparable evidence to support the proposition that including the dispute prompt will be problematic.

The Bureau is not modifying § 1006.34(c)(4)(i) to provide additional space for consumers to provide dispute details or to replace the dispute prompts with narrative instructions. As discussed above, the Bureau finds that it is unlikely that § 1006.34(c)(4)(i) will increase generic dispute volume. On the contrary, the dispute prompts—including the free-form dispute prompt in § 1006.34(c)(4)(i)(D)—will provide debt collectors with more detailed dispute information than they receive in many cases today. Further, the free-form dispute prompt

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[301] During one round of testing, approximately 50 percent of participants stated that they would attempt to "confirm" a debt in response to receiving a validation notice. Participants stated that they would do so by, for example, contacting either the creditor or the debt collector. Participants did not report that they would dispute solely for the purposes of confirming the details of the debt. *See* November 2020 Qualitative Testing Report, *supra* note 34, at 11.

[302] *See* Am. Bar Ass'n, *Model Rules of Professional Conduct, Rule 4.3: Dealing with Unrepresented Person https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_4_3_dealing_with_unrepresented_person/* (last visited Dec. 2, 2020).

informs consumers that they can provide additional information on the reverse of the consumer-response-information section (which is formatted as a tear-off on the model validation notice) or on a separate page. Thus, there is no need to provide additional space for dispute detail on the validation notice itself.

Section 1006.34(c)(4)(i) will not lead to disputes being misdirected to dedicated payment addresses. As discussed in the section-by-section analysis of § 1006.34(c)(4)(iii), the debt collector must disclose in the consumer-response information section the same mailing address disclosed pursuant to § 1006.34(c)(2)(i), which is the mailing address where the debt collector accepts disputes and requests for original-creditor information.

The Bureau declines to structure § 1006.34(c)(4)(i) as a single dispute prompt. As discussed above, the dispute prompts are designed to help consumers articulate, and debt collectors better understand, the nature of a consumer's dispute and respond more efficiently than if consumers had provided generic disputes. Reformulating § 1006.34(c)(4)(i) as a single prompt would undermine this goal. Meanwhile, the dispute prompts described in § 1006.34(c)(4)(i) do not contain individualized information that could reasonably result in a consumer making an unintentional admission against their interest.

The Bureau declines to adopt additional dispute-related prompts. Additional prompts for debts discharged in bankruptcy, debts resulting from identity theft, and debts that were previously paid or settled are, in the aggregate, not feasible and would likely overwhelm consumers. Further, the Bureau believes the dispute prompts in § 1006.34(c)(4)(i)(B) (this is not my debt) and (C) (the amount is wrong) essentially capture these scenarios.

The Bureau also declines to add a general account inquiry prompt distinct from the dispute prompt, as suggested by some commenters who argued that consumers would use the dispute prompts to obtain general information. The Bureau's testing has shown that consumers generally understand that their response options are not limited to selecting a dispute prompt and

that disputing the debt is not the appropriate method to raise a general question about the account.[303]

The Bureau declines to provide additional guidance about formatting the dispute prompts if validation information is provided on a website. As discussed in the November 2020 Final Rule, the Bureau did not finalize several proposed interventions related to electronic delivery of required notices, including proposed alternative procedures for providing the validation information on a secure website (proposed § 1006.42(c)(2)(ii)).[304] Because the Bureau is not addressing electronic delivery more broadly, the Bureau declines here to provide guidance about disclosing validation information on websites. However, as discussed in the section-by-section analysis of § 1006.34(d)(2), in contrast to the proposal, debt collectors are not required to use the model validation notice or a substantially similar form.

Accordingly, the Bureau is finalizing proposed § 1006.34(c)(4)(i) pursuant to its authority to implement and interpret FDCPA section 809, as well as its authority under Dodd-Frank Act section 1032(a).

34(c)(4)(ii) Original-Creditor Information Prompt

FDCPA section 809(a)(5) requires a debt collector to disclose to consumers their right under FDCPA section 809(b) to request the name and address of the original creditor, if different from the current creditor.[305] Proposed § 1006.34(c)(4)(ii) provided that consumer-response information includes the statement, "I want you to send me the name and address of the original creditor," using that phrase or a substantially similar phrase, next to a prompt the consumer could use to request original-creditor information.[306] Proposed § 1006.34(c)(4)(ii) was intended to

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[303] During usability testing, when participants were asked what they could do if they did not think they owed the debt, "all participants understood that they had options for contacting the debt collector to dispute the debt," which included calling and writing. FMG Usability Report, *supra* note 28, at 48. *See also* November 2020 Qualitative Testing Report, *supra* note 34, at 11 (discussion in "Response to the model validation notice" section).

[304] 85 FR 76734, 76850-55 (Nov. 30, 2020).

[305] 15 U.S.C. 1692g(a)(5).

[306] 84 FR 23274, 23405 (May 21, 2019).

work in tandem with proposed § 1006.34(c)(3)(ii).[307] The Bureau received no comments specifically addressing proposed § 1006.34(c)(4)(ii) and is finalizing it as proposed.

34(c)(4)(iii)

FDCPA section 809(b) assumes that a consumer has the ability to write to a debt collector to exercise the consumer's verification rights.[308] Requiring a debt collector to include mailing addresses for the consumer and the debt collector, along with the consumer-response information described in § 1006.34(c)(4)(i) and (ii), may facilitate a consumer's ability to exercise the consumer's verification rights. The Bureau proposed § 1006.34(c)(4)(iii) to provide that consumer-response information includes mailing addresses for the consumer and the debt collector.[309]

An industry trade group stated that some debt collectors use vendors to receive and process mail from consumers. According to this commenter, the Bureau should permit a debt collector to disclose the address at which a debt collector receives mail, even if that address is not the debt collector's physical address.

The Bureau is finalizing § 1006.34(c)(4)(iii) with a clarifying revision that addresses the commenter's request regarding letter vendor mailing addresses. The Bureau is revising § 1006.34(c)(4)(iii) to provide that the mailing addresses disclosed for the consumer and the debt collector in the consumer-response information must include the debt collector's and the consumer's names and mailing addresses as disclosed pursuant to § 1006.34(c)(2)(i) and (ii). In turn, the Bureau notes that final § 1006.34(c)(2)(i) and comment 34(c)(2)(i)–2 permit debt collectors to disclose a vendor's mailing address, if that is an address at which the debt collector accepts disputes and requests for original-creditor information. Thus, under the final rule, a debt

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[307] As finalized, § 1006.34(c)(3)(ii) provides that validation information includes the date that the debt collector will consider the end date of the validation period and a statement that, if the consumer requests in writing on or before that date the name and address of the original creditor, the debt collector must cease collection of the debt until the debt collector sends the consumer the name and address of the original creditor, if different from the current creditor.

[308] *See* 15 U.S.C. 1692g(b).

[309] 84 FR 23274, 23405 (May 21, 2019).

collector may include a vendor's address in the consumer-response information if that is the address that the debt collector discloses pursuant to § 1006.34(c)(2)(i).

The Bureau notes that final § 1006.34(c)(2)(i) and comment 34(c)(2)(i)–1 permit a debt collector to disclose its trade name or DBA, instead of its legal name. Thus, under the final rule, a debt collector must disclose its trade name or DBA in the consumer-response information if that is the name that the debt collector discloses pursuant to § 1006.34(c)(2)(i).

34(c)(5) Special Rule for Certain Residential Mortgage Debt

FDCPA section 809(a)(1) requires a debt collector to disclose to consumers the amount of the debt.[310] As discussed in the section-by-section analysis of § 1006.34(c)(2)(vi) through (viii), the Bureau interprets FDCPA section 809(a)(1) to require debt collectors to disclose three pieces of itemization-related information: the itemization date; the amount of the debt on the itemization date; and an itemization of the debt reflecting interest, fees, payments, and credits since the itemization date.

For certain residential mortgage debt covered by TILA, as implemented by Regulation Z, 12 CFR 1026, 12 CFR 1026.41(b) generally requires that a periodic statement be delivered or placed in the mail within a reasonably prompt time after the payment due date or the end of any courtesy period provided for the previous billing cycle. The Bureau understands that most residential mortgage debt is subject to this requirement, although exceptions exist.[311] The Bureau further understands that a consumer is provided with such a periodic statement every billing cycle, even if a loan is transferred between servicers. Pursuant to 12 CFR 1026.41(d)(3), such a periodic statement must include a past payment breakdown, which shows the total of all payments received since the last statement, including a breakdown showing the amount, if any,

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[310] 15 U.S.C. 1692g(a)(1).

[311] The periodic statement requirement pursuant to 12 CFR 1026.41(b) does not apply to open-end consumer credit transactions, such as a home equity line of credit. *See* 12 CFR 1026.41(a)(1). Pursuant to 12 CFR 1026.41(e), certain types of transactions are exempt from § 1026.41(b)'s periodic statement requirement, including reverse mortgages, timeshare plans, certain charged-off mortgage loans, mortgage loans with certain consumers in bankruptcy, and fixed-rate mortgage loans where a servicer provides the consumer with a coupon book for payment. Further, small servicers as defined by 12 CFR 1026.41(e)(4)(ii) are exempt from the periodic statement requirement.

that was applied to principal, interest, escrow, fees, and charges, and the amount, if any, sent to any suspense or unapplied funds account. The proposal stated that these periodic statement disclosures may be functionally equivalent to, and as useful for the consumer as, the information described in proposed § 1006.34(c)(2)(vii) through (ix).[312]

Proposed § 1006.34(c)(5) therefore provided that, for debts subject to Regulation Z, 12 CFR 1026.41, a debt collector need not provide the validation information described in § 1006.34(c)(2)(vii) through (ix) if the debt collector provided the consumer, at the same time as the validation notice, a copy of the most recent periodic statement provided to the consumer under 12 CFR 1026.41(b), and referred to that periodic statement in the validation notice. Proposed comment 34(c)(5)–1 provided examples clarifying how debt collectors could comply with § 1006.34(c)(5). Consistent with the proposal's rationale, and for the reasons discussed below, the Bureau is adopting § 1006.34(c)(5) and its related commentary with a substantive modification and a clarification.

Some commenters recommended that the Bureau expand proposed § 1006.34(c)(5) to cover additional debt types. An industry trade group commenter stated that the Bureau should revise proposed § 1006.34(c)(5) to apply to all residential mortgage debt, including to transactions that are exempt from § 1026.41(b)'s periodic statement requirement, such as mortgage loans with certain consumers in bankruptcy. As discussed in detail in the section-by-section analysis of § 1006.34(c)(2)(viii), the Bureau received feedback that its proposed itemization would be incompatible with the account characteristics of debts in bankruptcy. Thus, this commenter suggested that the Bureau should revise proposed § 1006.34(c)(5) to permit a debt collector to reference the consumer's bankruptcy case and the filed or pending proof of claim instead of providing the itemization-related disclosures required by § 1006.34(c)(2). Other

[312] 84 FR 23274, 23348 (May 21, 2019).

industry trade group commenters variously recommended that the special rule extend to reverse mortgages structured as open-end credit, home-equity lines of credit, and credit cards.

A consumer advocate commenter recommended that the Bureau revise proposed § 1006.34(c)(5) to apply only to debts that are currently subject to Regulation Z, 12 CFR 1026.41, to reduce the likelihood that a debt collector provides an outdated periodic statement. According to the commenter, TILA coverage is fluid and a significant amount of time can elapse between when the creditor provides a last periodic statement and when the debt collector provides a validation notice. This commenter recommended that the Bureau revise proposed § 1006.34(c)(5) to provide that the previous periodic statement must have been provided no more than 31 days before the validation notice is sent. The commenter also recommended that, if any entity other than the current servicer provided the most recent periodic statement, the debt collector must conduct a reasonable investigation to verify the accuracy of the prior entity's periodic statement or prepare its own periodic statement.

The Bureau declines to expand § 1006.34(c)(5) to cover additional debt types. For certain residential mortgage debt, the final rule permits debt collectors to provide a periodic statement that was provided under 12 CFR 1026.41(d)(3) in lieu of the information described in final § 1006.34(c)(2)(vi) through (viii) because those periodic statement disclosures are functionally equivalent to, and as useful for the consumer as, that itemization information. This special rule is not appropriate for the additional debt types recommended by commenters because those debt types are not subject to prescriptive disclosure regimes, such as Regulation Z. The Bureau doubts that disclosures used for those other debt types relate to information that is functionally equivalent to, or as useful as, the information § 1006.34(c)(2)(vi) through (viii) requires. For instance, mortgage loans with certain consumers in bankruptcy are exempt from § 1026.41(b)'s periodic statement requirement.[313] With respect to debts in bankruptcy in

[313] *See* 12 CFR 1026.41(e).

general, the Bankruptcy Code does not prescribe disclosure requirements for proofs of claim that are comparable to Regulation Z, 12 CFR 1026.41(d)(3). As discussed in the section-by-section analysis of § 1006.34(c)(2)(ix), reverse mortgages are not subject to prescriptive regulatory requirements for periodic statements. The periodic statement requirement in 12 CFR 1026.41(b) does not cover open-end consumer credit transactions, including home-equity lines of credit.[314] With respect to credit card debt, no special accommodation is necessary as debt collectors can readily disclose the itemization information pursuant to § 1006.34(c)(2)(vi) through (viii).

The Bureau determines that § 1006.34(c)(5) should apply only to debts that are currently subject to Regulation Z, 12 CFR 1026.41. Modifying the proposal to this effect is appropriate to reduce the likelihood that a debt collector provides an outdated periodic statement, which may not provide information that is functionally equivalent to, or as useful as, the information described in § 1006.34(c)(2)(vi) through (viii). The Bureau therefore is revising proposed § 1006.34(c)(5) and its related commentary to provide that the special rule only applies to residential mortgage debt if a periodic statement is required under Regulation Z, 12 CFR 1026.41, at the time a debt collector provides the validation notice.[315]

Accordingly, the Bureau is finalizing § 1006.34(c)(5) as described above and is finalizing comment 34(c)(5)–1 with minor revisions for clarity and consistency with provisions of the final rule.

34(d) Form of Validation Information

34(d)(1) In General

The Bureau proposed § 1006.34(d)(1)(i) to require that the validation information described in § 1006.34(c) be conveyed in a clear and conspicuous manner. The Bureau reasoned that FDCPA section 809(a)'s required disclosures would be ineffective unless a debt collector

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[314] *See* 12 CFR 1026.41(a)(1).

[315] Under § 1006.34(d)(2)(ii), a debt collector who uses the model validation notice and who also uses the special rule for certain residential mortgage debt under § 1006.34(c)(5) receives a safe harbor for use of the model notice except with respect to the disclosures that appear on the separate page.

disclosed them in a manner that was readily understandable to consumers.[316] The Bureau received no comments specifically addressing proposed § 1006.34(d)(1)(i). The Bureau therefore is finalizing it largely as proposed but renumbered as § 1006.34(d)(1)[317] and with a wording change solely for consistency with final § 1006.34(c). The Bureau adopts § 1006.34(d)(1) to implement and interpret FDCPA section 809(a) and pursuant to its authority under FDCPA section 814(d) to prescribe rules with respect to the collection of debts by debt collectors. The Bureau also adopts § 1006.34(d)(1) pursuant to its authority under section 1032(a) of the Dodd-Frank Act to prescribe rules to ensure that the features of consumer financial products and services are disclosed fully, accurately, and effectively. The Bureau finalizes this requirement on the basis that validation information is a feature of debt collection and this information must be readily understandable to be effectively and accurately disclosed.

Proposed Provision Not Finalized

As noted at the outset of the section-by-section analysis of § 1006.34, the Bureau proposed that debt collectors could use the model validation notice to comply with the disclosure requirements proposed in § 1006.34(a)(1)(i) and (d)(1).[318] In turn, the Bureau proposed § 1006.34(d)(1)(ii) to require that, if provided in a validation notice, the content, format, and placement of the validation information in § 1006.34(c) and the optional disclosures in § 1006.34(d)(3) must be substantially similar to the model validation notice. Proposed comment 34(d)(1)(ii)–1 explained that a debt collector could make certain changes as long as the resulting disclosures were substantially similar to the model validation notice, and it provided an example of a change that debt collectors may make to the validation notice if the consumer is deceased.

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[316] 84 FR 23274, 23348 (May 21, 2019). Section 1006.34(b)(1) defines clear and conspicuous, and the Bureau responded to comments on that definition in the section-by-section analysis of § 1006.34(b)(1).

[317] As discussed under the heading *Proposed Provision Not Finalized* in this section-by-section analysis, the Bureau is not finalizing proposed § 1006.34(d)(1)(ii) and therefore is finalizing proposed § 1006.34(d)(1)(i) as § 1006.34(d)(1).

[318] As discussed in the section-by-section analysis of § 1006.34(d)(1), the Bureau proposed § 1006.34(d)(1)(i) to require that required validation information be provided in a clear and conspicuous manner.

While some industry, industry trade group, and consumer advocate commenters supported proposed § 1006.34(d)(1)(ii), other industry and industry trade group commenters raised concerns that the proposed model validation notice would not accommodate all debt types and debt collection practices, suggesting that some debt collectors therefore would be unable to comply with proposed § 1006.34(d)(1)(ii). At least two commenters, including a debt buyer specializing in medical debt, stated that the proposed model validation notice was not well-suited for non-financial debts, such as medical debts. A number of commenters objected to the proposal because it would not allow debt collectors to combine multiple debts in a single validation notice or place multiple validation notices in one envelope. Commenters asked the Bureau to modify proposed § 1006.34(d)(1)(ii) to provide debt collectors more flexibility to customize validation notices to accommodate their business practices and the types of debts they collect.

As discussed in the section-by-section analysis of § 1006.34(d)(2), the Bureau has determined that a model validation notice will benefit consumers and industry. However, based in part on feedback from commenters, the Bureau also has determined that proposed § 1006.34(d)(1)(ii) was overly prescriptive. Proposed § 1006.34(d)(1)(ii) would have required any validation notice provided by a debt collector to be substantially similar to the model validation notice. Such a requirement could cause some debt collectors to face undue compliance challenges depending on their business practices and the types of debts they collect.

For this reason, the Bureau is not finalizing proposed § 1006.34(d)(1)(ii) and its related commentary. Instead, as discussed in the section-by-section analysis of § 1006.34(d)(2), the Bureau is adopting a more flexible framework in which debt collectors need not use either the model validation notice, specified variations of the model notice, or a substantially similar form, but debt collectors who do so will receive a safe harbor for compliance with the information and

form requirements of § 1006.34(c) and (d)(1).[319] This flexible framework is more consistent with model form safe harbors in other consumer financial regulations.[320] The Bureau determines that this new framework will accommodate industry without significantly increasing risks to consumers because the Bureau believes it is likely that, if possible, debt collectors will use the model validation notice, specified variations of the model notice, or a substantially similar form to receive the compliance safe harbor. The Bureau notes that a debt collector who provides the validation information in a form that is not substantially similar either to the model validation notice or to a specified variation of the model notice also is subject to the FDCPA section 807 prohibition on false or misleading representations and the FDCPA section 809(b) prohibition on overshadowing.

34(d)(2) Safe Harbor

As discussed, the Bureau proposed § 1006.34(d)(2) to provide, pursuant to its authority under Dodd-Frank Act section 1032(b), that a debt collector who uses the model validation complies with the disclosure requirements of § 1006.34(a)(1)(i) and (d)(1).[321] Proposed comment 34(d)(2)–1 provided certain details regarding use of the model validation notice. Under proposed § 1006.34(d)(2) and as explained in proposed comment 34(d)(2)–1, although use of the model validation notice was not required, debt collectors would have received a safe harbor for compliance only if they used the model validation notice. Under proposed § 1006.34(d)(2), debt collectors would not have received a safe harbor if they used a form that was substantially similar to the model validation notice.

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[319] The Bureau is relocating and repurposing some of the proposed text of § 1006.34(d)(1)(ii) and comment 34(d)(1)(ii)–1 to § 1006.34(d)(2). *See* the section-by-section analysis of § 1006.34(d)(2).

[320] 15 U.S.C. 1601 *et seq.*

[321] 84 FR 23274, 23405 (May 21, 2019). As discussed elsewhere in part V, proposed § 1006.34(a)(1)(i) provided that debt collectors must send validation notices containing the information described in proposed § 1006.34(c) to consumers in a manner permitted by § 1006.42 (*i.e.*, in a manner reasonably expected to provide actual notice and in a form that the consumer may keep and access later). And proposed § 1006.34(d)(1) provided that debt collectors must provide such validation information clearly and conspicuously.

As discussed below, the Bureau is finalizing proposed § 1006.34(d)(2) and comment 34(d)(2)–1 with significant revisions to, among other things, provide that debt collectors may obtain a safe harbor for compliance with the validation information disclosure requirements by using either the model validation notice, specified variations of the model notice, or a substantially similar form. The Bureau is finalizing new commentary to provide additional details regarding the revised safe harbor framework.

Industry and industry trade group commenters overall supported providing a safe harbor to debt collectors who use the model validation notice. An industry and an industry trade group commenter stated that a safe harbor would reduce frivolous litigation and compliance costs. An industry commenter stated that not requiring debt collectors to use the model validation notice would help to ensure that debt collectors can provide validation notices in a manner consistent with their business practices and the debt types they collect.

Some industry commenters asked the Bureau to specify what optional disclosures could be added to the model notice. A number of industry and industry trade group commenters also asked the Bureau to further clarify what changes debt collectors could make to the model validation notice and still receive the safe harbor.

Relatedly, some industry and industry trade group commenters asked the Bureau to clarify the meaning of "substantially similar," and two industry trade group commenters recommended that the Bureau adopt Regulation Z's definition of substantially similar. Some industry and industry trade group commenters recommended that the Bureau expand § 1006.34(d)(2) to provide that debt collectors who use the model validation notice comply with FDCPA section 807's prohibition on false or misleading statements and FDCPA section 809(b)'s overshadowing prohibition.[322]

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[322] *See* 15 U.S.C. 1692e; *see also* 15 U.S.C. 1692g(b) ("Any collection activities and communication during the 30-day period may not overshadow or be inconsistent with the disclosure of the consumer's right to dispute the debt or request the name and address of the original creditor.").

A group of consumer advocate commenters stated that proposed § 1006.34(d)(2) was too broad. Specifically, according to the commenter, the safe harbor's cross-reference to § 1006.34(a)(1)(i) was overbroad because simply using the model validation notice does not mean that the debt collector sent the validation notice in an initial communication or within five days of the initial communication as required by § 1006.34(a)(1)(i). This commenter recommended that the Bureau remove the reference to § 1006.34(a)(1)(i) from § 1006.34(d)(2).

After considering this feedback, and to clarify each of the ways in which a debt collector may receive a safe harbor for compliance with the final rule's validation information disclosure requirements, the Bureau is finalizing § 1006.34(d)(2) and its related commentary with significant revisions, as follows.

34(d)(2)(i) In General

First, the Bureau is finalizing § 1006.34(d)(2)(i) to provide that, as proposed, a debt collector who uses the model validation notice receives a safe harbor for compliance with the final rule's validation information disclosure requirements. The Bureau determines that a safe harbor is appropriate because the model validation notice will effectively disclose information required by § 1006.34(c), and the safe harbor will incentivize debt collectors to use the model notice.

The Bureau agrees that the § 1006.34(d)(2) safe harbor should not cover delivery of the validation notice. The Bureau recognizes the risk that a debt collector could deliver the model validation notice in an ineffective manner and that, as a result, the notice would be delayed or never received by the consumer. The Bureau does not intend § 1006.34(d)(2) to provide a safe harbor in such a scenario. For this reason, the Bureau is finalizing § 1006.34(d)(2)(i) to specify that the safe harbor for use of the model notice covers only compliance with the information and form requirements of final § 1006.34(c) and (d)(1).

In response to comments requesting clarity about the use of optional disclosures on the model notice, the Bureau is finalizing § 1006.34(d)(2)(i) to squarely address how the safe harbor

applies with respect to the § 1006.34(d)(3) optional disclosures.[323] First, the Bureau clarifies, as was intended in the proposal, that a debt collector may include any or all of the § 1006.34(d)(3) optional disclosures without losing the safe harbor pursuant to § 1006.34(d)(2). Specifically, final § 1006.34(d)(2)(i) provides that the model validation notice contains the validation information required by § 1006.34(c) and certain optional disclosures permitted by § 1006.34(d)(3). Section 1006.34(d)(2)(i) further provides that a debt collector who uses the model validation notice complies with the information and form requirements of § 1006.34(c) and (d)(1), including if the debt collector: omits any or all of the optional disclosures shown on the model notice (*see* § 1006.34(d)(2)(i)(A)); or adds any or all of the optional disclosures described in § 1006.34(d)(3) that are not shown on the model notice (*see* § 1006.34(d)(2)(i)(B)), provided that any such optional disclosures are no more prominent than any of the required validation information.[324]

The requirement that any § 1006.34(d)(3) optional disclosures that are added to the model validation notice be no more prominent than any of the validation information is designed to ensure that any such optional disclosures do not overload consumers with information or distract them from the required validation information. A debt collector who chooses to include one or more of the § 1006.34(d)(3) optional disclosures that do not appear on the model validation

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[323] Proposed § 1006.34(d)(3) specified that a debt collector who used the model validation notice could include any of the optional disclosures along with the validation information without losing the § 1006.34(d)(2) safe harbor for compliance.

[324] The model validation notice includes the following optional disclosures permitted by § 1006.34(d)(3), each of which is described in more detail in the section-by-section analysis below: (1) debt collector telephone contact information (*see* § 1006.34(d)(3)(i)); (2) reference code (*see* § 1006.34(d)(3)(ii)); (3) payment disclosures (*see* § 1006.34(d)(3)(iii)); (4) a statement referring to disclosures made under applicable law on the reverse of the validation notice (*see* § 1006.34(d)(3)(iv)(A)); (5) debt collector's website (*see* § 1006.34(d)(3)(v)(A)); (6) statement explaining how a consumer can dispute the debt or request original-creditor information electronically (*see* § 1006.34(d)(3)(v)(B)); (7) Spanish-language translation disclosures (*see* § 1006.34(d)(3)(vi)); (8) merchant brand information (*see* § 1006.34(d)(3)(vii)); and (9) for debt not related to a consumer financial product or service, the information specified in § 1006.34(c)(2)(iii) or (c)(3)(iv) (*i.e.*, name of the creditor to whom the debt was owed on the itemization date and Bureau's debt collection website, respectively) (*see* § 1006.34(d)(3)(viii)). The model validation notice does not include the following optional disclosures permitted by § 1006.34(d)(3): (1) time-barred debt disclosures made under applicable law on the front of the validation notice (*see* § 1006.34(d)(3)(iv)(B)); (2) debt collector email address (*see* § 1006.34(d)(3)(v)(A)); and (3) affinity brand or facility name information (but, as noted above, merchant brand information is shown on the model notice in the same location) (*see* § 1006.34(d)(3)(vii)).

notice, but who violates the no-more-prominent requirement, loses the safe harbor under § 1006.34(d)(2) and may violate § 1006.34 depending on the facts and circumstances.

As discussed in the section-by-section analysis of § 1006.34(c)(1), a consumer advocate commenter asked the Bureau to clarify what version of the FDCPA section 807(11) disclosure should appear on the validation notice: the longer, initial disclosure described in § 1006.18(e)(1) or the shorter, subsequent disclosure described in § 1006.18(e)(2). The model validation notice includes the disclosure required by § 1006.18(e)(1). The Bureau is adopting new comment 34(d)(2)(i)–1 to clarify that a debt collector who uses the model notice to provide a validation notice as described in § 1006.34(a)(1)(i)(B)—*i.e.*, a debt collector who provides the validation notice within five days of the initial communication—may replace the disclosure required by § 1006.18(e)(1) with the disclosure required by § 1006.18(e)(2) without losing the safe harbor provided by use of the model notice. Comment 34(d)(2)(i)–1 also refers to comment 34(c)(1)–1 for further guidance related to providing the disclosure required by § 1006.18(e) on a validation notice.

The Bureau declines to extend the § 1006.34(d)(2) safe harbor to cover compliance with FDCPA section 807's prohibition on false or misleading statements. A debt collector who uses the model validation notice is still capable of making false or misleading statements to consumers in the notice. For example, a debt collector using the model validation notice could include false or misleading information about the debt, such as an inflated current amount of the debt.

However, the Bureau agrees that debt collectors who use the model validation notice should have a safe harbor for compliance with FDCPA section 809(b)'s overshadowing prohibition. The Bureau provides a safe harbor to that effect in § 1006.38(b). The section-by-section analysis of § 1006.38(b) discusses this change in further detail.

34(d)(2)(ii) Certain Disclosures on a Separate Page

To conform with modifications in other sections of the Rule that permit debt collectors to make certain itemization-related disclosures on separate pages, the Bureau is finalizing new § 1006.34(d)(2)(ii). As discussed in the section-by-section analysis of § 1006.34(c)(2)(viii), when disclosing the itemization of the current amount of the debt, a debt collector has the option of disclosing that itemization on a separate page. As discussed in the section-by-section analysis of § 1006.34(c)(5), the final rule establishes a special rule for certain residential mortgage debt that permits a debt collector, subject to certain conditions, to provide a periodic statement under Regulation Z, 12 CFR 1026.41, instead of the itemization-related validation information required by § 1006.34(c)(2)(vi) through (viii).

Section 1006.34(d)(2)(ii) establishes how these provisions interact with the safe harbor provided by use of the model notice. Specifically, § 1006.34(d)(2)(ii) establishes that a debt collector who uses the model validation notice and makes certain disclosures on a separate page pursuant to § 1006.34(c)(2)(viii) or (5) may still receive a safe harbor for use of the model notice except with respect to the disclosures that appear on the separate page.

34(d)(2)(iii) Substantially Similar Form

As discussed in the section-by-section analysis of § 1006.34(d)(1), the Bureau has determined that debt collectors should receive a safe harbor for the information and form requirements of § 1006.34(c) and (d)(1) if they use a form that is substantially similar to the model validation notice. The Bureau determines that, so long as a form is substantially similar to the model notice, the validation information disclosures will remain effective; the Bureau therefore is finalizing § 1006.34(d)(2) to provide this flexibility for debt collectors.

For this reason, final § 1006.34(d)(2)(iii) provides that a debt collector who uses the model validation notice as described in § 1006.34(d)(2)(i) or (ii) may make changes to the form and retain a safe harbor for compliance with the information and form requirements of § 1006.34(c) and (d)(1), provided that the form remains substantially similar to the model notice.

(As discussed elsewhere in this Notice, a debt collector may comply with the requirements in § 1006.34(c) and (d)(1) without using the model validation notice.)

Final comment 34(d)(2)(iii)–1 provides details regarding the meaning of substantially similar, as requested by commenters, including examples of permissible changes. The Bureau believes that these are differences that may be useful to debt collectors and consumers and will not increase the risk of consumer harm.

One permissible change relates to deceased consumers. Comment 34(d)(2)(iii)–1 incorporates proposed comment 34(d)(1)(ii)–1, which discussed changes that debt collectors could make if the consumer were deceased. The Bureau proposed comment 34(d)(1)(ii)–1 to explain that a debt collector may make certain changes to the content, format, and placement of the validation information described in § 1006.34(c) as long as the resulting disclosures are substantially similar to the model notice. Proposed comment 34(d)(1)(ii)–1 also provided an example of a change that debt collectors may make to the model validation notice if the consumer is deceased.

The Bureau explained that, although the model validation notice will contain the name of the deceased consumer, some persons who are authorized to act on behalf of the deceased consumer's estate may be misled by the use of second person pronouns such as "you" in the validation notice. For example, the proposed model validation notice stated that "you owe" the debt collector. While nothing in the proposal would have prohibited a debt collector from including a cover letter to explain the nature of the validation notice, proposed comment 34(d)(1)(ii)–1 also clarified that a debt collector could modify inapplicable language in the validation notice that could suggest that the recipient of the notice was liable for the debt. For example, if a debt collector sent a validation notice to a person authorized to act on behalf of the deceased consumer's estate, and if that person was not liable for the debt, the debt collector could use the deceased consumer's name instead of "you."

The Bureau received a few comments on proposed comment 34(d)(1)(ii)–1. One trade group commenter recommended that the Bureau allow debt collectors to replace second-person pronouns with references to the estate, such as "the estate's bill." A group of consumer advocates stated that, although the comment's example would be appropriate in certain circumstances, the Bureau should provide an entirely separate model validation notice for decedent debt because, these commenters believed, debt collectors would be unlikely to diverge from the model notice. Two trade group commenters also asked the Bureau to create a second model validation notice for decedent debt.

The Bureau is incorporating proposed comment 34(d)(1)(ii)–1 into comment 34(d)(2)(iii)–1, which clarifies that a debt collector may make changes to the model validation notice and retain the safe harbor provided by use of the model notice. Because the example regarding decedent debt is illustrative, nothing in comment 34(d)(2)(iii)–1 prohibits a debt collector from making other substantially similar modifications, such as referring to the estate rather than "you," while still retaining the safe harbor. As explained elsewhere in this section-by-section analysis, the Bureau declines to create separate model forms for certain types of debt. The Bureau has modified the model-form-safe-harbor framework under § 1006.34(d)(2) to afford debt collectors more flexibility to customize validation information to accommodate their business practices and the types of debts they collect. Within identified limits, debt collectors may make changes to the model validation notice and still meet the standard for a safe harbor under § 1006.34(d)(2).

Comment 34(d)(2)(iii)–1 also includes four new examples of other permissible changes: relocating the consumer-response information required by § 1006.34(c)(4) to facilitate mailing; adding barcodes or QR codes, as long as the inclusion of such items does not violate § 1006.38(b); adding the date the form is generated; and embedding hyperlinks, if delivering the form electronically, which was proposed in comment 34(d)(2)–1.

The Bureau clarifies that, if a debt collector includes disclosures other than (1) the required validation information, (2) any optional disclosures described in § 1006.34(d)(3), or (3) any disclosures that, if included, still leave the form substantially similar in substance, clarity, and meaningful sequence to the model notice, then the safe harbor does not apply with respect to the entirety of the validation notice. Except as described in § 1006.34(d)(2)(ii), the Bureau has determined not to apply the safe harbor on a partial (*i.e.*, disclosure-by-disclosure) basis because it is not clear how disclosures other than those referenced above would interact with the validation information.[325] Final comment 34(d)(2)–1 clarifies that a debt collector who provides a validation notice that is neither a notice described in § 1006.34(d)(2)(i) or (ii), nor a substantially similar notice as described in § 1006.34(d)(2)(iii), does not receive a safe harbor for compliance with the information and form requirements of § 1006.34(c) and (d)(1). The Bureau notes that a debt collector who adds disclosures to the model validation notice that are not referenced above nevertheless may be able to comply with the requirements in § 1006.34(c) and (d)(1), § 1006.38(b)(1), and other requirements of the FDCPA and this final rule.

Model Validation Notice

While the majority of industry commenters who commented on the topic supported the idea of a model form, some criticized the design of the proposed model validation notice. At least two industry commenters stated that the proposed model notice contained too much content and would overwhelm consumers. One commenter criticized the proposed model notice for departing from the prevailing industry design for validation notices. A number of identical or nearly identical comments suggested that consumers would confuse the proposed model notice for a government document, such as an IRS notice, but did not explain what in particular about the model notice they believed would cause such consumer confusion.

[325] As described in § 1006.34(d)(2)(ii), a debt collector who includes certain itemization-related disclosures on a separate page in the same communication with the validation notice, and who includes on the front of the notice the required statement referring to those disclosures, receives a safe harbor for compliance with the information and form requirements of § 1006.34(c) and (d)(1) except with respect to the disclosures that appear on the separate page.

The Bureau's findings do not support the conclusions that the model notice contains too much content or will overwhelm consumers. The model validation notice was developed and validated over multiple rounds of consumer testing that support its efficacy and comprehensibility. The fact that the model validation notice departs from prevailing industry design is intended. As the proposal noted, many validation notices used today are confusing and lack sufficient information to help consumers recognize their debts or exercise their FDCPA verification rights.[326] With the model validation notice, the Bureau has developed an improved validation notice that benefits both consumers and debt collectors. In quantitative testing, the model validation notice consistently performed better than or equal to a "status quo" notice designed to resemble validation notices that some debt collectors use today.[327] The Bureau also disagrees that the model validation notice resembles a government document; the form clearly discloses that it is from a debt collector, not the government.

A number of consumer advocate and academic commenters asserted that the proposed model notice was not adequately tested. Some of these commenters stated that the Bureau's testing included too few participants to generate valid conclusions about the proposed model notice's efficacy or to evaluate the comprehension of consumers, particularly of the least sophisticated consumers. For instance, a consumer advocate commenter expressed concern that only 60 consumers were included in the cognitive and usability testing rounds.[328] Likewise, an academic commenter stated that the Bureau's consumer testing focused too heavily on observing what testing participants looked at on the model notice (based on the use of eye tracking techniques) at the expense of testing participants' comprehension of the notice. Another commenter stated that the Bureau should have tested more diverse groups, including consumers with limited English proficiency, students, older consumers, and consumers from more diverse

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[326] *See* 84 FR 23274, 23338 (May 21, 2019).

[327] CFPB Quantitative Testing Report, *supra* note 31, at 13-16.

[328] *See* FMG Summary Report, *supra* note 29, at 5-7.

socioeconomic backgrounds. Some consumer advocate and academic commenters recommended that the Bureau field test the proposed model notice with consumers with real debts. A consumer advocate expressed concern about the performance of certain aspects of the proposed model notice in quantitative testing, noting in particular that approximately 40 percent of respondents who received the model notice failed to identify the correct entity the consumer should pay.[329]

The Bureau disagrees that the model notice was not adequately tested. The model validation notice was developed and validated over multiple rounds of testing between 2014 and 2020, and the Bureau determines that these multiple rounds of testing were sufficient to assess the model validation notice's efficacy and comprehensibility. Further, the Bureau disagrees that its testing focused on eye-tracking at the expense of comprehension testing as consumer comprehension of the model validation notice was assessed in three rounds of testing. The Bureau's testing used eye-tracking in conjunction with consumer responses to inform its conclusions.

The Bureau disagrees that it did not sample sufficiently diverse groups. The Bureau selected respondents with the goal of developing diverse testing pools that would serve as a proxy for the population at large. For example, in one round of usability testing, participants reflected a range of demographic characteristics broken down by race and ethnicity, household income, education level, and employment status.[330] With respect to criticism that the Bureau did not "field test" the model validation notice, testing the form with consumers with real debts would have been impractical. Regarding comments that the model validation notice did not perform well during the quantitative testing round, the Bureau disagrees. As noted above, in that

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[329] Several comments in response to the May 2019 proposal also criticized the consumer testing as being outdated because, when that proposal was published, the most recent testing had occurred in 2016. However, the Bureau does not find any reason to believe that consumer understanding of the model notice has changed since 2016, and the commenters did not provide any evidence to support such a claim. Moreover, since the May 2019 proposal, the Bureau has conducted two additional testing rounds.

[330] FMG Usability Report, *supra* note 28, at 85-87.

testing round, the model validation notice consistently performed better than or equal to the status quo notice, including on the question of to whom the consumer should send a payment.[331]

Commenters provided feedback on specific aspects of the proposed validation notice, including the notice's disclosure of the FDCPA section 809(a)(4) dispute right. As discussed, § 1006.34(c)(3)(i), which implements FDCPA section 809(a)(4), requires debt collectors to: (1) disclose the date the debt collector will consider the end date of the validation period; and (2) state that, if the consumer notifies the debt collector in writing on or before that date that the debt, or any portion of the debt, is disputed, the debt collector must cease collection of the debt, or the disputed portion of the debt, until the debt collector sends the consumer either verification of the debt or a copy of a judgment. The proposed model notice showed this disclosure as: "Call or write to us by November 12, 2019, to dispute all or part of the debt . . . . If you write to us by November 12, 2019, we must stop collection on any amount you dispute until we send you information that shows you owe the debt."

Some commenters criticized the phrase "shows you owe the debt." Industry and industry trade group commenters stated that "shows you owe the debt" would require debt collectors to prove that consumers owe the debt. According to these commenters, this would modify the verification standard established by FDCPA section 809 and expose debt collectors to increased litigation risk.[332] Thus, these commenters recommended that the Bureau revise the proposed model notice to mirror the FDCPA's statutory text.[333] In contrast, a group of academic

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[331] In response to the question "According to the notice, if Person A wanted to make a payment on the debt, who should he or she sent the payment to?" approximately 60 percent of consumers who received the model validation notice answered correctly compared to approximately 40 percent of consumers who received a status quo notice. CFPB Quantitative Testing Report, *supra* note 31, at 14.

[332] An industry commenter stated that courts define verification narrowly and have not imposed a duty upon debt collectors to establish that a debt is owed. *See Walton v. EOS CCA*, 885 F.3d 1024, 1027-28 (7th Cir. 2018) ("The verification assures the consumer that the creditor actually made the demand the debt collector said it did and equips the consumer to evaluate the validity of the creditor's claim. It would be both burdensome and significantly beyond the Act's purpose to interpret § 1692g as requiring a debt collector to undertake an investigation into whether the creditor is actually entitled to the money it seeks."); *Haddad v. Alexander, Zelmanski, Danner & Fioritto*, 758 F.3d 777 (6th Cir. 2014); *Dunham v. Portfolio Recovery Assocs.*, 663 F.3d 997, 1003 (8th Cir. 2001) (citing *Chaudhry v. Gallerizzo*, 174 F.3d 394 (4th Cir. 1999)).

[333] For instance, one commenter recommended that the model notice should state "verifies the amount of the debt claimed" instead of "shows you owe the debt."

commenters stated that the verification standard established by case law is more robust than the phrase "shows you owe the debt" suggests.[334] These commenters expressed concerns that the proposed model notice would diminish the FDCPA's verification standard.

The Bureau is not changing the final model validation notice's disclosure of the FDCPA section 809(a)(4) dispute right. The Bureau does not intend to modify FDCPA section 809's verification standard and disagrees that the phrase "shows you owe the debt" has that effect. "Shows you owe the debt" is a plain-language phrase that the Bureau is adopting to improve consumer understanding. This rulemaking does not interpret what constitutes verification under FDCPA section 809.

The Bureau received comments on the model notice's description of the dispute rights under FDCPA section 809(a)(3) and (4). Under FDCPA section 809(a)(3), disputes can be made orally or in writing, which the proposed model notice showed in part as: "Call or write to us by November 12, 2019, to dispute all or part of the debt." However, under FDCPA section 809(a)(4) and (b), requests for verification must be made in writing to have effect under the statute.[335] An academic commenter and at least two consumer advocates expressed concern that the proposed model notice's description of these dispute rights was too nuanced, and consumers would not understand that they must write to request verification. To address this concern, a commenter recommended that the Bureau revise the model notice to state, "Call us to dispute. But if you do call, we may not be required to send information that shows you owe the debt."[336]

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[334] In *Haddad*, the court wrote that a verifying debt collector "should provide the date and nature of the transaction that led to the debt, such as a purchase on a particular date, a missed rental payment for a specific month, a fee for a particular service provided at a specified time, or a fine for a particular offense assessed on a certain date." 758 F.3d at 786.

[335] While FDCPA section 809 requires a debt collector to honor only written verification requests, the Bureau understands that some debt collectors honor both written and non-written verification requests. Nothing in the FDCPA, the November 2020 Final Rule, or this rule prevents such debt collectors from continuing to do so.

[336] This recommendation is based on phrasing that the Bureau adopted for usability testing. As noted in the usability testing report, consumers who reviewed validation notices using this phrasing "exhibited less confusion" about the distinction between how a debt collector would be required to respond when receiving a dispute in writing or by telephone. *See* FMG Usability Report, *supra* note 28, at 55-56.

An industry trade group expressed uncertainty about why the proposed model notice used the phrase "call or write" as opposed to "write" in different sentences.

The Bureau acknowledges that the dispute rights under FDCPA section 809(a)(3) and (4) may not be intuitive to some consumers. Nevertheless, the Bureau settled on the current phrasing in the model validation notice to emphasize the validation period end date as opposed to the actions—*i.e.*, calling or writing—that a consumer may take. In general, the model validation notice has tested well. The Bureau is concerned that revising or adding content to clarify the consequences of writing versus calling may undermine the overall efficacy of the form. Further, this clarification would be unnecessary in many cases. The Bureau expects that many consumers will visit the Bureau's website for more detailed information regarding consumer protections in debt collection.[337] However, to provide further clarity, the Bureau has reformatted how these dispute rights appear on the model validation notice. Specifically, the dispute rights now appear in separate bullets with bolded text for comprehension purposes.

Commenters provided feedback on the proposed model validation notice's original-creditor-information request disclosure pursuant to FDCPA section 809(a)(5). Section 1006.34(c)(3)(ii), which implements this provision, requires debt collectors to disclose the date the debt collector will consider the end date of the validation period and a statement that, if the consumer requests in writing on or before that date the name and address of the original creditor, the debt collector must cease collection of the debt until the debt collector sends the consumer the name and address of the original creditor, if different from the current creditor. The proposed model notice showed this disclosure as: "Write to ask for the name and address of the original creditor. If you write by November 12, 2019, we will stop collection until we send you that information." An industry commenter stated that, by omitting the phrase "if different from the

[337] If the debt collector is collecting debt related to a consumer financial product or service as defined in § 1006.34.2(f), a statement that informs the consumer that additional information regarding consumer protections in debt collection is available on the Bureau's website is required under § 1006.34(c)(3)(iv). If the debt collector is collecting debt other than debt related to a consumer financial product or service, such a statement is optional under § 1006.34(d)(3)(viii).

current creditor," the proposed model notice would compel debt collectors to respond to original-creditor-information requests, even if the current creditor is the original creditor. A consumer advocate supported the omission, arguing that debt collectors should be required to respond to all original-creditor-information requests, even if the current creditor and the original creditor are the same.

The Bureau concludes that the model validation notice should include the statutory phrase "if different from the current creditor" when disclosing the original-creditor-information request right. Thus, as finalized, the model validation notice includes the phrase "if different from the current creditor." Further, as discussed below, the Bureau is finalizing new § 1006.38(c)(2), which sets forth an alternative procedure that a debt collector may use to respond to a consumer's request for original-creditor information when the original creditor is the same as the current creditor.

Commenters recommended two other modifications to the proposed model notice. To emphasize the distinction between the debt collector and the creditor, an industry trade group commenter suggested that the Bureau revise the proposed model notice to emphasize that "North South Group is a debt collector, *not a creditor*." Another industry trade group stated that the model notice should incorporate account information into the mini-*Miranda* disclosure, which would frontload information that would help consumers recognize alleged debts and thereby reduce the number of disputes debt collectors receive. An industry trade group commenter stated that the proposed model notice is not properly formatted for standard mailing envelopes. According to the commenter, § 1006.34(c)(4)'s consumer-response information section will not fit a standard glassine window return envelope.

The Bureau declines other recommendations to modify the model validation notice. The Bureau declines to specify that North South Group is "not a creditor," as consumer testing indicates that consumers generally have a functional understanding that North South Group is a

debt collector.[338] The Bureau declines to modify the debt collection disclosure required by FDCPA section 807(11) and § 1006.18(e) as finalized in the November 2020 Final Rule. The Bureau concludes that combining this statutory disclosure with account information would undermine its clarity and purpose. The Bureau declines to modify the model notice in response to feedback that the form is not properly formatted for standard mailing envelopes. Comment 34(d)(2)(iii)–1 clarifies that debt collectors may relocate the consumer-response information required by § 1006.34(c)(4) to facilitate mailing without losing the safe harbor provided by § 1006.34(d)(2). Thus, the Bureau determines that debt collectors will be able to format the form for mailing.

Various commenters requested that the Bureau publish additional model validation notices to address specific scenarios. Several consumer advocate commenters urged the Bureau to translate the model notice into other languages, including Spanish. An industry trade group commenter recommended that the Bureau develop a model notice that debt collectors could use with consumers who are not obligated on the debt, such as heirs, successors in interest, and consumers whose debts were discharged in bankruptcy. An industry commenter recommended that the Bureau create a model notice that omits all optional disclosures.

The Bureau declines to create additional model validation notice forms. As discussed earlier in this section-by-section analysis, the Bureau has modified the model-form-safe-harbor framework under § 1006.34(d)(2) to afford debt collectors more flexibility to customize validation information to accommodate their business practices and the types of debts they collect. Within identified limits, debt collectors may make changes to the model validation notice and still meet the standard for a safe harbor under § 1006.34(d)(2).

The Bureau is making an additional change to the model validation notice in response to testing. The statement required by § 1006.34(c)(3)(iv) informs the consumer that additional

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[338] During November 2020 usability testing, 98 percent of participants correctly identified North South Group as the correct party to send payments to. Further, participants generally understood that they could dispute the debt with North South Group. *See* November 2020 Qualitative Testing Report, *supra* note 34, at 15.

information regarding consumer protections in debt collection is available on the Bureau's website. The Bureau's most recent consumer testing indicated that a small number of participants who used the model validation notice were uncertain about where to find more information about consumers' protections in debt collection.[339] In response to this finding, the Bureau is modifying how the statement required by § 1006.34(c)(3)(iv) appears on the model validation notice to further emphasize this disclosure and the Bureau's website address.

34(d)(3) Optional Disclosures

Proposed § 1006.34(d)(3) provided that a debt collector could include the optional information described in § 1006.34(d)(3)(i) through (vi) when providing the validation information. The Bureau received no comments specifically addressing the language in proposed § 1006.34(d)(3). Commenters did suggest a variety of optional disclosures to add to § 1006.34(d)(3), such as barcodes or QR codes, the date a validation notice was created and sent, disclosures required by government creditors, and a disclosure notifying the consumer if the debt collector will record telephone calls. Some of these suggested disclosures are permissible changes to the model notice under § 1006.34(d)(2)(iii)[340] or optional disclosures under § 1006.34(d)(3), and debt collectors can choose to make other suggested disclosures without safe harbor protection.

The Bureau is finalizing § 1006.34(d)(3) largely as proposed but with minor technical revisions for clarity and with one substantive revision to clarify that a debt collector who includes any of the optional disclosures receives the safe harbor described in § 1006.34(d)(2), provided that the debt collector otherwise uses the model validation notice or a variation of the

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[339] During the most recent round of qualitative testing, a few participants stated that they were unsure how to learn more about debt collection in general. For example, one participant was unable to find the statement required by § 1006.34(c)(3)(iv) on the model notice. *See* November 2020 Qualitative Testing Report, *supra* note 34, at 13.

[340] *See* comment 34(d)(2)(iii)–1 (examples of permissible changes to the model notice include (1) adding barcodes or QR codes as long as their inclusion does not violate § 1006.38(b), and (2) adding the date the form is generated).

model notice as described in § 1006.34(d)(2). This revision harmonizes § 1006.34(d)(3) with certain revisions to § 1006.34(d)(2) in the final rule.[341]

The Bureau is finalizing § 1006.34(d)(3) and the related provisions of § 1006.34(d)(2), including each of the optional disclosures that § 1006.34(d)(3) permits debt collectors to provide, to implement and interpret FDCPA section 809(a) and (b) and pursuant to its FDCPA section 814(d) authority to prescribe rules with respect to the collection of debts by debt collectors. The Bureau also is finalizing § 1006.34(d)(3) and the optional disclosures pursuant to its authority under section 1032(a) of the Dodd-Frank Act to prescribe rules to ensure that the features of consumer financial products and services are disclosed fully, accurately, and effectively.

34(d)(3)(i) Telephone Contact Information

Proposed § 1006.34(d)(3)(i) provided that a debt collector could include, along with the validation information, the debt collector's telephone contact information, including telephone number and the times that the debt collector accepts consumer telephone calls.

Two industry trade group commenters supported permitting debt collectors to disclose telephone contact information, with one such commenter noting that it would facilitate communication with consumers, and the other noting that some State laws require debt collectors to disclose telephone contact information. A group of consumer advocate commenters recommended that the Bureau make telephone contact information a mandatory disclosure.

The Bureau determines that debt collectors should be permitted to include their telephone contact information along with the validation information. Section 1006.34(d)(3)(i) will accommodate debt collectors who choose to communicate with consumers by telephone or who are required to disclose telephone contact information by applicable State law. The Bureau declines to make telephone contact information a mandatory disclosure because, while many debt collectors likely will provide telephone contact information, either by choice or because of a

[341] See the section-by-section analysis of § 1006.34(d)(2)(i), particularly the discussion of new § 1006.34(d)(2)(i)(A) and (B), which refers to the optional disclosures.

State-law requirement, some debt collectors may not need or want to do so. In such cases, consumers can use other contact information required in the validation information to contact the debt collector. For these reasons, the Bureau is finalizing § 1006.34(d)(3)(i) largely as proposed, except that the Bureau is finalizing the clarification that telephone contact information may include, for example, a telephone number as well as the times that the debt collector accepts consumer telephone calls, as new comment 34(d)(3)(i)–1, rather than in the regulation text as proposed.

34(d)(3)(ii) Reference Code

Many debt collectors include reference codes on validation notices for administrative purposes. The Bureau proposed § 1006.34(d)(3)(ii) to accommodate this practice by permitting a debt collector to include, along with the validation information, a number or code that the debt collector uses to identify the debt or the consumer. One industry commenter asked the Bureau to create a safe harbor for debt collectors to use an account number as a reference code, if that number is labeled as a reference code. The Bureau determines that creating such a safe harbor is unnecessary because debt collectors may use any number they choose as a reference code.[342] The Bureau therefore is finalizing § 1006.34(d)(3)(ii) as proposed.

34(d)(3)(iii) Payment Disclosures

The Bureau proposed in § 1006.34(d)(3)(iii) to allow debt collectors to include certain payment disclosures along with the validation information, provided that such disclosures were no more prominent than any of the validation information. Proposed § 1006.34(d)(3)(iii)(A) provided that a debt collector could include in the validation notice the statement "Contact us about your payment options," using that phrase or a substantially similar phrase. Proposed § 1006.34(d)(3)(iii)(B) provided that a debt collector could include in the consumer-response information section described in proposed § 1006.34(c)(4) the statement, "I enclosed this

[342] Although § 1006.34(d)(3)(ii) permits debt collectors to use any number they choose as a reference code, debt collectors may be prohibited from using certain numbers by other applicable laws, such as privacy or data security rules or regulations.

amount," using that phrase or a substantially similar phrase, payment instructions after that statement, and a prompt for a consumer to write in a payment amount. As discussed below, the Bureau is finalizing § 1006.34(d)(3)(iii) largely as proposed, but with certain revisions for clarity and consistency with other provisions in the final rule.

Industry and industry trade group commenters supported permitting debt collectors to include optional payment disclosures. One industry trade group stated that the proposed optional payment disclosures were appropriate because they would not violate FDCPA section 809(b)'s overshadowing prohibition.

Consumer advocate commenters generally objected to proposed § 1006.34(d)(3)(iii). A number of these commenters stated that consumers may perceive the payment disclosures as threatening, may misconstrue the disclosures as stating that consumers must make a payment to exercise their FDCPA dispute right, or may be confused about whether a payment is in their interest. Some commenters stated that the proposed disclosures could lead consumers to make payments that they might not otherwise have made, which some commenters noted could cause consumers to inadvertently revive previously time-barred debts. These commenters asked the Bureau not to finalize proposed § 1006.34(d)(3)(iii).

Some commenters suggested revisions to the proposed optional payment disclosures. Industry and industry trade group commenters recommended that the Bureau make the proposed optional payment disclosures more prominent. For example, some commenters suggested that the proposed optional payment disclosures be placed at the top of the consumer-response information section. An industry commenter recommended that the model validation notice include additional optional payment disclosures. Industry trade group commenters recommended that the Bureau permit debt collectors to include instructions about how a consumer could make a payment by telephone, website, or alternative payment methods, such as debit card or ACH. Based on the concerns noted above about potential consumer misunderstanding of the payment disclosures, a group of consumer advocate commenters urged

the Bureau to amend the validation notice to segregate the payment disclosures from the other disclosures and to eliminate the payment prompt on the consumer response form.

For the reasons discussed in the proposal, the Bureau determines that the proposed optional payment disclosures facilitate payments that may benefit both consumers and debt collectors. For consumers who recognize and choose to repay all or part of a debt, payment disclosures may make the transaction more efficient and convenient. In addition, for consumers who determine that they owe a debt but may not be ready to repay all of it at that time, payment disclosures may facilitate a discussion that can lead to repayment, settlement, or a payment plan.[343] The Bureau also has determined that the optional payment disclosures do not overshadow, and are not inconsistent with, consumers' verification rights pursuant to FDCPA section 809(b).[344]

Further, the Bureau's testing found that the model validation notice, which was tested with the optional payment disclosures, was not threatening or intimidating.[345] The Bureau disagrees that consumers will believe mistakenly that they must make a payment to exercise their verification rights. As the proposal noted, consumer testing indicates that consumers who encounter a payment disclosure on a validation notice understand that a payment is not required to dispute a debt.[346] The Bureau determines that inclusion of the neutral, non-threatening optional payment disclosures will not confuse consumers about whether making a payment is in their best interest. For the same reasons, the Bureau declines the suggestion to segregate the

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[343] *See* 84 FR 23274, 23350 (May 21, 2019).

[344] For example, during consumer testing, participants reported a variety of actions they thought they could take, and approximately 50 percent of respondents said they would confirm the debt is accurate before responding. Similarly, participants who received the model validation notice, which included the optional payment disclosures, generally understood from the notice how they could dispute the debt. *See* November 2020 Qualitative Testing Report, *supra* note 34, at 11, 15.

[345] Participants with prior debt collection experience observed that the model notice was "different" than other validation notices they had received because the notice did not include threatening or intimidating language. *See* November 2020 Qualitative Testing Report, *supra* note 34, at 10.

[346] FMG Usability Report, *supra* note 28, at 59-61.

payment disclosures from the other disclosures and to eliminate the payment prompt on the consumer response form.

The Bureau declines recommendations to permit debt collectors to emphasize or highlight the payment option disclosures. Making the payment disclosures more prominent, as some industry commenters suggested, would reduce the efficacy of the model validation notice and risk overshadowing the validation information in violation of FDCPA section 809(b). The Bureau also determines that the optional payment disclosures in § 1006.34(d)(3)(iii)(A) and (B) are sufficient to facilitate payments[347] and that additional prominence for the payment disclosures is not justified. The Bureau also declines to permit debt collectors to include specific instructions about other payment methods. Section 1006.34(d)(3)(iii)(A) permits debt collectors to invite consumers to contact them about payment options, and debt collectors have the ability to provide information about alternative payment methods in subsequent communications.

For these reasons, this Bureau is finalizing § 1006.34(d)(3)(iii) largely as proposed but with several revisions for clarity and for consistency with other provisions in the final rule. First, the Bureau is deleting the sentences that specified that the optional payment disclosures in both § 1006.34(d)(3)(iii)(A) and (B) must be no more prominent than any of the validation information. These deleted sentences are unnecessary in view of revisions to the final rule in § 1006.34(d)(2) that apply to all of the optional disclosures, which makes the deleted sentences redundant.[348] In addition, the Bureau is adding language to clarify that a debt collector may choose to include either of the optional payment disclosures, or both of them. Lastly, the Bureau is finalizing § 1006.34(d)(3)(iii)(B) to clarify that the optional payment disclosure must appear

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[347] During usability testing, participants expressed an understanding that one purpose of the model validation notice was to solicit payment on a debt. When asked about their payment options based on the model validation notice, approximately 80 percent of participants stated that they would contact the debt collector by telephone, website, email, or write to explore payment options. *See* November 2020 Qualitative Testing Report, *supra* note 34, at 10,12.

[348] Final § 1006.34(d)(2)(i) states that certain optional disclosures permitted by § 1006.34(d)(3) are contained on the model notice; those optional disclosures satisfy the requirement to be no more prominent than any validation information. Final § 1006.34(d)(2)(i)(B) also permits inclusion of the optional disclosures described by § 1006.34(d)(3) that are not included on the model notice so long as they are no more prominent than any validation information; see the section-by-section analysis of § 1006.34(d)(2)(i) for more detail.

"below" (rather than merely "with") the consumer-response information required by § 1006.34(c)(4)(i) and (ii).

Accordingly, final § 1006.34(d)(3)(iii) provides that debt collectors may include either or both of the following payment disclosures: (1) the statement, "Contact us about your payment options," using that phrase or a substantially similar phrase; and (2) below the consumer-response information required by § 1006.34(c)(4)(i) and (ii), the statement, "I enclosed this amount," using that phrase or a substantially similar phrase, payment instructions after that statement, and a prompt.

34(d)(3)(iv) Disclosures Under Applicable Law

Some States require specific disclosures to appear on validation notices. To enable debt collectors to comply with both § 1006.34(a)(1) and disclosure requirements under other applicable law, the Bureau proposed § 1006.34(d)(3)(iv) to permit a debt collector to include, on the front of the validation notice, a statement that other disclosures required by applicable law appear on the reverse of the form and, on the reverse of the validation notice, any such legally required disclosures. Proposed comment 34(d)(3)(iv)–1 provided examples of disclosure requirements that proposed § 1006.34(d)(3)(iv) would cover, including disclosures required by State statutes or regulations and disclosures required by judicial opinions or orders. For the reasons discussed below, the Bureau is adopting proposed § 1006.34(d)(3)(iv) with revisions, including the addition of new regulatory text subsections and commentary.

A number of industry and industry trade group commenters stated that the Bureau's proposal regarding disclosures required by other applicable law would either conflict with or not accommodate such disclosures. Commenters stated that some States require disclosures to appear on the front of a validation notice.[349] To address such concerns, commenters

[349] Although these commenters cited various State laws requiring disclosures, they primarily referred to State laws requiring time-barred debt disclosures and revival disclosures. For example, one industry trade group commenter noted that Massachusetts, New Mexico, and New York State and City require disclosures about time-barred debt and revival that specifically or practically must appear on the front page of the validation notice.

recommended that the Bureau allow debt collectors to include required State law disclosures on the front of the validation notice. One commenter, an industry trade group, urged the Bureau to allow for formatting flexibility for such State law disclosures while still affording safe harbor protection. At least one commenter suggested that the Bureau preempt State laws that require disclosures on the front of a validation notice.

The Bureau determines that, particularly with the changes to the model validation notice discussed in the section-by-section analysis, final § 1006.34(d)(3)(iv) generally will accommodate disclosures required by other applicable law.[350] As noted above, a few States require time-barred debt disclosures to appear on the front of a validation notice; time-barred debt disclosures are discussed further below. The Bureau is not aware that States specifically require any other disclosures to appear on the front of the validation notice; as such, the Bureau concludes that disclosures specifically required by applicable law, other than in those few instances relating to time-barred debt, can be accommodated on the reverse of the validation notice. The Bureau also is not aware of font size, prominence, or placement requirements established by State or other applicable law that final § 1006.34(d)(3)(iv) will not accommodate, as discussed further below. Further, the statement that § 1006.34(d)(3)(iv) permits on the front of a validation notice is consistent with State laws that require statements on the front of the notice.[351] The Bureau will continue to monitor whether disclosures required by other applicable

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[350] As discussed in the section-by-section analysis of § 1006.34(d)(2), the final rule permits a debt collector who uses the model validation notice, specified variations of the model notice, or a substantially similar form to receive a safe harbor. Moreover, as discussed below in this section-by-section analysis of § 1006.34(d)(3)(iv), the Bureau is modifying how the statement required by § 1006.34(d)(3)(iv) is disclosed on the model validation notice to mirror language on a disclosure required under Wisconsin law.

[351] *See, e.g.*, Colo. Rev. Stat. sec. 12-14-105(3)(c) ("In its initial written communication to a consumer, a collection agency shall include the following statement: 'For information about the Colorado Fair Debt Collection Practices Act, see www.ago.state.co.us/cadc/cadcmain.cfm.' If the notification is placed on the back of the written communication, there shall be a statement on the front notifying the consumer of such fact."); Wis. Admin. Code DFI-Bkg sec. 74.13 ("Unless the initial communication is written and contains the following notice or the debtor has paid the debt, a licensee shall send the debtor the following notice within 5 days after the initial communication with a debtor: 'This collection agency is licensed by the Division of Banking in the Wisconsin Department of Financial Institutions, *www.wdfi.org*.' . . . here the notice required by sub. (1) is printed on the reverse side of any collection notice or validation sent by the licensee, the front of such notice shall bear the following statement in not less than 8 point type: "Notice: See Reverse Side for Important Information.").

law are inconsistent or conflict with § 1006.34 or Regulation F generally, and if such an inconsistency or conflict is identified, the Bureau will endeavor to take action to address it. The Bureau also reiterates that, unlike the proposal, the final rule does not require the validation notice to be substantially similar to the model validation notice; thus, if § 1006.34(d)(3)(iv) does not accommodate a disclosure required under State or other applicable law, then debt collectors can provide such a disclosure without necessarily violating the rule, but they would lose the § 1006.34(d)(2) safe harbor.

The Bureau has revised § 1006.34(d)(3)(iv) in response to feedback and for clarity. Final § 1006.34(d)(3)(iv)(A) provides that the debt collector may include, on the reverse of the validation notice, any disclosures that are specifically required by, or that provide safe harbors under, applicable law and, if any such disclosures are included, a statement on the front of the validation notice referring to those disclosures. Final comment 34(d)(3)(iv)(A)–1 clarifies that disclosures permitted by § 1006.34(d)(3)(iv)(A) include, for example, specific disclosures required by Federal, State, or municipal statutes or regulations, and specific disclosures required by judicial or administrative decisions or orders, including administrative consent orders. The comment also describes how such disclosures could include, for example, time-barred debt disclosures and disclosures that the current amount of the debt may increase or vary due to interest, fees, or other charges, provided that such disclosures are specifically required by applicable law.

The Bureau has revised § 1006.34(d)(3)(iv) and its accompanying commentary from the proposal to clarify the disclosures that are permitted by § 1006.34(d)(3)(iv). Specifically, the revisions clarify that the provision applies if a debt collector must comply with a specific disclosure requirement under Federal, State, or local law, or under a judicial or administrative decision or order. As such, the Bureau emphasizes that this provision is not intended to capture circumstances in which a debt collector is not providing a disclosure that is required under a specific law, decision, or order, but rather the debt collector is providing a disclosure to try to

comply with a more general legal requirement. For example, if the debt collector were to add language to the validation notice to try to avoid a finding of an unfair, deceptive, or abusive practice under Dodd-Frank Act section 1031 or the FDCPA, that is not an optional disclosure covered by § 1006.34(d)(3)(iv). Debt collectors are not precluded from making such disclosures, but they will not receive the safe harbor under § 1006.34(d)(2).

The Bureau has made modifications to the final rule, moreover, to provide additional flexibility with respect to time-barred debt disclosures, in response to feedback to the proposal. Under new § 1006.34(d)(3)(iv)(B),[352] if a debt collector is collecting time-barred debt, the debt collector may include on the front of the validation notice any time-barred debt disclosure that is specifically required by, or that provides a safe harbor under, applicable law, provided that applicable law specifies the content of the disclosure.[353] New comment 34(d)(3)(iv)(B)–1 clarifies that, for example, if applicable State law requires a debt collector who is collecting time-barred debt to disclose to the consumer that the law limits how long a consumer can be sued on a debt and that the debt collector cannot or will not sue the consumer to collect it, the debt collector may include that disclosure on the front of the validation notice. New comment 34(d)(3)(iv)(B)–1 also includes a cross-reference to the definition of time-barred debt under § 1006.26(a)(2) and clarifies that, for purposes of § 1006.34(d)(3)(iv)(B), time-barred debt disclosures may include disclosures about revival of debt collectors' right to bring a legal action to enforce the debt. The Bureau concludes that providing additional flexibility to debt collectors to make these optional disclosures either on the front or reverse of the validation notice is warranted in view of circumstances in which it may be difficult to discern under applicable State or local law whether time-barred debt disclosures must appear on the front of a validation notice.

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[352] To permit this additional flexibility for time-barred debt disclosures as distinguished from other disclosures made under applicable law, the final rule has re-numbered proposed § 1006.34(d)(3)(iv), which would have specified that the applicable law disclosures are placed on the reverse side of the validation notice only, as § 1006.34(d)(3)(iv)(A).

[353] As with other disclosures required by or providing safe harbors under applicable law, debt collectors can also make the time-barred debt disclosures on the reverse of the validation notice pursuant to § 1006.34(d)(3)(iv)(A). See comment 34(d)(3)(iv)(A)–1, which gives an example of a time-barred debt disclosure as a disclosure permitted by § 1006.34(d)(3)(iv)(A).

Moreover, the Bureau is finalizing § 1006.34(d)(3)(iv)(B) in view of the Bureau's decision not to finalize a requirement for debt collectors to provide disclosures relating to time-barred debt or revival laws, described in more detail in the section-by-section analysis of § 1006.26.

The Bureau received feedback about modifying the scope of proposed § 1006.34(d)(3)(iv). An industry trade group commenter stated that the Bureau should limit § 1006.34(d)(3)(iv) to State laws and exclude disclosures required by judicial decisions or orders. According to the commenter, courts should not be permitted to dictate non-standard disclosures that would limit the efficacy of the model validation notice and result in validation notices that vary by jurisdiction. This commenter asserted that permitting courts to vary the model validation notice would be inconsistent with the framework in other consumer financial laws and regulations, such as TILA and Regulation Z, which do not permit courts to add disclosures to model forms. A group of consumer advocate commenters asked the Bureau to prohibit debt collectors from including disclosures that are permitted, but not required, by applicable law, because including all possible disclosures would overwhelm consumers. On the other hand, an industry trade group commenter asked the Bureau to allow debt collectors to include such disclosures.

The Bureau determines that § 1006.34(d)(3)(iv) should cover disclosures required pursuant to judicial or administrative decisions or orders, including administrative consent orders. Permitting disclosures required by judicial or administrative decisions or orders to appear, like any State-law-required disclosures, on the reverse of a validation notice will neither undermine the efficacy of the model validation notice nor create validation notices that significantly vary by jurisdiction, other than on the reverse of the notice. Further, the Bureau concludes that permitting judicially mandated disclosures to appear on validation notices is not inconsistent with other consumer financial laws, as some commenters suggested. For instance, the Bureau understands that nothing in TILA and its implementing Regulation Z prohibit, as those commenters appeared to believe, creditors from making disclosures required pursuant to

judicial orders or decisions. As noted above, final comment 34(d)(3)(iv)(A)–1 clarifies that the disclosures permitted by § 1006.34(d)(3)(iv) include specific disclosures required by judicial decisions or orders.

In response to feedback, the Bureau also is finalizing § 1006.34(d)(3)(iv)(A) and comment 34(d)(3)(iv)(A)–1 to permit debt collectors to include disclosures that provide safe harbors under applicable law without losing the safe harbor for compliance under § 1006.34(d)(2). Such disclosures can mitigate legal risks for debt collectors and reduce the potential for consumer harm.[354] On the other hand, the Bureau declines to allow debt collectors to include disclosures on the validation notice that are merely permitted by other applicable law and still retain the safe harbor.[355] Such disclosures may be irrelevant to consumers, and their inclusion on the validation notice may overwhelm consumers or overshadow more relevant disclosures. Nevertheless, as noted elsewhere, a debt collector who included such a disclosure would not necessarily violate Regulation F; that debt collector would, however, be outside the safe harbor for compliance.

Some commenters suggested that the Bureau revise the text and placement of the § 1006.34(d)(3)(iv) disclosure that appeared on the model validation notice. An industry trade group commenter noted that Wisconsin law allows disclosures on the reverse of the notice but requires the statement, "Notice: See Reverse Side for Important Information." A group of consumer advocate commenters suggested that disclosures required by applicable law should be separately labeled as "Disclosures Required by Your State" and "Disclosures Required by Local Federal Courts."

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[354] *Avila*, 817 F.3d at 76 (adopting the safe harbor approach for debt collectors disclosing the amount of the debt when the balance may increase due to interest and fees adopted in *Miller v. McCalla, Raymer, Padrick, Cobb, Nichols, & Clark, LLC*, 214 F.3d 872, 876 (7th Cir. 2000)).

[355] As discussed earlier in this section-by-section analysis, § 1006.34(d)(3)(iv) has been revised in the final rule to clarify that the optional disclosures are those that are "specifically" required by applicable law or that provide a safe harbor under applicable law.

Relatedly, some commenters noted that some State laws include specific prominence or font size requirements for validation notice disclosures. A comment letter from two associations of State regulatory agencies expressed concerns that proposed § 1006.34(d)(3)(iv), as disclosed on the model validation notice, was not sufficiently prominent. In particular, these commenters objected that the statement about disclosures required by applicable law appeared below the § 1006.34(d)(3)(iii)(A) payment disclosure.

In response to feedback, the Bureau is including a new comment 34(d)(3)(iv)(A)–2 to clarify how the disclosure described in § 1006.34(d)(3)(iv)(A) may appear depending on the delivery mechanism. The comment clarifies that, if a debt collector includes disclosures pursuant to § 1006.34(d)(3)(iv)(A), the debt collector must include a statement on the front of the validation notice referring to those disclosures; and a debt collector may comply with the requirement to refer to the disclosures by including on the front of the validation notice the statement, "Notice: See reverse side for important information," or a substantially similar statement. The comment further notes that if, as permitted by comment 34(d)(3)(iv)(A)–1, a debt collector places the disclosures below the content of the validation notice, the debt collector may comply with the requirement to refer to the disclosures by stating, "Notice: See below for important information," or a substantially similar statement.

In response to feedback, the Bureau is also modifying how the statement required by § 1006.34(d)(3)(iv) is disclosed on the model validation notice. Specifically, the § 1006.34(d)(3)(iv) statement appears on the final model notice as: "Notice: See Reverse Side for Important Information."[356] The Bureau finds that this phrase is clearer, more conspicuous, and more likely to encourage consumer action than the proposed phrase, "Review state law disclosures on reverse side, if applicable." Finally, the Bureau declines the suggestion to require debt collectors to label which disclosures are included pursuant to State law and which are

[356] The Bureau based this statement on a Wisconsin disclosure requirement. *See* Wis. Admin. Code DFI-Bkg sec. 74.13.

included pursuant to judicial orders and decisions. That distinction likely makes little practical difference to consumers.

The Bureau also determines that the § 1006.34(d)(3)(iv) disclosure should be more prominent than in the proposed model validation notice, in part to account for the fact noted by some commenters that disclosures required by other applicable law may have prominence requirements, including clear and conspicuous requirements. The Bureau therefore has modified the model validation notice to further emphasize the § 1006.34(d)(3)(iv) disclosure. Specifically, in contrast to the proposed model validation notice, on which the disclosure appeared in regular font in the middle of a list of other disclosures, the disclosure appears on the final model validation notice underlined and in bold font and separated from other disclosures.

Commenters sought additional guidance about what constitutes the "reverse side" of the validation notice. Two industry trade group commenters recommended that the Bureau interpret "reverse side" as synonymous with "next page" to allow debt collectors to use a second page to provide disclosures required by other applicable law. Relatedly, one commenter stated that requiring a debt collector to print on both sides of a validation notice would increase costs. Two associations of State regulatory agencies asked the Bureau to clarify where State law disclosures should be placed on validation notices delivered electronically, since disclosures delivered electronically will not have a reverse side.

The Bureau recognizes that the meaning of "on the reverse" may vary by delivery method and format and that clarification is warranted, particularly as to validation notices delivered electronically. As such, the Bureau is adopting new comment 34(d)(3)(iv)(A)–1, which clarifies, in relevant part, that if a debt collector provides a validation notice in the body of an email, the debt collector may, in lieu of including the disclosures permitted by § 1006.34(d)(3)(iv)(A) on the reverse of the validation notice, include them in the same communication below the content of the validation notice. Furthermore, as discussed above, comment 34(d)(3)(iv)(A)–2 notes that, if a debt collector places the disclosures below the content of the validation notice, the debt

collector may comply with the requirement to refer to the disclosures by including the statement, "Notice: See below for important information," or a substantially similar statement. These commentary provisions, therefore, address circumstances in which the validation notice is delivered in the body of an email.

The Bureau declines to permit debt collectors to place disclosures required by other applicable law on a second page while maintaining the § 1006.34(d)(2) safe harbor, as some commenters requested. In § 1006.34(d)(2)(ii), the Bureau specifies two narrow circumstances in which debt collectors are permitted to include validation information on a second page because such information, presented on a second page, is likely to benefit consumers.[357] And, in both cases, if a debt collector includes the disclosures on a second page, the debt collector loses the § 1006.34(d)(2) safe harbor with respect to the second page. The Bureau determines that it is unwarranted to provide a safe harbor that would be more expansive both in scope and protection than the other targeted exceptions to debt collectors providing other applicable law disclosures on a second page. The Bureau notes that debt collectors may include such disclosures on a second page without necessarily violating the rule.

The Bureau is making one additional change not in response to comments. Section 1006.34(d)(3)(iv)(A) provides, in relevant part, that disclosures made under § 1006.34(d)(3)(iv) must not appear directly on the reverse of the consumer-response information required by § 1006.34(c)(4), which appears on the front of the notice. This revision is included to ensure that debt collectors who choose to make the optional disclosures under § 1006.34(d)(3)(iv) do not provide the disclosures in a place where the disclosures would be returned with the consumer-response information.

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[357] Final § 1006.34(d)(2)(ii) allows a second page for debt collectors to provide information that would otherwise be provided in a relatively abbreviated itemization of the debt (*i.e.*, itemization on a second page and for the special rule regarding certain residential mortgage debt). This narrow exception allows the debt collector to potentially provide significantly more information to the consumer on a second page.

The Bureau notes that if, as permitted by § 1006.34(d)(3)(iv), a debt collector includes on the front of a validation notice the required statement regarding disclosures under other applicable law (*i.e.*, "Notice: See reverse side for important information"), the debt collector must actually place such disclosures on the reverse. Conversely, a debt collector may not include disclosures under other applicable law on the reverse of a validation notice without including the statement about those disclosures on the front of the validation notice. The Bureau intended this effect when it proposed § 1006.34(d)(3)(iv) and notes it here for clarity.

Accordingly, the Bureau is finalizing § 1006.34(d)(3)(iv) and its related commentary with both substantive revisions and minor wording changes.

34(d)(3)(v) Information about Electronic Communications

Proposed § 1006.34(d)(3)(v) provided that debt collectors could include certain information about electronic communications along with the validation information. First, proposed § 1006.34(d)(3)(v)(A) provided that a debt collector could include the debt collector's website and email address. Second, proposed § 1006.34(d)(3)(v)(B) provided that a debt collector could include, for validation information not provided electronically, the statement described in § 1006.34(c)(3)(v) explaining how a consumer could take the actions described in § 1006.34(c)(4) and § 1006.34(d)(3) electronically.[358] One industry commenter supported proposed § 1006.34(d)(3)(v), and the Bureau is finalizing it as proposed, with technical revisions to reflect conforming changes to final § 1006.34(c)(3)(v). For example, final § 1006.34(d)(3)(v)(B) no longer contains a reference to § 1006.34(d)(3) because final § 1006.34(c)(3)(v) itself no longer refers to § 1006.34(d)(3).[359]

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[358] Proposed § 1006.34(c)(3)(v) provided that such a statement was required validation information for validation notices provided electronically.

[359] As discussed in the section-by-section analysis of § 1006.34(c)(3)(v), the final rule does not require debt collectors who provide validation notices electronically to include statements explaining how consumers can take the actions described in § 1006.34(d)(3) electronically.

34(d)(3)(vi) Spanish-Language Translation Disclosures

Proposed § 1006.34(d)(3)(vi) provided that a debt collector could include, along with the validation information, optional Spanish-language disclosures that consumers could use to request a Spanish-language validation notice. The proposal stated that Spanish-speaking LEP consumers may benefit from a Spanish-language disclosure informing them of their ability to request a Spanish-language translation, if a debt collector chooses to make such a translation available.[360] The proposal stated that debt collectors may wish to provide validation information in Spanish, as doing so may facilitate their communications with consumers.

Consumer advocate commenters generally supported permitting debt collectors to provide certain Spanish-language disclosures along with the validation information. Some consumer advocate commenters recommended that the Bureau also require debt collectors to provide the disclosures described in proposed § 1006.34(d)(3)(vi). A group of consumer advocate commenters urged the Bureau to require a debt collector to send a translated validation notice if the debt collector receives a request from a consumer seeking information in the consumer's preferred language, including a request received using the proposed tear off portion of the validation notice.

An industry commenter supported proposed § 1006.34(d)(3)(vi) on the understanding that the Spanish-language disclosures would be optional. According to the commenter, requiring debt collectors to provide foreign language disclosures would entail significant costs. An industry commenter and an industry trade group commenter asked the Bureau to clarify whether providing the proposed § 1006.34(d)(3)(vi) disclosures would obligate a debt collector to provide future communications in Spanish to the consumer. Some commenters raised questions about whether the validation period would be paused when a consumer requests a Spanish-language

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[360] Spanish speakers represent the second-largest language group in the United States after English speakers. As of 2016, 40 million residents in the United States ages five and older spoke Spanish at home. *See* U.S. Census Bureau, *Profile America for Facts for Features CB17–FF.17: Hispanic Heritage Month 2017*, at 4 (Oct. 17, 2017), *https://www.census.gov/newsroom/facts-for-features/2017/hispanic-heritage.html.*

translation of the validation notice and then restart when it is received, with a local government commenter supporting such a revision in the final rule.

The Bureau declines to make the Spanish-language disclosures described in § 1006.34(d)(3)(vi) mandatory. A requirement to provide the § 1006.34(d)(3)(vi) disclosures, standing alone, would not be overly burdensome because the translation language is precisely described in the regulation and is also included on the model validation notice. However, the content of those disclosures means that mandating them would effectively compel debt collectors to provide translated validation notices to certain consumers (*i.e.*, consumers who respond to the § 1006.34(d)(3)(vi) disclosures by requesting a Spanish-language validation notice).[361] As discussed in the proposal, the Bureau did not propose to require debt collectors to provide translated validation notices because of the associated costs of such a requirement,[362] and the Bureau is declining to finalize such a requirement in this final rule.[363]

A debt collector who provides the optional disclosure described in § 1006.34(d)(3)(vi) must honor a consumer's request for a translated validation notice or risk violating FDCPA section 807. However, the proposal did not expressly state that the debt collector would be obligated to provide the Spanish-language translation of the validation notice in this circumstance. The proposal only implied such an obligation. To make the rule clearer, the Bureau is finalizing a new § 1006.34(e)(2), which provides that a debt collector who includes in the validation information either or both of the optional disclosures described in § 1006.34(d)(3)(vi), and who thereafter receives a request from the consumer for a Spanish-language validation notice, must provide the consumer a validation notice completely and accurately translated into Spanish.[364] The Bureau clarifies that, other than with respect to § 1006.34(e)(2), nothing in the rule obligates a debt collector to provide future communications

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[361] 15 U.S.C. 1692e.

[362] 84 FR 23274, 23352 (May 21, 2019).

[363] *See* the section-by-section analysis of § 1006.34(e).

[364] *Id.*

in Spanish solely because the debt collector provided a disclosure described in § 1006.34(d)(3)(vi) in Spanish.

Regarding the commenters who asked for clarification about, or supported, restarting the validation period when the consumer requests a Spanish-language validation notice, the Bureau declines to mandate such a change but notes that debt collectors who voluntarily restart the validation period after providing a copy of the Spanish-language validation notice following the consumer's request do not violate the FDCPA or Regulation F.

For these reasons, the Bureau is finalizing § 1006.34(d)(3)(vi) largely as proposed but with a revision to clarify that a debt collector may include either of the optional Spanish-language translation disclosures, or both of them.

34(d)(3)(vi)(A)

Proposed § 1006.34(d)(3)(vi)(A) provided that a debt collector could include a statement in Spanish informing a consumer that the consumer could request a Spanish-language validation notice. Specifically, the Bureau proposed in § 1006.34(d)(3)(vi)(A) to permit the statement, "Póngase en contacto con nosotros para solicitar una copia de este formulario en español," using that phrase or a substantially similar phrase in Spanish. In English, this phrase means, "You may contact us to request a copy of this form in Spanish." The proposal clarified that a debt collector who provided this optional disclosure could also include supplemental information in Spanish specifying how a consumer could request a Spanish-language validation notice. Proposed comment 34(d)(3)(vi)(A)–1 explained that, for example, a debt collector could provide a statement in Spanish that a consumer could request a Spanish-language validation notice by telephone or email.

Consumer advocate commenters supported the Spanish-language disclosure described in proposed § 1006.34(d)(3)(vi)(A). The Bureau received no other comments specifically addressing the disclosure. Accordingly, the Bureau is finalizing § 1006.34(d)(3)(vi)(A) and its related commentary as proposed, with only minor wording changes.

34(d)(3)(vi)(B)

Proposed § 1006.34(d)(3)(vi)(B) provided that debt collectors could include in the consumer-response information section of the validation notice a statement in Spanish that a consumer could use to request a Spanish-language validation notice. Specifically, the Bureau proposed in § 1006.34(d)(3)(vi)(B) to permit debt collectors to include the statement, "Quiero esta forma en español," using that phrase or a substantially similar phrase in Spanish. In English, this phrase means, "I want this form in Spanish." Proposed § 1006.34(d)(3)(vi)(B) would have required this statement to be next to a prompt that the consumer could use to request a Spanish-language validation notice.

Consumer advocate commenters generally supported the Spanish-language disclosure described in proposed § 1006.34(d)(3)(vi)(B). However, a group of consumer advocate commenters stated that the Spanish translation in proposed § 1006.34(d)(3)(vi)(B) was inaccurate. Specifically, the commenters stated that the correct Spanish translation of "form" is "formulario," not "forma." The word "forma" appeared in both proposed § 1006.34(d)(3)(vi)(B) and in the sample disclosure on the proposed model validation notice. The Bureau finds that "formulario," not "forma," is the correct Spanish translation of "form." The Bureau also finds that, for gender agreement, § 1006.34(d)(3)(vi)(B) should read "este formulario," not "esta formulario."

The Bureau is finalizing § 1006.34(d)(3)(vi)(B), its related commentary, and the disclosure on the model validation notice as proposed, but with revisions to correct the translation errors and with other, minor wording changes for consistency with other provisions of the final rule.

34(d)(3)(vii)

The Bureau proposed § 1006.34(c)(2)(iii) to provide that the merchant brand, if any, associated with a credit card debt, to the extent available to the debt collector, is validation information that must be provided to the consumer. Proposed comment 34(c)(2)(iii)–1 provided

an example of merchant brand information that the Bureau initially determined would be available to a debt collector and that, therefore, would be required on a validation notice.

For the reasons discussed below, the Bureau is not finalizing § 1006.34(c)(2)(iii) and its related commentary. Instead, the Bureau is restructuring and renumbering proposed § 1006.34(c)(2)(iii) as a new optional disclosure under § 1006.34(d)(3)(vii), which permits, but does not require, debt collectors to disclose the merchant brand, affinity brand, or facility name, if any, associated with the debt (and does not limit the optional disclosure to credit card debt).

Industry, industry trade group, and consumer advocate commenters uniformly agreed that, if available, merchant brand information may help consumers recognize debts. For example, consumer advocate commenters stated that, in the case of a store-branded credit card, a consumer may not associate the debt with the original creditor (often a bank) and may be more likely to recognize the merchant, whose name appears on the credit card. A group of consumer advocate commenters asserted that such information was important, impliedly suggesting that the Bureau require its disclosure as part of the validation information.

Although supportive of the proposed disclosure in principle, some industry trade group commenters asked the Bureau to clarify the circumstances in which merchant brand information would be deemed available. According to these commenters, whether merchant brand information is available may be unclear because it is not always identifiable in a consumer's file or a creditor may not have provided it. One industry trade group commenter stated that the proposed provision requiring disclosure of merchant brand information for credit cards as part of the validation information would better serve consumers and reduce compliance costs if the provision included broader categories than merchant brand names and was an optional, rather than mandatory, disclosure.

The Bureau received other comments about expanding the scope of proposed § 1006.34(c)(2)(iii). An industry trade group commenter recommended that § 1006.34(c)(2)(iii) also encompass affinity brand information (*e.g.*, the name of a college). Other commenters

recommended that debt collectors be permitted or required to disclose the facility name associated with a medical debt (*e.g.*, the name of a hospital). According to commenters, a consumer may be more likely to recognize a facility where treatment was provided than the healthcare service provider that is the creditor. A group of consumer advocate commenters noted that increasingly a hospital name may act as a brand for an umbrella of service providers and thus should be treated in the same manner as a merchant brand.

The Bureau determines that merchant brand information may help consumers recognize debts. However, the Bureau agrees with the feedback that whether merchant brand information is available may not always be clear to a debt collector. This ambiguity is particularly likely with respect to debts that have been sold or transferred multiple times. Furthermore, not all creditors will have an associated merchant brand, at least one that is distinct from the creditor name.

Accordingly, in lieu of finalizing the requirement in proposed § 1006.34(c)(2)(iii), the Bureau is adopting new § 1006.34(d)(3)(vii), which permits, rather than requires, debt collectors to disclose the merchant brand information, if any, associated with a debt. By making merchant brand an optional disclosure, the Bureau eliminates a source of potential ambiguity that could expose debt collectors to legal risk. In addition, notwithstanding this modification, the Bureau concludes that debt collectors will be incentivized to provide merchant brand information if it is available. Commenters uniformly agreed that merchant brand information helps consumers recognize debts.[365] Thus, debt collectors likely will benefit from including merchant brand information if possible. Providing merchant brand information will also benefit consumers by allowing them to more easily identify debts, determine whether they owe them, and avoid the confusion resulting from seeing a validation notice with an unfamiliar name (which potentially leads to the consumer ignoring the notice).

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[365] *See* 84 FR 23274, 23340 (May 21, 2019) (citing the Bureau's consumer focus group findings that indicate consumers use merchant brands to recognize credit card debts).

The Bureau finds that affinity brand information and facility name information also may help consumers recognize debts they owe. Whereas a merchant brand can be generally understood as the labelling or branding of a commercial entity, such as a retail store, an affinity brand may reflect the labelling or branding of an entity that is not necessarily commercial but one with which the consumer has a relationship. For example, a higher education institution (*e.g.*, "College of Columbia") or a charity may be associated with a consumer financial product (*e.g.*, a credit card provided by "ABC Bank") as an affinity brand. *See* comment 34(d)(3)(vii)–2. Moreover, facility name information (*e.g.*, "ABC Hospital") may prove more recognizable to consumers with respect to a medical debt than the name of, for example, the physicians group or laboratory that is the actual creditor (particularly if the consumer has one appointment or procedure at one facility that results in multiple bills from multiple providers). *See* comment 34(d)(3)(vii)–3. Thus, § 1006.34(d)(3)(vii) also permits debt collectors to disclose an affinity brand or a facility name, if any, associated with a debt.[366]

For these reasons, the Bureau is finalizing § 1006.34(d)(3)(vii) to provide that, along with the validation information, debt collectors may disclose the merchant brand, affinity brand, or facility name, if any, associated with a debt. The Bureau also is adopting new comments 34(d)(3)(vii)–1 through –3 to provide examples of a merchant brand, an affinity brand, and a facility name, respectively.

34(d)(3)(viii)

The Bureau is finalizing § 1006.34(d)(3)(viii) to provide that, although it is not required, a debt collector who is collecting debt not related to a consumer financial product or service may disclose certain additional information without losing the safe harbor provided by § 1006.34(d)(2) (assuming the debt collector otherwise satisfies the conditions for the safe harbor). Specifically, § 1006.34(d)(3)(viii) provides that, if a debt collector is collecting debt

[366] Although § 1006.34(d)(3)(vii) permits debt collectors to disclose the facility name associated with a medical debt along with the validation information, debt collectors may be prohibited from doing so by other applicable laws, such as healthcare privacy rules or regulations.

other than debt related to a consumer financial product or service as defined in § 1006.2(f), the debt collector may disclose: (1) the name of the creditor to whom the debt was owed on the itemization date (*i.e.*, the information specified in § 1006.34(c)(2)(iii)); or (2) a statement that informs the consumer that additional information regarding consumer protections in debt collection is available on the Bureau's website at *www.cfpb.gov/debt-collection* (*i.e.*, the information specified in § 1006.34(c)(3)(iv)). The Bureau determines that receipt of this information may be helpful for consumers.

34(d)(4) Validation Notices Delivered Electronically

As discussed in the proposal and in the November 2020 Final Rule, promoting electronic communications may benefit consumers and debt collectors.[367] As also discussed in the proposal, allowing debt collectors to make certain formatting modifications to validation notices delivered electronically may help consumers exercise their verification rights under FDCPA section 809 and may facilitate a debt collector's ability to process and understand a consumer's response to such an electronically delivered validation notice. Proposed § 1006.34(d)(4) therefore provided several modifications, discussed in the section-by-section analysis of § 1006.34(d)(4)(i) and (ii) below, that a debt collector could make, at its option, to the formatting of a validation notice delivered electronically.

An industry trade group commenter expressed support for proposed § 1006.34(d)(4)'s facilitation of validation notices delivered electronically. The Bureau received no other comments specifically addressing proposed § 1006.34(d). Accordingly, the Bureau is finalizing § 1006.34(d)(4) with only minor wording changes.

The Bureau is finalizing § 1006.34(d)(4) to implement and interpret FDCPA section 809(b) by establishing formatting requirements that facilitate the consumer's right to dispute a debt and request original-creditor information, and pursuant to its FDCPA section 814(d)

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[367] *See* 84 FR 23274, 23351 (May 21, 2019); 85 FR 76734, 76755 (Nov. 30, 2020).

authority to prescribe rules with respect to the collection of debts by debt collectors. The Bureau also is finalizing § 1006.34(d)(4) pursuant to its authority under section 1032(a) of the Dodd-Frank Act to prescribe rules to ensure that the features of consumer financial products and services are disclosed fully, accurately, and effectively.

34(d)(4)(i) Prompts

Proposed § 1006.34(d)(4)(i) provided that a debt collector delivering a validation notice electronically pursuant to § 1006.42 could display any prompt required by § 1006.34(c)(4)(i) or (ii) or (d)(3)(iii)(B) or (vi)(B) as a fillable field.[368]

One industry trade group commenter supported proposed § 1006.34(d)(4)(i). According to the commenter, if a validation notice is delivered by email, a debt collector should be permitted to format the prompts in the consumer-response information section so that the debt collector receives an email if a consumer selects them. Another industry trade group commenter asked the Bureau to clarify whether a fillable field includes a checkbox.

A consumer advocate commenter raised concerns about permitting a debt collector to format the payment prompt described in § 1006.34(d)(3)(iii)(B) as a fillable field. According to the commenter, scammers could impersonate legitimate debt collectors and attempt to convince consumers to make payments on fraudulent debts using the payment prompts. The commenter urged the Bureau to evaluate the security risks associated with fillable payment prompts and consider other approaches.

The Bureau determines that allowing a debt collector to design a validation notice delivered electronically to include fillable prompts will benefit consumers and industry by making it easier for consumers to exercise their verification rights, make a payment, or request a Spanish-language translation of the notice. The Bureau does not find that permitting a debt collector to format the payment prompt described in § 1006.34(d)(3)(iii)(B) as a fillable field

[368] 84 FR 23274, 23405 (May 21, 2019).

entails substantial security risks. The Bureau acknowledges that, in general, electronic communications present certain security risks to consumers. However, the Bureau finds that these general risks do not justify preventing debt collectors from including in electronic communications common design modifications, such as prompts, that are convenient to consumers. Thus, the Bureau declines to limit the ability of legitimate debt collectors to include on validation notices a common design modification that will benefit consumers.[369]

Accordingly, the Bureau is finalizing § 1006.34(d)(4)(i) largely as proposed, with only minor wording changes for consistency with other provisions in the final rule.

34(d)(4)(ii) Hyperlinks

Proposed § 1006.34(d)(4)(ii) provided that a debt collector delivering a validation notice electronically could embed hyperlinks in the validation notice that, when clicked, would connect consumers to the debt collector's website or permit consumers to dispute a debt or request original-creditor information.

Industry trade group commenters supported proposed § 1006.34(d)(4)(ii). For example, a commenter stated that hyperlinks are an important feature used to reduce the complexity of email and text messages while allowing readers to access important information. A consumer advocate commenter recommended that the Bureau also permit debt collectors to embed a hyperlink that connects consumers to the Bureau's website address described in § 1006.34(c)(3)(iv).

The Bureau determines that hyperlinks are a formatting modification that may benefit consumers and debt collectors if included in validation notices that are delivered electronically. And the Bureau agrees that debt collectors should be permitted to include a hyperlink that connects consumers to the Bureau's website address described in § 1006.34(c)(3)(iv). Accordingly, the Bureau is finalizing § 1006.34(d)(4)(ii) to provide that debt collectors may embed hyperlinks that, when clicked, connect consumers to the debt collector's website, connect

[369] With respect to the comment about whether a fillable field includes a checkbox, the Bureau confirms that a fillable field may appear as an unmarked checkbox that a consumer can select.

consumers to the Bureau's debt collection website as disclosed pursuant to § 1006.34(c)(3)(iv), or permit consumers to dispute the debt or request original-creditor information.

34(e) Translation into Other Languages

The Bureau proposed § 1006.34(e) to provide that a debt collector could send a consumer a validation notice completely and accurately translated into any language if the debt collector also sent an English-language validation notice that satisfied § 1006.34(a)(1). Proposed § 1006.34(e) also provided that, if a debt collector already provided a consumer an English-language validation notice that satisfied § 1006.34(a)(1) and subsequently provided the consumer a validation notice translated into any other language, the debt collector would not need to provide an additional copy of the English-language notice. Proposed comment 34(e)–1 clarified that the language of a validation notice obtained from the Bureau's website would be considered a complete and accurate translation, although debt collectors would be permitted to use other validation notice translations if they were accurate and complete.

Industry and industry trade group commenters supported proposed § 1006.34(e) and its optional approach to providing validation notices translated into other languages. An industry trade group commenter stated that this approach was appropriate because some debt collectors may not have the resources to conduct collections activities in languages other than English. Other industry trade group commenters stated that requiring debt collectors to provide validation notices in other languages would be burdensome and costly. An industry trade group commenter stated that, if a debt collector provided a validation notice in another language, a consumer would expect the debt collector to communicate in that language. According to this commenter, if the debt collector was unable to do so, this unfulfilled expectation would frustrate consumers and expose debt collectors to litigation risk.

Other commenters, including consumer advocates, legal aid providers, and faith groups, recommended that debt collectors be required to provide non-English validation notices to LEP consumers. According to these commenters, LEP consumers tend to experience poverty at much

greater rates, face significant challenges navigating the debt collection process, and are often subject to harassment and deception. Commenters stated that English-language validation notices would not enable LEP consumers to understand their rights in debt collection or to take appropriate action if they did not believe that they owed a debt. Commenters cited demographic statistics showing the growing population of LEP consumers, particularly in certain localities. A consumer advocate commenter stated that case law suggests that a debt collector's failure to provide a non-English validation notice to an LEP consumer may violate the FDCPA.[370]

To address these concerns, these commenters suggested various mandatory frameworks that would require debt collectors to provide translated validation notices to consumers. These suggested alternative frameworks included requiring debt collectors to provide a translated validation notice: (1) in Spanish and located on the back of every English-language validation notice; (2) with every English-language validation notice if the debt collector knows or should know the consumer has another language preference; (3) if the original transaction or the debt collector's prior communication was conducted in a foreign language; (4) upon a consumer's request; (5) if the debt collector received information in the file from the creditor or a prior debt collector indicating the consumer's non-English language preference; or (6) if and when the debt collector at a later point communicates with the consumer in a foreign language. In some cases, commenters framed these interventions as narrow or measured. A group of consumer advocates also urged the Bureau to make available on its website Spanish-translated validation notices as well as translations in the next seven most common languages spoken by LEP consumers in the United States.

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[370] The commenter cited, for example, *Evory v. RJM Acquisitions Funding LLC*, 505 F.3d 769, 774 (7th Cir. 2007). However, the Bureau disagrees with the commenter's premise that this opinion and the others it cited imply a general requirement under the FDCPA to provide translated notices to all Spanish-speaking LEP consumers. The Bureau believes, instead, that those holdings were dependent on the facts of those cases. For example, *Evory* discussed in *dicta* a hypothetical in which a debt collector targeted vulnerable Spanish-speaking LEP consumers with English-language validation notices, 505 F.3d at 774, but that particular scenario involved targeting, which is beyond the scope of § 1006.34(e).

The Bureau determines that LEP consumers may benefit from translated validation notices. Further, some debt collectors may want to provide translated validation notices to LEP consumers, if doing so is consistent with their business practices.

The Bureau, however, declines commenters' requests to require debt collectors to provide a Spanish-language translation to all consumers on the back of every English-language validation notice or a translated notice to consumers in other languages if the debt collector knows or should know the consumer has a different language preference. As discussed in the proposal,[371] these types of mandatory approaches would result in significant, industry-wide costs on both an upfront (implementation) basis and an ongoing basis, especially for smaller debt collectors and in connection with translations of the validation notice in languages whose use is not prevalent in the United States.[372] The Bureau acknowledges that some LEP consumers may experience particular challenges in the debt collection process. However, commenters did not provide information about the costs and benefits of requiring debt collectors to provide translated validation notices to all consumers, regardless of whether the consumer requests the translation, that persuades the Bureau that such mandatory requirements are justified. The Bureau, as stated above, recognizes the benefits of providing translated disclosures to consumers. However, the Bureau concludes that the approach in the proposal, supplemented by certain changes in the final rule, strikes a better balance than a mandatory requirement. The final rule permits debt collectors to provide disclosures carrying safe harbor protection that notify and encourage consumers to request a Spanish-language translation of the validation notice or additional information in Spanish, which can assist the largest group of LEP consumers in the United States by a wide margin compared to other languages. At the same time, the final rule does not require debt collectors to provide all consumers with translated validation notices, whether in Spanish or

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[371] *See also* the section-by-section analysis of § 1006.34(d)(3)(vi).

[372] *See* 84 FR 23274, 23352 (May 21, 2019).

other languages, and irrespective of whether the consumers request it or speak a language that is uncommon among LEP consumers in the United States.

Regarding the request by a group of consumer advocate commenters that the Bureau translate the validation notice into Spanish and seven other languages and deem the Bureau translations as complete and accurate, the Bureau plans to make available on its website, prior to the effective date of the final rule, a Spanish-language translation of the validation notice, and it will consider taking such action in the future with respect to one or more of the other languages cited by these commenters following implementation of the final rule.

The Bureau also declines to implement the other mandatory approaches suggested by consumer advocate, faith group, and legal aid provider commenters. As discussed above, these commenters suggested a variety of interventions, such as requiring the debt collector provide the translated notice in circumstances in which the consumer had expressed a language preference to a prior debt collector or the creditor and that preference is noted in the file for the debt, or in which, at a later point in the process, the consumer communicates in a foreign language.

The Bureau disagrees with some commenters' characterization of these interventions as targeted or narrow in scope, as each suggestion would entail a mandatory requirement with associated upfront and ongoing costs and complexity (which would be compounded if more than one or even all of these interventions were adopted collectively). In some cases, these suggested interventions are beyond the scope of the proposal. As to others, the Bureau concludes that the costs of such interventions to debt collectors, particularly smaller entities, would not outweigh the benefits to consumers because they would add undue complexity to the rule from an operational, compliance, and supervisory perspective.

For these reasons, the Bureau declines to adopt a final rule that requires debt collectors to provide translated validation notices. Nevertheless, because the Bureau determines that, as discussed in the proposal, LEP consumers may benefit from receiving translated validation notices, the Bureau is finalizing § 1006.34(e) to clarify how debt collectors may provide such

notices if they choose. The Bureau is finalizing proposed § 1006.34(e) as § 1006.34(e)(1), with certain revisions and organizational changes for clarity; no substantive change is intended. Furthermore, as discussed in the section-by-section analysis of § 1006.34(d)(3)(vi), the Bureau is finalizing new § 1006.34(e)(2) to provide that, if a debt collector includes in the validation information either or both of the optional disclosures notifying a consumer that the consumer can request a copy of the validation notice in Spanish, the debt collector must provide the consumer a Spanish-language validation notice if the consumer requests one. The Bureau intended this result in the proposal and is including § 1006.34(e)(2) for clarity and in response to feedback. Finally, the Bureau is finalizing comment 34(e)–1 with revisions to conform to the revisions and organizational changes made to § 1006.34(e); no substantive change is intended.

Section 1006.38 Disputes and Requests for Original-Creditor Information

FDCPA section 809(b) requires debt collectors both to refrain from taking certain actions during the 30 days after the consumer receives the validation information or notice described in FDCPA section 809(a) (*i.e.*, during the validation period) and to take certain actions if a consumer either disputes the debt in writing, or requests the name and address of the original creditor in writing, during the validation period. The Bureau proposed § 1006.38 to implement and interpret FDCPA section 809(b) and (c), and the Bureau finalized the majority of proposed § 1006.38 in the November 2020 Final Rule.[373] The Bureau now is finalizing the remainder of proposed § 1006.38 as follows.

Comment 38–1

The Bureau proposed comment 38–2 (renumbered in the November 2020 Final Rule as comment 38–1) to set forth examples of written and electronic communications consumers can use in disputing the debt or requesting the name and address of the original creditor.[374] The second proposed example, proposed comment 38–2.ii, would have clarified that a consumer

[373] 85 FR 76734, 74843-48, 76893 (Nov. 30, 2020).

[374] 84 FR 23274, 23353 (May 21, 2019).

could return to the debt collector the consumer-response form that proposed § 1006.34(c)(4)(i) would have required to appear on the validation notice and indicate on the form a dispute or request. The Bureau received no comments on proposed comment 38–2.ii.[375] The Bureau did not finalize proposed comment 38–2.ii in the November 2020 Final Rule because the Bureau did not finalize § 1006.34 as part of that final rule. The Bureau now is finalizing comment 38–2.ii as proposed, renumbered as comment 38–1.ii, except that the Bureau is correcting a typographical error in the proposed comment such that the final comment cross references § 1006.34(c)(4) rather than § 1006.34(c)(4)(i).

Comment 38–3

The Bureau proposed comment 38–1 (renumbered in this final rule as comment 38–3) to clarify the applicability of § 1006.38 in the decedent debt context. Proposed comment 38–1 would have clarified that, if the consumer has not previously disputed the debt or requested the name and address of the original creditor, then a person who is authorized to act on behalf of the deceased consumer's estate operates as the consumer for purposes of § 1006.38. Proposed comment 38–1 also would have clarified that, if a person who is authorized to act on behalf of the deceased consumer's estate submits either a written request for original-creditor information or a written dispute to the debt collector during the validation period, then § 1006.38(c) or (d)(2), respectively, would require the debt collector to cease collection of the debt until the debt collector has responded to that request or dispute.

For the reasons discussed in the section-by-section analysis of § 1006.2(e), the Bureau is interpreting the term consumer to mean any natural person, whether living or deceased, who is obligated or allegedly obligated to pay any debt. And, pursuant to its authority under FDCPA section 814(d) to prescribe rules with respect to the collection of debts by debt collectors, the Bureau is adopting commentary clarifying how this definition operates in the decedent debt

[375] The Bureau addressed comments received on other aspects of proposed comment 38–2 in the November 2020 Final Rule. 85 FR 76734, 76843-44 (Nov. 30, 2020).

context, including debt collectors' obligations for providing the validation information and responding to disputes and requests for original-creditor information. Accordingly, the Bureau is finalizing comment 38–1 as proposed, renumbered as comment 38–3 in this final rule.

38(a) Definitions

38(a)(2) Validation Period

The Bureau proposed in § 1006.38(a)(2) to provide that the term validation period as used in § 1006.38 has the same meaning given to it in proposed § 1006.34(b)(5).[376] Because the Bureau did not finalize § 1006.34 in the November 2020 Final Rule, the Bureau finalized the definition in § 1006.38(a)(2) with revised wording to refer to the 30-day period described in FDCPA section 809 as defined by Regulation F.[377] The Bureau noted that it might, as part of this final rule, revise the definition of validation period as finalized in the November 2020 Final Rule to cross-reference any definition of that term that the Bureau adopts in this final rule. As discussed in the section-by-section analysis of § 1006.34(b)(5), the Bureau is finalizing the definition of validation period.[378] Therefore, the Bureau is making a technical change revising § 1006.38(a)(2), as finalized in the November 2020 Final Rule, to provide that the term validation period as used in § 1006.38 has the same meaning given to it in § 1006.34(b)(5).

38(b) Overshadowing of Rights to Dispute or Request Original-Creditor Information

FDCPA section 809(b) provides that, for 30 days after the consumer receives the validation information described in FDCPA section 809(a), a debt collector must not engage in collection activities or communications that overshadow or are inconsistent with the disclosure of the consumer's right to dispute the debt or request information about the original creditor.[379]

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[376] 84 FR 23274, 23353 (May 21, 2019).

[377] 85 FR 76734, 76844, 76893 (Nov. 30, 2020).

[378] The Bureau addresses comments received regarding the definition of validation period in the section-by-section analysis of § 1006.34(b)(5).

[379] This language was added to the FDCPA by the Financial Services Regulatory Relief Act of 2006, Pub. L. 109-351, sec. 802(c), 120 Stat. 1966, 2006 (2006), after an FTC advisory opinion on the same subject. *See* Fed. Trade Comm'n, *Advisory Opinion to American Collector's Ass'n* (Mar. 31, 2000) (opining that the 30-day period set forth

The Bureau proposed in § 1006.38(b) to implement this prohibition and generally restate the relevant statutory language, with only minor changes for style and clarity.[380]

As the Bureau discussed in the November 2020 Final Rule,[381] the Bureau received a few substantive comments addressing proposed § 1006.38(b). Two industry commenters requested that the final rule define the term "overshadowing." These commenters observed that debt collectors' communications of validation information almost always expressly advise the consumer of the right to dispute the debt and to request the name and address of the original creditor. These commenters asserted that overshadowing claims are nonetheless some of the most common allegations in FDCPA lawsuits. These commenters also requested clarity as to whether the safe harbor in proposed § 1006.34(d)(2) for debt collectors who use the model validation notice also would provide a safe harbor for compliance with the overshadowing prohibition in proposed § 1006.38(b). One industry commenter requested that the final rule clarify that credit reporting during the validation period does not constitute overshadowing.[382]

In the November 2020 Final Rule, the Bureau finalized proposed § 1006.38(b) as § 1006.38(b)(1) and reserved § 1006.38(b)(2).[383] As noted above, proposed § 1006.38(b) generally restated the relevant statutory language, with only minor changes for style and clarity, and § 1006.38(b)(1) in the November 2020 Final Rule did the same. In the November 2020 Final Rule, the Bureau stated that it expected to address, as part of this final rule, the comments it received requesting further clarity about the safe harbor provided by § 1006.34(d)(2), and the Bureau reserved § 1006.38(b)(2) for that purpose.[384]

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in FDCPA section 809(a) "is a *dispute* period within which the consumer may insist that the debt collector verify the debt, and not a *grace* period within which collection efforts are prohibited" but that "[t]he collection agency must ensure, however, that its collection activity does not overshadow and is not inconsistent with the disclosure of the consumer's right to dispute the debt specified by [s]ection 809(a)").

[380] 84 FR 23274, 23353-54 (May 21, 2019).

[381] 85 FR 76734, 76844 (Nov. 30, 2020).

[382] In addition, one industry commenter stated that it generally agreed with proposed § 1006.38, and a group of consumer advocates that addressed proposed § 1006.38(b) did not object to the proposal.

[383] 85 FR 76734, 76844, 76893 (Nov. 30, 2020).

[384] *Id.*

After considering the comments, the Bureau is finalizing in § 1006.38(b)(2) a safe harbor from the prohibition in § 1006.38(b)(1) against overshadowing.[385] Section 1006.38(b)(2) provides that a debt collector who uses Model Form B–1 in appendix B of this part in a manner described in § 1006.34(d)(2) has not thereby violated § 1006.38(b)(1). Therefore, a debt collector who uses Model Form B–1 in appendix B to Regulation F, specified variations of the model notice, or a substantially similar form, has not thereby violated § 1006.38(b)(1). The safe harbor protects only the use of the model validation notice to comply with the information and form requirements of § 1006.34(c) and (d)(1). If a debt collector uses the model validation notice as described in § 1006.34(d)(2) and conducts other collection activities during the validation period, the debt collector does not receive a safe harbor for those other collection activities. A debt collector also does not receive a safe harbor for the manner in which a model validation notice is provided, such as the envelope in which a model validation notice is provided.

The Bureau declines to otherwise define the term "overshadow" or to clarify whether other collection activities during the validation period either violate or comply with the prohibition in final § 1006.38(b)(1). The Bureau finds that the safe harbor in § 1006.38(b)(2) provides sufficient clarity for debt collectors.

38(c) Requests for Original-Creditor Information

FDCPA section 809(a)(5) states that the validation information a debt collector provides to a consumer must include a statement that, upon the consumer's written request within the 30-day validation period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor. FDCPA section 809(b) provides that, if a consumer requests the name and address of the original creditor in writing within 30 days of

[385] Accordingly, the heading for final § 1006.38(b)(2) refers to the safe harbor, and the Bureau is revising: (1) the heading for § 1006.38(b)(1) as finalized in the November 2020 Final Rule to clarify that that paragraph relates to the overshadowing prohibition; and (2) § 1006.38(b)(1) to omit a reference to the fact that the Bureau may provide in this part a safe harbor for debt collectors when they use certain Bureau-approved disclosures because the Bureau is providing that safe harbor in this final rule.

receiving the validation information described in FDCPA section 809(a), the debt collector must cease collection of the debt until the debt collector obtains and mails that information to the consumer. The Bureau proposed in § 1006.38(c) to implement this prohibition and generally restate the relevant statutory language.

As the Bureau discussed in the November 2020 Final Rule, the Bureau received a number of comments addressing proposed § 1006.38(c).[386] Three industry commenters requested that the final rule provide that, if a debt collector's communication of the validation information to a consumer identifies the original creditor, the debt collector need not give the consumer the option of requesting original-creditor information from the debt collector. These commenters stated that, if the original creditor has already been identified to a consumer, it would be confusing to the consumer to provide the option to request the name and address of the original creditor. Further, they stated, consumers could use unnecessary requests for original-creditor information as a tactic to delay or avoid collection. One industry commenter requested that the final rule clarify that a debt collector is not required to include original-creditor information in its communication of validation information to a consumer. This commenter stated that lawsuits are often filed alleging that a debt collector has violated the FDCPA by not identifying the original creditor in the validation information.

Several commenters recommended that the Bureau define "original creditor" to mean the creditor at the time of charge off. According to an industry trade group, this definition would be consistent with other laws, including the Uniform Rules for New York State Trial Courts.[387] Other industry and industry trade group commenters stated that this definition would be appropriate for older debts because a consumer may no longer recognize the original creditor, particularly if an account has been sold. An industry trade group suggested that defining

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[386] 85 FR 76734, 76844-45 (Nov. 30, 2020).

[387] "*Original creditor* means the financial institution that owned the consumer credit account at the time the account was charged off, even if that financial institution did not originate the account. *Charged-off consumer debt* means a consumer debt that has been removed from an original creditor's books as an asset and treated as a loss or expense." 22 NYCRR 208.14-a(a)(2).

"original creditor" as the creditor at the time of charge off may resolve some compliance challenges in the retail installment sales context. According to the commenter, in retail installment sales, the original creditor is the retail seller, not the entity that ultimately buys the contract, and retail-seller information may not be readily available to the debt collector or helpful to the consumer.

A group of consumer advocate commenters who addressed proposed § 1006.38(c) generally noted the importance of original-creditor information to consumers in helping them recognize the debt in question. One commenter stated that the rule should require debt collectors to identify the original creditor in the validation information.[388]

In the November 2020 Final Rule, the Bureau finalized proposed § 1006.38(c) as § 1006.38(c)(1) and reserved § 1006.38(c)(2).[389] As noted above, proposed § 1006.38(c) generally restated the relevant statutory language, and § 1006.38(c)(1) in the November 2020 Final Rule did the same.[390] In the November 2020 Final Rule, the Bureau stated that it expected to address, as part of this final rule, how a debt collector may respond to a request for original-creditor information if the original creditor is the same as the current creditor, and the Bureau reserved § 1006.38(c)(2) for that purpose.[391] The Bureau also noted that it would respond in this final rule to the comments asking the Bureau to define the term original creditor.

The Bureau has determined that a debt collector's communication of the validation information must include disclosure of the option to request original-creditor information. As noted above, FDCPA section 809(a)(5) states that the validation information must include "a statement that, upon the consumer's written request within the thirty-day period, the debt

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[388] Consumer advocates also addressed the proposal's provisions regarding electronic delivery of original-creditor information (and other information) in proposed § 1006.42. These comments regarding electronic delivery were addressed in the November 2020 Final Rule. *Id.* at 76848.

[389] *Id.* at 76893.

[390] While this final rule republishes in § 1006.38(c) some of the text of § 1006.38(c)(1) as finalized in the November 2020 Final Rule, this final rule makes no change to the substance of § 1006.38(c)(1) from what the Bureau finalized in the November 2020 Final Rule.

[391] 85 FR 76734, 76845 n.557 (Nov. 30, 2020).

collector will provide the consumer with the name and address of the original creditor, if different from the current creditor."[392] Because FDCPA section 809(a) requires the validation information to include disclosure of the consumer's right to request original-creditor information, the Bureau finds that consumer confusion would result if the final rule were to permit a debt collector not to respond to a consumer's timely request for that information if the original creditor is the same as the current creditor. Further, FDCPA section 809(b) states that "[a]ny collection activities and communication during the 30-day period may not overshadow or be inconsistent with the disclosure of *the consumer's right to* dispute the debt or *request the name and address of the original creditor*."[393] The Bureau therefore has determined to require a debt collector to respond to a consumer's request for original-creditor information if the original creditor is the same as the current creditor.

However, the Bureau also has determined that FDCPA section 809(a)(5) and (b) permits a debt collector to respond differently to the consumer's request for original-creditor information when the original creditor is the same as the current creditor. Specifically, the Bureau has determined that FDCPA section 809(b), when read together with FDCPA section 809(a)(5), requires the debt collector to provide the name and address of the original creditor to the consumer only if the original creditor is different from the current creditor. Accordingly, the Bureau is finalizing new § 1006.38(c)(2) to set forth an alternative procedure that a debt collector may use to respond to a consumer's request for original-creditor information if the original creditor is the same as the current creditor. Specifically, if a debt collector receives a request for the name and address of the original creditor submitted by the consumer in writing within the validation period, the special rule set forth in § 1006.38(c)(2) provides that the debt collector must cease collection of the debt until the debt collector reasonably determines that the original creditor is the same as the current creditor and either (i) notifies the consumer in writing or

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[392] 15 U.S.C. 1692g(a)(5).

[393] 15 U.S.C. 1692g(b) (emphasis added).

electronically in the manner required by § 1006.42 that the original creditor is the same as the current creditor and refers the consumer to the debt collector's earlier provision of the validation information or (ii) satisfies § 1006.38(c)(1).

Under the final rule, a debt collector is not required to use the alternative procedure in § 1006.38(c)(2); a debt collector can always comply with the rule by complying with § 1006.38(c)(1). By adopting the § 1006.38(c)(2) alternative procedure, the Bureau strikes the best balance between providing debt collectors with a less burdensome method of responding to consumer requests for original-creditor information and protecting consumers.

The Bureau adopts the alternative procedure in § 1006.38(c)(2) as an interpretation of FDCPA section 809(a)(5) and (b), and pursuant to its authority under FDCPA section 814(d). In particular, § 1006.38(c)(2) is an interpretation of what it means for a debt collector, pursuant to FDCPA section 809(b), to "obtain[ ] . . . the name and address of the original creditor" and send that information to the consumer when, pursuant to FDCPA section 809(a)(5), the debt collector already provided the name of the current creditor to the consumer within the validation information (as required by FDCPA section 809(a)(2) and § 1006.34(c)(2)(v)) and the original creditor is not different from the current creditor. If the original creditor is the same as the current creditor, the Bureau interprets FDCPA section 809(b)'s requirement to provide original-creditor information to the consumer to mean that a debt collector must cease collection of the debt until the debt collector either provides the name and address of the original creditor to the consumer in compliance with § 1006.38(c)(1) or, in compliance with § 1006.38(c)(2), notifies the consumer in writing or electronically in the manner required by § 1006.42 that the original creditor is the same as the current creditor and refers the consumer to the debt collector's earlier provision of the validation information.

The Bureau declines to require all debt collectors to include the name of the original creditor in the validation information because the Bureau believes such a requirement is not necessary or warranted. The statute prescribes a method for a consumer to obtain this

information upon request. Further, the Bureau interprets FDCPA section 809(a)(2) as requiring debt collectors to disclose in the validation information the name of the current creditor; *i.e.*, "the name of the creditor to whom the debt is owed."

The Bureau declines to define "original creditor" in the manner commenters suggested. Although the definition suggested by commenters might be accurate for some debts, it is not clear to the Bureau that the suggested definition would be accurate for all debts. The Bureau did not propose such a definition and the Bureau does not have sufficient information to develop and include a definition of "original creditor" in the rule.

Taking into consideration the provisions of FDCPA section 809(a) and (b), the final rule provides debt collectors an alternative response procedure, described above, when the original creditor—which in many cases will be the creditor as of the itemization date—is the same as the current creditor. The alternative procedure permits debt collectors to respond to some consumer requests for original-creditor information in a less burdensome way, while also protecting consumers. Therefore, the Bureau believes that defining original creditor in the final rule is unnecessary and unwarranted.

Section 1006.42 Sending Required Disclosures

42(a) Sending Required Disclosures

42(a)(2) Exceptions

The Bureau proposed in § 1006.42(a)(2) to provide that a debt collector need not comply with § 1006.42(a)(1) when providing the disclosure required by § 1006.6(e) or § 1006.18(e) in writing or electronically, unless the disclosure was included on a notice required by § 1006.34(a)(1)(i) or § 1006.38(c) or (d)(2).[394] Because the Bureau did not finalize § 1006.34 in the November 2020 Final Rule, the Bureau finalized § 1006.42(a)(2) with a reference to the notice required by FDCPA section 809(a), as implemented by Regulation F, in lieu of a reference

[394] 84 FR 23274, 23357-59 (May 21, 2019).

to the notice required by § 1006.34(a)(1)(i).[395] Because the Bureau is now finalizing § 1006.34, the Bureau is making a technical change revising § 1006.42(a)(2) to refer to the notice required by § 1006.34(a)(1)(i), as originally proposed. The Bureau addressed comments received regarding proposed § 1006.42(a)(2) in the section-by-section analysis of § 1006.42(a)(2) in the November 2020 Final Rule.[396]

42(b) Requirements for Certain Disclosures Sent Electronically

Proposed § 1006.42(b)(1) generally would have required a debt collector who provided the validation notice described in § 1006.34(a)(1)(i)(B) electronically to do so in accordance with section 101(c) of the E-SIGN Act.[397] Because the Bureau did not finalize § 1006.34 in the November 2020 Final Rule, the Bureau finalized § 1006.42(b) with a reference to the notice required by FDCPA section 809(a), as implemented by Regulation F, in lieu of a reference to the validation notice described in § 1006.34(a)(1)(i)(B).[398] Because the Bureau is now finalizing § 1006.34, the Bureau is making a technical change revising § 1006.42(b) to refer to the validation notice required by § 1006.34(a)(1)(i)(B), as originally proposed. The Bureau addressed comments received regarding proposed § 1006.42(b)(1) in the section-by-section analysis of § 1006.42(b) in the November 2020 Final Rule.[399]

Subpart C—Reserved

Subpart D—Miscellaneous

Section 1006.100 Record Retention

100(a) In General

Section 1006.100(a), as finalized in the November 2020 Final Rule, requires a debt collector to retain records that are evidence of compliance or non-compliance with the FDCPA

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[395] 85 FR 76734, 76893 (Nov. 30, 2020).

[396] *Id.* at 76850-51.

[397] 84 FR 23274, 23356-57 (May 21, 2019).

[398] 85 FR 76734, 76893 (Nov. 30, 2020).

[399] *Id.* at 76850-51.

and Regulation F. The Bureau proposed comment 100–1 to clarify that, for purposes of § 1006.100(a), evidence of compliance includes, among other things, copies of documents provided by the debt collector to the consumer in accordance with the requirements of proposed § 1006.34.[400] Because the Bureau did not finalize § 1006.34 in the November 2020 Final Rule, the Bureau finalized comment 100(a)–1 to include, as an example of evidence of compliance, copies of documents provided by the debt collector to the consumer in accordance with FDCPA section 809(a), as implemented by Bureau regulation.[401] Because the Bureau now is finalizing § 1006.34, the Bureau is making a technical change revising comment 100(a)–1 to include, as an example of evidence of compliance, copies of documents provided by the debt collector to the consumer in accordance with § 1006.34, as originally proposed. The Bureau addressed comments received regarding proposed comment 100–1 in the section-by-section analysis of § 1006.100(a) and comment 100(a)–1 in the November 2020 Final Rule.[402]

Section 1006.104 Relation to State Laws

FDCPA section 816 provides that the FDCPA does not annul, alter, or affect, or exempt any person subject to the provisions of the FDCPA from complying with the laws of any State with respect to debt collection practices, except to the extent that those laws are inconsistent with any provision of the FDCPA, and then only to the extent of the inconsistency. FDCPA section 816 also provides that, for purposes of that section, a State law is not inconsistent with the FDCPA if the protection such law affords any consumer is greater than the protection provided by the FDCPA.[403] The November 2020 Final Rule finalized § 1006.104 to implement FDCPA section 816.[404]

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[400] 84 FR 23274, 23367 (May 21, 2019).

[401] 85 FR 76734, 76907 (Nov. 30, 2020).

[402] *Id.* at 76858 n.600.

[403] 15 U.S.C. 1692n.

[404] 85 FR 76734 at 76860 (Nov. 30, 2020).

Proposed comment 104–1 clarified that a disclosure required by applicable State law that describes additional protections under State law does not contradict the requirements of the FDCPA or the corresponding provisions of Regulation F.[405] In the November 2020 Final Rule, the Bureau indicated that it was not finalizing proposed comment 104–1 as part of that rule and would determine whether and how to finalize the comment as part of this final rule.[406]

As discussed in the November 2020 Final Rule, some commenters asked the Bureau to clarify how proposed comment 104–1 would interact with State law disclosure requirements.[407] According to these commenters, the proposed commentary did not track FDCPA section 816's statutory language and therefore would be susceptible to competing interpretations. These commenters expressed concern that proposed comment 104–1 could be interpreted to mean that § 1006.104 would preempt State law disclosure requirements that afford the same protections as the FDCPA and the corresponding provisions of Regulation F. These commenters opposed such an interpretation as inconsistent with FDCPA section 816.

With proposed comment 104–1, the Bureau did not intend to communicate that § 1006.104 would preempt disclosures required by State law that describe State laws that afford the same protections as the FDCPA and the corresponding provisions of Regulation F. To mitigate the risk that the proposed commentary could be interpreted in this manner, the Bureau is modifying proposed comment 104–1 to more closely track FDCPA section 816's statutory language.

Accordingly, the Bureau is finalizing comment 104–1 to clarify that the FDCPA and the corresponding provisions of Regulation F do not annul, alter, or affect, or exempt any person subject to these requirements from complying with a disclosure requirement under applicable State law that describes additional protections under State law that are not inconsistent with the

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[405] 84 FR 23274, 23368 (May 21, 2019).

[406] 85 FR 76734, 76860 (Nov. 30, 2020).

[407] *Id.*

FDCPA and Regulation F. In addition, comment 104–1 clarifies that a disclosure required by State law is not inconsistent with the FDCPA or Regulation F if the disclosure describes a protection such law affords any consumer that is greater than the protection provided by the FDCPA or Regulation F.

VI. Effective Date

As discussed in the November 2020 Final Rule, the Bureau proposed an implementation period of one year after publication of the final rule in the *Federal Register*.[408] The Bureau received several comments on the proposed effective date. As noted in the November 2020 Final Rule, a few industry commenters supported the proposed effective date, stating that a one-year implementation period would provide debt collectors with enough time to comply with the rule. Two other industry commenters supported an 18-month and a 24-month implementation period, respectively, arguing that it would take longer than one year to update policies and procedures, train employees, and make programming changes necessary to come into compliance. A government commenter encouraged the Bureau to provide small entities more than one year to comply, if such entities were not exempted from the rule altogether. Several industry commenters asked the Bureau to clarify that a debt collector is permitted to comply with all or part of the final rule before the effective date.

The Bureau considered those comments in finalizing the November 2020 Final Rule and determined that that final rule would take effect one year after publication in the *Federal Register*. The Bureau determined that the revisions made to the proposal and discussed in that Final Rule would permit debt collectors to meet that effective date. The Bureau also recognized that all stakeholders might benefit if the November 2020 Final Rule and this final rule had the same effective date.

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[408] 85 FR 76734, 76863 (Nov. 30, 2020); *see also* 84 FR 23274, 23276 (May 21, 2019).

As noted in part III, the November 2020 Final Rule was published in the *Federal Register* on November 30, 2020 and will take effect on November 30, 2021. The Bureau concludes that all stakeholders will benefit if the November 2020 Final Rule and this final rule have the same effective date. The Bureau also determines that setting the effective date for this final rule as November 30, 2021, consistent with the effective date of the November 2020 Final Rule, will provide debt collectors nearly one year, and therefore sufficient time, to come into compliance with this final rule.

The Bureau notes that debt collectors may, but are not required to, comply with the final rule's requirements and prohibitions before the effective date. Until that date, the FDCPA and other applicable law continue to govern the conduct of FDCPA debt collectors. Similarly, to the extent the final rule establishes a safe harbor from liability for certain conduct or a presumption that certain conduct complies with or violates the rule, those safe harbors and presumptions are not effective until the final rule's effective date.

VII. Dodd-Frank Act Section 1022(b) Analysis

A. Overview

In developing the final rule, the Bureau has considered the potential benefits, costs, and impacts as required by section 1022(b)(2)(A) of the Dodd-Frank Act.[409]

Debt collectors play a critical role in markets for consumer financial products and services. Credit markets function because lenders expect that borrowers will pay them back. In consumer credit markets, if borrowers fail to repay what they owe per the terms of their loan agreement, creditors often engage debt collectors to attempt to recover amounts owed, whether through the court system or through less formal demands for repayment.

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[409] Specifically, section 1022(b)(2)(A) of the Dodd-Frank Act (12 U.S.C. 5512(b)(2)(A)) requires the Bureau to consider the potential benefits and costs of the regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products and services; the impact of the rule on insured depository institutions and insured credit unions with less than $10 billion in total assets as described in section 1026 of the Dodd-Frank Act (12 U.S.C. 5516); and the impact on consumers in rural areas.

In general, third-party debt collection creates the potential for market failures. Consumers do not choose their debt collectors, and, as a result, debt collectors do not have the same incentives that creditors have to treat consumers fairly.[410] Certain provisions of the FDCPA may help mitigate such market failures in debt collection, for example by prohibiting unfair, deceptive, or abusive debt collection practices by third-party debt collectors.

Any restriction on debt collection may reduce repayment of debts, providing a benefit to some consumers who owe debts and an offsetting cost to creditors and debt collectors. A decrease in repayment will in turn lower the expected return to lending. This can lead lenders to increase interest rates and other borrowing costs and to restrict availability of credit, particularly to higher-risk borrowers.[411] Because of this, policies that increase protections for consumers with debts in collection involve a tradeoff between the benefits of protections for those consumers and the possibility of increased costs of credit and reduced availability of credit for all consumers. Whether there is a net benefit from such protections depends on whether consumers value the protections enough to outweigh any associated increase in the cost of credit or reduction in availability of credit.

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[410] Consumers do choose their lenders, and, in principle, consumer loan contracts could specify which debt collector would be used or what debt collection practices would be in the event a loan is not repaid. Some economists have identified potential market failures that prevent loan contracts from including such terms even when they could make both borrowers and lenders better off. For example, terms related to debt collection may not be salient to consumers at the time a loan is made. Alternatively, if such terms are salient, a contract that provides for more lenient collection practices may lead to adverse selection, attracting a disproportionate share of borrowers who know they are more likely to default. *See* Thomas A. Durkin *et al.*, *Consumer Credit and the American Economy* 521-25 (Oxford U. Press 2014) (discussing potential sources of market failure and potential problems with some of those arguments). *See also* Erik Durbin & Charles Romeo, *The Economics of Debt Collection: with attention to the issue of salience of collections at the time credit is granted*, Journal of Credit Risk (Sept. 4, 2020) (discussing how rules that limit debt collection affect consumer welfare when debt collection is not salient to consumers when they borrow).

[411] *See* Thomas A. Durkin *et al.*, *Consumer Credit and the American Economy* 521-25 (Oxford U. Press 2014) (discussing theory and evidence on how restrictions on creditor remedies affect the supply of credit). Empirical evidence on the impact of State laws restricting debt collection is discussed in section G below. The provisions in this final rule could also affect consumer demand for credit, to the extent that consumers contemplate collection practices when making borrowing decisions. However, there is evidence suggesting that consumer demand for credit is generally not responsive to differences in creditor remedies. *See* James Barth *et al.*, *Benefits and Costs of Legal Restrictions on Personal Loan Markets*, Journal of Law & Economics, 29(2) (1986).

[411] *See* 15 U.S.C. 1692(e).

The final rule will further the FDCPA's goals of eliminating abusive debt collection practices and ensuring that debt collectors who refrain from such practices are not competitively disadvantaged.[412] However, as discussed below, it is not clear based on the information available to the Bureau whether the net effect of the final rule will be to make it more costly or less costly for debt collectors to recover unpaid amounts, and therefore not clear whether the rule will tend to increase or decrease the supply of credit. The final rule will benefit both consumers and debt collectors by increasing clarity and certainty about what the FDCPA prohibits and requires. When a law is unclear, it is more likely that parties will disagree about what the law requires, that legal disputes will arise, and that litigation will be required to resolve disputes. Since 2010, consumers have filed approximately 8,000 to 12,000 lawsuits under the FDCPA each year, some of which involve issues on which the law is unclear.[413] The number of disputes settled without litigation has likely been much greater.[414] Perhaps more important than the costs of resolving legal disputes are the steps that debt collectors take to prevent legal disputes from arising in the first place. This includes direct costs of legal compliance, such as auditing and legal advice, as well as indirect costs from avoiding collection practices that might be both effective and legal but that raise potential legal risks. In some cases, debt collectors seeking to follow the law and avoid litigation have adopted practices that appear to be economically inefficient, with costs that exceed the benefits to consumers or even impose net costs on consumers.[415]

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[412] *See id.*

[413] *See* WebRecon LLC, *WebRecon Stats for Dec 2019 & Year in Review*, *https://webrecon.com/webrecon-stats-for-dec-2019-and-year-in-review-how-did-your-favorite-statutes-fare/* (last visited Dec. 1, 2020). Greater clarity about legal requirements could reduce unintentional violations and could also reduce lawsuits because, when parties can better predict the outcome of a lawsuit, they may be more likely to settle claims out of court.

[414] Some debt collectors have reported that they receive approximately 10 demand letters from attorneys asserting a violation of the FDCPA for each lawsuit filed. *See* Small Business Review Panel Outline, *supra* note 39, at 69 n.105.

[415] For example, as discussed further below, debt collectors typically may disclose only the information that FDCPA section 809(a) specifically references and may provide the FDCPA section 809 information using statutory language, rather than plain language that consumers can more easily comprehend.

This final rule relating to disclosures could make debt collection either more or less costly in ways that are difficult to predict. For example, the validation notice requirements will provide consumers with more information than they currently receive about debts, which could reduce costs to consumers and debt collectors from disputes that arise when consumers do not recognize the debt or do not understand the basis for the alleged amount due. At the same time, the final rule's clearer explanation of dispute rights could make consumers more likely to dispute, which could provide benefits to consumers while increasing costs for debt collectors. Disputes are costly for debt collectors to process, so these requirements could either increase or decrease debt collector and consumer costs depending on the net effect on dispute rates.

In developing the final rule, the Bureau has consulted, or offered to consult with, the appropriate prudential regulators and other Federal agencies, including regarding consistency with any prudential, market, or systemic objectives administered by such agencies.

B. Provisions to Be Analyzed

The analysis below considers the potential benefits, costs, and impacts to consumers and covered persons of key provisions of the final rule (provisions), which include:

1. Time-barred debt: prohibiting suits and threats of suit.
2. Notice for validation of debts.
3. Required actions prior to furnishing information.

C. Data Limitations and Quantification of Benefits, Costs, and Impacts

The discussion in this part VII relies on publicly available information as well as information the Bureau has obtained. To better understand consumer experiences with debt collection, the Bureau developed its 2015 Survey of Consumer Views on Debt, which provided the first comprehensive and nationally representative data on consumers' experiences and preferences related to debt collection.[416] In addition, the Bureau relies on its Consumer Credit

[416] *See* CFPB Debt Collection Consumer Survey, *supra* note 292.

Panel (CCP) to understand potential benefits and costs to consumers of the rule.[417] To better understand potential effects of the rule on industry, the Bureau has engaged in significant outreach to industry, including through the CFPB Debt Collection Operations Study.[418] In July 2016, the Bureau consulted with small entities as part of the SBREFA process and obtained important information on the potential impacts of proposals that the Bureau was considering at the time for the topics covered by the final rule; many of those proposals are included in the final rule.[419]

The sources described above, together with other sources of information and the Bureau's market knowledge, form the basis for the Bureau's consideration of the likely impacts of the final rule. The Bureau makes every attempt to provide reasonable estimates of the potential benefits and costs to consumers and covered persons of this final rule given available data. However, available data sources generally do not permit the Bureau to quantify, in dollar terms, how particular provisions will affect consumers. With respect to industry impacts, much of the Bureau's existing data come from qualitative input from debt collectors and other entities that operate in the debt collection market rather than from representative sampling that would allow the Bureau to estimate total benefits and costs.

General economic principles and the Bureau's expertise in consumer financial markets, together with the data and findings that are available, provide insight into the potential benefits, costs, and impacts of the final rule. Where possible, the Bureau has made quantitative estimates based on these principles and the data available. Some benefits and costs, however, are not amenable to quantification, or are not quantifiable given the data available to the Bureau. The Bureau provides a qualitative discussion of those benefits, costs, and impacts. The Bureau requested additional data or studies that could help quantify the benefits and costs to consumers

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[417] For more information about Bureau data sources, see Bureau of Consumer Fin. Prot., *Sources and uses of data at the Bureau of Consumer Financial Protection* (Sept. 26, 2018), *https://www.consumerfinance.gov/data-research/research-reports/sources-and-uses-data-bureau-consumer-financial-protection/*.

[418] *See* CFPB Debt Collection Operations Study, *supra* note 37.

[419] *See* Small Business Review Panel Report, *supra* note 40.

and covered persons of the May 2019 Proposed Rule and the February 2020 Proposed Rule. The Bureau summarizes comments on this subject below, but few comments explicitly addressed quantifying the costs and benefits of the rule or provided additional data or studies. Comments on the benefits and costs of the rule are also discussed in part V above.

D. Baseline for Analysis

In evaluating the potential benefits, costs, and impacts of the final rule, the Bureau takes as a baseline the current legal framework governing debt collection. This includes debt collector practices as they currently exist, responding to the requirements of the FDCPA as currently interpreted by courts and law enforcement agencies, other Federal laws, and the rules and statutory requirements promulgated by the States.[420] In the consideration of potential benefits, costs, and impacts below, the Bureau discusses its understanding of practices in the debt collection market under this baseline and how those practices are likely to change under the final rule.

Until the creation of the Bureau, no Federal agency was given the authority to write substantive regulations implementing the FDCPA, meaning that many of the FDCPA's requirements are subject to interpretations in court decisions that are not always consistent or do not always definitely resolve an issue, such as a single district court opinion on an issue. Debt collectors' practices reflect their interpretations of the FDCPA and their decisions about how to balance effective collection practices against litigation risk. Many of the impacts of the final rule relative to the baseline would arise from changes that debt collectors would make in response to additional clarity about the most appropriate interpretation of what conduct is permissible and not permissible under the FDCPA's provisions.

[420] These requirements, and the specificity of the requirements, may vary depending upon the jurisdiction in which the collection occurs. This baseline does not include any potential impacts of the November 2020 Final Rule, however. The November 2020 Final Rule included a separate Dodd-Frank Act Section 1022(b) analysis, and that rule's provisions do not go into effect until November 30, 2021.

The Bureau received no comments regarding its choice of baseline for its section 1022(b) analysis.

E. Goals of the Rule

The final rule is intended to further the FDCPA's goals of eliminating abusive debt collection practices and ensuring that debt collectors who refrain from such practices are not competitively disadvantaged. To these ends, an important goal of the rule is to benefit both consumers and debt collectors by increasing clarity and certainty about what the FDCPA prohibits and requires, which could improve compliance with the FDCPA while reducing unnecessary litigation regarding the FDCPA's requirements.

As discussed in part V and in this part VII, other goals of the rule's provisions regarding validation information include providing more information to consumers about their debts, which may help consumers determine whether a debt is theirs and whether the reported amount owed is accurate and may reduce unnecessary disputes. The validation information is also intended to help consumers to know their rights and be able to exercise them, including by disputing a debt. In addition, the model validation notice is intended to provide information to consumers in a more appealing and easy-to-read format, making it more likely that consumers read and comprehend the information than with the validation notices currently in use.

The rule's provision requiring debt collectors to take certain actions prior to furnishing information about a debt to a consumer reporting agency is intended to increase the likelihood that consumers learn about an alleged debt before furnishing occurs, giving them an opportunity to resolve the debt or dispute it if appropriate.

The rule's provision prohibiting debt collectors from suing or threatening to sue on time-barred debts is intended to mitigate the consumer harms that can result from such actions, including causing some consumers to pay or prioritize time-barred debts over other debts in the mistaken belief that doing so is necessary to avoid litigation or adverse judgments, when in fact consumers have meritorious defenses based on the statute of limitations.

F. Coverage of the Rule

The final rule applies to debt collectors as defined in the FDCPA and § 1006.2(i) of the November 2020 Final Rule. Creditors that collect on debts they own generally will not be affected directly by the final rule because they typically are not debt collectors for purposes of the FDCPA. Creditors, however, may experience indirect effects if debt collectors' costs increase and if those costs are passed on to creditors.

G. Potential Benefits and Costs to Consumers and Covered Persons

The Bureau discusses the benefits and costs of the rule to consumers and covered persons (generally FDCPA debt collectors) in detail below.[421] The Bureau believes that an important benefit of many of the provisions to both consumers and covered persons—compared to the baseline of the FDCPA as currently interpreted by courts and law enforcement agencies—is an increase in clarity and precision of the law governing debt collection. Greater certainty about legal requirements can benefit both consumers and debt collectors, making it easier for consumers to understand and assert their rights and easier for firms to ensure they are in compliance. The Bureau discusses these benefits in more detail with respect to certain provisions below but believes that they generally apply, in varying degrees, to all of the provisions discussed below.

1. Time-barred debt: prohibiting suits and threats of suit

Section 1006.26(b) prohibits a debt collector from suing or threatening to sue a consumer to collect a time-barred debt.

As discussed in part V above, multiple courts have held that the FDCPA prohibits suits and threats of suit on time-barred debt. The Bureau understands that most debt collectors do not knowingly sue or threaten to sue consumers to collect time-barred debts. Although the final rule

[421] For purposes of the section 1022(b)(2) analysis, the Bureau considers any consequences that consumers perceive as harmful to be a cost to consumers. In considering whether consumers might perceive certain activities as harmful, the Bureau is not analyzing whether those activities would be unlawful under the FDCPA or the Dodd-Frank Act.

applies a strict liability standard to this prohibition, under which debt collectors may be liable for suits or threats of suit even if they do not know that the debt is time-barred, the Bureau believes that debt collectors have multiple ways of managing such risk including, but not limited to, confirming that the statute of limitations has not expired before bringing or threatening to bring a legal action or, if a debt collector is unable to make such a determination, refraining from bringing or threatening to bring a legal action while, in most States, continuing with non-litigation collection activities. Therefore, the Bureau does not expect this provision of the rule to have a significant effect on most debt collectors.

To the extent that there are costs to covered persons or benefits to consumers from this provision, they will most likely come from reduced payments on time-barred debts, to the extent that some debt collectors currently sue or threaten to sue on time-barred debts as a strategy to elicit payment.[422] If it is currently true that (1) suing or threatening to sue on debts is an important means of collection for debts for which the statute of limitations is close to expiring, and (2) most debt collectors stop suing or threatening to sue once the statute of limitations for a debt expires, then one would expect repayment rates to drop after the statute of limitations expires, and that drop might be made more significant by the provision. Such a reduction in payments would benefit consumers who owe the debts while imposing costs on debt collectors and creditors and potentially increasing the cost of credit generally.

The Bureau therefore attempted to indirectly measure the potential effect of the provision by examining the behavior of consumers who owe debts that either recently expired or are close to expiring under their State's statute of limitations. To do so, the Bureau used data from its Consumer Credit Panel (CCP), which contains information from one of the three nationwide

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[422] The final rule may also increase costs to covered persons to the extent that debt collectors who currently sue or threaten to sue to collect time-barred debt increase their efforts to determine whether or not a debt is time barred. As discussed above in part V, The Bureau recognizes that, in most jurisdictions, expiration of the statute of limitations provides the consumer with an affirmative defense to liability, but it does not bar a debt collector from bringing suit. As such, some debt collectors who sue or threaten to sue on older debts may currently expend less time and effort verifying the time-barred status of a debt than they will under the final rule.

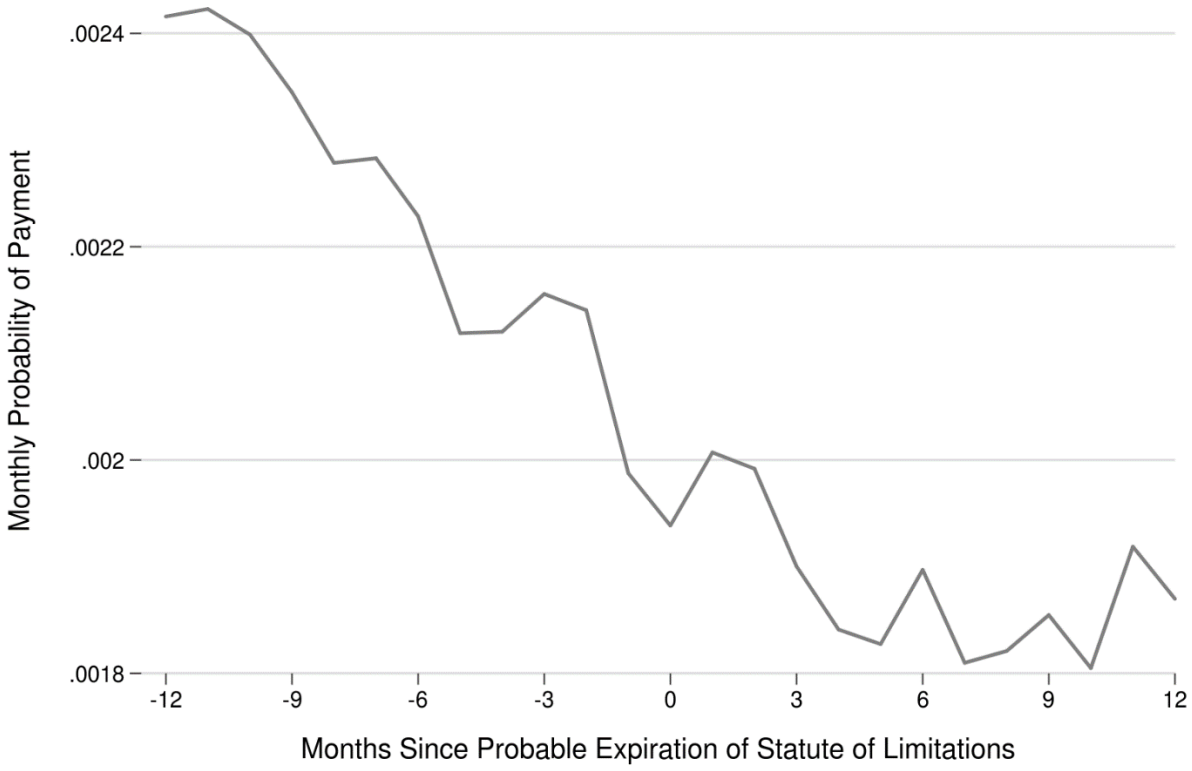
CRAs. The Bureau used data from the CCP to attempt to estimate the current effect of State statutes of limitation on the propensity of consumers to pay old debts in collection.

The CCP contains information on collections tradelines—records that were furnished to this nationwide CRA by third-party debt collectors or debt buyers. The Bureau analyzed these data to determine whether the probability of payment declines around the expiration of the statute of limitations in the consumer's State. Specifically, the Bureau followed debts reported in the CCP from the time they were first reported on a consumer's credit record until they either showed some record of payment or disappeared from the credit record. In this analysis, the Bureau assumed that the applicable statute of limitations is the one applicable to written contracts in the consumer's State of residence and that the statute of limitations begins for a debt on the date that the debt first appears on the consumer's credit report. The Bureau assumed this starting date because there was no other date in the available data on which to reasonably base the beginning of the statute of limitations. There is likely to be some inaccuracy in this assumption due to a variety of factors, including delays between the beginning of the period defined by the statute of limitations and the first report of information to the CRA and cases in which the applicable statute of limitations is not the one in the consumer's State. However, if the estimated expiration of the statute of limitations is at least approximately correct in most cases, then one would expect to observe whether the expiration of the statute of limitations has an effect on the likelihood that a debt is reported to have been paid.

The Bureau calculated the probability of payment occurring after a given number of days, conditional on no payment occurring before—in technical terms, the "hazard rate" for payments—for all collections tradelines in the CCP. The Bureau then calculated the average hazard rate based on the number of months before or after the estimated expiration of the applicable statute of limitations. This calculation is plotted in Figure 1, below. The figure shows that the probability of a collections tradeline showing evidence of payment declines steadily for at least a year leading up to the estimated expiration of the statute of limitations and continues to

decline at roughly the same rate afterwards. Thus, while the probability of payment declines over time, the reduced ability of debt collectors to pursue litigation does not seem to materially affect payments on collections tradelines. Combined with the Bureau's understanding that debt collectors generally do not knowingly sue or threaten to sue on time-barred debt, this suggests that the provision would be unlikely to cause any further reduction in the rate of repayment on time-barred debt.

Figure 1: Probability of Payment



Because the available data do not permit the Bureau to identify the expiration of the statute of limitations precisely, the analysis above may fail to identify some effects.

2. *Notice for validation of debts*

Section 1006.34 implements and interprets FDCPA section 809(a), (b), (d), and (e). Specifically, § 1006.34(a) provides that, subject to certain exceptions, a debt collector must provide a consumer the validation information described in § 1006.34(c). Section 1006.34(c) implements FDCPA section 809(a)'s content requirements and specifies that validation

information includes certain information about the debt and the consumer's protections with respect to debt collection that debt collectors do not currently provide to consumers. Section 1006.34(d) sets forth a general requirement that such information be clear and conspicuous. Section 1006.34(d) also provides safe harbors for using the model validation notice, specified variations of the model notice, or a substantially similar form, and permits the inclusion of certain optional information. Section 1006.34(e) affirmatively permits debt collectors to provide validation notices translated into other languages and requires debt collectors who offer to provide consumers translated notices to provide them to consumers who request them.

Potential benefits and costs to consumers. The required validation information may benefit consumers in four ways. First, the disclosures will provide more information about the debt, which may help consumers determine whether the debt is theirs and whether the reported amount owed is accurate. Second, the notice will provide a plain-language disclosure of the consumer's rights in debt collection, in particular the right to dispute, which should help consumers to know their rights and be able to exercise them. Third, the validation information will include consumer-response information that should make it easier for consumers to take certain actions, including disputing a debt. Finally, the model validation notice form is intended to provide information to consumers in a more plain-language and visually appealing format, making it more likely that consumers will read and comprehend the information than with the validation notices currently in use.

To quantify the benefit of providing more and clearer validation information, the Bureau would need to estimate the impact of this additional information on consumers' ability to recognize their debts compared to what is currently provided on validation notices, as well as how consumers would respond to that additional information. Although the Bureau is not aware of data that would permit a full accounting of these benefits, below is a summary of information the Bureau is aware of that is relevant to assessing these benefits.

The Bureau understands that, in general, validation notices currently include little or no information about the debt beyond the information specifically listed in section 809(a) of the FDCPA (*e.g.*, the current amount of the debt and the name of the current creditor). This information may not be sufficient for the consumer to recognize the debt, particularly if: (1) the amount owed has changed over time due to interest, fees, payments, or credits; (2) the debt collector has changed since an original collection attempt; or (3) the creditor's name is not one the consumer associates with the debt (as with some store-branded credit cards issued by third-party financial institutions). Consumers who do not recognize a debt because the information on a validation notice is insufficient may incur costs if they mistakenly dispute a debt they owe, make a payment on a debt they do not owe, or ignore a debt on the assumption that the collection attempt is in error.

Relative to current validation notices, the validation information under the final rule will include more specific details about the debt, such as the debt's account number and an itemization of the debt. The Bureau has determined that this information will benefit consumers by making it easier for them to determine whether they owe a debt and, therefore, reducing the likelihood of incurring costs due to mistakes like those noted above. The consumer can also use the consumer-response information to request the name and address of the original creditor, which may further help the consumer to recognize the debt.

To fully evaluate the benefits to consumers of disclosing this additional information, the Bureau would need representative data to estimate how often consumers would read and understand the additional information on the notice and the extent to which that information increases consumer recognition and understanding compared to a notice without it. For example, the Bureau could further quantify some of the consumer benefits of the additional information if the Bureau were able to estimate: (1) how many consumers ignore notices out of a mistaken conclusion that the debt is not theirs; (2) how many consumers dispute correct debts, and subsequently, how much time the validation notice saves by obviating later interactions that

result from improper disputes; and (3) how many consumers fail to dispute or make payments on incorrect debts. The Bureau is not aware of a source of information on the number of consumers in these categories or the possible time savings that could result from the validation information. The Bureau's Debt Collection Consumer Survey suggests that the required validation information would likely be helpful in recognizing a debt. Specifically, when asked how helpful various pieces of information would be in figuring out whether they owed a debt, consumers were most likely to indicate that the creditor name, type of debt, and an itemization of the amount owed (such as principal, interest, and fees) were especially valuable.[423] These opinions were echoed in focus groups in which consumers noted that, after a debt is sold, it is more difficult to recognize, and that they wanted as much information as possible to help them recognize the debt as theirs (especially the account number, creditor, and amount due) with the exception of sensitive information like social security numbers.[424]

To quantify the benefits of the provision requiring a clear and conspicuous disclosure of a consumer's right to dispute a debt, the Bureau would need to estimate the number of consumers who fail to dispute debts that they do not owe because they are unaware of, or do not comprehend, their right to dispute. The Bureau cannot precisely quantify this benefit; however, the discussion below identifies several applicable considerations and estimates.

The Bureau estimates that at least 49 million consumers are contacted by debt collectors each year.[425] Twenty-eight percent of consumers who said they had been contacted about one or more debts in collection reported that the contacts included attempts to collect at least one debt that the consumers believed they did not owe.[426] One-third of consumers who had been

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[423] CFPB Debt Collection Consumer Survey, *supra* note 292.

[424] FMG Focus Group Report, *supra* note 26, at 15-16.

[425] *See* CFPB Debt Collection Consumer Survey, *supra* note 292, at 13, 40-41.

[426] The survey questions concerning consumer beliefs about errors in collections did not ask respondents to distinguish between debts owed to a debt collector and debts owed to a creditor. If consumers are more or less likely to believe there is an error for collection attempts by debt collectors, then this percentage and those below may over- or under-estimate the likelihood that a consumer believes a debt is in error when the consumer is contacted by a debt collector.

contacted said the amount the creditor or debt collector was trying to collect was wrong for at least one of these debts, and 16 percent said the contacts included at least one contact about a debt that was instead owed by a family member. (Some consumers reported more than one of these issues). Taken together, more than half of consumers (53 percent) who said they had been contacted about one or more debts in collection reported that they thought at least one of the debts they were contacted about was in error. This suggests that there are many consumers who receive the validation notices in use today who might be likely to dispute based on their perception that either the debt is not theirs or is wrong.

Among the 53 percent of consumers who cited one of the issues noted above, 42 percent reported that they disputed a collection in the prior year, and 11 percent of consumers who had not cited one of those issues indicated that they had disputed a debt. The fact that less than half of consumers who questioned a debt about which the creditor or debt collector contacted them reported disputing a debt is consistent with the possibility that some consumers do not dispute in response to a collection effort because they are not aware of the option to dispute or do not understand the steps required to do so. The required clear-and-conspicuous statement of the dispute right could benefit these consumers by making them aware of their right to dispute and informing them how to dispute.

The survey's finding that only 42 percent of consumers who thought they experienced an error with a debt in collection disputed the error suggests consumers are uncertain about how to dispute a debt in collection or that they believe that disputes require too much time and effort relative to the expected benefit. The required consumer-response information could reduce these impediments to disputing debts that consumers believe are in error. Specifically, the consumer-response information will provide a clear means of disputing a debt in a way that triggers the protections provided by the FDCPA and this rule. Furthermore, the convenience of the consumer-response information, which is formatted on the model validation notice as a tear-off with prompts for various actions, could reduce barriers to responding by eliminating or reducing

the burden of, for example, deciding what information is relevant and how to phrase the response.[427] This could allow some consumers to save time and avoid other negative consequences, such as lower credit scores due to a debt they may not owe being listed as unpaid on their credit reports.

Additionally, the consumer-response information includes an option to request information about the original creditor. Original-creditor information may help consumers in determining whether the debt is theirs.

The Bureau has tested a model validation notice. Several considerations went into the content and design of the model validation notice. First, consumers must have relevant and accurate information to make informed decisions about how to act with regard to the debt. The Bureau therefore conducted consumer testing to identify what pieces of information consumers considered to be important to help them identify whether a debt was theirs, whether the amount stated was correct, and how the amount the debt collector was attempting to collect has changed over time (*e.g.*, due to fees, interest, and payments).[428] However, there is some indication that consumers tend to not read certain types of standard-form disclosures.[429] To try to avoid this result, the Bureau conducted consumer testing exploring how consumers interacted and engaged with the notice and the pieces of information contained therein.[430] This helped the Bureau

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[427] A 2016 research report by the United Kingdom's Financial Conduct Authority showed that, in a large randomized control trial, a tear-off form (with a text or email reminder) led to more consumers switching from a current savings account to one with a better interest rate relative to getting only an informational text or email reminder and relative to an informational box with instructions on how to switch. Paul Adams *et al.*, *Attention, Search and Switching: Evidence on Mandated Disclosure from the Savings Market* (UK Fin. Conduct Authority, Occasional Paper No. 19 2016), *https://www.fca.org.uk/publication/occasional-papers/occasional-paper-19.pdf.*

[428] FMG Summary Report, *supra* note 29.

[429] *See, e.g.*, Ian Ayres & Alan Schwartz, *The No-Reading Problem in Consumer Contract Law*, 66 Stan. L. Rev. 545 (2014); Yannis Bakos *et al.*, *Does Anyone Read the Fine Print? Consumer Attention to Standard-Form Contracts*, 43 J. Legal Studies 1, 1-35 (2014); George R. Milne & Mary J. Culnan, *Strategies for Reducing Online Privacy Risks: Why Consumers Read (or Don't Read) Online Privacy Notices*, 18 J. Interactive Mktg. 3, 15-29 (2004); Jonathan A. Obar & Anne Oeldorf-Hirsch, *The Biggest Lie on the Internet: Ignoring the Privacy Policies and Terms of Service Policies of Social Networking Services* (York U., draft version, 2018), *http://dx.doi.org/10.2139/ssrn.2757465*.

[430] FMG Cognitive Report, *supra* note 27.

understand whether consumers were inclined to engage with the document in general and which pieces of the validation notice received more or less consumer attention.

The Bureau incorporated the findings from this consumer testing in its design of the model validation notice. To increase both consumer engagement with and comprehension of the validation information, the Bureau designed the model notice to be visually engaging. The notice uses plain language wherever possible and conforms to recommendations the Securities and Exchange Commission (SEC) set forth in its plain English handbook.[431] To reduce the perceived complexity of the information, the form uses a clear hierarchy of information through positioning in a columnar format, varying type size, and bold-faced type for subsection headings. It uses shading to highlight the amount due and plain language rather than technical terms. Usability testing analyzing eye-tracking suggests that participants were able to locate relevant information on the form, with most participants able to quickly locate their account number and the contact information of the creditor.[432] The information presented in the form is also concise, presenting consumers with a manageable amount of information about the debt and what they can do in response to the information. This is important, as the perceived and actual cost to a consumer of reading a disclosure increases with the amount of information provided.[433]

A number of consumer advocate and academic commenters asserted that the proposed model notice was not adequately tested. Some of these commenters stated that the Bureau's testing included too few participants to generate valid conclusions about the proposed model notice's efficacy or to evaluate the comprehension of consumers, particularly of the least sophisticated consumers. For instance, a consumer advocate expressed concern that only 60

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[431] *See* Sec. & Exchange Comm'n, *A Plain English Handbook* (Aug. 1998), *https://www.sec.gov/pdf/handbook.pdf*.

[432] FMG Summary Report, *supra* note 29.

[433] The idea that consumers may decrease their engagement with information when more information is provided is somewhat supported by research on "choice overload." This work indicates that, if choice sets are large, some people opt to make no choice at all. *See, e.g.*, Sheena Iyengar *et al.*, *How Much Choice is Too Much? Contributions to 401(k) Retirement Plans, in Pension Design and Structure: New Lessons from Behavioral Finance*, at 83 (Oxford U. Press 2004).

consumers were included in the cognitive and usability testing rounds.[434] Likewise, an academic commenter stated that the Bureau's consumer testing focused too heavily on observing what testing participants looked at on the model notice (based on the use of eye tracking techniques) at the expense of testing participants' comprehension of the notice. Another commenter stated that the Bureau should have tested more diverse groups, including consumers with limited English proficiency, students, older consumers, and consumers from more diverse socioeconomic backgrounds. Some consumer advocate and academic commenters recommended that the Bureau field test the proposed model notice with consumers with real debts. A consumer advocate expressed concern about the performance of certain aspects of the proposed model notice in quantitative testing, noting in particular that approximately 40 percent of respondents who received the model notice failed to identify the correct entity the consumer should pay.[435]

The Bureau disagrees that the model validation notice was not adequately tested. The model validation notice was developed and validated over multiple rounds of testing between 2014 and 2020, and the Bureau determines that these multiple rounds of testing were sufficient to assess the model validation notice's efficacy and comprehensibility. Further, the Bureau disagrees that its testing focused on eye-tracking at the expense of comprehension testing as consumer comprehension of the model validation notice was assessed in three rounds of testing. The Bureau's testing used eye-tracking in conjunction with consumer responses to inform its conclusions.

The Bureau disagrees that it did not sample sufficiently diverse groups. The Bureau selected respondents with the goal of developing diverse testing pools that would serve as a proxy for the population at large. For example, in one round of usability testing, participants

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[434] *See* FMG Summary Report, *supra* note 29, at 5-7.

[435] Several comments in response to the May 2019 proposal also criticized the consumer testing as being outdated because, when that proposal was published, the most recent testing had occurred in 2016. However, the Bureau does not find any reason to believe that consumer understanding of the model notice has changed since 2016, and the commenters did not provide any evidence to support such a claim. Moreover, since the May 2019 proposal, the Bureau has conducted two additional testing rounds.

reflected a range of demographic characteristics broken down by race and ethnicity, household income, education level, and employment status.[436] With respect to the criticism that the Bureau did not "field test" the model validation notice, testing the form with consumers with real debts would have been impractical.

Regarding comments that the model validation notice did not perform well during the quantitative testing round, the Bureau disagrees. As noted above, in that testing round, the model validation notice consistently performed better than or equal to the status quo notice, including on the question of to whom the consumer should send a payment.[437] Additionally, the Bureau conducted qualitative follow-up testing of the model notice in October 2020. In this testing 88 percent of respondents reported that the notice was either "very easy" or "easy" to understand.[438] Between 71 percent and 100 percent of participants responded correctly to 14 different comprehension questions. Although some participants expressed confusion about a few aspects of the notice, the initial reactions to the notice were that information was clear and the available actions were obvious.

In summary, the Bureau's testing establishes that consumers will benefit from the use of the model notice compared to the baseline of status quo validation notices.

The Bureau expects consumers to experience few costs as a result of the provision.

Potential benefits to covered persons. The provision provides debt collectors with a safe harbor if they use the model validation notice, specified variations of the model notice, or a substantially similar form to meet the requirements in § 1006.34(c). The Bureau understands that debt collectors currently face litigation risk associated with the validation notices they send, reflecting, in part, conflicting court decisions about what language is required and what language

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[436] FMG Usability Report, *supra* note 28, at 85-87.

[437] In response to the question "According to the notice, if Person A wanted to make a payment on the debt, who should he or she sent the payment to?" approximately 60 percent of consumers who received the model validation notice answered correctly compared to approximately 40 percent of consumers who received a status quo notice. CFPB Quantitative Testing Report, *supra* note 31, at 14.

[438] *See id.* at 16.

is permitted in the notices.[439] The Bureau expects a significant number of debt collectors will use the model notice, specified variations of the model notice, or a substantially similar form and, therefore, will face significantly reduced litigation risk when providing validation notices because they will receive the safe harbor. This will benefit debt collectors directly, by reducing litigation costs related to validation notices. The provision's requirements to provide specific information about the debt and about a consumer's protections in debt collection could also indirectly benefit debt collectors by adding information to validation notices that would be helpful to consumers but that debt collectors currently do not include for fear that it would increase litigation risk. The validation information may also make consumers more likely to dispute, which could increase costs for debt collectors, as discussed under "Potential costs to covered persons" below.

The validation information includes specific information about the debt intended to help consumers identify the debt and understand the amount the debt collector claims is owed. The Bureau's qualitative consumer research and the Bureau's complaint data suggest that the information currently included in validation notices is often not sufficient for consumers to identify a debt or whether the amount owed is correct. If consumers are better able to identify debts, they may be less likely to dispute or ignore a debt that they in fact owe, and at the same time may be better able to articulate the basis for a dispute of a debt that they do not owe. These effects could benefit debt collectors by reducing the costs associated with consumer disputes. Although it is possible that debt collectors could currently provide such information on validation notices, the Bureau understands that some debt collectors who would like to provide additional information do not do so largely due to the legal risks associated with including information in the validation notice beyond what is expressly required by the FDCPA.[440] The

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[439] *See* Small Business Review Panel Report, *supra* note 40, at 22.

[440] *See* Small Business Review Panel Report, *supra* note 40, at 22 (finding that small entities would benefit from a model notice that reduced litigation risk arising from conflicting court decisions about what information is permitted on a validation notice).

form will significantly reduce this legal risk. To quantify the benefits of this provision to covered persons, the Bureau would need data on how frequently consumers do not recognize the debt or the amount owed as identified on a validation notice, how many consumers would better recognize the debt if they received the required validation information, and how consumers would act in response to that information. While the Bureau is not aware of available data that would permit it to estimate these numbers, the Debt Collection Consumer Survey does provide some basis for concluding that the required validation information will be helpful to consumers and, therefore, beneficial for debt collectors.

The validation information could reduce debt collector costs associated with disputes by preventing some disputes from consumers who are more likely to recognize that they owe a debt and by making the disputes that debt collectors receive clearer and easier to resolve.

Debt collectors report that processing disputes is a costly activity and that it can be especially difficult to process disputes if the consumer provides little or no detail about the basis for a dispute. Debt collectors surveyed by the Bureau indicated that most disputes took between five minutes and one hour of staff time to resolve, with 15 to 30 minutes being the most common amount of time.[441] Respondents said that disputes took the longest amount of time to resolve if the basis of the dispute was unclear or if the consumer said the debt was not theirs.[442]

One commenter noted that 40 percent of disputes at their debt collection agency are non-generic and generally resolvable. This commenter asserted that the tear offs on the model validation notice will make these non-generic disputes less informative. An industry commenter noted that 99.4 percent of accounts it received were not disputed. Of the 0.6 percent that are disputed, 80 percent are accurate once more information is gathered. Given this, the commenter argued that providing consumers itemized statements for medical bills, which can run into many pages, is unnecessary.

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[441] CFPB Debt Collection Operations Study, *supra* note 37, at 31.

[442] *Id.*

The Bureau does not have a basis to estimate how much the validation information might affect dispute rates. As an illustration of potential cost savings if dispute rates fall, if the information were to reduce the number of consumers who dispute by 1 percent of all validation notices sent, and assuming that there are 140 million validation notices sent per year,[443] the overall number of annual disputes would fall by 1.4 million. Assuming time to process each dispute of 0.375 hours, the overall savings to industry would be estimated at 525,000 person-hours, or approximately 250 full-time equivalents. Assuming labor costs for debt collectors of $22 per hour,[444] this would represent industry cost savings of about $11.5 million.

The validation notice could also reduce the cost of processing disputes by making it easier for consumers who dispute to provide at least some information about the basis of their disputes. This could reduce the costs to covered persons of processing disputes by making it easier for debt collectors to investigate disputed debts in order to verify the debt.

Potential costs to covered persons. Debt collectors already send validation notices to consumers to comply with the FDCPA, so the validation information will generally affect the content of existing disclosures debt collectors are sending rather than require debt collectors to send entirely new disclosures. Nonetheless, debt collectors will incur certain costs to comply with the form. These include one-time compliance costs, the ongoing costs of obtaining the required validation information, and potentially ongoing costs of responding to a potential increase in the number of disputes.

The provision will require debt collectors to reformat their validation notices to accommodate the validation information requirements. The Bureau expects that any one-time costs to debt collectors of reformatting the validation notice will be relatively small, particularly

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[443] The assumption of 140 million validation notices per year is based on an estimated 49 million consumers contacted by debt collectors each year and an assumption that each consumer receives an average of approximately 2.8 notices during the year.

[444] This assumes an hourly wage of $15 and taxes, benefits, and incentives of $7 per hour. *See* CFPB Debt Collection Operations Study, *supra* note 37, at 17 (reporting estimated debt collector wages between $10 and $20 per hour plus incentives).

for debt collectors who rely on vendors, because the Bureau expects that most vendors will provide an updated notice at no additional cost.[445] The Bureau understands from its outreach that many covered persons currently use vendors to provide validation notices.[446] Surveyed firms, and their vendors, told the Bureau that vendors do not typically charge an additional cost to modify an existing template (although this practice might not apply given that the final rule likely will require more extensive changes to validation notices than vendors typically make today).[447] Debt collectors and vendors will bear costs to understand the requirements of the provision and to ensure that their systems generate notices that comply with the requirements, although these costs will be mitigated somewhat by the availability of a model notice.

The validation information will require debt collectors to provide certain additional information about the debt, which will require that debt collectors receive and maintain certain data fields and incorporate them into the notices. The Bureau believes that the large majority of debt collectors already receive and maintain most data fields included in the final validation information. However, some respondents to the Debt Collection Operations Study reported that they do not receive from creditors information about post-default interest, fees, payments, and credits.[448] These debt collectors will have to update their systems to track these fields. The Bureau understands that such system updates would be likely to cost less than $1,000 for each debt collector.[449]

At least one industry commenter asserted that one-time compliance costs would be significantly higher than $1,000, at least for collectors of medical debt. This commenter estimated costs of between $22,000 and $31,000 for implementation. The commenter noted that,

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[445] *See id.* at 33.

[446] In the Operations Study, over 85 percent of debt collectors surveyed by the Bureau reported using letter vendors. *Id.* at 32.

[447] *Id.* at 33.

[448] In the Bureau's Operations Study, 52 of 58 respondents reported receiving itemization of post-charge-off fees on at least some of their accounts. *Id.* at 23.

[449] *Id.* at 26.

for collectors of medical debt, an itemization of charges requires information about payments by the consumer's health insurance, increasing the complexity and cost of tracking the necessary information. The Bureau acknowledges that costs may be higher for some debt collectors. However, the Bureau's estimate is based on responses to the CFPB Debt Collection Operations Study, more than half of which came from debt collectors of medical debt. As such, the Bureau believes that, on average, its estimate of less than $1,000 in one-time costs is reasonable.

If debt collectors adjust their systems to produce notices including the new validation information, the Bureau does not expect there would be an increase in the ongoing costs of printing and sending validation notices. However, there could be ongoing costs related to the validation information requirements if the required data are not always available to debt collectors.[450] The Bureau understands that some creditors do not currently track post-default charges and credits in a way that can be readily transferred to debt collectors. However, the Bureau's understanding is that most creditors, including medical providers, do track this information, and many debt collectors already provide this information on validation notices. Further, debt collectors are already required to disclose an itemization for some types of debt in at least one jurisdiction, New York State.[451]

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[450] One industry trade group estimated that an itemization requirement would cost $600 million in professional fees to conduct legal analyses of HIPAA compliance for medical debt, $30 million for one-time system reprogramming for debt collectors, and $3 billion for one-time system reprogramming for creditors. The proposal allegedly would also result in billions of dollars in ongoing support costs and uncompensated medical care because, according to the commenter, the proposed requirement, if adopted, would increase the risks that hospitals might be unable to use debt collectors. As discussed in part V, the itemization requirement should not raise issues of HIPAA compliance that would require creditors to engage legal counsel in order to provide the required information, as HIPAA privacy regulations explicitly permit disclosure where required by law. While some one-time costs will be required so that collection and billing systems can incorporate the data needed to comply with the requirement, as discussed in this section, the Bureau understands that the required changes would not be far outside the scope of normal adjustments to billing and collection systems and does not have reason to believe the changes would be so expensive as to prevent hospitals from using debt collectors. The final rule permits debt collectors to use the date of the last statement or invoice provided to the consumer by a creditor as the itemization date. If providing a debt collector with itemization information were prohibitively expensive for a medical provider, such providers could avoid these costs by simply issuing a statement to the consumer.

[451] *See* 23 NYCRR 1.2(b) (requiring debt collectors to provide an itemized accounting of the debt within five days after the initial communication with a consumer in connection with the collection of certain types of charged-off debt, such as credit card debt). The fact that debt collectors subject to New York's requirements continue to operate and send validation notices in New York suggests that, although the itemization requirement may impose one-time adjustment costs on some creditors and debt collectors, ongoing costs are not prohibitive, at least for the types of debts for which New York has required itemization.

In addition, as discussed in the section-by-section analysis of § 1006.34(b)(3), the final rule's itemization date definition permits debt collectors to select an itemization date that is feasible for the type of debt in collection and the information debt collectors receive. And § 1006.34(c)(2)(viii) requires itemization of fees, interest, and credits only subsequent to the selected itemization date. Thus, for example, if a debt collector selects the last statement date as the itemization date under § 1006.34(b)(3), and if the creditor has recently issued a statement to the consumer, the debt collector need only obtain and provide to the consumer an itemization with fees, interest, and credits subsequent to that last statement date. And, as discussed in the section-by-section analysis of § 1006.34(d)(2), a debt collector may provide the itemization on a separate page and retain the safe harbor for the rest of the validation notice.

Industry commenters asserted that there would be additional printing and mailing costs of the provision due to the tear-off portion of the model notice, which is formatted for use with a return envelope. The commenters argued that many debt collectors do not currently include return envelopes with their validation notices and that including a return envelope would increase mailing costs. The Bureau disagrees that this would be a cost of the rule, as the rule does not require including a return envelope with a mailed validation notice, the format of the tear-off portion notwithstanding. Given that it is not required, the Bureau expects that debt collectors will only begin including return envelopes if they find, in their own analysis, that the benefit exceeds the additional costs.

Several commenters discussed the potential for ongoing costs of providing the new validation information. One industry commenter expressed concern about the availability of the information required on the model validation notice for medical debt, as the commenter believed that the only available itemization date permitted by the proposal for these debts would be date of service (*i.e.*, the transaction date), and the commenter stated that date of service was currently only available from 17.2 percent of its clients. Another industry commenter noted that there

would be costs associated with providing updated itemization dates for a debt that transfers between debt collectors.

Industry trade association commenters noted that there would be costs to creditors of providing the fields to debt collectors and that not all of the required fields are necessarily tracked by all creditors currently, particularly credit unions. The Bureau acknowledges that the FDCPA and this final rule may create indirect costs for creditors that use debt collectors, because the costs to debt collectors of complying with FDCPA requirements may be passed on to creditors and because debt collectors must receive certain information about debts in order to comply with FDCPA requirements. The information available to the Bureau does not suggest that any indirect costs to creditors of this provision will be large.

Further, one industry commenter asserted that the itemization requirement could competitively harm collectors of medical debt. This commenter asserted that medical care providers are currently unable to provide the required itemization information, and rather than incurring costs to provide this information, would switch to using debt collectors who do not comply with the law. This would put compliant debt collectors at a competitive disadvantage. As noted above, the Bureau acknowledges that the provision may affect the costs to creditors, including medical care providers, of using FDCPA debt collectors, because creditors must provide debt collectors with the necessary information for the validation notice. It is also possible that in some cases a less sophisticated creditor may employ a debt collector who does not attempt to comply with the rule. However, the Bureau finds it unlikely that this provision of the rule would lead to widespread non-compliance, at the expense of debt collectors who comply with the requirements of the rule. The Bureau, the FTC, and other Federal and State law enforcement agencies have and will continue to maintain vigorous enforcement of the

FDCPA.[452] Any debt collector who obtained enough business through non-compliance with the rule to do material harm to debt collectors who comply with the rule would be likely to attract enforcement action from regulators. Moreover, the risk of reputational harm is likely to deter some medical providers from intentionally employing debt collectors who knowingly do not comply with the rule.

Other potential costs to debt collectors could arise if changes to the validation information affect how consumers respond, particularly whether they dispute the debt. As discussed above, because the validation information would include more detail, consumers might be more likely to recognize the debt and less likely to mistakenly dispute debts that they owe. On the other hand, the new consumer-response information would make it easier to dispute debts or request the name and address of the original creditor. Together with the additional information about consumers' ability to dispute that will be provided, this could increase the number of consumers who dispute or request original-creditor information. Similarly, some industry commenters argued that the tear-off portion of the model notice would make disputes easier, resulting in more disputes. The overall impact on dispute rates is unclear.

Any increases in dispute rates would not be likely to substantially reduce collection revenue, but increased dispute rates would increase debt collector costs. With respect to collections revenue, the Bureau expects that, with some fairly limited exceptions, consumers who choose to pay a debt are generally those who recognize that they owe the debt and want to pay it, and that in most cases the validation information would be unlikely to cause such consumers to dispute rather than pay.[453] With respect to costs, the disclosures could lead

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[452] *See, e.g.*, Bureau of Consumer Fin. Prot., *CFPB, FTC, State, and Federal Law Enforcement Partners Announce Nationwide Crackdown on Phantom and Abusive Debt Collection* (Sept. 29, 2020), *https://www.consumerfinance.gov/about-us/newsroom/cfpb-ftc-state-and-federal-law-enforcement-partners-announce-nationwide-crackdown-phantom-and-abusive-debt-collection*.

[453] While there is some evidence that consumers sometimes pay alleged debts even though they do not believe they owe them, such consumers may be motivated by factors, such as credit reporting concerns, that are not addressed by the validation notice itself. *See* Jeff Sovern *et al.*, *Validation and Verification Vignettes: More Results from an Empirical Study of Consumer Understanding of Debt Collection Validation Notices*, at 46-47 (St. John's U., Working Paper No. 18-0016, 2018), *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3219171*.

consumers who do not recognize the debt or who believe there is a problem with the amount demanded to dispute the debt rather than ignoring it. Responding to disputes is a costly activity for debt collectors, so an increase in dispute rates would increase these costs. As discussed above, covered persons surveyed by the Bureau indicated that most disputes took between five minutes and one hour of staff time to resolve, with 15 to 30 minutes being the most common amount of time.[454]

Alternative proposals to require Spanish-language disclosures. The Bureau considered proposals that would require debt collectors to provide a Spanish-language translation of the validation information under certain circumstances, such as on the reverse side of any English-language validation notice or if requested by a consumer. Consumers with limited English proficiency may benefit from translations of the validation information, and Spanish speakers represent the second-largest language group in the United States after English speakers.[455]

Requiring Spanish-language disclosures would impose costs on some debt collectors. A requirement to send a Spanish-language disclosure on the back of each validation notice could increase mailing costs for all validation notices that are sent by mail, because it would require information that would otherwise be printed on the back of validation notices, such as State-mandated disclosures, to be provided on a separate page. A requirement to provide Spanish-language validation notices upon request could lead to a smaller increase in mailing costs but could require debt collectors to develop and maintain systems for tracking a consumer's language preference and responding to that preference.

The Bureau understands that some debt collectors currently send validation notices in Spanish to some consumers. These debt collectors presumably believe that the increase in

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[454] CFPB Debt Collection Operations Study, *supra* note 37, at 31. The discussion in "Benefits to covered persons" above provides an illustration of the potential impact on debt collectors of a change in dispute rates. Using the assumptions in that illustration, if the net impact of the proposal were to increase industrywide disputes by 1 million disputes per year, it could imply increased industry costs totaling around $8.25 million per year.

[455] In 2013, 38.4 million residents in the United States aged five and older spoke Spanish at home. *See* U.S. Census Bureau, *Facts for Features: Hispanic Heritage Month 2015* (Sept. 14, 2015), *https://www.census.gov/newsroom/facts-for-features/2015/cb15-ff18.html*.

revenues from sending them to these consumers exceeds the costs of doing so. To the extent sending such notices is already prevalent, it would limit the consumer benefits of a provision that requires Spanish-language translations as well as the costs to debt collectors of such a provision, although there would still be costs associated with ensuring that such disclosures were made as required by regulation.

Consumer advocate and academic commenters argued that the Bureau should have required that the validation notice be in the language of the original transaction, including languages other than English or Spanish. The commenters noted that procedural hurdles, such as a mismatch between the consumers' primary language and the language of a disclosure, can have large effects on behavior. The Bureau notes that this alternative would impose significantly greater costs on debt collectors than the final rule, as they would need to maintain versions of the model notice for each such language. At the same time, the marginal benefit to consumers of the alternative suggested by commenters would be smaller, as fewer consumers communicate in languages other than English and Spanish.

3. *Required actions prior to furnishing information*

Section 1006.30(a)(1) prohibits a debt collector from furnishing information to a consumer reporting agency (CRA) about a debt before taking specific actions to contact the consumer about that debt. A debt collector can satisfy this requirement by: (i) speaking to the consumer about the debt in person or by telephone; or (ii) placing a letter in the mail or sending an electronic message to the consumer about the debt and waiting a reasonable period of time to receive a notice of undeliverability, provided certain other conditions are satisfied. A validation notice is one type of letter or electronic communication debt collectors can use to satisfy § 1006.30(a)(1)(ii).

Potential benefits and costs to consumers. The final rule will help consumers to learn about an alleged debt before a debt collector furnishes adverse information to a CRA. If

consumers believe that the information is incorrect, they will have an opportunity to dispute the debt.

When debt collectors furnish information about unpaid debts to CRAs, that information can appear on consumer credit reports, potentially limiting consumers' ability to obtain credit, employment, or housing. If consumers are unaware that information about a possible unpaid debt is being furnished to a CRA, then they may not realize that their ability to obtain credit, employment or housing may be affected by the debt's presence on their credit reports. They may pay more for credit or lose out on employment or housing because they are unaware that their credit scores have been negatively affected or they may discover the adverse information only when they apply for credit, employment, or housing.

To quantify the potential consumer benefits from the final rule, the Bureau would need to know: (1) how frequently consumers are unaware that debt collectors furnished information about their debts to CRAs but would become aware of it if debt collectors informed consumers prior to furnishing information; and (2) the benefit to these consumers of becoming aware they had a debt in collections.

In many cases, consumers will not be affected by the provision because many debt collectors already take one of the actions required by the final rule before furnishing information to CRAs. Many other consumers will not be affected by the provision because not all debt collectors furnish information to CRAs about the debts on which they are seeking to recover.

The Bureau understands that most debt collectors mail validation notices to consumers shortly after they receive accounts for collection.[456] A minority of debt collectors sometimes or always mail validation notices only after speaking with consumers (whether contact was initiated

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[456] *See* CFPB Debt Collection Operations Study, *supra* note 37, at 28. One large industry commenter, which does furnish to the CRAs, also confirmed that it almost always mails a validation notice before furnishing. To comply with the final rule, these debt collectors would also need to wait a reasonable period of time to allow for notifications of non-delivery, and only furnish if they don't receive such notifications. The Bureau does not have information as to how many of these debt collectors currently take these additional steps. However, the Bureau expects that taking these additional steps would impose minimal costs on debt collectors that do not already take them.

by the debt collector or the consumer).[457] The Bureau does not have representative data to estimate how often consumers would be affected by the provision, but the evidence suggests that a relatively small share of debt collectors furnish information to CRAs before providing a validation notice or taking one of the other actions required by the final rule. If, for example, debt collectors sent validation notices for an additional five percent of debts in collection, the provision could result in up to approximately seven million additional validation notices sent each year (assuming that no debt collectors would cease furnishing in response to the provision).[458]

Learning that a debt is in collections shortly after the collections process begins can help consumers prevent or mitigate harm from adverse information on their credit reports. This can be particularly important if the information about the debt is inaccurate because in those cases consumers who learn of the alleged debt can dispute the debt under the FDCPA or dispute the item of information under the FCRA. By informing consumers about the collection item before it is furnished to a CRA, the final rule will make it less likely that consumers learn about a collection item when they are in the process of applying for credit or other benefits, at which point they may feel pressure to resolve the item and may not have the opportunity to fully dispute the item.

An FTC report addressed the prevalence of collections-related errors in credit reports.[459] The FTC report analyzed data from a sample of 1,001 consumers and identified errors in the credit records of three nationwide CRAs. The report found collections-related errors in

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[457] In the Bureau's Operations Study, 53 of 58 respondents said that they send a validation notice shortly after debt placement, and of those that do not, three respondents that said that they furnish data to CRAs. *Id.* During the meeting of the SBREFA Panel, only one small entity representative described additional burdens it would face as a result of a requirement to communicate with consumers before furnishing information to credit bureaus.

[458] This estimate assumes 140 million validation notices are sent each year, based on an estimated 49 million consumers contacted by debt collectors each year and an assumption that each receives an average of approximately 2.8 notices during the year.

[459] Fed. Trade Comm'n, *Report to Congress under Section 319 of the Fair and Accurate Credit Transactions Act of 2003*, (Dec. 2012) *https://www.ftc.gov/sites/default/files/documents/reports/section-319-fair-and-accurate-credit-transactions-act-2003-fifth-interim-federal-trade-commission/130211factareport.pdf* (FTC Report to Congress).

4.9 percent of credit reports, and credit reports with documented errors contained, on average, 1.8 errors per report. The Bureau's Debt Collection Consumer Survey also suggests that debt collectors make collection errors, finding that 53 percent of consumers who said they had been contacted about one or more debts in collection said that these contacts included at least one debt the consumer thought was in error.[460]

Credit scores are based on a wide variety of information in consumer credit files. While many errors have only small effects on consumers' credit scores,[461] in some cases information in credit files about unpaid debts can have a reasonably large impact on credit scores. For example, analysis of telecommunications collection items in credit reports has shown that, while additional collection items have relatively small effects in some cases, they can have substantial effects for some consumers, with an average reduction in credit score of more than 41 points for super-prime consumers.[462] In some circumstances, these changes could lead to higher interest rates for consumers or denial of credit, particularly for borrowers with otherwise high credit scores.

Potential benefits and costs to covered persons. The final rule will affect the practices of debt collectors who sometimes furnish information about consumers' debts to CRAs before taking one of the required actions under the final rule. The Bureau understands that most debt collectors mail validation notices to consumers shortly after they receive the accounts for collections and before they furnish information on those accounts. These debt collectors either already would be in compliance with the final rule or could come into compliance with minimal additional cost.[463] Forty-five out of 58 debt collectors responding to the Bureau's Operations

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[460] CFPB Debt Collection Consumer Survey, *supra* note 292, at 24.

[461] *See* FTC Report to Congress, *supra* note 459, at 43.

[462] *See* Brian Bucks *et al.*, Bureau of Consumer Fin. Prot., *Collection of Telecommunication Debt*, *https://files.consumerfinance.gov/f/documents/bcfp_consumer-credit-trends_collection-telecommunications-debt_082018.pdf* (Aug. 2018).

[463] In the Operations Study, 53 of 58 respondents said that they send a validation notice shortly after debt placement. CFPB Debt Collection Operations Study, *supra* note 37, at 28. To comply with the final rule, these debt collectors would also need to wait a reasonable period of time to allow for notifications of non-delivery, accept non-delivery notifications and only furnish if they don't receive such notifications. The Bureau does not have information as to how many of these debt collectors currently take these additional steps. However, the Bureau expects that taking these additional steps would impose minimal costs on debt collectors that do not already take them.

Study said that they furnish information to CRAs.[464] Of these respondents, all but three said that they send a validation notice upon account placement, such that the final rule's requirement would be satisfied as long as the debt collectors also wait a reasonable period of time to allow for notifications of non-delivery, and only furnish if they do not receive such notifications. These debt collectors will likely need to review their policies to ensure that validation notices are always sent (or validation information is provided in an initial communication) prior to reporting on the account, which the Bureau expects would involve a small one-time cost. Debt collectors that do not currently wait a reasonable period of time prior to furnishing to allow for notifications of non-delivery, accept non-delivery notifications, and only furnish if they do not receive such notifications would need to adopt these practices, but the Bureau expects this would impose minimal ongoing operational costs. Other debt collectors do not furnish information to CRAs at all and will not be affected by the requirement.

Debt collectors who furnish information to CRAs prior to communicating with consumers but provide validation notices to consumers only after they have been in contact with consumers will need to change their practices and would face increased costs as a result of the final rule. Because these debt collectors are already required to provide validation notices to consumers (unless validation information is provided in an initial communication or the debt has been paid), the Bureau expects that many already have systems in place for sending notices and will not face one-time compliance costs greater than those of other debt collectors.[465] However, these debt collectors will face ongoing costs from sending validation notices to more consumers than they otherwise would, at an estimated cost of $0.50 to $0.80 per debt if sent by mail.[466] To

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[464] *Id.* at 19.

[465] Debt collectors who do not currently have systems in place for sending notices will face one-time compliance costs to implement those systems.

[466] *See* CFPB Debt Collection Operations Study, *supra* note 37, at 32-33. One small entity representative on the Bureau's SBREFA Panel indicated that, for about one-half of its accounts, it currently sends validation notices only after speaking with a consumer, and that, if it were required to send validation notices to all consumers, it would incur additional mailing costs of $0.63 per mailing for an estimated 400,000 accounts per year. A small industry commenter asserted that mailing costs were significantly higher than $0.50-$0.80 per debt but did not provide an alternative figure.

the extent debt collectors take advantage of opportunities to send validation notices electronically, the marginal cost of sending each notice is likely to be approximately zero. Alternatively, these debt collectors could cease furnishing information to CRAs until after they take the specific steps identified in the final rule, which could impact the effectiveness of their collection efforts.[467] Because debt collectors could choose the less burdensome of these options, the additional costs of delivering notices represent an upper bound on the burden of the provision for debt collectors.

Commenters noted several specific situations in which the proposed provision could, in the commenters' view, unduly burden debt collectors. One small industry commenter raised the concern that a bad address, which occurs in 15 percent of accounts at their agency, would stop collections. Another industry commenter noted that 3 percent of its notices are returned as undeliverable and argued that attempting to deliver a validation notice should count as a communication and thus allow furnishing. Another industry commenter noted that some States are "closed" in the sense that debt collectors based in other States are not allowed to deliver notices into those States. This commenter was concerned that the proposed provision would not allow furnishing of information about consumers in those States and argued that this will reduce credit report accuracy. A joint comment by an industry commenter and CRA argued that the proposed provision would be particularly problematic in the check verification space. The commenter noted that, in the case of bad checks, the debt collector generally does not have the consumer's address or telephone number and cannot communicate with the consumer directly. In these cases, the debt collector would report the bad check to a check verification CRA, but this could be prohibited under the proposed provision. The commenter argued that the proposed provision could undermine the reliability of the check payment system by making it impossible to track check fraud, among other things.

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[467] If debt collectors furnish information to CRAs less frequently this could make consumer reports less informative in general, which could have negative effects on the credit system by making it harder for creditors to assess credit risk.

The Bureau agrees with some of the commenters with respect to these additional costs and has revised the final rule from the proposal to reduce or eliminate these costs. In particular, the Bureau has revised § 1006.30(a) to specify that, if a debt collector places a letter in the mail or sends an electronic message to the consumer about the debt, the debt collector must wait a reasonable period of time (with a safe harbor for waiting 14 consecutive days) before furnishing information about the debt to a CRA and, during that period, permit receipt of, and monitor for, notifications of undeliverability for mail and electronic messages. A debt collector who places a letter in the mail or sends an electronic message, does not receive a notice of undeliverability during that period, and furnishes information to a consumer reporting agency after the period ends has not violated the rule even if the debt collector subsequently receives a notice of undeliverability. Section 1006.30(a)(2) of the final rule also specifies that § 1006.30(a)(1) does not apply to the furnishing of information about a debt to a specialty check verification CRA. The Bureau believes these changes will reduce or eliminate many of the costs cited by the commenters.

H. Potential Reduction of Access by Consumers to Consumer Financial Products and Services

Economic theory indicates that it is possible for changes in debt collection rules, such as those contained in this final rule, to affect consumers' access to credit. Under economic theory, creditors should decide to extend credit based on the discounted expected value of the revenue stream from that extension of credit. This entails considering the possibility that the consumer will ultimately default and expected payments will decrease. If this final rule addressing disclosures were to increase collection costs or reduce revenue collected from delinquent debt, then this would reduce the return to lending, which in theory could lead lenders to increase the cost of lending, restrict availability of credit, or both.

As discussed in the November 2020 Final Rule, the Bureau has considered the available empirical data and research on the effect of State debt collection laws on the price and

availability of credit.[468] That research shows that State debt collection laws affect the price and availability of credit in ways that theory would predict, but that effects are relatively small even for changes in State laws that are likely more significant than the provisions in this final rule.[469] In light of that research and the CCP analysis above, the Bureau concludes that the provisions in this final rule are unlikely to cause any significant reduction in access to consumer credit.

I. Potential Specific Impacts of the Rule

1. *Depository Institutions and Credit Unions With $10 Billion or Less in Total Assets, as Described in Section 1026*

Depository institutions and credit unions are generally not debt collectors under the FDCPA and therefore would not be covered under the final rule. Creditors could experience indirect effects from the final rule to the extent they hire FDCPA debt collectors or sell debt in default to such debt collectors. Such creditors could experience higher costs if debt collectors' costs increase and if debt collectors are able to pass those costs on to creditors. The Bureau understands that many depository institutions and credit unions with $10 billion or less in total assets rely on FDCPA debt collectors to collect uncollected amounts, but the Bureau does not have data indicating whether such institutions are more or less likely than other creditors to do so. The Bureau did not receive any comments on this issue with respect to the provisions in this final rule.

2. *Impact of the Final Rule on Consumers in Rural Areas*

Consumers in rural areas may experience benefits from the final rule that are different in certain respects from the benefits experienced by consumers in general. For example, consumers in rural areas may be more likely to borrow from small local banks and credit unions that may be less likely to outsource debt collection to FDCPA debt collectors.

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[468] *See* 84 FR 23274, 23389-91 (May 21, 2019).

[469] For example, one study found that additional State regulations on debt collectors' conduct caused the rate at which a credit inquiry led to a successful account opening to decline by less than 0.02 percentage points off a base rate of about 43 percent. *See id.* at 23389-90.

The Bureau requested interested parties to provide data, research results, and other factual information on the impact of the proposed rule on consumers in rural areas, but the Bureau did not receive any comments on this subject.

VIII. Final Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct an Initial Regulatory Flexibility Analysis (IRFA) and a Final Regulatory Flexibility Analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements.[470] Section 604(a) of the RFA sets forth the required elements of the FRFA. Section 604(a)(1) requires a statement of the objectives of, and the legal basis for, the rule.[471] Section 604(a)(2) requires a statement of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments. Section 604(a)(3) requires the response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments. Section 604(a)(4) requires a description of and, where feasible, an estimate of the number of small entities to which the rule will apply.[472] Section 604(a)(5) requires a description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities that will be subject to the requirement and the types of professional skills necessary for the preparation of the report or record.[473] Section 604(a)(6) requires a description of any significant alternatives to the rule that accomplish the stated objectives of applicable statutes and that minimize any significant economic impact of the rule on small entities.[474]

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[470] 5 U.S.C. 603(a), 604(a).

[471] 5 U.S.C. 604(a)(1).

[472] 5 U.S.C. 604(a)(4).

[473] 5 U.S.C. 604(a)(5).

[474] 5 U.S.C. 604(a)(6).

Finally, section 604(a)(7) requires a description of the steps the agency has taken to minimize any additional cost of credit for small entities.[475]

A. Statement of the Objectives of, and Legal Basis for, the Final Rule

As discussed in part IV, the Bureau issues this rule pursuant to its authority under the FDCPA and the Dodd-Frank Act. The objectives of the final rule are to clarify and implement the FDCPA's provisions and to further the FDCPA's goals of eliminating abusive debt collection practices and ensuring that debt collectors who refrain from abusive debt collection practices are not competitively disadvantaged.[476] As the first Federal agency with authority under the FDCPA to prescribe substantive rules with respect to the collection of debts by debt collectors, the Bureau is requiring consumer disclosure requirements to provide greater clarity for both consumers and industry participants as to the information debt collectors must provide consumers to comply with the law. The Bureau intends that these clarifications will help to eliminate abusive debt collection practices and ensure that debt collectors who refrain from abusive debt collection practices are not competitively disadvantaged.[477]

As amended by the Dodd-Frank Act, FDCPA section 814(d) provides that the Bureau may "prescribe rules with respect to the collection of debts by debt collectors," as that term is defined in the FDCPA.[478] Section 1022(a) of the Dodd-Frank Act provides that "[t]he Bureau is authorized to exercise its authorities under Federal consumer financial law to administer, enforce, and otherwise implement the provisions of Federal consumer financial law."[479] "Federal consumer financial law" includes title X of the Dodd-Frank Act and the FDCPA. The legal basis for the final rule is discussed in detail in the legal authority analysis in part IV and in the section-by-section analysis in part V.

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[475] *Id.*

[476] *See* 15 U.S.C. 1692(e).

[477] *See id.*

[478] 15 U.S.C. 1692*l*(d).

[479] 12 U.S.C. 5512(a).

B. Significant Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis

The Bureau received comments on the IRFA from the Acting Chief Counsel for Advocacy of the Small Business Administration, which are discussed in the next section. The Bureau did not receive other comments that referenced the IRFA specifically; however, several commenters did raise issues about the burdens of the proposed rule's provisions, and the Bureau's response to these issues is discussed in parts V and VII above and in this part below.

C. Response to Any Comments Filed by the Chief Counsel for Advocacy of the Small Business Administration

The Acting Chief Counsel for Advocacy of the Small Business Administration filed a public comment letter on the May 2019 proposed rule that discusses both the IRFA and certain of the proposed requirements (the "first SBA letter"). The Acting Chief Counsel for Advocacy of the Small Business Administration also filed a public comment letter on the February 2020 supplemental proposed rule that discusses both the IRFA and the proposed requirements (the "second SBA letter"). This section first responds to comments on the IRFA and then responds to the substantive comments on the proposed rule's provisions.

The first SBA letter notes that the proposed rule could impose costs to read and understand the rule and to train employees in new practices. The Bureau had discussed these costs in the context of some specific provisions but has added a more general discussion of these costs to section E of the FRFA, below.

The first SBA letter also notes that the Bureau claims some provisions will cause no significant impact because those provisions are already part of debt collectors' business practices, and argues that the Bureau should clarify what the benefit of such provisions is to consumers if they will not change debt collector practices. As discussed in part V above and the section 1022(b)(2) analysis of the proposed rule, the Bureau believes that, by clarifying the FDCPA's requirements, the rule will benefit both consumers and debt collectors, including small

entities. Many market participants have identified a need for greater clarity in interpreting many of the FDCPA's provisions. For example, a trade group commenter emphasized that ambiguities in the FDCPA lead to unnecessary and costly litigation. The Bureau believes that there is a benefit to providing additional clarity about the FDCPA's requirements even where the vast majority of debt collectors follow practices that meet those requirements. The additional clarity helps those debt collectors to avoid unnecessary litigation and to have confidence in what practices do and do not violate the FDCPA. The additional clarity also makes it easier to establish when less scrupulous debt collectors have violated the statute and to hold them accountable, which benefits consumers as well as debt collectors who do comply with the law.

The first SBA letter points out that the proposed rule's Paperwork Reduction Act (PRA) section estimates 1,029,500 burden hours and argues that this could translate into millions of dollars in recordkeeping and reporting costs. Most of this burden is not attributable to the rule itself but rather to the requirements of the FDCPA. As discussed in the supporting statement accompanying the Bureau's information collection request, the PRA estimates include the burden not only of complying with the new requirements introduced by the final rule but also of complying with the FDCPA itself. These burdens had not previously been accounted for under the PRA. Thus, the large majority of the estimated burden hours represent the burden of complying with existing FDCPA provisions that exist independent of the rule, in particular the requirement to provide a validation notice under § 809(a) of the FDCPA and the requirement to respond to consumer disputes under § 809(b) of the FDCPA. There are, of course, burdens associated with other information collections that are being introduced or modified by the final rule, and those burdens are discussed in this FRFA as well as in the supporting statement.

The SBA letters also expressed several concerns about specific provisions of the proposed rule and recommended changes to those provisions. These concerns and recommendations, and the Bureau's response, are discussed in the section-by-section analysis of the relevant provisions in part V above.

D. Description and, Where Feasible, Provision of an Estimate of the Number of Small Entities to which the Final Rule Will Apply

As discussed in the Small Business Review Panel Report, for the purposes of assessing the impacts of this final rule on small entities, "small entities" is defined in the RFA to include small businesses, small nonprofit organizations, and small government jurisdictions.[480] A "small business" is determined by application of SBA regulations in reference to the North American Industry Classification System (NAICS) classifications and size standards.[481] Under such standards, the Small Business Review Panel (Panel) identified four categories of small entities that may be subject to the final rule: collection agencies (NAICS 561440) with annual receipts at or below the SBA size standard (currently $16.5 million), debt buyers (NAICS 522298) with annual receipts at or below the size standard (currently $41.5 million), collection law firms (NAICS 541110) with annual receipts at or below the size standard (currently $12 million), and servicers who acquire accounts in default. These servicers include depository institutions (NAICS 522110, 522120, and 522130) with assets at or below the size standard (currently $600 million) or non-depository institutions (NAICS 522390) with annual receipts at or below the size standard (currently $22 million). The Panel did not meet with small nonprofit organizations or small government jurisdictions.[482]

The following table provides the Bureau's estimate of the number and types of entities that may be affected by the final rule:

Table 1: Estimated number of affected entities and small entities by category

Category	**NAICS**	**Small-Entity Threshold**	**Estimated total number of debt collectors within category**	**Estimated number of small-entity debt collectors within category**

[480] 5 U.S.C. 601(6).

[481] The current SBA size standards are found on SBA's website, *http://www.sba.gov/content/table-small-business-size-standards.*

[482] Small Business Review Panel Report, *supra* note 40, at 29.

Category	NAICS	Small-Entity Threshold	Estimated total number of debt collectors within category	Estimated number of small-entity debt collectors within category
Collection agencies	561440	$16.5 million in annual receipts	9,000	8,800
Debt buyers	522298	$41.5 million in annual receipts	330	300
Collection law firms	541110	$12.0 million in annual receipts	1,000	950
Loan servicers	522110, 522120, and 522130 (depositories); 522390 (non-depositories)	$600 million in annual receipts for depository institutions; $22.0 million or less for non-depositories	700	200

Descriptions of the four categories:

Collection agencies. The Census Bureau defines "collection agencies" (NAICS code 561440) as "establishments primarily engaged in collecting payments for claims and remitting payments collected to their clients."[483] According to the Census Bureau, in 2012 (the most recent year for which detailed data are available), there were approximately 4,000 collection agencies with paid employees in the United States. Of these, the Bureau estimates that 3,800 collection agencies have $16.5 million or less in annual receipts and are therefore small entities.[484] Census Bureau estimates indicate that in 2012 there were also more than 5,000 collection agencies without employees, all of which are presumably small entities.

Debt buyers. Debt buyers purchase delinquent accounts and attempt to collect amounts owed, either themselves or through agents. The Bureau estimates that there are approximately

[483] As defined by the U.S. Census Bureau, collection agencies include entities that collect only commercial debt, and the proposed rule would apply only to debt collectors of consumer debt. However, the Bureau understands that relatively few collection agencies collect only commercial debt.

[484] The U.S. Census Bureau estimates average annual receipts of $95,000 per employee for collection agencies. Given this, the Bureau assumes that all firms with fewer than 100 employees and approximately one-half of the firms with 100 to 499 employees are small entities, which implies approximately 3,800 firms.

330 debt buyers in the United States, and that a substantial majority of these are small entities.[485] Many debt buyers—particularly those that are small entities—also collect debt on behalf of other debt owners.[486]

Collection law firms. The Bureau estimates that there are 1,000 law firms in the United States that either have as their principal purpose the collection of consumer debt or regularly collect consumer debt owed to others, so that the proposed rule would apply to them. The Bureau estimates that 95 percent of such law firms are small entities.[487]

Loan servicers. Loan servicers would be covered by the final rule if they are covered by the FDCPA because, among other things, they acquire the right to service loans already in default.[488] The Bureau believes that this is most likely to occur with regard to companies that service mortgage loans or student loans. The Bureau estimates that approximately 200 such mortgage servicers may be small entities and that few, if any, student loan servicers that would be covered by the final rule are small.[489]

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[485] The Receivables Management Association, the largest trade group for debt buyers, states that it has approximately 300 debt buyer members and believes that 90 percent of debt buyers are current members.

[486] The Bureau understands that debt buyers are generally nondepositories that specialize in debt buying and, in some cases, debt collection. The Bureau expects that debt buyers that are not collection agencies would be classified by the U.S. Census Bureau under "all other nondepository credit intermediation" (NAICS Code 522298).

[487] The primary trade association for collection attorneys, the National Creditors Bar Association (NCBA), states that it has approximately 600 law firm members, 95 percent of which are small entities. The Bureau estimates that approximately 60 percent of law firms that collect debt are NCBA members and that a similar fraction of non-member law firms are small entities.

[488] The Bureau expects that loan servicers are generally classified under NAICS code 522390, "Other Activities Related to Credit Intermediation." Some depository institutions (NAICS codes 522110, 522120, and 522130) also service loans for others and may be covered by the final rule.

[489] Based on the December 2015 Call Report data as compiled by SNL Financial (with respect to insured depositories) and December 2015 data from the Nationwide Mortgage Licensing System and Registry (with respect to non-depositories), the Bureau estimates that there are approximately 9,000 small entities engaged in mortgage servicing, of which approximately 100 service more than 5,000 loans. *See* 81 FR 72160, 72363 (Oct. 19, 2016). The Bureau's estimate is based on the assumption that all those servicing more than 5,000 loans may acquire servicing of loans when loans are in default and that at most 100 of those servicing 5,000 loans or fewer acquire servicing of loans when loans are in default.

E. Projected Reporting, Recordkeeping, and other Compliance Requirements of the Rule, Including an Estimate of Classes of Small Entities that Will Be Subject to the Requirements and the Type of Professional Skills Necessary for the Preparation of the Report or Record

The final rule will not impose new reporting or recordkeeping requirements, but it will impose new compliance requirements on small entities subject to the rule.[490] The requirements and the costs associated with them are discussed below. In addition to the specific costs discussed below, all small entities will incur costs to read the rule and incorporate its provisions into their policies and procedures, and small entities with employees will need to train employees in new policies and procedures. The extent of training required will depend on debt collectors' existing practices and on the roles performed by individual employees. Debt collectors employ an estimated 123,000 workers.[491] If, on average, the rule required an additional hour of training for each of these employees, at an average cost of $22 per hour, the total training cost would be approximately $2,700,000.[492]

In evaluating the potential impacts of the rule on small entities, the Bureau takes as a baseline conduct in debt collection markets under the current legal framework governing debt collection. This includes debt collector practices as they currently exist, responding to the requirements of the FDCPA as currently interpreted by courts and law enforcement agencies, other Federal laws, and the rules and statutory requirements promulgated by the States. This baseline represents the status quo from which the impacts of this rule will be evaluated.

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[490] While the final rule does not include new recordkeeping requirements, the Bureau notes that, by introducing a new compliance requirement, the rule may increase the cost of complying with recordkeeping requirements of the November 2020 Final Rule. This is because debt collectors would need to retain evidence of compliance with any additional compliance requirement.

[491] 2020 FDCPA Annual Report, *supra* note 12, at 7.

[492] The estimated hourly cost is based on an estimated wage of $15 per hour and taxes, benefits, and incentives of $7 per hour. *See* CFPB Debt Collection Operations Study, *supra* note 37, at 17 (describing estimated debt collector wages ranging from $10 to $20 per hour).

The Bureau requested that interested parties provide data and quantitative analysis of the benefits, costs, or impacts of the proposed rule on small entities but did not receive any comments on this subject.

The Bureau believes that, except where otherwise noted, the impacts discussed in part VII would apply to small entities to the same extent as to larger entities.

F. Description of Any Significant Alternatives to the Rule that Accomplish the Stated Objectives of the Applicable Statutes and Minimize Any Significant Economic Impact of the Rule on Small Entities

Section 604(a)(6) of the RFA requires the Bureau to describe in the FRFA any significant alternatives to the rule that accomplish the stated objectives of applicable statutes and that minimize any significant economic impact of the rule on small entities.[493] In developing the rule, the Bureau has considered alternative provisions and believes that none of the alternatives considered would be as effective at accomplishing the stated objectives of the FDCPA and the applicable provisions of title X of the Dodd-Frank Act while minimizing the impact of the rule on small entities. Some of these alternatives are discussed in part V, above.

G. Discussion of Impact on Cost of Credit for Small Entities

Section 603(d) of the RFA requires the Bureau to consult with small entities regarding the potential impact of the proposed rule on the cost of credit for small entities and related matters.[494] To satisfy these statutory requirements, the Bureau provided notification to the Chief Counsel for Advocacy of the Small Business Administration (Chief Counsel) that the Bureau would collect the advice and recommendations of the same small entity representatives identified in consultation with the Chief Counsel through the SBREFA process concerning any projected impact of the proposed rule on the cost of credit for small entities. The Bureau sought to collect the advice and recommendations of the small entity representatives during the Small Business

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[493] 5 U.S.C. 604(a)(6).

[494] 5 U.S.C. 603(d).

Review Panel meeting regarding the potential impact on the cost of business credit because, as small debt collectors with credit needs, the small entity representatives could provide valuable input on any such impact related to the proposed rule.

The Bureau's Small Business Review Panel Outline asked small entity representatives to comment on how the proposals under consideration would affect the cost of credit to small entities. During the SBREFA process, several small entity representatives said that the proposals under consideration at that time, which included time-barred debt disclosures among several other proposals, could have an impact on the cost of credit for them and for their small business clients. Some small entity representatives said that they use lines of credit in their business and that regulations that raise their costs or reduce their revenue could mean they are unable to meet covenants in their loan agreements, causing lenders to reduce access to capital or increase their borrowing costs.

The Bureau believes that the disclosures in the final rule will have little impact on the cost of credit to small entities. The Bureau does recognize that consumer credit could become more expensive and less available as a result of requirements that restrict the collection of debt; however, the Bureau does not anticipate that the requirements of this final rule will have any significant impact on the cost or availability of consumer credit. Many small entities affected by the disclosures in the final rule use consumer credit as a source of credit and may, therefore, see costs rise if consumer credit availability decreases. The Bureau does not expect this to be a large effect and does not anticipate measurable impact.

IX. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA),[495] Federal agencies are generally required to seek approval from the Office of Management and Budget (OMB) for information collection requirements prior to implementation. Under the PRA, the Bureau may not conduct or

[495] 44 U.S.C. 3501 *et seq.*

sponsor, and, notwithstanding any other provision of law, a person is not required to respond to, an information collection unless the information collection displays a valid control number assigned by OMB.

As part of its continuing effort to reduce paperwork and respondent burden, the Bureau conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on the information collection requirements in accordance with the PRA. This helps ensure that the public understands the Bureau's requirements or instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Bureau can properly assess the impact of collection requirements on respondents.

The final rule amends 12 CFR part 1006 (Regulation F), which implements the FDCPA. The Bureau's OMB control number for Regulation F is 3170-0056; it expires April 30, 2022. This final rule along with the November 2020 Final Rule would revise the information collection requirements contained in Regulation F that OMB has approved under that OMB control number.

Under the final rule, the Bureau requires two information collection requirements in Regulation F beyond those required by the November 2020 Final Rule:

1. Validation notices (final rule § 1006.34).
2. Communication with consumers prior to furnishing information (final rule § 1006.30(a)).

These information collections are required to provide benefits for consumers and will be mandatory. Because the Bureau does not collect any information, no issue of confidentiality arises. The likely respondents are for-profit businesses that are FDCPA debt collectors.

The collections of information contained in this rule, and identified as such, as well as the information collections contained in the November 2020 final rule have been submitted to OMB for review under section 3507(d) of the PRA. A complete description of the information

collection requirement, including the burden estimate methods, is provided in the information collection request (ICR) supporting statement that the Bureau has submitted to OMB under the requirements of the PRA. The Bureau will publish a separate notice in the *Federal Register* when these information collections have been approved by OMB.

Please send your comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Bureau of Consumer Financial Protection. Send these comments by email to *oira_submission@omb.eop.gov* or by fax to (202) 395-6974. If you wish to share your comments with the Bureau, please send a copy of these comments as described in the Addresses section above. The ICR submitted to OMB requesting approval under the PRA for the information collection requirements contained herein is available at *www.regulations.gov* as well as on OMB's public-facing docket at *www.reginfo.gov*.

Title of Collection: Regulation F: Fair Debt Collection Practices Act.

OMB Control Number: 3170-0056.

Type of Review: Revision of a currently approved collection.

Affected Public: Private Sector.

Estimated Number of Respondents: 12,027.[496]

Estimated Total Annual Burden Hours: 881,000.

The Bureau has a continuing interest in the public's opinion of its collections of information. At any time, comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, may be sent to the Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW, Washington, DC 20552, or by email to *CFPB_PRA@cfpb.gov*.

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[496] The Bureau shares enforcement authority under the FDCPA with the Federal Trade Commission. To avoid double-counting, the Bureau allocates to itself half of the estimated paperwork burden under the final rule by dividing the burden hours even between the agencies. However, since the Bureau has joint authority over the respondents themselves, the Bureau retains the entity count of all affected respondents as shown above.

Where applicable, the Bureau will display the control number assigned by OMB to any documents associated with any information collection requirements adopted in this rule.

X. Congressional Review Act

Pursuant to the Congressional Review Act,[497] the Bureau will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States at least 60 days prior to the rule's published effective date. The Office of Information and Regulatory Affairs has designated this rule as a "major rule" as defined by 5 U.S.C. 804(2).

XI. Signing Authority

The Director of the Bureau, Kathleen L. Kraninger, having reviewed and approved this document, is delegating the authority to electronically sign this document to Grace Feola, a Bureau Federal Register Liaison, for purposes of publication in the *Federal Register*.

List of Subjects in 12 CFR Part 1006

Administrative practice and procedure, Consumer protection, Credit, Debt collection, Intergovernmental relations.

Authority and Issuance

For the reasons set forth above, the Bureau is further amending Regulation F, 12 CFR part 1006, as revised on November 30, 2020, at 85 FR 76734, effective November 30, 2021, as set forth below:

PART 1006—DEBT COLLECTION PRACTICES (REGULATION F)

1. The authority citation for part 1006 continues to read as follows:

Authority: 12 U.S.C. 5512, 5514(b), 5532; 15 U.S.C. 1692*l*(d), 1692o, 7004.

Subpart A—General

2. Section 1006.1 is amended by adding paragraph (c)(2) to read as follows:

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[497] 5 U.S.C. 801 *et seq.*

§ 1006.1 Authority, purpose, and coverage.

* * * * *

(c) * * *

(2) Section 1006.34(c)(2)(iii) and (c)(3)(iv) applies to debt collectors only when they are collecting debt related to a consumer financial product or service as defined in § 1006.2(f).

3. Section 1006.2 is amended by revising paragraph (e) and adding paragraph (f) to read as follows:

§ 1006.2 Definitions.

* * * * *

(e) *Consumer* means any natural person, whether living or deceased, obligated or allegedly obligated to pay any debt. For purposes of § 1006.6, the term *consumer* includes the persons described in § 1006.6(a).

(f) *Consumer financial product or service* has the same meaning given to it in section 1002(5) of the Dodd-Frank Act (12 U.S.C. 5481(5)).

* * * * *

Subpart B—Rules for FDCPA Debt Collectors

4. Section 1006.26 is added to read as follows:

§ 1006.26 Collection of time-barred debts.

(a) *Definitions*. For purposes of this section:

(1) *Statute of limitations* means the period prescribed by applicable law for bringing a legal action against the consumer to collect a debt.

(2) *Time-barred debt* means a debt for which the applicable statute of limitations has expired.

(b) *Legal actions and threats of legal actions prohibited*. A debt collector must not bring or threaten to bring a legal action against a consumer to collect a time-barred debt. This

paragraph (b) does not apply to proofs of claim filed in connection with a bankruptcy proceeding.

5. Section 1006.30 is amended by adding paragraph (a) to read as follows:

§ 1006.30 Other prohibited practices.

(a) *Required actions prior to furnishing information*—(1) *In general*. Except as provided in paragraph (a)(2) of this section, a debt collector must not furnish to a consumer reporting agency, as defined in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f)), information about a debt before the debt collector:

(i) Speaks to the consumer about the debt in person or by telephone; or

(ii) Places a letter in the mail or sends an electronic message to the consumer about the debt and waits a reasonable period of time to receive a notice of undeliverability. During the reasonable period, the debt collector must permit receipt of, and monitor for, notifications of undeliverability from communications providers. If the debt collector receives such a notification during the reasonable period, the debt collector must not furnish information about the debt to a consumer reporting agency until the debt collector otherwise satisfies this paragraph (a)(1).

(2) *Special rule—information furnished to certain specialty consumer reporting agencies.* Paragraph (a)(1) of this section does not apply to a debt collector's furnishing of information about a debt to a nationwide specialty consumer reporting agency that compiles and maintains information on a consumer's check writing history, as described in section 603(x)(3) of the Fair Credit Reporting Act (15 U.S.C. 1681a(x)(3)).

* * * * *

6. Section 1006.34 is added to read as follows:

§ 1006.34 Notice for validation of debts.

(a) *Validation information required*—(1) *In general.* Except as provided in paragraph (a)(2) of this section, a debt collector must provide a consumer with the validation information required by paragraph (c) of this section either:

(i) By sending the consumer a validation notice in the manner required by § 1006.42:

(A) In the initial communication, as defined in paragraph (b)(2) of this section; or

(B) Within five days of that initial communication; or

(ii) By providing the validation information orally in the initial communication.

(2) *Exception*. A debt collector who otherwise would be required to send a validation notice pursuant to paragraph (a)(1)(i)(B) of this section is not required to do so if the consumer has paid the debt prior to the time that paragraph (a)(1)(i)(B) of this section would require the validation notice to be sent.

(b) *Definitions*. For purposes of this section:

(1) *Clear and conspicuous* means readily understandable. In the case of written and electronic disclosures, the location and type size also must be readily noticeable and legible to consumers, although no minimum type size is mandated. In the case of oral disclosures, the disclosures also must be given at a volume and speed sufficient for the consumer to hear and comprehend them.

(2) *Initial communication* means the first time that, in connection with the collection of a debt, a debt collector conveys information, directly or indirectly, regarding the debt to the consumer, other than a communication in the form of a formal pleading in a civil action, or any form or notice that does not relate to the collection of the debt and is expressly required by:

(i) The Internal Revenue Code of 1986 (26 U.S.C. 1 *et seq.*);

(ii) Title V of the Gramm-Leach-Bliley Act (15 U.S.C. 6801 through 6827); or

(iii) Any provision of Federal or State law or regulation mandating notice of a data security breach or privacy risk.

(3) *Itemization date* means any one of the following five reference dates for which a debt collector can ascertain the amount of the debt:

(i) The last statement date, which is the date of the last periodic statement or written account statement or invoice provided to the consumer by a creditor;

(ii) The charge-off date, which is the date the debt was charged off;

(iii) The last payment date, which is the date the last payment was applied to the debt;

(iv) The transaction date, which is the date of the transaction that gave rise to the debt; or

(v) The judgment date, which is the date of a final court judgment that determines the amount of the debt owed by the consumer.

(4) *Validation notice* means a written or electronic notice that provides the validation information required by paragraph (c) of this section.

(5) *Validation period* means the period starting on the date that a debt collector provides the validation information required by paragraph (c) of this section and ending 30 days after the consumer receives or is assumed to receive the validation information. For purposes of determining the end of the validation period, the debt collector may assume that a consumer receives the validation information on any date that is at least five days (excluding legal public holidays identified in 5 U.S.C. 6103(a), Saturdays, and Sundays) after the debt collector provides it.

(c) *Validation information*. Pursuant to paragraph (a)(1) of this section, a debt collector must provide the following validation information.

(1) *Debt collector communication disclosure*. The statement required by § 1006.18(e).

(2) *Information about the debt*. Except as provided in paragraph (c)(5) of this section:

(i) The debt collector's name and the mailing address at which the debt collector accepts disputes and requests for original-creditor information.

(ii) The consumer's name and mailing address.

(iii) If the debt collector is collecting a debt related to a consumer financial product or service as defined in § 1006.2(f), the name of the creditor to whom the debt was owed on the itemization date.

(iv) The account number, if any, associated with the debt on the itemization date, or a truncated version of that number.

(v) The name of the creditor to whom the debt currently is owed.

(vi) The itemization date.

(vii) The amount of the debt on the itemization date.

(viii) An itemization of the current amount of the debt reflecting interest, fees, payments, and credits since the itemization date. A debt collector may disclose the itemization on a separate page provided in the same communication with a validation notice, if the debt collector includes on the validation notice, where the itemization would have appeared, a statement referring to that separate page.

(ix) The current amount of the debt.

(3) *Information about consumer protections*. (i) The date that the debt collector will consider the end date of the validation period and a statement that, if the consumer notifies the debt collector in writing on or before that date that the debt, or any portion of the debt, is disputed, the debt collector must cease collection of the debt, or the disputed portion of the debt, until the debt collector sends the consumer either verification of the debt or a copy of a judgment.

(ii) The date that the debt collector will consider the end date of the validation period and a statement that, if the consumer requests in writing on or before that date the name and address of the original creditor, the debt collector must cease collection of the debt until the debt collector sends the consumer the name and address of the original creditor, if different from the current creditor.

(iii) The date that the debt collector will consider the end date of the validation period and a statement that, unless the consumer contacts the debt collector to dispute the validity of the debt, or any portion of the debt, on or before that date, the debt collector will assume that the debt is valid.

(iv) If the debt collector is collecting debt related to a consumer financial product or service as defined in § 1006.2(f), a statement that informs the consumer that additional information regarding consumer protections in debt collection is available on the Bureau's website at *www.cfpb.gov/debt-collection.*

(v) If the debt collector sends the validation notice electronically, a statement explaining how a consumer can, as described in paragraphs (c)(4)(i) and (ii) of this section, dispute the debt or request original-creditor information electronically.

(4) *Consumer-response information*. The following information, segregated from the validation information required by paragraphs (c)(1) through (3) of this section and from any optional information included pursuant to paragraphs (d)(3)(i) and (ii), (d)(3)(iii)(A), (d)(3)(iv) and (v), (d)(3)(vi)(A), and (d)(3)(vii) and (viii) of this section, and, if provided on a validation notice, located at the bottom of the notice under the headings, "How do you want to respond?" and "Check all that apply:":

(i) *Dispute prompts*. The following statements, listed in the following order, and using the following phrasing or substantially similar phrasing, each next to a prompt:

(A) "I want to dispute the debt because I think:";

(B) "This is not my debt.";

(C) "The amount is wrong."; and

(D) "Other (please describe on reverse or attach additional information)."

(ii) *Original-creditor information prompt*. The statement, "I want you to send me the name and address of the original creditor.", using that phrase or a substantially similar phrase, next to a prompt.

(iii) *Mailing addresses*. Mailing addresses for the consumer and the debt collector, which are the debt collector's and the consumer's names and mailing addresses as disclosed pursuant to § 1006.34(c)(2)(i) and (ii).

(5) *Special rule for certain residential mortgage debt*. For residential mortgage debt, if a periodic statement is required under Regulation Z, 12 CFR 1026.41, at the time a debt collector provides the validation notice, a debt collector need not provide the validation information required by paragraphs (c)(2)(vi) through (viii) of this section if the debt collector:

(i) Provides the consumer, in the same communication with the validation notice, a copy of the most recent periodic statement provided to the consumer under Regulation Z, 12 CFR 1026.41(b); and

(ii) Includes on the validation notice, where the validation information required by paragraphs (c)(2)(vi) through (viii) of this section would have appeared, a statement referring to that periodic statement.

(d) *Form of validation information*—(1) *In general.* The validation information required by paragraph (c) of this section must be clear and conspicuous.

(2) *Safe harbor*—(i) *In general*. Model Form B–1 in appendix B to this part contains the validation information required by paragraph (c) of this section and certain optional disclosures permitted by paragraph (d)(3) of this section. A debt collector who uses Model Form B–1 complies with the information and form requirements of paragraphs (c) and (d)(1) of this section, including if the debt collector:

(A) Omits any or all of the optional disclosures shown on Model Form B–1; or

(B) Adds any or all of the optional disclosures described in paragraph (d)(3) of this section that are not shown on Model Form B–1, provided that any such optional disclosures are no more prominent than any of the validation information required by paragraph (c) of this section.

(ii) *Certain disclosures on a separate page*. A debt collector who uses Model Form B–1 as described in paragraph (d)(2)(i) of this section and who, pursuant to paragraph (c)(2)(viii) or (c)(5) of this section, includes certain disclosures on a separate page in the same communication with the validation notice and, on the notice, the required statement referring to those disclosures, receives a safe harbor for compliance with the information and form requirements of paragraphs (c) and (d)(1) of this section except with respect to the disclosures on the separate page.

(iii) *Substantially similar form*. A debt collector who uses Model Form B–1 as described in paragraph (d)(2)(i) or (ii) of this section may make changes to the form and retain a safe harbor for compliance with the information and form requirements of paragraphs (c) and (d)(1) of this section provided that the form remains substantially similar to Model Form B–1.

(3) *Optional disclosures*. A debt collector may include any of the following information when providing the validation information required by paragraph (c) of this section. A debt collector who includes any of the following information receives the safe harbor described in paragraph (d)(2) of this section, provided that the debt collector otherwise uses Model Form B–1 in appendix B to this part, or a variation of Model Form B–1, as described in paragraph (d)(2) of this section.

(i) *Telephone contact information*. The debt collector's telephone contact information.

(ii) *Reference code*. A number or code that the debt collector uses to identify the debt or the consumer.

(iii) *Payment disclosures*. Either or both of the following phrases:

(A) The statement, "Contact us about your payment options.", using that phrase or a substantially similar phrase; and

(B) Below the consumer-response information required by paragraphs (c)(4)(i) and (ii) of this section, the statement, "I enclosed this amount:", using that phrase or a substantially similar phrase, payment instructions after that statement, and a prompt.

(iv) *Disclosures under applicable law*—(A) *Disclosures on the reverse of the validation notice*. On the reverse of the validation notice, any disclosures that are specifically required by, or that provide safe harbors under, applicable law and, if any such disclosures are included, a statement on the front of the validation notice referring to those disclosures. Any such disclosures must not appear directly on the reverse of the consumer-response information required by paragraph (c)(4) of this section.

(B) *Disclosures on the front of the validation notice*. If a debt collector is collecting time-barred debt, on the front of the validation notice below the disclosure required by paragraph (c)(2)(ix) of this section, any time-barred debt disclosure that is specifically required by, or that provides a safe harbor under, applicable law, provided that applicable law specifies the content of the disclosure.

(v) *Information about electronic communications.* The following information:

(A) The debt collector's website and email address.

(B) If the validation information is not provided electronically, a statement explaining how a consumer can, as described in paragraphs (c)(4)(i) and (ii) of this section, dispute the debt or request original-creditor information electronically.

(vi) *Spanish-language translation disclosures*. Either or both of the following disclosures regarding a consumer's ability to request a Spanish-language translation of a validation notice:

(A) The statement, "Póngase en contacto con nosotros para solicitar una copia de este formulario en español" (which means "Contact us to request a copy of this form in Spanish"), using that phrase or a substantially similar phrase in Spanish. If providing this optional disclosure, a debt collector may include supplemental information in Spanish that specifies how a consumer may request a Spanish-language validation notice.

(B) With the consumer-response information required by paragraph (c)(4) of this section, the statement "Quiero este formulario en español" (which means "I want this form in Spanish"), using that phrase or a substantially similar phrase in Spanish, next to a prompt.

(vii) The merchant brand, affinity brand, or facility name, if any, associated with the debt.

(viii) If a debt collector is collecting debt other than debt related to a consumer financial product or service as defined in § 1006.2(f), the information specified in paragraph (c)(2)(iii) or (c)(3)(iv) of this section.

(4) *Validation notices delivered electronically*. If a debt collector delivers a validation notice electronically, a debt collector may, at its option, format the validation notice as follows:

(i) *Prompts*. Any prompt required by paragraph (c)(4)(i) or (ii) or paragraph (d)(3)(iii)(B) or (d)(3)(vi)(B) of this section may be displayed electronically as a fillable field.

(ii) *Hyperlinks*. Hyperlinks may be embedded that, when clicked:

(A) Connect a consumer to the debt collector's website;

(B) Connect a consumer to the Bureau's debt collection website as disclosed pursuant to paragraph (c)(3)(iv) of this section; or

(C) Permit a consumer to respond to the dispute and original-creditor information prompts required by paragraphs (c)(4)(i) and (ii) of this section.

(e) *Translation into other languages*—(1) *In general*. A debt collector may send a consumer a validation notice completely and accurately translated into any language if the debt collector:

(i) Sends the consumer an English-language validation notice in the same communication as the translated validation notice; or

(ii) Previously provided the consumer an English-language validation notice, in which case the debt collector need not send the consumer an English-language validation notice in the same communication as the translated validation notice.

(2) *Spanish-language validation notice—requirement to provide after optional disclosure*. A debt collector who includes in the validation information either or both of the optional disclosures described in paragraph (d)(3)(vi) of this section, and who thereafter receives

a request from the consumer for a Spanish-language validation notice, must provide the consumer a validation notice completely and accurately translated into Spanish.

7. Section 1006.38 is amended by revising paragraphs (a)(2), (b), and (c) to read as follows:

§ 1006.38 Disputes and requests for original-creditor information.

(a) * * *

(2) *Validation period* has the same meaning given to it in § 1006.34(b)(5).

(b) *Overshadowing of rights to dispute or request original-creditor information*—(1) *Prohibition*. During the validation period, a debt collector must not engage in any collection activities or communications that overshadow or are inconsistent with the disclosure of the consumer's rights to dispute the debt and to request the name and address of the original creditor.

(2) *Safe harbor*. A debt collector who uses Model Form B–1 in appendix B to this part in a manner described in § 1006.34(d)(2) has not thereby violated paragraph (b)(1) of this section.

(c) *Requests for original-creditor information*. Upon receipt of a request for the name and address of the original creditor submitted by the consumer in writing within the validation period, a debt collector must cease collection of the debt until the debt collector:

(1) *In general*. Sends the name and address of the original creditor to the consumer in writing or electronically in the manner required by § 1006.42; or

(2) *Special rule if the current creditor and the original creditor are the same*. In lieu of taking the actions described in paragraph (c)(1) of this section, reasonably determines that the original creditor is the same as the current creditor, notifies the consumer of that fact in writing or electronically in the manner required by § 1006.42, and refers the consumer to the validation information previously provided pursuant to § 1006.34(a)(1).

* * * * *

8. Section 1006.42 is amended by revising paragraphs (a)(2) and (b) to read as follows:

§ 1006.42 Sending required disclosures.

(a) * * *

(2) *Exceptions*. A debt collector need not comply with paragraph (a)(1) of this section when sending the disclosure required by § 1006.6(e) or § 1006.18(e) in writing or electronically, unless the disclosure is included on a notice required by § 1006.34(a)(1)(i) or § 1006.38(c) or (d)(2).

(b) *Requirements for certain disclosures sent electronically*. To comply with paragraph (a) of this section, a debt collector who sends the notice required by § 1006.34(a)(1)(i)(B), or the disclosures described in § 1006.38(c) or (d)(2)(i), electronically must do so in accordance with section 101(c) of the Electronic Signatures in Global and National Commerce Act (E-SIGN Act) (15 U.S.C. 7001(c)).

9. Appendix B to part 1006 is added to read as follows:

Appendix B to Part 1006—Model Forms

B–1 Model Form for Validation Notice

North South Group
P.O. Box 123456
Pasadena, CA 91111-2222
(800) 123-4567 from 8am to 8pm EST, Monday to Saturday
www.example.com

To: Person A
2323 Park Street
Apartment 342
Bethesda, MD 20815

Reference: 584-345

North South Group is a debt collector. We are trying to collect a debt that you owe to Bank of Rockville. We will use any information you give us to help collect the debt.

Our information shows:

You had a Main Street Department Store credit card from Bank of Rockville with account number 123-456-789.

As of January 2, 2017, you owed:		$ 2,234.56
Between January 2, 2017 and today:		
You were charged this amount in interest:	+	$ 75.00
You were charged this amount in fees:	+	$ 25.00
You paid or were credited this amount toward the debt:	–	$ 50.00
Total amount of the debt now:		**$ 2,284.56**

How can you dispute the debt?

- **Call or write to us by August 28, 2020, to dispute all or part of the debt.** If you do not, we will assume that our information is correct.
- **If you write to us by August 28, 2020**, we must stop collection on any amount you dispute until we send you information that shows you owe the debt. You may use the form below or write to us without the form. You may also include supporting documents. We accept disputes electronically at www.example.com/dispute.

What else can you do?

- **Write to ask for the name and address of the original creditor, if different from the current creditor.** If you write by August 28, 2020, we must stop collection until we send you that information. You may use the form below or write to us without the form. We accept such requests electronically at www.example.com/request.
- **Go to www.cfpb.gov/debt-collection to learn more about your rights under federal law.** For instance, you have the right to stop or limit how we contact you.
- Contact us about your payment options.
- Póngase en contacto con nosotros para solicitar una copia de este formulario en español.

Notice: See reverse side for important information.

Mail this form to:
North South Group
P.O. Box 123456
Pasadena, CA 91111-2222

Person A
2323 Park Street
Apartment 342
Bethesda, MD 20815

How do you want to respond?

Check all that apply:

- ☐ **I want to dispute the debt because I think:**
  - ☐ This is not my debt.
  - ☐ The amount is wrong.
  - ☐ Other (please describe on reverse or attach additional information).
- ☐ **I want you to send me the name and address of the original creditor.**
- ☐ **I enclosed this amount:** $ _____

Make your check payable to *North South Group*. Include the reference number 584-345.

- ☐ **Quiero este formulario en español.**

10. In supplement I to part 1006:

a. Under *Section 1006.30—Other Prohibited Practices*, the headings *30(a) Required actions prior to furnishing information*, and *30(a)(1) In general*, and paragraphs 1 and 2 are added.

b. *Section 1006.34—Notice for Validation of Debts* is added.

c. Under *Section 1006.38—Disputes and Requests for Original-Creditor Information*, the introductory text before *38(a) Definitions* is revised.

d. Under *Section 1006.100—Record Retention*, *100(a) In general*, including the heading, is revised.

e. *Section 1006.104—Relation to State Laws* is added.

The additions and revisions read as follows:

Supplement I to Part 1006—Official Interpretations

* * * * *

Subpart B—Rules for FDCPA Debt Collectors

* * * * *

Section 1006.30—Other Prohibited Practices

30(a) Required actions prior to furnishing information.

30(a)(1) In general.

1. *About the debt*. Section 1006.30(a)(1) provides, in relevant part, that a debt collector must not furnish to a consumer reporting agency, as defined in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f)), information about a debt before taking one of the actions described in § 1006.30(a)(1)(i) or (ii). Each of the actions includes conveying information "about the debt" to the consumer. The validation information required by § 1006.34(c), including such information if provided in a validation notice, is information "about the debt."

2. *Reasonable period of time.* Section 1006.30(a)(1)(ii) provides, in relevant part, that a debt collector who places a letter about a debt in the mail, or who sends an electronic message about a debt to the consumer, must wait a reasonable period of time to receive a notice of

undeliverability before furnishing information about the debt to a consumer reporting agency. The reasonable period of time begins on the date that the debt collector places the letter in the mail or sends the electronic message. A period of 14 consecutive days after the date that the debt collector places a letter in the mail or sends an electronic message is a reasonable period of time.

3. *Notices of undeliverability*. Section 1006.30(a)(1)(ii) provides, in relevant part, that, if a debt collector who places a letter about a debt in the mail, or who sends an electronic message about a debt to the consumer, receives a notice of undeliverability during the reasonable period of time, the debt collector must not furnish information about the debt to a consumer reporting agency until the debt collector otherwise satisfies paragraph (a)(1) of this section. A debt collector who does not receive a notice of undeliverability during the reasonable period and who thereafter furnishes information about the debt to a consumer reporting agency does not violate paragraph (a)(1) of this section even if the debt collector subsequently receives a notice of undeliverability. The following examples illustrate the rule:

i. Assume that, on May 1, a debt collector mails the consumer a validation notice as described in § 1006.34(a)(1)(i)(A). On May 10, the debt collector receives a notice of undeliverability and, without taking any additional action described in § 1006.30(a)(1), subsequently furnishes information regarding the debt to a consumer reporting agency. The debt collector has violated § 1006.30(a)(1).

ii. Assume that, on May 1, a debt collector mails the consumer a validation notice as described in § 1006.34(a)(1)(i)(A). On May 10, the debt collector receives a notice of undeliverability. On May 11, the debt collector mails the consumer another validation notice as described in § 1006.34(a)(1)(i)(A). From May 11 to May 24, the debt collector permits receipt of, monitors for, and does not receive, a notice of undeliverability and thereafter furnishes information regarding the debt to a consumer reporting agency. The debt collector has not violated § 1006.30(a)(1).

iii. Assume that, on May 1, a debt collector mails the consumer a validation notice as described in § 1006.34(a)(1)(i)(A). From May 1 to May 14, the debt collector permits receipt of, monitors for, and does not receive, a notice of undeliverability and thereafter furnishes information regarding the debt to a consumer reporting agency. After furnishing the information, the debt collector receives a notice of undeliverability. The debt collector has not violated § 1006.30(a)(1) and, without taking any further action, may furnish additional information about the debt to a consumer reporting agency.

* * * * *

Section 1006.34—Notice for Validation of Debts

34(a) Validation information required.

34(a)(1) In general.

1. *Deceased consumers*. Section 1006.34(a)(1) generally requires a debt collector to provide the validation information required by § 1006.34(c) either by sending the consumer a validation notice in the manner required by § 1006.42, or by providing the information orally in the debt collector's initial communication. If the debt collector knows or should know that the consumer is deceased, and if the debt collector has not previously provided the validation information to the deceased consumer, a person who is authorized to act on behalf of the deceased consumer's estate operates as the consumer for purposes of § 1006.34(a)(1). In such circumstances, to comply with § 1006.34(a)(1), a debt collector must provide the validation information to an individual that the debt collector identifies by name who is authorized to act on behalf of the deceased consumer's estate.

34(b) Definitions.

34(b)(2) Initial communication.

1. *Bankruptcy proofs of claim*. Section 1006.34(b)(2) defines initial communication and states that the term does not include a communication in the form of a formal pleading in a civil action. A proof of claim that a debt collector files in a bankruptcy proceeding in accordance with

the requirements of the United States Bankruptcy Code (Title 11 of the U.S. Code) is a communication in the form of a formal pleading in a civil action and therefore is not an initial communication for purposes of § 1006.34.

34(b)(3) Itemization date.

1. *In general*. Section 1006.34(b)(3) defines itemization date for purposes of § 1006.34. Section 1006.34(b)(3) states that the itemization date is any one of five reference dates for which a debt collector can ascertain the amount of the debt. The reference dates are the last statement date, the charge-off date, the last payment date, the transaction date, and the judgment date. A debt collector may select any of these dates as the itemization date to comply with § 1006.34. Once a debt collector uses a reference date for a debt in a communication with a consumer, the debt collector must use that reference date for that debt consistently when providing the information required by § 1006.34(c) to that consumer. For example, if a debt collector uses the last statement date to determine and disclose the account number associated with the debt pursuant to § 1006.34(c)(2)(iv), the debt collector may not use the charge-off date to determine and disclose the amount of the debt pursuant to § 1006.34(c)(2)(vii).

2. *Subsequent debt collectors.* When selecting an itemization date pursuant to § 1006.34(b)(3), a debt collector may use a different reference date than a prior debt collector who attempted to collect the debt.

Paragraph 34(b)(3)(i).

1. *Last statement date.* Under § 1006.34(b)(3)(i), the last statement date is the date of the last periodic statement or written account statement or invoice provided to the consumer by a creditor. For purposes of § 1006.34(b)(3)(i), the last statement may be provided by a creditor or a third party acting on the creditor's behalf, including a creditor's service provider. However, a statement or invoice provided by a debt collector is not a last statement for purposes of § 1006.34(b)(3)(i), unless the debt collector is also a creditor.

Paragraph 34(b)(3)(iii).

1. *Last payment date.* Under § 1006.34(b)(3)(iii), the last payment date is the date the last payment was applied to the debt. A third-party payment applied to the debt, such as a payment from an auto repossession agent or an insurance company, can be a last payment for purposes of § 1006.34(b)(3)(iii).

Paragraph 34(b)(3)(iv).

1. *Transaction date*. Section 1006.34(b)(3)(iv) provides that the itemization date may be the date of the transaction that gave rise to the debt. The transaction date is the date that the good or service that gave rise to the debt was provided or made available to the consumer. For example, the transaction date for a debt arising from a medical procedure may be the date the medical procedure was performed, and the transaction date for a consumer's gym membership may be the date the membership contract was executed. In some cases, a debt may have more than one transaction date. This could occur, for example, if a contract for a service is executed on one date and the service is performed on another date. If a debt has more than one transaction date, a debt collector may use any such date as the transaction date for purposes of § 1006.34(b)(3)(iv), but the debt collector must use whichever transaction date is selected consistently, as described in comment 34(b)(3)–1.

34(b)(5) Validation period.

1. *Assumed receipt of validation information.* Section 1006.34(b)(5) defines the validation period as the period starting on the date that a debt collector provides the validation information required by § 1006.34(c) and ending 30 days after the consumer receives or is assumed to receive it. Section 1006.34(c)(3)(i) through (iii) requires statements that specify the end date of the validation period. If a debt collector provides the validation information in writing or electronically, then, at the time that the debt collector calculates the validation period end date, the debt collector will know only the date on which the consumer is assumed to receive the validation information. In such cases, the debt collector may use that date to calculate the

validation period end date even if the debt collector later learns that the consumer received the validation information on a different date.

2. *Updated validation period.* If a debt collector sends a subsequent validation notice to a consumer because the consumer did not receive the original validation notice and the consumer has not otherwise received the validation information required by § 1006.34(c), the debt collector must calculate the end date of the validation period specified in the § 1006.34(c)(3) disclosures based on the date the consumer receives or is assumed to receive the subsequent validation notice. For example, assume a debt collector sends a consumer a validation notice on January 1, and that notice is returned as undeliverable. After obtaining accurate location information, the debt collector sends the consumer a subsequent validation notice on January 15. Pursuant to § 1006.34(b)(5), the end date of the validation period specified in the § 1006.34(c)(3) disclosures is based on the date the consumer receives or is assumed to receive the validation notice sent on January 15.

34(c) Validation information.

34(c)(1) Debt collector communication disclosure.

1. *Statement required by § 1006.18(e).* Section 1006.34(c)(1) provides that validation information includes the statement required by § 1006.18(e). Section 1006.18(e)(1) requires a debt collector to disclose in its initial communication that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose. Section 1006.18(e)(2) requires a debt collector to disclose in each subsequent communication that the communication is from a debt collector. A debt collector who provides a validation notice as described in § 1006.34(a)(1)(i)(A) complies with § 1006.34(c)(1) by providing on the validation notice the disclosure required by § 1006.18(e)(1). A debt collector who provides a validation notice as described in § 1006.34(a)(1)(i)(B) complies with § 1006.34(c)(1) by providing either the disclosure required by § 1006.18(e)(1) or the disclosure required by § 1006.18(e)(2). The following example illustrates the rule:

i. ABC debt collector has an initial communication with the consumer by telephone. Within five days of that initial communication, ABC debt collector sends the consumer a validation notice using Model Form B–1 in appendix B to this part. ABC debt collector has complied with § 1006.34(c)(1) even though Model Form B–1 includes the disclosure described in § 1006.18(e)(1) rather than the disclosure described in § 1006.18(e)(2).

34(c)(2) Information about the debt.

Paragraph 34(c)(2)(i).

1. *Debt collector's name*. Section 1006.34(c)(2)(i) provides, in part, that validation information includes the debt collector's name. A debt collector may disclose its trade or doing-business-as name, instead of its legal name.

2. *Debt collector's mailing address*. Section 1006.34(c)(2)(i) provides, in part, that validation information includes the mailing address at which the debt collector accepts disputes and requests for original-creditor information. A debt collector may disclose a vendor's mailing address, if that is an address at which the debt collector accepts disputes and requests for original-creditor information.

Paragraph 34(c)(2)(ii).

1. *Consumer's name.* Section 1006.34(c)(2)(ii) provides, in part, that validation information includes the consumer's name. To satisfy the requirement to provide this validation information, a debt collector must disclose the version of the consumer's name that the debt collector reasonably determines is the most complete and accurate version of the name about which the debt collector has knowledge. A debt collector does not disclose the most complete and accurate version of the consumer's name if the debt collector omits known name information in a manner that creates a false, misleading, or confusing impression about the consumer's identity. For example, assume the creditor provides the consumer's first name, middle name, last name, and name suffix to the debt collector. In this scenario, the debt collector would reasonably determine that the most complete and accurate version of the consumer's name about which the

debt collector has knowledge includes the first name, middle name, last name, and name suffix. If the debt collector omits any of this information, the debt collector has not satisfied the requirement to provide the consumer's name pursuant to § 1006.34(c)(2)(ii).

Paragraph 34(c)(2)(iii).

1. *Creditor's name*. Section 1006.34(c)(2)(iii) provides that, if a debt collector is collecting debt related to a consumer financial product or service as defined in § 1006.2(f), validation information includes the name of the creditor to whom the debt was owed on the itemization date. Pursuant to § 1006.34(c)(2)(iii), a debt collector may disclose this creditor's trade or doing-business-as name, instead of its legal name.

Paragraph 34(c)(2)(iv).

1. *Account number truncation*. Section 1006.34(c)(2)(iv) provides that validation information includes the account number, if any, associated with the debt on the itemization date, or a truncated version of that number. If a debt collector uses a truncated account number, the account number must remain recognizable. For example, a debt collector may truncate a credit card account number so that only the last four digits are provided.

Paragraph 34(c)(2)(v).

1. *Creditor's name*. Section 1006.34(c)(2)(v) provides that validation information includes the name of the creditor to whom the debt currently is owed. A debt collector may disclose this creditor's trade or doing-business-as name, instead of its legal name.

Paragraph 34(c)(2)(vii).

1. *Amount of the debt on the itemization date.* Section 1006.34(c)(2)(vii) provides that validation information includes the amount of the debt on the itemization date. The amount of the debt on the itemization date includes any fees, interest, or other charges owed as of that date.

Paragraph 34(c)(2)(viii).

1. *Itemization of the debt.* Section 1006.34(c)(2)(viii) provides that validation information includes an itemization of the current amount of the debt reflecting interest, fees,

payments, and credits since the itemization date. If providing a validation notice, a debt collector must include fields in the notice for all of these items even if none of the items have been assessed or applied to the debt since the itemization date. A debt collector may indicate that the value of a required field is "0," "none," or may state that no interest, fees, payments, or credits have been assessed or applied to the debt; a debt collector may not leave a required field blank.

2. *Itemization required by other applicable law.* If a debt collector is required by other applicable law to provide an itemization of the current amount of the debt with the validation information, the debt collector may comply with § 1006.34(c)(2)(viii) by disclosing the itemization required by other applicable law in lieu of the itemization described in § 1006.34(c)(2)(viii), if the itemization required by other applicable law is substantially similar to the itemization that appears on Model Form B–1 in appendix B to this part.

3. *Itemization on a separate page*. Section 1006.34(c)(2)(viii) provides that a debt collector may disclose the itemization of the current amount of the debt on a separate page provided in the same communication with a validation notice if the debt collector includes on the validation notice, where the itemization would have appeared, a statement referring to that separate page. A debt collector may comply with the requirement to refer to the separate page by, for example, including on the validation notice the statement, "See the enclosed separate page for an itemization of the debt," situated next to the information about the current amount of the debt required by § 1006.34(c)(2)(ix).

4. *Debt collectors collecting multiple debts*. A debt collector who combines multiple debts on a single validation notice complies with § 1006.34(c)(2)(viii) by disclosing either a single, cumulative itemization on the validation notice or a separate itemization of each debt on a separate page or pages provided in the same communication as the validation notice.

Paragraph 34(c)(2)(ix).

1. *Current amount of the debt*. Section 1006.34(c)(2)(ix) provides that validation information includes the current amount of the debt (*i.e.*, the amount as of when the validation

information is provided). For residential mortgage debt subject to Regulation Z, 12 CFR 1026.41, a debt collector may comply with the requirement to provide the current amount of the debt by providing the consumer the total balance of the outstanding mortgage, including principal, interest, fees, and other charges.

2. *Debt collectors collecting multiple debts*. A debt collector who combines multiple debts on a single validation notice complies with § 1006.34(c)(2)(ix) by disclosing on the validation notice a single cumulative figure that is the sum of the current amount of all the debts.

34(c)(3) Information about consumer protections.

Paragraph 34(c)(3)(v).

1. *Electronic communication media.* Section 1006.34(c)(3)(v) provides that, if the debt collector provides the validation notice electronically, validation information includes a statement explaining how a consumer can, as described in paragraphs (c)(4)(i) and (ii) of this section, dispute the debt or request original-creditor information electronically. A debt collector may provide the information required by § 1006.34(c)(3)(v) by including the statements, "We accept disputes electronically at," using that phrase or a substantially similar phrase, followed by an email address or website portal that a consumer can use to take the action described in § 1006.34(c)(4)(i), and "We accept original creditor information requests electronically," using that phrase or a substantially similar phrase, followed by an email address or website portal that a consumer can use to take the action described in § 1006.34(c)(4)(ii). If a debt collector accepts electronic communications from consumers through more than one medium, such as by email and through a website portal, the debt collector is required to provide information regarding only one of these media but may provide information on any additional media.

34(c)(4) Consumer-response information.

1. *Prompts*. If the validation information is provided in writing or electronically, a prompt required by § 1006.34(c)(4) may be formatted as a checkbox as in Model Form B–1 in appendix B to this part.

34(c)(5) Special rule for certain residential mortgage debt.

1. *In general*. Section 1006.34(c)(5) provides that, for residential mortgage debt, if a periodic statement is required under Regulation Z, 12 CFR 1026.41, at the time a debt collector provides the validation notice, a debt collector need not provide the validation information required by § 1006.34(c)(2)(vi) through (viii) if the debt collector provides the consumer, in the same communication with the validation notice, a copy of the most recent periodic statement provided to the consumer under 12 CFR 1026.41(b), and the debt collector includes on the validation notice, where the validation information required by paragraphs (c)(2)(vi) through (viii) of this section would have appeared, a statement referring to that periodic statement. A debt collector may comply with the requirement to refer to the periodic statement in the validation notice by, for example, including on the validation notice the statement, "See the enclosed periodic statement for an itemization of the debt."

34(d) Form of validation information.

34(d)(2) Safe harbor.

1. *In general*. A debt collector who provides a validation notice that is neither a notice described in § 1006.34(d)(2)(i) or (ii), nor a substantially similar notice as described in § 1006.34(d)(2)(iii), does not receive a safe harbor for compliance with the information and form requirements of § 1006.34(c) and (d)(1).

34(d)(2)(i) In general.

1. *Disclosure required by § 1006.18(e)*. Section 1006.18(e)(1) requires a debt collector to disclose in its initial communication that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose. Section 1006.18(e)(2) requires a debt collector to disclose in each subsequent communication that the communication is from a debt collector. Model Form B–1 in appendix B to this part includes the disclosure required by § 1006.18(e)(1). A debt collector who uses Model Form B–1 to provide a validation notice as described in § 1006.34(a)(1)(i)(B) may replace the disclosure required by § 1006.18(e)(1) with

the disclosure required by § 1006.18(e)(2) without losing the safe harbor described in § 1006.34(d)(2). See comment 34(c)(1)–1 for further guidance related to providing the disclosure required by § 1006.18(e) on a validation notice.

34(d)(2)(iii) Substantially similar form.

1. *Substantially similar form*. Pursuant to § 1006.34(d)(2)(iii), a debt collector who uses Model Form B–1 as described in § 1006.34(d)(2)(i) may make changes to the form and retain the safe harbor for compliance with the information and form requirements of § 1006.34(c) and (d)(1) provided that the form remains substantially similar in substance, clarity, and meaningful sequence to Model Form B–1. Permissible changes include, for example:

i. Modifications to remove language that could suggest liability for the debt if such language is not applicable. For example, if a debt collector sends a validation notice to a person who is authorized to act on behalf of the deceased consumer's estate (see comment 34(a)(1)–1), and that person is not liable for the debt, the debt collector may use the name of the deceased consumer instead of "you";

ii. Relocating the consumer-response information required by § 1006.34(c)(4) to facilitate mailing;

iii. Adding barcodes or QR codes, as long as the inclusion of such items does not violate § 1006.38(b);

iv. Adding the date the form is generated; and

v. Embedding hyperlinks, if delivering the form electronically.

34(d)(3) Optional disclosures.

34(d)(3)(i) Telephone contact information.

1. *In general*. Section 1006.34(d)(3)(i) permits a debt collector to include telephone contact information. Telephone contact information may include, for example, a telephone number as well as the times that the debt collector accepts consumer telephone calls.

34(d)(3)(iv) Disclosures under applicable law.

34(d)(3)(iv)(A) Disclosures on the reverse of the validation notice.

1. *In general.* Section 1006.34(d)(3)(iv)(A) permits, in relevant part, a debt collector to include on the reverse of the validation notice any disclosures that are specifically required by, or that provide safe harbors under, applicable law. If a debt collector provides a validation notice in the body of an email, the debt collector may, in lieu of including the disclosures permitted by § 1006.34(d)(3)(iv)(A) on the reverse of the validation notice, include them in the same communication below the content of the validation notice. Disclosures permitted by § 1006.34(d)(3)(iv)(A) include, for example, specific disclosures required by Federal, State, or municipal statutes or regulations, and specific disclosures required by judicial or administrative decisions or orders, including administrative consent orders. Such disclosures could include, for example, time-barred debt disclosures and disclosures that the current amount of the debt may increase or vary due to interest, fees, or other charges, provided that such disclosures are specifically required by applicable law.

2. *Statement referring to disclosures*. If a debt collector includes disclosures pursuant to § 1006.34(d)(3)(iv)(A), the debt collector must include a statement on the front of the validation notice referring to those disclosures. A debt collector may comply with the requirement to refer to the disclosures by including on the front of the validation notice the statement, "Notice: See reverse side for important information," or a substantially similar statement. If, as permitted by comment 34(d)(3)(iv)(A)–1, a debt collector places the disclosures below the content of the validation notice, the debt collector may comply with the requirement to refer to the disclosures by stating, "Notice: See below for important information," or a substantially similar statement.

34(d)(3)(iv)(B) Disclosures on the front of the validation notice.

1. *In general*. Section 1006.34(d)(3)(iv)(B) provides, in relevant part that, if a debt collector is collecting time-barred debt, the debt collector may include on the front of the validation notice any time-barred debt disclosure that is specifically required by, or that provides

a safe harbor under, applicable law, provided that applicable law specifies the content of the disclosure. For example, if applicable State law requires a debt collector who is collecting time-barred debt to disclose to the consumer that the law limits how long a consumer can be sued on a debt and that the debt collector cannot or will not sue the consumer to collect it, the debt collector may include that disclosure on the front of the validation notice. See § 1006.26(a)(2) for the definition of time-barred debt. For purposes of § 1006.34(d)(3)(iv)(B), time-barred debt disclosures may include disclosures about revival of debt collectors' right to bring a legal action to enforce the debt.

34(d)(3)(vi) Spanish-language translation disclosures.

Paragraph 34(d)(3)(vi)(A).

1. *Supplemental information in Spanish*. Section 1006.34(d)(3)(vi)(A) permits a debt collector to include supplemental information in Spanish that specifies how a consumer may request a Spanish-language validation notice. For example, a debt collector may include a statement in Spanish that a consumer can request a Spanish-language validation notice by telephone or email, if the debt collector accepts consumer requests through those communication media.

Paragraph 34(d)(3)(vii).

1. *Merchant brand*. Section 1006.34(d)(3)(vii) permits a debt collector to include the merchant brand, if any, associated with debt. For example, assume that a debt collector is attempting to collect a consumer's credit card debt. The credit card was issued by ABC Bank and was co-branded XYZ Store. "XYZ Store" is the merchant brand.

2. *Affinity brand*. Section 1006.34(d)(3)(vii) permits a debt collector to include the affinity brand, if any, associated with the debt. For example, assume that a debt collector is attempting to collect a consumer's credit card debt. The credit card was issued by ABC Bank, and the logo for the College of Columbia appears on the credit card. "College of Columbia" is the affinity brand.

3. *Facility name*. Section 1006.34(d)(3)(vii) permits a debt collector to include the facility name, if any, associated with the debt. For example, assume that a debt collector is attempting to collect a consumer's medical debt. The medical debt relates to a treatment that the consumer received at ABC Hospital. "ABC Hospital" is the facility name.

34(e) Translation into other languages.

1. *Safe harbor for complete and accurate translation*. Section 1006.34(e) provides, among other things, that, if a debt collector sends a consumer a validation notice translated into a language other than English, the translation must be complete and accurate. The language of a validation notice that a debt collector obtains from the Bureau's website is considered a complete and accurate translation. Debt collectors are permitted to use other validation notice translations if they are complete and accurate.

Section 1006.38—Disputes and Requests for Original-Creditor Information

1. *In writing*. Section 1006.38 contains requirements related to a dispute or request for the name and address of the original creditor timely submitted in writing by the consumer. A consumer has disputed the debt or requested the name and address of the original creditor in writing for purposes of § 1006.38(c) or (d)(2) if the consumer, for example:

i. Mails the written dispute or request to the debt collector;

ii. Returns to the debt collector the consumer-response form that § 1006.34(c)(4) requires to appear on the validation notice and indicates on the form the dispute or request;

iii. Provides the dispute or request to the debt collector using a medium of electronic communication through which the debt collector accepts electronic communications from consumers, such as an email address or a website portal; or

iv. Delivers the written dispute or request in person or by courier to the debt collector.

* * * * *

3. *Deceased consumers*. If the debt collector knows or should know that the consumer is deceased, and if the consumer has not previously disputed the debt or requested the name and

address of the original creditor, a person who is authorized to act on behalf of the deceased consumer's estate operates as the consumer for purposes of § 1006.38. In such circumstances, to comply with § 1006.38(c) or (d)(2), respectively, a debt collector must respond to a request for the name and address of the original creditor or to a dispute timely submitted in writing by a person who is authorized to act on behalf of the deceased consumer's estate.

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Subpart D—Miscellaneous

Section 1006.100—Record Retention

* * * * *

100(a) In general.

1. *Records that evidence compliance*. Section 1006.100(a) provides, in part, that a debt collector must retain records that are evidence of compliance or noncompliance with the FDCPA and this part. Thus, under § 1006.100(a), a debt collector must retain records that evidence that the debt collector performed the actions and made the disclosures required by the FDCPA and this part, as well as records that evidence that the debt collector refrained from conduct prohibited by the FDCPA and this part. 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 the record is one that is evidence of compliance or noncompliance, and the debt collector must retain it. Such records include, but are not limited to, records that evidence that the debt collector's communications and attempts to communicate in connection with the collection of a debt complied (or did not comply) with the FDCPA and this part. For example, a debt collector must retain:

i. Telephone call logs as evidence of compliance or noncompliance with the prohibition against harassing telephone calls in § 1006.14(b)(1); and

ii. Copies of documents provided to consumers as evidence that the debt collector provided the information required by §§ 1006.34 and 1006.38 and met the delivery requirements of § 1006.42.

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Section 1006.104—Relation to State Laws

1. *State law disclosure requirements*. The Act and the corresponding provisions of Regulation F do not annul, alter, or affect, or exempt any person subject to these requirements from complying with a disclosure requirement under applicable State law that describes additional protections under State law that are not inconsistent with the Act and Regulation F. A disclosure required by State law is not inconsistent with the FDCPA or Regulation F if the disclosure describes a protection that such law affords any consumer that is greater than the protection provided by the FDCPA or Regulation F.

Dated: December 18, 2020.

Grace Feola,

Federal Register Liaison, Bureau of Consumer Financial Protection.

[FR Doc. 2020-28422 Filed: 1/15/2021 8:45 am; Publication Date: 1/19/2021]