



BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1006

[Docket No. CFPB-2021-0008]

RIN 3170-AA41

Debt Collection Practices in Connection with the Global COVID-19 Pandemic

(Regulation F)

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Interim final rule; request for public comment.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is issuing this interim final rule to amend Regulation F, which implements the Fair Debt Collection Practices Act (FDCPA) and currently contains the procedures for State application for exemption from the provisions of the FDCPA. The interim final rule addresses certain debt collector conduct associated with an eviction moratorium issued by the Centers for Disease Control and Prevention (CDC) in response to the global COVID-19 pandemic. The interim final rule requires that debt collectors provide written notice to certain consumers of their protections under the CDC eviction moratorium and prohibit misrepresentations about consumers' ineligibility for protection under such moratorium.

DATES: This interim final rule is effective on May 3, 2021. Comments must be received on or before [INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by Docket No. CFPB-2021-0008, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Email:* 2021-IFR-Eviction-Notice@cfpb.gov. Include Docket No. CFPB-2021-0008 in the

subject line of the message.

- *Hand Delivery/Mail/Courier:* Comment Intake, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552. Please note that due to circumstances associated with the COVID-19 pandemic, the Bureau discourages the submission of comments by hand delivery, mail, or courier.

Instructions: The Bureau encourages the early submission of comments. All submissions should include the agency name and docket number for this rulemaking. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, and in light of difficulties associated with mail and hand deliveries during the COVID-19 pandemic, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to <https://www.regulations.gov>. In addition, once the Bureau's headquarters reopens, comments will be available for public inspection and copying at 1700 G Street NW, Washington, DC 20552, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. At that time, you can make an appointment to inspect the documents by telephoning 202-435-7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Proprietary information or sensitive personal information, such as account numbers, Social Security numbers, or names of other individuals, should not be included. Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Seth Caffrey, Courtney Jean, Adam Mayle, Kristin McPartland, or Michael Silver, Senior Counsels, Office of Regulations, at 202-435-7700 or <https://reginquiries.consumerfinance.gov/>. If you require this document in an alternative electronic format, please contact CFPB_Accessibility@cfpb.gov.

SUPPLEMENTARY INFORMATION:

I. Summary of the Interim Final Rule

The Bureau issues this interim final rule to address certain debt collector conduct associated with an eviction moratorium issued by the CDC. This interim final rule applies to debt collectors, as that term is defined in the FDCPA. The FDCPA establishes broad consumer protections and prohibits debt collectors from engaging in harassment or abuse, making false or misleading representations, or engaging in unfair practices in debt collection.

On March 29, 2021, the CDC extended an existing agency order that imposes an eviction moratorium that generally limits the circumstances in which certain persons may be evicted from residential property. The Bureau is concerned that consumers are not aware of their protections under the CDC Order's eviction moratorium and that FDCPA-covered debt collectors may be engaging in eviction-related conduct that violates the FDCPA.

This interim final rule amends Regulation F, which implements the FDCPA, to require debt collectors to provide written notice to certain consumers of their protections under the CDC Order's eviction moratorium and to clarify that certain misrepresentations are prohibited. More specifically, § 1006.9 prohibits certain acts by debt collectors that undermine the purpose and effectiveness of the CDC Order's eviction moratorium to prevent the further spread of COVID-19. Section 1006.9(a) and (b) sets forth the purpose and coverage of subpart B and defines certain terms used in the subpart, and § 1006.9(c) identifies the prohibited acts. The Bureau is adopting § 1006.9 pursuant to its authority under FDCPA section 814(d) to write rules with respect to the collection of debts by debt collectors and, with respect to § 1006.9(c), pursuant to its authority to interpret FDCPA sections 807 and 808.

II. Background

A. The FDCPA

In 1977, Congress passed the FDCPA¹ 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 Among other things, the FDCPA establishes broad consumer protections and prohibits debt collectors from engaging in harassment or abuse,⁵ making false or misleading representations,⁶ and engaging in unfair practices in debt collection.⁷

The FDCPA, in general, applies to debt collectors as that term is defined under the statute.⁸ The Bureau has authority under the FDCPA to prescribe substantive rules with respect to the collection of debts by debt collectors.⁹ This interim final rule amends existing Regulation F, 12 CFR part 1006.¹⁰

¹ 15 U.S.C. 1692 *et seq.*

² 15 U.S.C. 1692e.

³ 15 U.S.C. 1692a.

⁴ *Id.*

⁵ 15 U.S.C. 1692d.

⁶ 15 U.S.C. 1692e.

⁷ 15 U.S.C. 1692f.

⁸ The FDCPA generally provides that a debt collector is “any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another.” 15 U.S.C. 1692a(6). FDCPA section 803(6) also sets forth several exclusions from the general definition. *Id.*

⁹ 15 U.S.C. 1692l(d).

¹⁰ Independent of this interim final rule, the Bureau has published two final rules that revise Regulation F, 12 CFR part 1006, which implements the FDCPA. *See* 85 FR 76734 (Nov. 30, 2020); 86 FR 5766 (Jan. 19, 2021). The

B. COVID-19 Pandemic and CDC Order

On January 31, 2020, the Department of Health and Human Services declared a public health emergency for the entire United States to aid the nation’s healthcare community in responding to the 2019 novel coronavirus (COVID-19) pandemic.¹¹ By the end of August 2020, there were over 5,500,000 COVID-19 cases identified in the United States and over 174,000 deaths related to the disease.¹²

On September 4, 2020, the CDC published an agency order (CDC Order or Order) entitled “Temporary Halt in Residential Evictions To Prevent the Further Spread of COVID-19.”¹³ Citing the historic threat to public health posed by the COVID-19 pandemic, the CDC, pursuant to section 361 of the Public Health Service Act, issued an eviction moratorium that generally limits the circumstances in which certain persons may be evicted from residential property.¹⁴ According to the CDC, eviction moratoria help protect public health in several ways. First, eviction moratoria encourage self-isolation by people who become ill or who are at risk for severe illness from COVID-19 due to an underlying medical condition.¹⁵ Second, eviction moratoria allow State and local authorities to more easily implement stay-at-home and social distancing directives to mitigate the community spread of COVID-19.¹⁶ Third, eviction moratoria limit the likelihood of individuals moving into close quarters in congregate or shared

original effective date for these final rules was November 30, 2021. *Id.* The Bureau has proposed extending the effective dates for these final rules to January 29, 2022. *See* Bureau of Consumer Fin. Prot., *CFPB Proposes Delay of Effective Date for Recent Debt Collection Rules* (Apr. 7, 2021), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-proposes-delay-of-effective-date-for-recent-debt-collection-rules/>.

¹¹ Press Release, U.S. Dep’t of Health & Human Servs., *Secretary Azar Declares Public Health Emergency for United States for 2019 Novel Coronavirus* (Jan. 31, 2020), <https://www.hhs.gov/about/news/2020/01/31/secretary-azar-declares-public-health-emergency-us-2019-novel-coronavirus.html>.

¹² 85 FR 55292, 55292 (Sept. 4, 2020).

¹³ *Id.*

¹⁴ *See id.*; *see also* 42 U.S.C. 264 and its implementing regulation 42 CFR 70.2.

¹⁵ 86 FR 16731, 16733 (Mar. 31, 2021).

¹⁶ *Id.*

living settings, such as homeless shelters, which then puts individuals at higher risk of contracting COVID-19.¹⁷

The CDC Order initially was set to expire on December 31, 2020.¹⁸ The CDC Order has been extended three times and currently is set to expire on June 30, 2021.¹⁹ In the most recent extension on March 29, 2021, the CDC emphasized the continued threat to public health posed by COVID-19. The CDC stated that, as of March 25, 2021, over 29,700,000 cases had been identified in the United States and there were over 540,000 deaths due to the disease.²⁰ Further, the CDC stated that, although transmission of COVID-19 has decreased since a peak in January 2021, the number of cases per day has remained almost twice as high as the initial peak in April 2020 and transmission rates are similar to the second peak in July 2020.²¹ The CDC stated in its most recent extension of the Order that despite higher rates of vaccine coverage, the relaxing of community mitigation efforts may continue to expose vulnerable populations to higher-than-average infection rates.²² The Order also described the global emergence of new variants of the virus that studies have shown are more easily transmitted and may increase mortality.²³

The CDC Order generally prohibits a landlord, owner of a residential property, or other person with a legal right to pursue eviction or possessory action from evicting for non-payment of rent any person protected by the CDC Order²⁴ from any residential property in any jurisdiction

¹⁷ *Id.* at 16734.

¹⁸ 85 FR 55292, 55297 (Sept. 4, 2020).

¹⁹ Section 502 of title V, Division N of the Consolidated Appropriations Act, 2021, Pub. L. 116-260, 134 Stat. 1182, 2078 (2020), extended the original Order until January 31, 2021. On January 29, 2021, following an assessment of the ongoing pandemic, the CDC Director renewed the CDC Order until March 31, 2021. 86 FR 8020 (Feb. 3, 2021). On March 29, 2021, the CDC Director extended the CDC Order until June 30, 2021. 86 FR 16731 (Mar. 31, 2021).

²⁰ *Id.* at 16732.

²¹ *See id.*

²² *See id.* at 16732-33.

²³ *See id.*

²⁴ The CDC Order defines those individuals who are covered by the CDC Order as “covered persons,” but this interim final rule generally refers to such persons as “persons protected by the CDC Order” for simplicity.

in which the CDC Order applies.²⁵ This prohibition applies, without limitation, to an agent or attorney acting on behalf of a landlord or owner of the residential property.²⁶ To be a “covered person” under the CDC Order’s eviction moratorium, a person must submit a written declaration under penalty of perjury attesting to certain eligibility criteria generally establishing that, because of the person’s financial situation, the person is unable to make full rental payments and, if evicted, likely would become homeless or would be required to move into a congregate or shared living setting.²⁷

The CDC Order defines “evict” and “eviction” as any action by a landlord or owner of a residential property—which also includes an agent or attorney acting on behalf of the landlord or the owner of the residential property—or any other person with a legal right to pursue eviction or a possessory action, to remove or cause the removal of a person protected by the CDC Order from a residential property.²⁸ The CDC Order does not cover foreclosure on a home mortgage.²⁹ The CDC Order does not apply in any State, local, territorial, or tribal area with a moratorium on residential evictions that provides the same or greater level of public-health protection than the requirements listed in the CDC Order.³⁰ Moreover, the CDC Order does not preclude evictions unrelated to the non-payment of rent.³¹ The CDC Order does not bar a landlord, residential property owner, or their representative, including an attorney, from filing an eviction action in court, but it does prohibit the physical removal of a person from the property if the person meets

²⁵ *Id.* at 16732 n.3.

²⁶ *Id.*

²⁷ *Id.* at 16734.

²⁸ *Id.* at 16732.

²⁹ *Id.*

³⁰ *Id.* at 16736.

³¹ Specifically, the CDC Order does not preclude evictions based on a tenant, lessee, or resident: (1) engaging in criminal activity while on the premises; (2) threatening the health or safety of other residents; (3) damaging or posing an immediate and significant risk of damage to property; (4) violating any applicable building code, health ordinance, or similar regulation relating to health and safety; or (5) violating any other contractual obligation, other than the timely payment of rent or similar housing-related payment (including non-payment or late payment of fees, penalties, or interest). *Id.* at 16733.

the criteria and submits the declaration.³² Since the person must file a declaration to obtain this protection, however, a person must first be aware that the CDC Order exists and may apply to them.

To respond to the public health threat posed by the COVID-19 pandemic, Federal, State, and local governments have taken a variety of actions, including restrictions on travel, stay-at-home orders, and mask requirements.³³ In addition to the CDC Order's eviction moratorium, governments have established other eviction moratoria to alleviate the economic and public health consequences of the COVID-19 pandemic. For instance, section 4024 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act)³⁴ provided a temporary moratorium on eviction filings as well as other protections for tenants in certain rental properties with Federal assistance or federally related financing. State and local governments have also implemented temporary eviction moratoria, rent freezes, and rental assistance programs.³⁵

In the wake of the COVID-19 pandemic, the Bureau has taken numerous steps to protect and assist consumers facing possible eviction and housing insecurity.³⁶ On March 29, 2021, the Bureau's Acting Director and the Federal Trade Commission's Acting Chairwoman issued a joint statement regarding their agencies' work to help stop illegal evictions and protect American

³² Centers for Disease Control & Prevention, *FREQUENTLY ASKED QUESTIONS* (Apr. 13, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/downloads/Eviction-Moratoria-Order-FAQs-02012021-508.pdf> (CDC Order FAQs).

³³ 86 FR 16731, 16733 (Mar. 31, 2021).

³⁴ CARES Act section 4024, Pub. L. 116-136, 134 Stat. 281, 492 (2020).

³⁵ See, e.g., Eviction Lab, *COVID-19 HOUSING POLICY SCORECARD*, <https://evictionlab.org/covid-policy-scorecard/> (last visited Apr. 1, 2021); U.S. Dep't of the Treasury, *Emergency Rental Assistance Program*, <https://home.treasury.gov/policy-issues/cares/emergency-rental-assistance-program> (last visited Apr. 1, 2021); Perkins Coie LLP, *COVID-19 Related Eviction and Foreclosure Orders/Guidance 50-State Tracker* (Mar. 29, 2021), <https://www.perkinscoie.com/en/news-insights/covid-19-related-eviction-and-foreclosure-ordersguidance-50-state-tracker.html>.

³⁶ See generally Bureau of Consumer Fin. Prot., *Help for homeowners and renters during the coronavirus national emergency*, <https://www.consumerfinance.gov/coronavirus/mortgage-and-housing-assistance/> (updated Mar. 25, 2021); and *Protections for renters during COVID-19*, <https://www.consumerfinance.gov/coronavirus/mortgage-and-housing-assistance/rent-protections-covid-19> (last visited Apr. 10, 2021). On April 5, 2021, the Bureau issued a notice of proposed rulemaking to amend Regulation X to establish a temporary COVID-19 emergency pre-foreclosure review period until December 31, 2021, for principal residences to help ensure that borrowers affected by the COVID-19 pandemic have an opportunity to be evaluated for loss mitigation before the initiation of foreclosure. 86 FR 18840 (Apr. 9, 2021).

consumers facing economic hardship due to COVID-19.³⁷ This interim final rule aims to complement this and other efforts the Bureau has initiated since the onset of the COVID-19 pandemic to assist consumers and to protect those most vulnerable to harms arising from violations of Federal consumer financial protection law.

C. Rental Evictions and Debt Collectors

When a consumer becomes delinquent on rental payments, landlords, residential property owners, or their agents (which may include attorneys acting on their behalf) typically seek to bring the consumer's account current. Landlords, residential property owners, or their agents may engage in oral or written communication with tenants and may arrange payment schedules or reduced payments.³⁸ The Bureau understands that a significant number of landlords and residential property owners hire debt collectors for pre-eviction collections.

If efforts to resolve the unpaid rent are not successful, a landlord, residential property owner, or their agent may seek to evict the tenant from the property. In order to remove a tenant from the property through legal process, the landlord, residential property owner, or their agent typically must first provide notice to the tenant of their intent to evict and, if the tenant does not bring the account current or leave the premises, then file an eviction action in court, often with a claim of back rent. These eviction processes are governed primarily by State or local law. While some landlords or residential property owners may represent themselves in court, the Bureau understands that a large segment of landlords or residential property owners hire an attorney to conduct eviction proceedings on their behalf.³⁹

³⁷ Press Release, Bureau of Consumer Fin. Prot., *CFPB Acting Director Uejio & FTC Acting Chairwoman Slaughter Issue Joint Statement on Preventing Illegal Evictions* (Mar. 29, 2021), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-acting-director-uejio-and-ftc-acting-chairwoman-slaughter-issue-joint-statement-on-preventing-illegal-evictions/>.

³⁸ This interim final rule generally uses the terms “tenant” and “renter” interchangeably.

³⁹ Eric. S. Peterson & Cathy McKittrick *et al.*, *Landlords evict hundreds of Utah renters each month despite a ban during the pandemic*, *The Salt Lake Tribune* (Dec. 12, 2020), <https://www.sltrib.com/news/2020/12/12/landlords-evict-hundreds/> (finding that in August 2020, nearly two-thirds of eviction filings in Utah appear to have been filed by one law firm) (Peterson & McKittrick); Bob Ivry, *Down and Out in Eviction Court*, *The American Prospect* (Mar.

FDCPA section 803(5) defines “debt” as any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment. A consumer’s unpaid residential rent would typically fall within the FDCPA’s definition of debt because it is an obligation of a consumer to pay money arising out of a transaction for personal, family, or household purposes. FDCPA section 803(6) generally defines “debt collector” as any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another.⁴⁰ Attorneys who regularly engage in debt collection activity, even when that activity consists of litigation, are debt collectors as defined in the FDCPA.⁴¹ Therefore, attorneys who engage in eviction proceedings on behalf of landlords or residential property owners to collect unpaid residential rent may be “debt collectors” as defined by the FDCPA.⁴²

D. COVID-19 Pandemic Impacts on Renters, Evictions, and Debt Collectors

The COVID-19 pandemic has had extraordinarily widespread and adverse effects on the economy. Since the start of the COVID-19 pandemic, employment has fallen dramatically in

18, 2021), <https://prospect.org/infrastructure/housing/down-and-out-in-eviction-court/> (“Philadelphia landlords were represented by legal counsel in 82 percent of eviction cases from 2015 to 2020, according to a study by Community Legal Services In Kansas City, 1.3 percent of tenants were represented from 2006 to 2016, while 84 percent of landlords had lawyers, according to the KC Eviction Project.”) (Ivry).

⁴⁰ FDCPA section 803(6)’s definition of “debt collector” also includes any creditor who, in the process of collecting its own debts, uses any name other than the creditor’s own which would indicate that a third person is collecting or attempting to collect such debts.

⁴¹ See *Heintz v. Jenkins*, 514 U.S. 291, 299 (1995) (holding that “attorneys who ‘regularly’ engage in consumer-debt-collection activity” are subject to the FDCPA, “even when that activity consists of litigation”). In reaching this conclusion, the Supreme Court discussed the history of the FDCPA, which contained an express exemption for lawyers until Congress repealed the exemption in its entirety in 1986 “without creating a narrower, litigation-related exemption to fill the void.” *Id.* at 294-95.

⁴² According to the National Creditors Bar Association, 52 percent of their members practice in the area of landlord and tenant law, <https://www.creditorsbar.org/about-ncba> (last visited Apr. 3, 2021) (NCBA).

response to public health measures and diminishing consumer demand.⁴³ Renters have been particularly impacted by these economic trends. Renters are more likely than homeowners to have become unemployed or experienced decreasing income during the COVID-19 pandemic.⁴⁴ In addition, renters tend to have less savings than homeowners and are therefore more vulnerable to economic shocks.⁴⁵ By the end of 2020, 8.8 million rental households were behind in their rental obligations.⁴⁶ The average delinquent rental household owed more than \$5,000.⁴⁷ Even as the economy and the labor market have begun to improve in 2021, substantial rental debt remains.⁴⁸

The COVID-19 pandemic, furthermore, has disproportionately impacted the housing security of minority and low-income households. Black and Hispanic households have been significantly more likely than other types of households to accrue rental debt.⁴⁹ As of December 2020, households with incomes below \$75,000 were more than twice as likely to be behind on rental obligations than households with incomes above \$75,000.⁵⁰

⁴³ Lauren Bauer & Kristen Broady *et al.*, *Ten facts about COVID-19 and the U.S. economy*, Brookings Inst. (Sept. 17, 2020), <https://www.brookings.edu/research/ten-facts-about-covid-19-and-the-u-s-economy/>.

⁴⁴ JPMorgan Chase Inst., *Renters v. Homeowners: Income and Liquid Asset Trends during COVID-19*, (Mar. 2021), <https://www.jpmorganchase.com/institute/research/household-debt/renters-homeowners-income-and-liquid-asset-trends-during-covid-19>.

⁴⁵ *Id.*

⁴⁶ Bureau of Consumer Fin. Prot., *Housing insecurity and the COVID-19 pandemic*, at 17 (Mar. 2021), https://files.consumerfinance.gov/f/documents/cfpb_Housing_insecurity_and_the_COVID-19_pandemic.pdf (CFPB Housing Insecurity Report).

⁴⁷ *Id.* at 17.

⁴⁸ The Federal Reserve Bank of Philadelphia estimated that renters owed \$11 billion in rent in March 2021. See Federal Reserve Bank of Philadelphia, *Household Rental Debt During COVID-19: UPDATE FOR 2021*, at 8 (Mar. 2021), <https://www.philadelphiafed.org/community-development/housing-and-neighborhoods/household-rental-debt-during-covid-19-update-for-2021> (Household Rental Debt During COVID-19); see also Urban Inst., *Many People are Behind on Rent. How Much Do They Owe?* (Feb. 24, 2021), <https://www.urban.org/urban-wire/many-people-are-behind-rent-how-much-do-they-owe> (analyzing three estimates of back rent owed by U.S. households in January 2021 that ranged from \$8.4 billion to \$52.6 billion).

⁴⁹ As of December 2020, Black and Hispanic households were more than twice as likely to report being behind on their rental payments as White households. See U.S. Census Bureau, *Census Household Pulse Survey, Week 21* (December 9 – December 21) (Jan. 6, 2021), <https://www.census.gov/data/tables/2020/demo/hhp/hhp21.html> (Census Household Pulse Survey). As of March 2021, 7.8 percent of Hispanic/Latino households and 5.8 percent of Black households had rental debt, compared to 4.4 percent of White households. See *Household Rental Debt During COVID-19*, *supra* note 48, at 8.

⁵⁰ Census Household Pulse Survey, *supra* note 49.

Individuals and families who are at risk of losing their housing because of delinquent rent face dire personal and financial consequences. As the Bureau explained in the CFPB Housing Insecurity Report, families that do not have access to safe, affordable, and stable housing (also referred to as housing insecurity) face the prospects of homelessness as well as a host of other negative outcomes, such as higher rates of depression, higher rates of suspension and expulsion from school, and increased risks of chronic health conditions. In the midst of a global pandemic, housing insecurity can make it difficult for renters to comply with public health measures such as quarantining or restricting the number of close contacts.⁵¹ Federal, State, and local eviction moratoria have slowed the pace of evictions, but thousands of renters are still evicted weekly.⁵² According to the CFPB Housing Insecurity Report, as of December 2020, 9 percent of renters reported that it was likely they would be evicted in the next two months.⁵³ Approximately 16 percent of Black renters and 11 percent of Hispanic renters who were surveyed expressed this belief.⁵⁴ Data on eviction rates also suggests that minority renters are particularly vulnerable to eviction.⁵⁵

In addition to formal evictions, informal evictions can occur outside the judicial eviction process. Evidence suggests that informal evictions may be common.⁵⁶ Tenants may

⁵¹ CFPB Housing Insecurity Report, *supra* note 46, at 3.

⁵² *Id.* at 14.

⁵³ *Id.* at 15. This finding is consistent with other research on consumers' views about housing precarity. According to a study by the Mortgage Bankers Association, 2.3 million tenants said they feel at risk of eviction or would be forced to move in the next 30 days. Mortg. Bankers Ass'n, *MBA RIHA Study Reveals Progress, but 5 Million Renters and Homeowners Missed December Payments* (Feb. 8, 2021), <https://www.mba.org/2021-press-releases/february/mba-riha-study-reveals-progress-but-5-million-renters-and-homeowners-missed-december-payments>.

⁵⁴ CFPB Housing Insecurity Report, *supra* note 46, at 15.

⁵⁵ Reinvestment Fund, *Evictions in Philadelphia: Race (and Place) Matters*, at 2 (Feb. 2021), https://www.reinvestment.com/wp-content/uploads/2021/02/ReinvestmentFund_PHL-Evictions-Race-and-Place-Matters.pdf (between 2018 and 2019, Black and Hispanic Philadelphians experienced an annual eviction filing rate of 8.8 percent and 5.2 percent, respectively, compared to 3.1 percent of White Philadelphians); Jane Place Neighborhood Sustainability Initiative, *Unequal Burden, Unequal Risk: Households Headed by Black Women Experience Highest Rates of Eviction*, at 6, <http://www.jpnsi.org/evictions> (last visited Apr. 1, 2021) (from September 2019 to March 2020, 82.2 percent of tenants facing evictions in New Orleans were Black).

⁵⁶ See Matthew Desmond & Tracey Shollenberger, *Forced Displacement From Rental Housing: Prevalence and Neighborhood Consequences*, *Demography*, vol. 52, no. 5, at 1751-72 (Aug. 2015), www.jstor.org/stable/43697545

preemptively move out of rental housing to avoid an eviction filing, which may have negative consequences for the tenant whether or not the filing ultimately leads to physical removal.⁵⁷

Tenants may take this preemptive step, for example, to prevent the mere possibility of having an eviction judgment on their records because subsequent landlords may refuse to rent to tenants with an eviction history. This practice is sometimes referred to as “self-eviction.”⁵⁸ Such losses of rental housing may be comparable to evictions from the perspective of consumers, even if they are not evident in eviction filing statistics. Moreover, preliminary findings from one university research study indicate that informal evictions have increased during the COVID-19 pandemic, including situations where renters received texts, emails, or verbal communication from landlords telling them to leave; arrived home to find their doors locked or possessions removed; or moved even though they recognized their legal right to challenge the landlord’s action, out of fear that the landlord would make their living situation difficult if they refused to leave.⁵⁹

(survey in Milwaukee between 2011 and 2013 found that informal evictions were twice as frequent as formal evictions) (Desmond & Shollenberger); Sophie Collyer & Lily Bushman-Copp, *Forced Moves and Eviction in New York City*, Robin Hood (May 2019), https://www.robinhood.org/uploads/2019/08/HOUSING-REPORT_8.5.pdf (study found that half of evictions in New York City resulted from forced moves, which include informal evictions).

⁵⁷ Desmond & Shollenberger, *supra* note 56, at 1751-72; Hous. Action Ill. & Lawyers’ Comm. for Better Hous., *Prejudged: The Stigma of Eviction Records* (Mar. 2018), <https://lcbh.org/sites/default/files/resources/Prejudged-Eviction-Report-2018.pdf>; Reinvestment Fund, *Resolving Landlord-Tenant Disputes: An Analysis of Judgments by Agreement in Philadelphia’s Eviction Process* (May 2020), https://www.reinvestment.com/wp-content/uploads/2020/05/ReinvestmentFund_Report-2020_PHL-Evictions-Judgments-by-Agreement-Landlord-Court.pdf.

⁵⁸ As an Eviction Lab report notes, “[m]any tenants may move out before the eviction case concludes, even if they would qualify for protection under the eviction moratorium. Data from before the pandemic show that many tenants leave without the case going to court, perhaps aware that the vast majority of cases end with decisions in the landlord’s favor. At the same time, just the presence of a filing on a tenant’s record can prevent that tenant from accessing safe and healthy rental housing in the future.” <https://evictionlab.org/moratorium-extended-evictions-continue/> (last visited Apr. 7, 2021). Furthermore, according to a legal services organization, “[t]he consequences of eviction records go far beyond temporary displacement and loss of shelter. Eviction records mean loss of housing subsidy vouchers, ineligibility for other public housing programs, and being screened out of private housing, leading to dangerous cycles of poverty and instability.” Cmty. Legal Servs. of Phila., *Breaking the Record: Dismantling the Barriers Eviction Records Place on Housing Opportunities*, at 1 (Nov. 2020), <http://www.phillytenant.org/breaking-the-record-dismantling-the-barriers-eviction-records-place-on-housing-opportunities/>. See also Eric S. Peterson & Ria Agarwal *et al.*, *Renters can be haunted by past evictions or debt claims even if they never made it to court*, *The Salt Lake Tribune* (Feb. 22, 2021), <https://www.sltrib.com/news/2021/02/22/renters-can-be-haunted-by/>.

⁵⁹ Univ. of Washington Graduate Sch., *Informal evictions are on the rise during the pandemic, with people of color most at risk for housing insecurity* (Mar. 11, 2021), <https://www.grad.washington.edu/student-alumni-profiles/informal-evictions-are-on-the-rise-during-the-pandemic-with-people-of-color-most-at-risk-for-housing->

That consumers may be unaware of their eligibility for temporary protection under the CDC Order and potentially other moratoria may explain the continuing rates of formal and informal evictions during the COVID-19 pandemic. Stakeholders, including consumer advocates and legal aid organizations, have expressed concerns to the Bureau that many consumers at risk of eviction either do not know about the CDC Order or, if they are aware of it, they may be under the mistaken impression that the Order’s protections automatically apply or they otherwise may be uncertain about what steps they must take to avail themselves of the CDC Order’s eviction protections.⁶⁰

A Government Accountability Office (GAO) report analyzing the effectiveness of COVID-19 eviction moratoria found that some renters may not fully understand that they have to take action to become protected under the CDC Order’s eviction moratorium, and others may not understand all of the required steps, including how to submit the required declaration.⁶¹ The GAO report included a comparison of jurisdictions subject to both the CDC Order and State or local moratoria with jurisdictions where only the CDC Order applied and found that the jurisdictions without separate State or local moratoria experienced larger increases in eviction filings. The GAO noted that, although comprehensive information does not exist on renter awareness of the CDC Order’s protections, the increasing rate of eviction filings and the

insecurity/ (“‘If a landlord wants to evict a tenant and they’re really intent on doing it, they are probably going to accomplish it without serving a formal eviction notice,’ said Matt Fowle, one of the researchers of the study ‘Tenants perceive that they have less power now compared to landlords than they did before the pandemic.’”).

⁶⁰ Letter to President Biden, Director Walensky, Secretary Fudge, and Secretary Vilsack from thousands of National and Multistate Organizations (Mar. 15, 2021), https://nlihc.org/sites/default/files/Eviction-Moratorium-Letter_March.15.2021.pdf (asserting that corporate and other landlords continue to evict tenants before tenants know about the moratorium protections or by finding reasons for eviction other than nonpayment of rent and urging, among other policy suggestions, that the Federal government at minimum require landlords to provide notice to renters of their rights under the CDC moratorium); Natalie Campisi, *Government Extends Eviction Moratorium For 3 Months. Here’s What Renters Should Do*, Forbes (Mar. 29, 2021), <https://www.forbes.com/advisor/personal-finance/what-renters-should-do-when-eviction-moratorium-ends/> (“‘One of the problems with the CDC moratorium is that tenants need to know it exists and they need to apply for it—many renters don’t realize this is an option,’ says Marcus Roth, development director at the Coalition on Homelessness and Housing in Ohio. Unlike the eviction moratorium in the CARES Act, the CDC order is not automatic, which might have contributed to the lack of awareness for many tenants.”).

⁶¹ See Gov’t Accountability Office, *Covid-19 Housing Protections: Moratoriums Have Helped Limit Evictions, but Further Outreach Is Needed*, at 1 (Mar. 15, 2021), <https://www.gao.gov/products/gao-21-370> (GAO Report).

apparent need for State and local measures targeted at increasing awareness of the CDC Order’s protections suggest that some renters and property owners may be unaware of the CDC Order or its requirements.⁶² The GAO noted that “clear, accurate, and timely information” is “essential to keep the public informed during the COVID-19 pandemic.”⁶³ The GAO concluded that, as the COVID-19 pandemic persists, potentially millions of renters and property owners will continue to experience financial challenges, and that while the CDC Order provides some measure of relief to struggling renters, some renters facing eviction may be unaware of and unable to exercise the moratorium, and therefore unnecessarily evicted.⁶⁴

The Bureau also is aware of reports that even when renters are aware of the CDC Order and attempt to exercise their rights under the Order to halt evictions, they may be falsely informed that they are ineligible for temporary protection from eviction under the CDC Order or otherwise may be discouraged from submitting a declaration that could trigger a “covered person” designation under the CDC Order.⁶⁵ Numerous public reports and Bureau outreach with consumer advocates, legal aid organizations, and other stakeholders also suggest that parties to the eviction process may be engaged in other conduct in violation of Federal, State, or local eviction moratoria.⁶⁶

⁶² *Id.* at 17.

⁶³ *Id.* at 1.

⁶⁴ *Id.* at 30.

⁶⁵ According to a study by the National Housing Law Project, 91 percent of tenants surveyed reported illegal evictions in their area during the pandemic, which included allegedly false statements that properties were not covered by eviction moratoria. See Nat’l Hous. Law Project, *Stopping COVID-19 Eviction Survey Results* (July 2020), <https://www.nhlp.org/wp-content/uploads/Evictions-Survey-Results-2020.pdf>. See also Peterson & McKittrick, *supra* note 39.

⁶⁶ See, e.g., Press Release, Washington State Office of the Attorney General, *AG FERGUSON FILES LAWSUIT AGAINST NATIONAL SORORITY FOR CHARGING AND THREATENING UW STUDENTS IN VIOLATION OF EVICTION MORATORIUM* (Jan. 25, 2021), <https://www.atg.wa.gov/news/news-releases/ag-ferguson-files-lawsuit-against-national-sorORITY-charging-and-threatening-uw>; Annie Nova, *The CDC banned evictions. Tens of thousands have still occurred*, CNBC (Jan. 14, 2021), <https://www.cnbc.com/2020/12/05/why-home-evictions-are-still-happening-despite-cdc-ban.html>; Ashley Balcerzak, *NJ renters still being locked out by landlords despite COVID eviction freeze* (Mar. 11, 2021), <https://www.northjersey.com/story/news/2021/03/11/nj-rental-assistance-covid-eviction-freeze-ignored-some-landlords/6892203002/>; Sophie Nieto-Munoz, *N.J. announces new measures to protect tenants from illegal lockouts during eviction moratorium* (Apr. 5, 2021), <https://www.nj.com/coronavirus/2021/04/nj-announces-new-measures-to-protect-tenants-from-illegal-lockouts->

Consumer advocacy groups, legal aid organizations, housing organizations, faith groups, and other stakeholders have expressed concerns to the Bureau that debt collectors under the FDCPA are not abiding by the CDC Order.⁶⁷ This feedback includes, among other things, allegations that debt collectors have engaged in eviction-related conduct that in their view violates the FDCPA.⁶⁸ The Bureau has engaged in informal outreach with such groups and with industry participants.⁶⁹

The Bureau has concluded that consumer harms associated with evictions during the COVID-19 pandemic necessitate immediate action, specifically pertaining to the activity of debt collectors who are involved in the evictions process during the pendency of the CDC Order. For these reasons and the reasons discussed below, the Bureau is amending Regulation F in this interim final rulemaking to require certain debt collectors to provide written notice to certain consumers of their protections under the CDC Order’s eviction moratorium and prohibit certain misrepresentations.

The Bureau believes that this rulemaking is appropriate during the COVID-19 pandemic, which presents extraordinary circumstances.⁷⁰ The Bureau will evaluate comments received on

during-eviction-moratorium.html (noting that a spokesman for the New Jersey Attorney General said that the office “has received 17 written complaints regarding landlords illegally evicting tenants since April 2020 . . . but stressed there are likely many, many more” and that “the Volunteer Justice Lawyers say there have been hundreds across the state, with illegal evictions ramping up since the fall”). The Bureau has not independently verified the allegations described in public news reports and stakeholder outreach.

⁶⁷ For example, a variety of consumer advocate, legal aid organization, civil rights organization, faith group, and other stakeholders urged the Bureau and FTC to explore use of FDCPA and Federal Trade Commission Act authorities, among other authorities, to take “immediate” action to “prevent or limit imminent rental evictions,” noting that, “[w]hile the CDC eviction moratorium has been helpful, it still leaves many families unprotected, it has been inconsistently implemented, and some landlords have used questionable and sometimes abusive tactics to evade it.” Letter from Nat’l Consumer Law Ctr. *et al.*, to Acting Bureau Director David Uejio & Fed. Trade Comm’n Acting Chair Rebecca K. Slaughter (Mar. 3, 2021), https://www.nclc.org/images/pdf/special_projects/covid-19/CFPB_FTC_Moratorium_Ltr.pdf.

⁶⁸ Consumer advocates and legal aid organizations have reported, among other conduct, instances (which the Bureau has not independently verified) of landlords’ attorneys refusing to accept a signed tenant declaration when presented with one or advising landlords to have their property managers tell tenants who present a signed declaration that they are not eligible under the CDC Order as means of avoiding compliance with the CDC Order.

⁶⁹ Apart from this rulemaking, the Bureau will continue to monitor debt collector conduct with respect to the eviction process for any potential consumer harm or compliance concerns and consider taking additional action at a later time if needed.

⁷⁰ See also part IV.

the interim final rule to determine whether it is appropriate to revise the amendments. The Bureau also will continue to monitor the market to assess consumers' experiences under the interim final rule.

As part of this rulemaking, the Bureau consulted with, or offered to consult with, the appropriate prudential regulators and other Federal agencies.

III. Legal Authority

The Bureau is issuing this interim final rule pursuant to its authority under FDCPA section 814(d), which provides that the Bureau “may prescribe rules with respect to the collection of debts by debt collectors,” as defined in the FDCPA.⁷¹ In particular, as discussed in part V, the provisions of this interim final rule are based on an interpretation of FDCPA sections 807 and 808. A debt collection rule published by the Bureau in November 2020 (the November 2020 Final Rule) provides an overview of how the Bureau interprets FDCPA sections 807 and 808.⁷²

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.”⁷³ Then, “[w]ithout limiting the general application of the foregoing,” section 807 lists 16 examples of conduct that violate that section.⁷⁴ Similarly, FDCPA section 808 prohibits a debt collector from “us[ing] unfair or unconscionable means to collect or attempt to collect any debt.”⁷⁵ Then, “[w]ithout limiting the general application of the foregoing,” FDCPA section 808 lists eight examples of conduct that violate that section.⁷⁶ Consistent with the approach in the November 2020 Final Rule,⁷⁷ the Bureau interprets FDCPA sections 807 and 808 in light of:

⁷¹ 15 U.S.C. 1692l(d).

⁷² See 85 FR 76734, 76739-41 (Nov. 30, 2020).

⁷³ 15 U.S.C. 1692e.

⁷⁴ 15 U.S.C. 1692e(1)-(16).

⁷⁵ 15 U.S.C. 1692f.

⁷⁶ 15 U.S.C. 1692f(1)-(8).

⁷⁷ See 85 FR 76734, 76738-41 (Nov. 30, 2020).

(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.

By their plain terms, FDCPA sections 807 and 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,⁷⁸ as are opinions by courts that have addressed this issue.⁷⁹ Accordingly, the Bureau may interpret the general provisions of FDCPA sections 807 and 808 to prohibit conduct that the specific examples in FDCPA sections 807 and 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 807 and 808 in light of the significant body of existing court decisions interpreting those sections, which provide instructive examples of collection practices that are not addressed by the specific prohibitions in those sections but that nonetheless run afoul of the FDCPA’s general prohibitions in sections 807 and 808.⁸⁰ Consistent with the majority of courts, the Bureau interprets FDCPA sections 807 and 808 to incorporate an objective, “unsophisticated” or “least sophisticated” consumer standard.⁸¹ Finally, courts have found that a debt collector collecting back rent is subject to the FDCPA, including the statute’s prohibitions on deception and unfairness.⁸²

⁷⁸ See, e.g., S. Rep. No. 382, 95th Cong., 1st Sess. 4 (1977), reprinted in 1977 U.S.C.C.A.N. 1695, 1698 (“[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).

⁷⁹ 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.”).

⁸⁰ 85 FR 76734, 76740 (Nov. 30, 2020).

⁸¹ *Id.*; 84 FR 23274, 23282-83 (May 21, 2019).

⁸² See, e.g., *Romea v. Heiberger & Assocs.*, 163 F.3d 111, 115-16 (2d Cir. 1998) (“[U]nder the FDCPA, back rent is debt.”); *Lipscomb v. The Raddatz Law Firm, P.L.L.C.*, 109 F. Supp. 3d 251, 258-59 (D.D.C. 2015) (concluding that “the FDCPA applies where eviction proceedings include an attempt to recover back rent”).

IV. Administrative Procedure Act

Under the Administrative Procedure Act (APA),⁸³ notice and opportunity for public comment are not required if the Bureau for good cause finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest.⁸⁴ Similarly, publication of this interim final rule at least 30 days before its effective date is not required where the Bureau has identified good cause for a different effective date.⁸⁵

The Bureau finds that prior notice and public comment are impracticable and contrary to the public interest in consideration of the public health emergency caused by the COVID-19 pandemic and its effects on consumers. In particular, renters may be vulnerable to the negative economic impacts of the pandemic, which include an elevated risk of eviction, and the immediate health and safety consequences that are likely to ensue.⁸⁶ Citing the continuing health and safety risks posed by the COVID-19 pandemic, the CDC Order, as extended on March 29, 2021, maintains the eviction moratorium until June 30, 2021. As the CDC Order extension noted, although COVID-19 transmission has decreased since a peak in January 2021, the current number of cases per day remains almost twice as high as the initial peak in April 2020 and transmission rates are similar to the second peak in July 2020.⁸⁷ Since the CDC Order's eviction moratorium went into effect in September 2020, some debt collectors have engaged in evicting consumers from residential properties.

As discussed more fully in parts II and V, the Bureau has become aware in the months following the initial institution of the CDC Order's eviction moratorium that consumers who interact with these debt collectors may not be aware of their protections under the CDC Order

⁸³ 5 U.S.C. 551 *et seq.*, 701 *et seq.*

⁸⁴ 5 U.S.C. 553(b)(B).

⁸⁵ 5 U.S.C. 553(d)(3).

⁸⁶ *See also* 86 FR 16731, 16737 (Mar. 31, 2021) (in describing how it would be impracticable to provide notice and comment, the CDC wrote in the extension of the CDC Order that, "The rapidly changing nature of the pandemic requires not only that CDC act swiftly, but also deftly to ensure that its actions are commensurate with the threat.").

⁸⁷ *See id.* at 16732.

and the steps they must take to avail themselves of such protections.⁸⁸ As explained below, the failure of debt collectors to disclose these protections can violate the FDCPA with immediate consequences to health and safety. At the same time, debt collectors who otherwise might disclose these protections may lack clear direction about how to do so to comply with the FDCPA. The Bureau also understands that some debt collectors may be engaging in misrepresentations regarding consumers' ineligibility for the CDC Order's protections. These challenges have emerged only after the CDC Order initially took effect, and the eviction moratorium effectuated by the CDC Order has recently been extended for a limited period. To provide necessary protection for consumers, particularly in light of the health and safety consequences of eviction, as well as clarity for debt collectors, it is critical that the interim final rule take effect as soon as practicable.

For similar reasons, the Bureau also finds that delaying this rulemaking to allow for prior public comment would be contrary to the public interest, because the interim final rule is necessary to avoid the harm to consumers and to address the lack of clarity for debt collectors that would result if the interim final rule did not take effect a short time after issuance. By identifying a practice that violates the FDCPA and identifying the means by which a debt collector may comply with the FDCPA while engaging in certain actions related to residential evictions, the interim final rule will benefit consumers while minimizing the burden on debt collectors.

For these reasons, the Bureau also finds that there is good cause for this interim final rule to be effective less than 30 days after publication, to ensure that this interim final rule is effective on May 3, 2021 and for the duration of the CDC Order's effective period and any extension thereof.

⁸⁸ See, e.g., GAO Report, *supra* note 61, at 1.

V. Section-by-Section Analysis

Subpart B—Rules for Debt Collectors Subject to the Fair Debt Collection Practices Act

Section 1006.9 Debt Collection Practices in Connection with the Global COVID-19 Pandemic

Section 1006.9 prohibits certain debt collection practices by debt collectors related to the global COVID-19 pandemic. More specifically, § 1006.9 prohibits certain acts by debt collectors that, by interfering with consumers' ability to protect themselves from eviction pursuant to the CDC Order, undermine the purpose of the CDC Order's eviction moratorium to prevent the further spread of COVID-19. Section 1006.9(a) and (b) sets forth the purpose and coverage of subpart B and defines certain terms used in the subpart, and § 1006.9(c) identifies the prohibited acts. The Bureau is adopting § 1006.9 pursuant to its authority under FDCPA section 814(d) to write rules with respect to the collection of debts by debt collectors and, with respect to § 1006.9(c), pursuant to its authority to interpret FDCPA sections 807 and 808.

9(a) Purpose and Coverage

Section 1006.9(a) identifies the purpose of subpart B of part 1006 and is consistent with FDCPA section 802, which sets forth the purpose of the FDCPA.⁸⁹ Pursuant to section 802, the purpose of the FDCPA is to eliminate abusive debt collection practices by debt collectors, to ensure that 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. Section 1006.9(a) thus provides that the purpose of subpart B is to eliminate certain abusive debt collection practices by debt collectors related to the global COVID-19 pandemic, to ensure that debt collectors who refrain from using such abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against such debt collection abuses.

⁸⁹ 15 U.S.C. 1692(e).

Section 1006.9(a) also identifies the coverage of subpart B. Section 1006.9(a) provides that subpart B applies to debt collectors, as defined in FDCPA section 803(6),⁹⁰ other than a person excluded from coverage by section 1029(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).⁹¹ Section 1006.9(a) reflects the Bureau’s FDCPA rulemaking authority as set forth in FDCPA section 814(d).⁹²

9(b) Definitions

9(b)(1)

Section 1006.9(b)(1) provides that the terms “consumer,” “debt,” and “debt collector” have the meaning given to them in FDCPA section 803.⁹³ FDCPA section 803(3) defines “consumer” as any natural person obligated or allegedly obligated to pay any debt.⁹⁴ FDCPA section 803(5) defines “debt” as any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.⁹⁵ A consumer’s unpaid residential rent would typically fall within the FDCPA’s definition of debt because it is an obligation of a consumer to pay money arising out of a transaction for personal, family, or household purposes.⁹⁶ FDCPA section 803(6) generally defines “debt collector” as any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or

⁹⁰ 15 U.S.C. 1692a(6).

⁹¹ Pub. L. 113-203, 124 Stat. 1376, 2004 (2010) (12 U.S.C. 5519(a)).

⁹² FDCPA section 814(d) provides, in part, that the Bureau may not prescribe rules under the FDCPA with respect to motor vehicle dealers as described in section 1029(a) of the Dodd-Frank Act. 15 U.S.C. 1692l(d). Any motor vehicle dealers who are FDCPA-covered debt collectors still need to comply with the FDCPA.

⁹³ 15 U.S.C. 1692a.

⁹⁴ 15 U.S.C. 1692a(3).

⁹⁵ 15 U.S.C. 1692a(5).

⁹⁶ See, e.g., *Romea*, 163 F.3d at 115-16 (“[U]nder the FDCPA, back rent is debt.”); *Lipscomb*, 109 F. Supp. 3d at 258-59 (concluding that “the FDCPA applies where eviction proceedings include an attempt to recover back rent”).

due or asserted to be owed or due another. FDCPA section 803(6)'s definition of "debt collector" also includes any creditor who, in the process of collecting its own debts, uses any name other than the creditor's own which would indicate that a third person is collecting or attempting to collect such debts.

9(b)(2)

Section 1006.9(b)(2) provides that the term "CDC Order" means the order issued by the CDC titled *Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19*, as extended by the CDC.⁹⁷ As explained in part II, the CDC Order generally prohibits a landlord, owner of a residential property, or other person with a legal right to pursue eviction or possessory action from evicting for non-payment of rent any covered person from any residential property in any jurisdiction in which the Order applies during the effective period of the Order.⁹⁸ The CDC Order will remain in effect until June 30, 2021, unless extended, modified, or rescinded.

9(b)(3)

Section 1006.9(b)(3) provides that the term "eviction notice" means the earliest of any written notice that the laws of any State, locality, territory, or tribal area require to be provided to a consumer before an eviction action against the consumer may be filed. Not all jurisdictions require such a notice, and some jurisdictions may require more than one. The definition clarifies that, for purposes of this interim final rule, the term eviction notice refers to the earliest of any such notice that must be provided. Jurisdictions that do require such a notice may refer to the notice using different names.⁹⁹ The definition of eviction notice is meant to encompass all such

⁹⁷ 86 FR 16731 (Mar. 31, 2021). In the event the CDC further extends the CDC Order, the Bureau expects that the requirements and prohibitions in this interim final rule will continue to apply until the expiration of any such extension.

⁹⁸ This prohibition applies, without limitation, to an agent or attorney acting on behalf of a landlord or owner of the residential property. *Id.* at 16732 n.3.

⁹⁹ *See, e.g.*, Ala. Code 35-9A-421 ("Noncompliance with rental agreement; failure to pay rent."); Ariz. Rev. Stat. Ann. 33-1368 ("Noncompliance with rental agreement by tenant; failure to pay rent; utility discontinuation; liability

required notices, regardless of the names by which those notices are known. Thus, comment 9(b)(3)–1 clarifies that the term eviction notice includes, for example, notices to quit, notices to pay rent or quit, and notices to terminate tenancy. As explained in the section-by-section analysis of § 1006.9(c)(1), a debt collector who provides a consumer with an eviction notice while the CDC Order is in effect may be required at that time to disclose to the consumer certain information about the CDC Order.

9(c) Prohibitions

Section 1006.9(c) prohibits certain deceptive and unfair acts by debt collectors. As discussed further below, § 1006.9(c)(1) generally prohibits debt collectors from filing an eviction action against a consumer to whom the CDC Order reasonably might apply without disclosing that the consumer may be eligible for temporary protection from eviction under the CDC Order. Section 1006.9(c)(2) prohibits debt collectors from falsely representing or implying to a consumer that the consumer is not eligible for temporary protection from eviction under the CDC Order.

The prohibitions in § 1006.9(c) apply only if certain initial conditions are satisfied. First, because this interim final rule is designed to address deceptive and unfair debt collection practices with respect to the CDC Order, the prohibitions apply only during the effective period of the CDC Order, and only in jurisdictions in which the CDC Order is effective. As already noted, the CDC Order is set to expire on June 30, 2021, unless extended, modified, or rescinded. The CDC Order does not apply in any State, local, territorial, or tribal area with a moratorium on

for guests; definition.”); D.C. Code Ann. 42-3505.01(a) (providing that “[a]ll notices to vacate shall contain a statement detailing the reasons for the eviction”); Fla. Stat. Ann. 83.56(3) (“Termination of rental agreement.”); 735 Ill. Comp. Stat. 5/9-209 (“Demand for rent—eviction action.”); Kan. Stat. Ann. 58-2564(b) (“Material noncompliance by tenant; notice; termination of rental agreement; limitations; nonpayment of rent; remedies.”); N.C. Gen. Stat. 42-3 (“Term forfeited for nonpayment of rent.”); Tex. Prop. Code Ann. 24.005 (“Notice to Vacate Prior to Filing Eviction Suit.”); Vt. Stat. Ann. tit. 9, 4467 (“Termination of tenancy; notice.”); Wis. Stat. Ann. 704.17 (“Notice terminating tenancies for failure to pay rent or other breach by tenant.”).

residential evictions that provides the same or greater level of public-health protection than the requirements listed in the CDC Order.¹⁰⁰

Second, the prohibitions in § 1006.9(c) apply only to a debt collector's conduct in connection with the collection of a debt. That is because the Bureau is adopting § 1006.9(c) pursuant to its authority to interpret FDCPA sections 807 and 808, which prohibit certain conduct by debt collectors in connection with the collection of a debt.¹⁰¹

9(c)(1)

According to the CDC, an eviction moratorium—like quarantine, isolation, and social distancing—can be an effective public-health measure to prevent the spread of COVID-19.¹⁰² Evicted renters must move, which can increase the risk of COVID-19 spread, particularly given that, according to the CDC, a large number of evicted renters may move into close quarters in shared housing or become homeless.¹⁰³ In addition, according to the CDC, the risk of eviction for non-payment of rent is related to factors such as suffering a job loss, having limited financial resources, low income, or high out-of-pocket medical expenses.¹⁰⁴ As noted in part II, to qualify for the CDC Order's eviction moratorium, a person must submit a written declaration under penalty of perjury attesting to certain eligibility criteria generally establishing that, because of the person's financial situation, the person is unable to make full rental payments and, if evicted, likely would become homeless or would be required to move into a congregate or shared living setting.¹⁰⁵

¹⁰⁰ 86 FR 16731, 16736 (Mar. 31, 2021). *See also* CDC Order FAQs, *supra* note 32. State, local, territorial, and tribal moratoria are discussed further in the section-by-section analysis of § 1006.9(c)(1).

¹⁰¹ As discussed elsewhere in this interim final rule, 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 808 generally prohibits debt collectors from using unfair or unconscionable means to collect or attempt to collect any debt.

¹⁰² 86 FR 16731, 16733 (Mar. 31, 2021).

¹⁰³ *Id.* at 16734-35.

¹⁰⁴ *Id.* at 16731 n.2.

¹⁰⁵ *Id.* at 16731-32.

Based on informal outreach to consumer advocates and other stakeholders discussed in part II, and the GAO report discussed in part II,¹⁰⁶ the Bureau understands that many consumers are unaware that they may be temporarily protected from eviction for nonpayment of rent under the CDC Order, or, if they are aware of the Order, they may believe its protections apply automatically or may not otherwise understand the steps needed to avail themselves of such protections. Consumers who are unaware of the CDC Order cannot evaluate whether they qualify for protection under the eligibility criteria set forth in the Order. Consumers who assume the protections apply automatically or do not understand the steps needed to exercise their protections may fail to take such necessary steps, including submitting a declaration. As a result, some consumers who otherwise might be permitted to remain in their homes during the pendency of the CDC Order may be evicted because they fail to claim such protection or may choose to leave before being evicted (*i.e.*, either before any eviction action is filed, or after an eviction action is filed but before any physical eviction takes place). And, as discussed in the CDC Order, evictions can undermine public health by contributing to the spread of COVID-19. Requiring debt collectors to disclose the existence of the CDC Order to certain consumers in certain circumstances will help to address these harms by increasing the likelihood that consumers will become aware of the Order, and that consumers eligible for protection under the Order will take the steps necessary to obtain and invoke that protection.

For these reasons, § 1006.9(c)(1) provides that, during the effective period of the CDC Order, a debt collector collecting a debt in any jurisdiction in which the Order applies must not, in connection with the collection of that debt, file an eviction action for non-payment of rent against a consumer to whom the CDC Order reasonably might apply without disclosing to that consumer clearly and conspicuously in writing, on the date that the debt collector provides the consumer with an eviction notice or, if no eviction notice is required by applicable law, on the

¹⁰⁶ See GAO Report, *supra* note 61, at 1 (describing how “clear, accurate, and timely information” is “essential to keep the public informed” during the COVID-19 pandemic).

date that the eviction action is filed, that the consumer may be eligible for temporary protection from eviction under the CDC Order.

Section 1006.9(c)(1) specifies that a debt collector must provide the disclosure only if the debt collector files an eviction action for non-payment of rent by the consumer. A debt collector who files an eviction action unrelated to the payment of rent would typically not be acting “in connection with the collection of a debt,” which is required for the FDCPA to apply. The disclosure requirement is consistent in this respect with the CDC Order, which specifies that the Order does not preclude evictions based on certain conduct by a tenant, lessee, or resident unrelated to the non-payment of rent. Specifically, the CDC Order does not preclude evictions based on a tenant, lessee, or resident: (1) engaging in criminal activity while on the premises; (2) threatening the health or safety of other residents; (3) damaging or posing an immediate and significant risk of damage to property; (4) violating any applicable building code, health ordinance, or similar regulation relating to health and safety; (5) or violating any other contractual obligation, other than the timely payment of rent or similar housing-related payment (including non-payment or late payment of fees, penalties, or interest).¹⁰⁷

Comment 9(c)(1)–1 clarifies that a debt collector does not file an action to evict a consumer for non-payment of rent if the debt collector files the action based solely on the consumer engaging in one or more of the actions specified in the CDC Order as unrelated to the payment of rent. If a debt collector files an eviction action for non-payment of rent and other reasons unrelated to non-payment, the disclosure requirement applies. For ease of reference, this interim final rule refers to an eviction action that meets all of the conditions of § 1006.9(c)(1) (*i.e.*, filed by a debt collector during the effective period of the CDC Order, in a jurisdiction in which the Order applies, and for nonpayment of rent against a consumer to whom the Order reasonably might apply) as an “eviction action.”

¹⁰⁷ 86 FR 16731, 16736 (Mar. 31, 2021).

Section 1006.9(c)(1) requires debt collectors to provide the disclosure only to consumers to whom the CDC Order reasonably might apply. Comment 9(c)(1)–2 clarifies that a consumer to whom the CDC Order reasonably might apply is a consumer who reasonably might be eligible to be a covered person as defined in the CDC Order.¹⁰⁸ Comment 9(c)(1)–2 also clarifies that a consumer is not reasonably eligible to be a covered person if the debt collector has knowledge that the consumer is not eligible for protection under the CDC Order. If a particular consumer would not actually qualify for temporary eviction protection under the CDC Order, then there is likely no deception or unfairness to cure, no consumer benefit from receiving a disclosure about the Order, and no reason to cause debt collectors to incur the expense of providing such a disclosure.

The Bureau recognizes that, given the multiple factual assertions to which a consumer must attest in the declaration before the protections of the CDC Order attach, in many circumstances it will be difficult for a debt collector to identify the consumers to whom the CDC Order reasonably might apply. Accordingly, § 1006.9(c)(1) does not require a debt collector to make an individualized determination as to a consumer’s eligibility for protection under the CDC Order in connection with providing the disclosure. Comment 9(c)(1)–2 clarifies that nothing in § 1006.9(c)(1) prohibits a debt collector from providing the disclosure to a consumer even if the consumer might not reasonably be eligible to be a covered person. In addition, comment 9(c)(1)–2 clarifies that a debt collector may comply with the § 1006.9(c)(1) disclosure requirement by, for example, providing the disclosure to each consumer against whom the debt collector files an eviction action for non-payment of rent.¹⁰⁹ Comment 9(c)(1)–2 also clarifies

¹⁰⁸ See *supra* note 24.

¹⁰⁹ For example, under the interim final rule, if a debt collector concludes that the CDC Order would not reasonably apply to a particular consumer, the debt collector need not provide the disclosure to that consumer. However, the debt collector also would not violate the interim final rule if the debt collector provided the disclosure to that consumer out of an abundance of caution. More generally, a debt collector would not violate the interim final rule if the debt collector provided the disclosure to a consumer against whom the debt collector files a covered eviction action without making an individualized determination whether the CDC Order is reasonably likely to apply to that consumer.

that a debt collector does not violate FDCPA sections 807 or 808 merely because the debt collector provides the disclosure to consumers as described in comment 9(c)(1)–2 even if the consumer is not reasonably eligible to be a covered person.

Given that eligibility under the CDC Order depends on the consumer’s personal circumstances and actions, the Bureau expects that, in most situations involving non-payment of rent, a debt collector will not know whether a consumer reasonably might be eligible for protection under the Order. The Bureau therefore expects that most debt collectors will provide the disclosure to most or all consumers to whom they provide an eviction notice for non-payment of rent or against whom they file an eviction action for non-payment of rent. The Bureau notes that § 1006.9(c)(1) requires debt collectors to disclose to consumers that the consumers “may” be eligible for temporary protection from eviction under the CDC Order. The Bureau believes that, in this context, the disclosure does not convey, impliedly or expressly, that the debt collector has determined that the consumer is eligible for protection under the CDC Order. Accordingly, nothing in the disclosure constitutes legal advice, and a debt collector does not violate the FDCPA by providing the disclosure to a consumer to whom the protection is not reasonably likely to apply or to whom the protection does not ultimately apply.

Section 1006.9(c)(1) requires a debt collector to provide the disclosure on the date that the debt collector provides the consumer with an eviction notice or, if no eviction notice is required by applicable law, on the date that the eviction action is filed.¹¹⁰ Formal notices and court filings are likely to command a consumer’s attention and crystallize the threat of eviction. Thus, requiring debt collectors to provide the disclosure on the same date as they provide these documents helps ensure that consumers receive information about the CDC Order when that information may be especially salient to them and they may be most likely to act on that information. Information about the CDC Order may be especially salient and important to a

¹¹⁰ If, as of the date this interim final rule takes effect, a debt collector has provided the consumer an eviction notice but not yet filed an eviction action, the debt collector would comply by providing the disclosure on the date that the eviction action is filed.

consumer when the consumer receives an eviction notice. Consumers who believe they qualify for protection under the CDC Order and receive the disclosure at that time may be less likely to leave the property of their own accord in the mistaken belief that the debt collector can physically evict them.¹¹¹ For consumers who do not receive an eviction notice, information about the CDC Order may be especially salient and important when an eviction action is filed. As noted above, the CDC Order does not prohibit the filing of eviction actions; the Order prohibits only the actual, physical removal of persons covered by the Order from their homes.¹¹² Thus, a consumer who receives the disclosure at the time an eviction action is filed will still be able to take action to obtain the CDC Order's protection before the harm the Order addresses (*i.e.*, physical removal) takes place.¹¹³

Section 1006.9(c)(1) requires a debt collector to disclose to the consumer on the same date that—but not necessarily at the same time as—the debt collector provides the consumer with an eviction notice or files an eviction action. Accordingly, comment 9(c)(1)–3 clarifies that a debt collector may satisfy this requirement by, for example, delivering the disclosure to the address that is the subject of eviction proceedings; the debt collector is not required to ensure that the consumer actually receives the disclosure. Delivering the disclosure to the address that is the subject of the eviction proceedings, particularly if provided with the notice of eviction or eviction filing, makes it highly likely that the consumer will receive the disclosure. In light of this, requiring debt collectors to ensure that consumers actually receive the disclosure would be unduly burdensome for debt collectors. The Bureau also notes that the FDCPA's disclosure requirements generally do not require debt collectors to ensure actual receipt.¹¹⁴

¹¹¹ See part II.D for discussion of informal evictions.

¹¹² See CDC Order FAQs, *supra* note 32.

¹¹³ If the landlord or the property manager rather than the debt collector provides the eviction notice, § 1006.9(c)(1) requires the debt collector to provide the disclosure on the date that the debt collector files the eviction action—even if the landlord or the property manager separately disclosed the existence of the CDC Order.

¹¹⁴ See 15 U.S.C. 1692g.

Additionally, the Bureau recognizes that, to minimize costs, a debt collector may wish to provide the disclosure at the same time that the debt collector provides the consumer with an eviction notice or serves the consumer with an eviction action. The Bureau does not believe that this would reduce the effectiveness of the disclosure for consumers. Therefore, comment 9(c)(1)–3 clarifies that a debt collector may provide the disclosure at the same time that the debt collector provides the consumer with any eviction notice or serves the consumer with any eviction action. For example, a debt collector may, but is not required to, include the disclosure in an envelope either on or with the eviction notice or in the same mailing in which the debt collector serves the consumer with an eviction action.¹¹⁵

Comment 9(c)(1)–4 clarifies that § 1006.9(c)(1) does not require a debt collector to provide the disclosure more than once. Nevertheless, the Bureau also believes that a consumer who has been provided the disclosure once would not be harmed by receiving the disclosure again. Accordingly, comment 9(c)(1)–4 also clarifies that nothing in § 1006.9(c)(1) prohibits a debt collector from providing the disclosure more than once, such as in each subsequent communication with the consumer. Comment 9(c)(1)–4 further clarifies that, in addition, a debt collector does not violate FDCPA sections 807 or 808 merely because the debt collector provides the disclosure more than once.

As noted, § 1006.9(c)(1) requires the debt collector to disclose that the consumer may be eligible for temporary protection from eviction under the CDC Order. Comment 9(c)(1)–5 provides sample language that a debt collector may use to comply with this disclosure requirement. The sample language alerts consumers to the possibility of protection from eviction, prompts them to take follow-up steps, and directs them to further resources available on the Bureau’s website and by telephone through the Department of Housing and Urban Development’s Housing Counseling Program. Specifically, comment 9(c)(1)–5.i provides

¹¹⁵ In the case of eviction actions, service of process often happens shortly after filing, so providing the disclosure at the time of service still ensures that consumers receive the disclosure when information about the CDC Order is likely to be relevant to them.

sample language that a debt collector may use to comply with this disclosure requirement if the debt collector is disclosing that the consumer may be eligible for temporary protection from eviction *solely* under the CDC Order. The sample language in comment 9(c)(1)–5.i states: “Because of the global COVID-19 pandemic, you may be eligible for temporary protection from eviction under Federal law. Learn the steps you should take now: visit www.cfpb.gov/eviction or call a housing counselor at 800-569-4287.”¹¹⁶ Comment 9(c)(1)–5.i also clarifies that a debt collector does not violate FDCPA sections 807 or 808 merely because the debt collector provides the sample language in comment 9(c)(1)–5.i to a consumer in a jurisdiction in which the CDC Order does not apply.

The Bureau recognizes that the CDC Order does not apply in any State, local, territorial, or tribal area with a moratorium on residential evictions that provides the same or greater level of public-health protection than the CDC Order.¹¹⁷ Section 1006.9(c)(1) does not require debt collectors collecting debts in such jurisdictions to disclose such protections, but debt collectors may nevertheless wish to do so.¹¹⁸ The Bureau also recognizes that a debt collector may be uncertain about whether the CDC Order or a State, local, territorial, or tribal moratorium applies in a particular jurisdiction because it may be unclear whether the CDC Order is more protective than any such moratorium. As a result, a debt collector may wish to disclose that the consumer may be eligible for temporary protection from eviction under the CDC Order or under State,

¹¹⁶ Section 1006.9(c)(1) requires a debt collector to disclose that the consumer may be eligible for temporary protection from eviction under the CDC Order. The Bureau believes that consumers may be more familiar with the term “Federal law” than the term “CDC Order,” particularly given the Bureau’s concern that consumers may be unaware of the CDC Order’s existence. To aid consumer comprehension, the sample language in comment 9(c)(1)–5 therefore uses the term “Federal law.”

¹¹⁷ 86 FR 16731, 16736 (Mar. 31, 2021).

¹¹⁸ In light of the large number of potential State, local, territorial, and tribal moratoria, the Bureau has not made a finding in this interim final rule that it is unfair or deceptive under the FDCPA for a debt collector in a jurisdiction in which such a moratorium applies to file an eviction action against a consumer without disclosing that moratorium to the consumer. Nevertheless, a debt collector’s failure to disclose such information to a consumer may violate the FDCPA’s prohibitions on deception or unfairness (or both) for the same reasons discussed in this interim final rule with respect to the failure to disclose the CDC Order, particularly if State, local, territorial, or tribal law offers greater protection than the CDC Order. Providing the disclosure in comment 9(c)(1)–5.ii likely cures any deception or unfairness under FDCPA sections 807 or 808 that would arise from the failure to disclose a more protective State, local, territorial, or tribal law. Nothing in § 1006.9(c)(1) affects a debt collector’s obligation to provide any moratorium-related disclosure required by State, local, territorial, or tribal law.

local, territorial, or tribal law. Comment 9(c)(1)–5.ii provides alternative sample language that a debt collector may use to make such a disclosure while satisfying § 1006.9(c)(1). The sample language in comment 9(c)(1)–5.ii states: “Because of the global COVID-19 pandemic, you may be eligible for temporary protection from eviction under the laws of your State, territory, locality, or tribal area, or under Federal law. Learn the steps you should take now: visit www.cfpb.gov/eviction or call a housing counselor at 800-569-4287.” Comment 9(c)(1)–5.ii also clarifies that a debt collector does not violate FDCPA sections 807 or 808 merely because the debt collector provides the sample language in comment 9(c)(1)–5.ii to a consumer in a jurisdiction in which only the CDC Order applies or in which the CDC Order does not apply.

Section 1006.9(c)(1) requires the debt collector to make the disclosure clearly and conspicuously in writing. Requiring debt collectors to provide the disclosure to consumers clearly and conspicuously and in writing rather than electronically (such as by email) increases the likelihood in the context of eviction during the global COVID-19 pandemic that consumers will actually receive and understand the disclosure, since the Bureau expects that most debt collectors will provide the disclosure to the address that is the subject of eviction proceedings. Requiring debt collectors to provide the disclosure to consumers clearly and conspicuously and in writing rather than orally (such as during a telephone call) increases the likelihood that consumers will retain the disclosure, refer back to it if necessary, and act upon it if appropriate. Comment 9(c)(1)–6 clarifies that clear and conspicuous means readily understandable. In addition, the comment clarifies that the location and type size also must be readily noticeable and legible to consumers, although no minimum type size is mandated.

The Bureau is finalizing § 1006.9(c)(1) as an interpretation of FDCPA sections 807 and 808, pursuant to its authority under FDCPA section 814(d) to prescribe rules with respect to the collection of debts by debt collectors. 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. In addition, FDCPA section 807(2)(A) specifically prohibits falsely

representing the character, amount, or legal status of any debt; FDCPA section 807(4) specifically prohibits representing or implying that non-payment of a debt will result in, among other things, the seizure or sale of any property unless such action is lawful and the debt collector or creditor intends to take such action; and FDCPA section 807(5) specifically prohibits threatening to take any action that cannot legally be taken or that is not intended to be taken.

Because of the continuing health and safety risks posed by the COVID-19 pandemic, the CDC Order provides temporary protection to certain consumers against whom a covered eviction action is filed. A debt collector who nevertheless files a covered eviction action against a consumer may explicitly or implicitly represent to the consumer that the consumer is not eligible, and could not become eligible, for protection under the CDC Order.¹¹⁹ This representation is false or misleading when made to consumers who are eligible, or could become eligible, for protection under the CDC Order (such as if they submitted a declaration). Further, such a misrepresentation is similar to a false representation of the character and legal status of a debt, which FDCPA section 807(2)(A) specifically prohibits. It is also similar to a false representation that non-payment will result in the seizure or sale of property. And it is similar to a threat to take an action that cannot legally be taken, which FDCPA section 807(5) specifically prohibits. The disclosure required by § 1006.9(c)(1) corrects this false representation by informing consumers that temporary protection from eviction may be available under the CDC Order.

FDCPA section 808 generally prohibits a debt collector from using unfair or unconscionable means to collect or attempt to collect any debt. In addition, FDCPA section 808(6)(C) specifically prohibits a debt collector from taking or threatening to take any nonjudicial action to effect dispossession or disablement of property if the property is exempt by law from such dispossession or disablement. As explained above, the Bureau believes that many consumers are unaware that they may be temporarily protected under the CDC Order from

¹¹⁹ Similarly, as the Bureau and many courts have recognized, the filing of a legal action to collect a time-barred debt explicitly or implicitly misrepresents to the consumer that the debt is legally enforceable. *See* 86 FR 5766, 5778 (Jan. 19, 2021).

eviction for non-payment of rent. As also explained above, the Bureau believes that lack of awareness about the CDC Order, including that the protections are not automatic and the requirement that the consumer provide a declaration, causes some consumers who would be eligible for such temporary protection to forgo it. For such consumers—and for public health more broadly—this harm is significant. Furthermore, evicting a consumer who would have been protected under the CDC Order, had the consumer known about the CDC Order, is similar to taking an action to effect dispossession of property that is exempt from such dispossession. For these reasons, the Bureau concludes that a debt collector violates FDCPA section 808’s prohibition on unfairness by filing a covered eviction action against a consumer without disclosing to the consumer clearly and conspicuously in writing, on the date that the debt collector provides the consumer with an eviction notice or, if no eviction notice is required by applicable law, on the date that the eviction action is filed that the consumer may be eligible for temporary protection from eviction under the CDC Order.

9(c)(2)

The Bureau understands, based on informal outreach to consumer advocates and other stakeholders, that some debt collectors may have falsely represented or implied to consumers that those consumers are ineligible for protection under the CDC Order.¹²⁰ False statements about a consumer’s ineligibility for protection under the CDC Order may cause an eligible consumer to forgo that protection, possibly leading to the consumer’s departure or eviction from residential property in which the consumer otherwise would have been entitled to remain for the duration of the CDC Order’s eviction moratorium. Such departures or evictions can contribute to the spread of COVID-19 by forcing consumers to move, often into close quarters in shared or congregate housing settings.¹²¹

¹²⁰ For example, as described in part II, consumer advocates and legal aid organizations have reported, among other conduct, instances (which the Bureau has not independently verified) of landlord attorneys refusing to accept a signed tenant declaration when presented with one or advising landlords to have their property managers tell tenants who present a signed declaration that they are not eligible under the CDC Order.

¹²¹ 86 FR 16731, 16734-35 (Mar. 31, 2021).

For these reasons, § 1006.9(c)(2) provides that, during the effective period of the CDC Order, a debt collector collecting a debt in any jurisdiction in which the Order applies must not, in connection with the collection of that debt, falsely represent or imply to a consumer that the consumer is ineligible for temporary protection from eviction under the CDC Order. The Bureau is finalizing § 1006.9(c)(2) as an interpretation of FDCPA section 807, pursuant to its authority under FDCPA section 814(d) to prescribe rules with respect to the collection of debts by debt collectors. As noted above, 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. A debt collector who, in connection with the collection of a debt, falsely represents or implies to a consumer that the consumer is ineligible for protection under the CDC Order uses false, deceptive, or misleading means to collect the debt. Such activity therefore violates FDCPA section 807.

Supplement I to Part 1006—Official Interpretations

The interim final rule adds Supplement I to Regulation F to publish official interpretations of the regulation (*i.e.*, commentary). Comment I–1 explains that the commentary is the Bureau’s vehicle for supplementing Regulation F and that the provisions of the commentary are issued under the same authorities as the corresponding provisions of Regulation F and in accordance with the notice-and-comment procedures of the APA.

VI. Effective Date

This interim final rule is effective on May 3, 2021. Although this interim final rule is being issued without notice and opportunity for comment for the good cause reasons described in part IV above (*i.e.*, the vulnerability of renters to the negative economic impacts of the pandemic, the risk of eviction, and the health and safety consequences that may ensue), the interim final rule will impose a new disclosure requirement on debt collectors. Consequently, debt collectors may need some time to become aware of the new disclosure requirement and implement it into their processes and systems to the extent they are engaged in the evictions

process. The Bureau does not believe that a lengthy compliance period is necessary, however, in view of the disclosure's short length and simplicity, and because the disclosure does not need to be customized to the specific consumer.¹²² The Bureau also plans on engaging in robust regulatory implementation and consumer education efforts to increase stakeholder awareness of the interim final rule. The compliance period thus balances these considerations.

VII. Dodd-Frank Act Section 1022(b) Analysis

A. Overview

In developing this interim 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.¹²³ Specifically, section 1022(b)(2)(A) of the Dodd-Frank Act requires the Bureau to consider the potential benefits and costs of a regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services, the impact on depository institutions and credit unions with \$10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act, and the impact on consumers in rural areas. The Bureau consulted with appropriate prudential regulators and other Federal agencies regarding the consistency of this interim final rule with prudential, market, or systemic objectives administered by such agencies, as required by section 1022(b)(2)(B) of the Dodd-Frank Act.

This interim final rule amends Regulation F, which implements the FDCPA. The interim final rule addresses certain debt collector conduct associated with an eviction moratorium issued by the CDC in response to the COVID-19 pandemic. The amendments would require that debt collectors provide written notice to certain consumers of their protections under the CDC Order and prohibit misrepresentations about consumers' ineligibility for protection under such moratorium.

¹²² In addition, the Bureau notes that debt collectors may, but are not required to, comply with the interim final rule's disclosure requirement before the effective date.

¹²³ 12 U.S.C. 5512(b)(2)(A).

This interim final rule's purpose is to prevent debt collectors from making false or misleading representations or engaging in unfair practices associated with the eviction moratorium issued by the CDC. As stated above, the CDC Order generally prohibits consumers protected by the CDC Order from physical removal from residential property for non-payment of rent. To be covered by the CDC Order, a person must submit a written declaration under penalty of perjury attesting to certain eligibility criteria generally establishing that, because of the person's financial situation, the person is unable to make full rental payments and, if evicted, would likely become homeless or would be required to move into a congregate or shared living setting.

Despite the eviction moratorium, physical removals of consumers from residential property have continued, potentially including consumers who may have been eligible for protection under the CDC Order. As discussed above, the GAO found that some renters may not fully understand that they have to take action to become protected under the CDC Order's eviction moratorium, and others may not understand all of the required steps, including how to submit the required declaration.¹²⁴ The GAO concluded that, as the COVID-19 pandemic persists, potentially millions of renters and property owners will continue to experience financial challenges, and that while the CDC Order provides some measure of relief to struggling renters, some renters facing eviction may be unaware of and unable to exercise the moratorium, and therefore unnecessarily evicted.¹²⁵ This interim final rule prohibits debt collectors, in certain circumstances, from filing an eviction action for non-payment of rent against a consumer to whom the CDC Order reasonably might apply without disclosing to that consumer in writing that the consumer may be eligible for temporary protection from eviction under the CDC Order. The interim final rule also clarifies that debt collectors, in certain circumstances, must not falsely represent or imply to a consumer that the consumer is ineligible for temporary protection from

¹²⁴ See GAO Report, *supra* note 61, at 1.

¹²⁵ *Id.* at 30.

eviction under the CDC Order. Therefore, this interim final rule may increase awareness of the CDC Order for consumers who do not know about the CDC Order or who do not understand the specific steps needed to avail themselves of the CDC Order's temporary protections. This, in turn, may encourage consumers to invoke the CDC Order's protections and subsequently reduce the number of physical removals that the CDC Order is intended to prevent.

1. Data and evidence

The discussion below relies on publicly available sources, including reports published by the Bureau. These sources form the basis for the Bureau's consideration of the likely impacts of the interim final rule. To the extent possible, the Bureau provides estimates of the potential benefits and costs to consumers, covered persons, and landlords and residential property owners of this interim final rule given available data. However, the data with which to quantify the potential costs, benefits, and impacts of the interim final rule are generally limited.

For the purpose of this analysis, the Bureau uses, among other sources, publicly available data on eviction filings provided by the Eviction Lab at Princeton University. The Bureau analyzed two datasets from the Eviction Lab. The Eviction Lab Eviction Tracking System (ETS) collects records of eviction case filings weekly for 27 cities across the United States. The Bureau analyzed data from those 27 cities through March 20, 2021. Second, the Bureau analyzed Eviction Lab data from 2000 to 2016 that counts eviction filings nationally.

However, the Bureau does not have sufficient data that would allow it to reliably estimate the national quantity of other relevant aspects of the eviction process, such as eviction notices or the physical removal of consumers from residential property. As explained below, a more complete characterization of the benefits and costs of this interim final rule requires a full catalog of eviction-related events and the economic circumstances of the affected consumers. The Bureau is not aware of the existence of such data.

In light of these data limitations, the analysis below generally includes a qualitative discussion of the benefits, costs, and impacts of the interim final rule, rather than a quantitative

analysis. General economic principles and the Bureau's expertise in consumer financial markets, together with the limited data that are available, provide insight into these benefits, costs, and impacts.

2. Description of the baseline

The Bureau considers the benefits, costs, and impacts of the interim final rule against a current law baseline that assumes the Bureau takes no action. Under the baseline, the CDC Order continues to be in effect until June 30, 2021.¹²⁶ The assumed baseline assumes that rental assistance remains available to eligible consumers through the Department of Treasury's Emergency Rental Assistance Program along with eviction moratoria, rent freezes, and rental assistance programs implemented by State and local governments.¹²⁷ These policies affect the number of renters at risk of eviction under the baseline.

The analysis of this interim final rule's benefits and costs separately examines consumers and covered persons. Specifically, the analysis of the costs and benefits associated with this interim final rule examines the direct and indirect effects on consumers, their landlords and other residential property owners, and debt collectors, as defined by the FDCPA.

3. Benefits to consumers

The interim final rule is intended to help ensure that consumers who may face an eviction proceeding as a result of non-payment of rent are aware of temporary eviction protections under the CDC Order and are not misled about their ineligibility for such protections.

¹²⁶ At a date subsequent to the publication of this interim final rule, the CDC may decide to extend the temporary protections beyond its scheduled expiration on June 30, 2021. If extended, the number of evictions delayed or prevented would likely increase, and this would likely increase the benefits to consumers and the costs to landlords, residential property owners, and covered persons.

¹²⁷ See, e.g., Eviction Lab, *COVID-19 HOUSING POLICY SCORECARD*, <https://evictionlab.org/covid-policy-scorecard/> (last visited Apr. 1, 2021); U.S. Dep't of the Treasury, *Emergency Rental Assistance Program*, <https://home.treasury.gov/policy-issues/cares/emergency-rental-assistance-program> (last visited Apr. 1, 2021); Perkins Coie LLP, *COVID-19 Related Eviction and Foreclosure Orders/Guidance 50-State Tracker* (Mar. 29, 2021), <https://www.perkinscoie.com/en/news-insights/covid-19-related-eviction-and-foreclosure-ordersguidance-50-state-tracker.html>.

Under the baseline, consumers who are unaware of the CDC Order may be removed from the property even though they would have been eligible for the Order's protection had they taken certain steps.¹²⁸ Some consumers may be unaware of the eviction protections available under the CDC Order and therefore may move out following receipt of an eviction notice but before a formal eviction action is filed or judgment issued.¹²⁹ Some consumers may be falsely informed that they are ineligible for the CDC Order's protections.

This interim final rule prohibits debt collectors from filing an eviction action in a jurisdiction in which the CDC Order applies without disclosing to certain consumers in writing that they may be eligible for protections from eviction. The interim final rule further clarifies that debt collectors are prohibited from falsely representing or implying to a consumer that the consumer is ineligible for temporary protection from eviction under the CDC Order. Therefore, this interim final rule may help to ensure that consumers learn about the CDC Order and take advantage of its temporary protections when appropriate. In turn, the interim final rule may reduce physical removals that the CDC Order is intended to prevent. Accordingly, this interim final rule may subsequently reduce the number of consumers who become homeless or are required to move into a congregate or shared living setting, the related spread of COVID-19, and other related negative economic as well as health and safety consequences.¹³⁰

Number of consumers directly affected

The Bureau expects that the consumers who will be most directly affected by the interim final rule are those in jurisdictions in which the CDC order applies who would receive eviction notices or be the subject of a covered eviction action between the effective date of this interim

¹²⁸ Minority renters, renters with lower income, and renters with lower educational attainment are more likely to be behind on rent payments than other consumers and therefore face a greater risk of eviction. Based on Census Household Pulse Survey data from March 2021, about 12 percent of White renters reported being behind on their rent, compared to 20 to 22 percent of non-White renters. About 19 percent of renters with pre-tax income less than \$35,000 reported being behind on their rent, compared to about 12 percent for consumers with income between \$35,000 and \$75,000. Of renters without a high school degree, over 26 percent reported being behind on rent, compared to 17 percent for renters with a high school degree and 7 percent for renters with a college degree.

¹²⁹ See *supra* note 55.

¹³⁰ 86 FR 16731, 16734 (Mar. 31, 2021).

final rule and June 30, 2021. These renters may not currently be aware of the temporary protection from eviction under the CDC Order. This interim final rule would prohibit a debt collector from filing a covered eviction action against a consumer without disclosing to the consumer that the consumer may be eligible for temporary protection from eviction under the CDC Order.¹³¹ The disclosure must be provided on the date that the debt collector provides the consumer with an eviction notice or, if no eviction notice is required by applicable law, on the date that the eviction action is filed.

Ideally, an analysis of the benefits and costs of this interim final rule would separately include quantitative information on eviction notices, eviction filings, and physical removals, both under the baseline and with the disclosure mandated by this interim final rule. However, the Bureau does not have sufficient data to estimate the number of eviction notices issued by debt collectors or the number of physical removals that occurred in either the period before the beginning of the pandemic or since. The Bureau has some limited data on eviction filings, which may not speak to effects on other covered eviction actions or physical removals of the CDC Order or the interim final rule.

Of the 27 cities for which data on eviction filings are available from the Eviction Lab, 16 did not have an active local moratorium one month prior to the effective date of the CDC Order.¹³² Analyzing trends in eviction filings among these cities, the data suggest that the CDC Order standing alone did not have an immediate and measurable effect on the rate of eviction

¹³¹ Some renters may also benefit if landlords choose to delay eviction proceedings as a result of the required disclosure. The Bureau does not have the data to measure what fraction of landlords of renters potentially covered by the CDC Order's eviction moratorium would choose not to initiate an eviction proceeding as a result of this interim final rule. As discussed below, the Bureau expects that the direct costs of providing the disclosure are not large. However, if landlords or residential property owners anticipate that consumers are more likely to be covered by the CDC Order as a result of the required disclosure, then the interim final rule may reduce their incentive to initiate eviction proceedings.

¹³² These cities are Charleston, SC; Cincinnati, OH; Cleveland, OH; Columbus, OH; Fort Worth, TX; Gainesville, FL; Greenville, FL; Houston, TX; Jacksonville, FL; Kansas City, MO; Memphis, TN; Milwaukee, WI; New York, NY; St. Louis, MO; Tampa, FL; and Wilmington, DE.

filings. Eviction filings in the five weeks following the effective date of the CDC Order continued at rates that were similar to or higher than those immediately before.¹³³

From the analysis of eviction filings around the effective date of the CDC Order, the finding that filings did not decline does not necessarily imply that physical removals did not decline. However, it does imply that if eviction filings continue at recent rates, many consumers will receive a disclosure and may be directly affected by this interim final rule. In the first 11 weeks of 2021, there were approximately 5,000 eviction filings per week in the 27 cities for which the Eviction Lab has made data available. Using the Eviction Lab's historical annual data, between 2000 and 2016 these 27 cities accounted for a roughly constant fraction of 5 percent of eviction filings nationally.

To estimate the number of consumers that would receive the disclosure and may be affected by this interim final rule, the Bureau makes two assumptions. First, the Bureau assumes that, absent this interim final rule, the rate of weekly eviction filings would continue to be about 5,000 per week in the 27 cities. Second, the Bureau assumes that the share of evictions accounted for nationally in the 27 cities is 5 percent, the same as the share between 2000 and 2016. Under these two assumptions, the Bureau estimates that at publication of this interim final rule, there are roughly 100,000 eviction filings per week, nationally. The interim final rule only applies to jurisdictions where the CDC Order applies; the Bureau does not have a comprehensive catalog of jurisdictions where more protective moratoria apply. Somewhat fewer households would be subject to an eviction filing and would receive the disclosure to the extent filings were made by debt collectors in a jurisdiction where the CDC Order applies.¹³⁴ Somewhat more

¹³³ Specifically, there were 20,741 eviction filings in those 16 cities over the period beginning August 23, 2020 and ending August 29, 2020. Between September 6, 2020 and October 10, 2020, there were 22,011 eviction filings. While evictions generally increased through the summer of 2020, the effective date of the CDC Order does not appear to coincide with a discrete change in the number of eviction filings. This finding is consistent with an analysis conducted by the GAO. See GAO Report, *supra* note 61.

¹³⁴ The Bureau also does not have data to estimate the number of renters who would receive the required disclosure because the person providing the eviction notice or filing is a debt collector covered by the interim final rule. Some landlords or residential property owners may represent themselves in court, in which case the interim final rule

households may receive a disclosure accompanying another covered eviction action.

Nevertheless, the Bureau does not have data to estimate what fraction of those households would invoke eviction protections absent this interim final rule.

Direct benefits: Evictions delayed or prevented

This interim final rule directly benefits consumers if it delays or prevents consumers who are eligible for temporary eviction protection under the CDC Order from physical removal from housing. For instance, a physical removal may be delayed but not prevented if consumers invoke their eviction protections but are nevertheless evicted following the expiration of the CDC Order. An eviction may be prevented entirely if, during the moratorium period, consumers who are delinquent on rent become current, possibly through use of rental assistance funds made available through the Department of Treasury's Emergency Rental Assistance Program, and are not evicted after June 30, 2021. Delaying or preventing evictions results in important health benefits during the COVID-19 pandemic, which is the motivation for the CDC Order.¹³⁵

Despite the CDC eviction moratorium, data available to the Bureau indicate that evictions have continued.¹³⁶ By requiring debt collectors to provide a written disclosure about the CDC Order and by clarifying that debt collectors are prohibited from making misrepresentations about consumers' ineligibility for eviction protection, this interim final rule may prevent or delay evictions between the effective date and June 30, 2021.

likely would not apply. However, the Bureau understands that a large majority of landlords or residential property owners hire an attorney to conduct eviction proceedings on their behalf and that, therefore, the interim final rule would apply to most eviction proceedings to which the CDC Order would apply between the effective date and June 30, 2021. *See* Peterson & McKittrick, *supra* note 39 (finding that in August 2020, nearly two-thirds of eviction filings in Utah appear to have been filed by one law firm); Ivry, *supra* note 39 ("Philadelphia landlords were represented by legal counsel in 82 percent of eviction cases from 2015 to 2020, according to a study by Community Legal Services . . . In Kansas City, 1.3 percent of tenants were represented from 2006 to 2016, while 84 percent of landlords had lawyers, according to the KC Eviction Project.").

¹³⁵ *See* 86 FR 16731, 16737 (Mar. 31, 2021). The CDC Director has determined that "extending the temporary halt in evictions . . . constitutes a reasonable measure . . . to prevent the further spread of COVID-19 throughout the United States." *Id.*

¹³⁶ Data from Eviction Lab show that there have been approximately 5,000 eviction filings per week in 27 cities in the first 11 weeks of 2021. *See* <https://evictionlab.org/eviction-tracking/> (last visited Apr. 12, 2021).

The number of physical removals that will be delayed or prevented as a result of this interim final rule is uncertain, and the Bureau is not aware of data that could help to estimate it. The number of evictions that might be prevented by the interim final rule depends on: (1) the number of consumers who will receive an eviction notice or be subject to an eviction action for non-payment of rent between the effective date and June 30, 2021; (2) the share of those consumers who will receive the disclosure (*i.e.*, be covered by the interim final rule); and (3) the extent to which the disclosure causes consumers who receive it to avail themselves of the temporary protection afforded under the CDC Order when they otherwise would not have. As discussed above, there may be as many as 800,000 renters at risk of eviction between the effective date of the interim final rule and June 30, 2021. The Bureau does not have data to estimate how many of these renters would receive the required disclosure under the interim final rule and meet the criteria for protection under the CDC Order.¹³⁷ This number depends, among other things, on whether the source of eviction risk is non-payment of rent and whether, if evicted, these renters likely would become homeless or would be required to move into a congregate or shared living setting.

The number of evictions prevented by the interim final rule also depends on the effectiveness of the disclosure. For renters receiving the required disclosure, its effect depends on whether they are already aware of the CDC Order and, if they are not, on whether the renters read, understand, and act on the disclosure. The effectiveness of a disclosure depends on factors including consumers' comprehension of the disclosure, consumers' beliefs in the authenticity of the disclosure, and consumers' receipt of the disclosure at a time when they can act on its information.¹³⁸ Existing studies of the effectiveness of disclosures in other settings suggest that a

¹³⁷ See *supra* note 134.

¹³⁸ The Bureau is aware of evidence that many tenants may not have knowledge of the CDC Order. Stakeholders, including consumer advocates and legal aid organizations, have expressed concerns to the Bureau that many consumers at risk of eviction either do not know about the CDC Order or are uncertain about what steps they must take to avail themselves of the CDC Order's eviction protections. Notably, a GAO report analyzing the effectiveness of COVID-19 eviction moratoria found that some renters may not fully understand how to use the CDC moratorium or complete the required declaration.

disclosure's effectiveness may be limited, depending on how effectiveness is measured and the context of the disclosure.¹³⁹ Here, the fact that the interim final rule not only requires a disclosure but also prohibits certain misrepresentations by debt collectors about consumer ineligibility for protection under the CDC moratorium may increase the effectiveness of the disclosure.¹⁴⁰

To the extent that the interim final rule does delay or prevent evictions that would otherwise take place prior to June 30, 2021, it will benefit consumers by reducing their exposure to the risk of COVID-19 infection, disease, and death. The Bureau cannot quantify the change in exposure to COVID-19, nor the economic cost of COVID-19-related morbidity and mortality.¹⁴¹ Recent research suggests that eviction moratoria that predate the current CDC moratorium were associated with significant reductions in the number of COVID-19 infections and deaths.¹⁴² These reductions occurred while few U.S. adults had been vaccinated and were due in large part to the continued ability of renters to practice social distancing and good hygiene. Potentially

¹³⁹ See Alicia Chin & Dustin H. Beckett, *Don't watch me read: how mere presence and mandatory waiting periods affect consumer attention to disclosures*, Behavioural Pub. Policy (Jan. 28, 2019), <https://www.cambridge.org/core/journals/behavioural-public-policy/article/abs/dont-watch-me-read-how-mere-presence-and-mandatory-waiting-periods-affect-consumer-attention-to-disclosures/D429B9196FC7C1DEAEB1C4ED609A0E7F>. See also Mark A. LeBoeuf, Jessica M. Choplin, & Debra Pogrud Stark, *Eye See What You Are Saying: Testing Conversational Influences on the Information Gleaned from Home-Loan Disclosure Forms*, Journal of Behavioral Decision Making (May 17, 2015), <https://onlinelibrary.wiley.com/doi/full/10.1002/bdm.1881>.

¹⁴⁰ The extent to which the disclosure may affect whether consumers obtain the CDC Order's eviction protections may depend on a number of factors. For example, consumers who expect that they will continue to be unable to make rental payments may choose to seek new housing before they have an opportunity to see the disclosure. The disclosure's design and timing as well as consumers' economic circumstances may also affect whether the disclosure would change behavior. The Bureau is not aware of research quantifying the extent to which factors such as these might limit the effect of the disclosure.

¹⁴¹ Among other data, morbidity and mortality estimates would require health, demographic, and employment data on the population of households that would benefit from the disclosures mandated by this interim final rule.

¹⁴² See Kay Jowers & Christopher Timmins *et al.*, *Housing Precarity & the COVID-19 Pandemic: Impacts of Utility Disconnection and Eviction Moratoria on Infections and Deaths Across US Counties* (Jan. 2021), <https://www.nber.org/papers/w28394> (estimating that eviction moratoria are associated with a 3.8 percent reduction in COVID-19 infections and a 11 percent reduction in deaths). See also Kathryn M. Leifheit & Sabriya L. Linton *et al.*, *Expiring Eviction Moratoriums and COVID-19 Incidence and Mortality* (Nov. 30, 2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3739576 (cited by CDC in its Order, 86 FR 16731, 16734 n.32 (Mar. 30, 2021), estimating that lifting eviction moratoria was associated with approximately 434,000 excess COVID-19 cases and 11,000 excess deaths nationally).

affected renters are those who would be evicted before June 30, 2021 under the baseline where the Bureau does not issue this interim final rule.

This interim final rule may decrease COVID-19-related risk for several reasons. First, consumers who have not been evicted and transitioned to a shared living situation or homelessness may be better able to practice social distancing and good hygiene, one primary hypothesis for the effectiveness of pandemic-related eviction moratoria in recent academic research. Second, even if this interim final rule only delays eviction, renters will face the housing challenges of eviction—including limited ability to social distance—later, in a period expected to have increased herd immunity and lower COVID-19 case prevalence. It also means that these renters will have more opportunity to become vaccinated before being exposed to higher-risk environments such as those associated with group housing.¹⁴³ As such, the Bureau expects that renters who experience delayed eviction as a result of the interim final rule will be at a lower overall risk of infection. Nevertheless, the Bureau is not aware of data that may help to estimate the number of COVID-19-related infections and deaths prevented as a result of this interim final rule with any degree of precision.

Consumers whose eviction is delayed or prevented by the interim final rule may also benefit directly in other ways from decreased housing insecurity. Evictions impose direct costs associated with moving and may disrupt the lives of consumers. Evicted consumers are subject to uncertain and unstable environments and often find housing with family, in temporary group housing, or even become homeless.¹⁴⁴ Notably, researchers have even hypothesized that the

¹⁴³ As of the publication of the interim final rule, the United States has currently fully vaccinated roughly 20 percent of the adult population, is administering roughly 3 million vaccine doses per day, and is on pace to reach 4 million doses per day by April 30, 2021. See *How the Vaccine Rollout Is Going in Your County and State*, <https://www.nytimes.com/interactive/2020/us/covid-19-vaccine-doses.html> (Apr. 11, 2021). See also *Press Briefing by White House COVID-19 Response Team and Public Health Officials* (Apr. 5, 2021), <https://www.whitehouse.gov/briefing-room/press-briefings/2021/04/05/press-briefing-by-white-house-covid-19-response-team-and-public-health-officials-24/>. At this pace, more than a third of adults will be vaccinated by this interim final rule's effective date. At 4 million doses per day, between May 1 and June 30, another 240 million doses and 120 million more adults will be vaccinated, suggesting that more than three quarters of Americans will be vaccinated before the expiration of the CDC Order.

¹⁴⁴ 86 FR 16731, 16734 (Mar. 31, 2021).

acute stress associated with evictions may explain negative health outcomes in children whose mothers experienced eviction while pregnant.¹⁴⁵ To the extent that eviction is delayed by the CDC Order, consumers may further benefit from the delay by having the opportunity to make plans in anticipation of being removed from housing. Some consumers may also be able to take advantage of rental assistance programs and stay in their homes beyond June 30, 2021. However, that benefit may be reduced if consumers accrue additional rental debt, since the CDC Order does not stop unpaid rent from accruing. The Bureau does not have data that can be used to estimate the cost of the stresses associated with eviction-related housing insecurity.

Indirect benefits

As described previously, the potential direct beneficiaries of this interim final rule are consumers who would be removed from their residence for non-payment of rent but who, because of the interim final rule, acquire information about the CDC Order and utilize the Order's temporary protection against eviction. However, consumers may also indirectly benefit from this interim final rule. Although the Bureau does not have data with which to quantify the magnitude of these additional indirect benefits, where possible, the Bureau describes describe some of these indirect benefits below.

The CDC Order's eviction moratorium is premised, in part, on the prediction that eviction limits consumers' ability to follow adequate social distancing recommendations. Eviction potentially forces consumers into shared living situations, housing with friends and

¹⁴⁵ Gracie Himmelstein & Matthew Desmond, *Association of Eviction with Adverse Birth Outcomes Among Women in Georgia, 2000 to 2016*, JAMA Pediatrics (Mar. 1, 2021), <https://jamanetwork.com/journals/jamapediatrics/fullarticle/2776776>. The physical and mental health consequences of physical removal are likely to be greater for larger households with children and for consumers without health insurance. See Matthew Desmond & Rachel Tolbert Kimbro, *Eviction's Fallout: Housing, Hardship, and Health*, Social Forces (Feb. 24, 2015), https://scholar.harvard.edu/files/mdesmond/files/desmondkimbro.evictions.fallout.sf2015_2.pdf, and Matthew Desmond, *Evicting Children*, Social Forces (May 17, 2013), https://scholar.harvard.edu/files/mdesmond/files/social_forces-2013-desmond-303-27.pdf. There is evidence that these groups are more likely to be at risk of eviction. Based on Census Household Pulse Survey data from March 2021, about 21 percent of renter households that include children under 18 were behind on their rent, compared to about 11 percent of other households. About 25 percent of renters without health insurance reported being behind on rent, compared to about 13 percent of renters with health insurance.

family, or homelessness; these circumstances may expose evicted consumers to increased risk of COVID-19 infection.¹⁴⁶

In turn, evicted consumers themselves may expose broader populations of consumers to COVID-19 infection. When evicted consumers move, they may spread COVID-19 to individuals in their new housing situations and the community at large.¹⁴⁷

Thus, even if this interim final rule's effect on evictions and the resulting direct reduction of renters' exposure to COVID-19 infection is relatively small, the effects on public health could be significant more broadly. Nevertheless, the Bureau does not have data required to ascertain how evictions affect the direct and indirect risks of COVID-19 infection.

4. Benefits and costs to landlords

Landlords and residential property owners (collectively in this section, "landlords") generally are not debt collectors and therefore generally will not be covered by the interim final rule.¹⁴⁸ However, landlords will be indirectly affected by the interim final rule to the extent that they employ debt collectors to provide eviction notices or engage in in eviction actions. The Bureau does not have data to reliably estimate the number of landlords that employ debt collectors for eviction-related activities but understands that in some jurisdictions a majority of eviction filings are made by attorneys (who in many cases are FDCPA-covered debt collectors).¹⁴⁹

¹⁴⁶ See 86 FR 16731, 16737 (Mar. 31, 2021). The CDC Director has determined that "extending the temporary halt in evictions . . . constitutes a reasonable measure . . . to prevent the further spread of COVID-19 throughout the United States." *Id.*

¹⁴⁷ See *id.* at 16734-35.

¹⁴⁸ In addition to the CDC Order, landlords and residential property owners also may be affected by other government policies undertaken in response to the COVID-19 pandemic, such as eviction moratoria imposed by State or local governments. This interim final rule does not address such government policies and the costs and benefits of those interventions are not considered in this interim final rule.

¹⁴⁹ See NCBA, *supra* note 42.

Landlords may benefit along with the general population from the interim final rule's direct and indirect effects, especially those related to health. However, landlords bear costs of evictions that are delayed or prevented as a result of this interim final rule.

Specifically, the disclosure required by this interim final rule may cause consumers to invoke their protections under the CDC Order and prevent or delay physical removal from housing despite landlords serving eviction notices or filing eviction lawsuits. Delaying physical removal has different effects on landlords than preventing physical removal. To understand why, suppose that this interim final rule causes a consumer to invoke eviction protections. First, consider the case in which protections under the CDC Order only delay physical removal for non-payment of rent until after June 30, 2021. In that case, the landlord may be delayed in replacing lost rental revenue streams, meaning that the landlord would lose some rental income from their property. Landlords may not be able to recover this income through subsequent collection efforts.¹⁵⁰ Second, consider the case in which protections under the CDC Order prevent physical removal for non-payment of rent altogether, because the delay permits renters to become current on rent prior to the completion of an eviction proceeding. For instance, renters' economic situations may improve, or they may benefit from rental assistance programs such as the Department of Treasury's Emergency Rental Assistance Program. In this case, the landlord's revenue may not be lost, only delayed. Relative to the baseline where the renter is removed, the landlord bears the cost of a late payment but may avoid costs associated with replacing the renter.¹⁵¹

Landlords are generally unable to predict whether renters fall into the first or second category above. If they were able to, they may not take eviction actions against the latter

¹⁵⁰ It may be difficult for landlords to recover unpaid rent owed by consumers who eventually vacate the property, for example, because it is difficult for landlords or their agents to locate consumers who have moved and because those consumers may not have funds from which they can pay amounts owed.

¹⁵¹ Landlords, especially smaller ones, may rely on rental income to service other debt or liabilities. If the interim final rule interrupts rental income by causing renters to invoke eviction protections, landlords may bear additional costs associated with becoming delinquent or defaulting on other debts. However, mortgage forbearance programs in the baseline may help landlords mitigate some of those costs.

category because the cost of a delayed payment may be small relative to the cost of replacing the renter.¹⁵² To the extent that this interim final rule prevents evictions, it may offset some of the economic costs to landlords caused by delayed evictions.

The Bureau is unaware of data that would allow it to estimate the lost revenue that landlords would experience as a result of this interim final rule. Specifically, the Bureau does not have data to estimate which renters would invoke their protections under the CDC Order, which renters would be able to eventually become current on their rent, or the rent of their respective rental units.

5. *Benefits and costs to covered persons*

Debt collectors who engage in eviction-related activities on behalf of landlords may be subject to three costs as a result of this interim final rule. First is the direct cost of providing the required disclosure. The Bureau does not have direct evidence on costs of eviction notices but believes that the cost associated with providing the required disclosure is negligible, given that: (1) the disclosure requires at most one additional printed page; (2) the disclosure is required in connection with a notice that already must be provided to the consumer; and (3) the disclosure does not need to be customized to the specific consumer.¹⁵³ Even for larger debt collectors that serve automated eviction notices *en masse*, the Bureau does not anticipate large costs associated with including a disclosure that does not include consumer-specific information.

Second, debt collectors may incur one-time costs to train staff and update systems to ensure that the disclosure is provided and to demonstrate compliance. These costs are unlikely to be large, given that the disclosure requirement is tied to existing legal processes that already require debt collectors to comply with State, local, or court rules. Debt collectors are likely to

¹⁵² The opportunity costs of eviction may be exacerbated by external factors. For example, the landlord may be liquidity constrained, the unit may be rent controlled, or the local rental market may experience extremely high demand.

¹⁵³ The Bureau has previously estimated that debt collectors face estimated ongoing printing and mailing costs from providing validation notices to consumers of \$0.50 to \$0.80 per notice. *See* 86 FR 5848 (Jan. 19, 2021). The Bureau anticipates that such costs will be significantly lower here, in particular because the notice can be provided with other required notices, reducing postage costs associated with the required notice.

already have systems in place to ensure that renters are provided with certain information required by the relevant jurisdiction at the time of the disclosure. Debt collectors in certain jurisdictions may also incur a one-time legal or compliance cost associated with determining the CDC Order's interaction with applicable State, local, territorial, or tribal eviction moratoria, in the event they did not already do so since the CDC Order initially went into effect.

Third, debt collectors who represent landlords as attorneys in eviction actions may collect decreased legal fees to the extent that the required disclosure leads to a decrease in eviction filings. As described in greater detail above, this interim final rule may lead to both delayed and prevented evictions. In the case of a delayed eviction, attorneys' legal fees may be delayed until after the expiration of the moratorium on June 30, 2021. The Bureau does not anticipate that the cost of a months-long delay is substantial. In the case of prevented evictions, attorneys would lose legal fees, a benefit to landlords.

B. Potential Impact on Depository Institutions and Credit Unions With \$10 Billion or Less in Total Assets, as Described in Section 1026

Depository institutions and credit unions with \$10 billion or less in total assets are not covered under this interim final rule and are not expected to be directly impacted.

C. Potential Impact on Consumers in Rural Areas and on Access by Consumers to Consumer Financial Products or Services

Generally, rural areas are characterized by having fewer renters, which would imply fewer evictions by itself. However, the Bureau does not have data that would allow it to evaluate how the benefits and costs detailed above would differ in rural areas, especially those related to health.

In part because of the temporary nature of the interim final rule's effects, the Bureau does not expect that this interim final rule will materially affect access by consumers to consumer financial products or services.

VIII. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA)¹⁵⁴ does not apply to a rulemaking where general notice of proposed rulemaking is not required.¹⁵⁵ As noted previously, the Bureau has determined that it is unnecessary to publish a general notice of proposed rulemaking for this interim final rule. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

IX. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA),¹⁵⁶ 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 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.

The interim final rule amends 12 CFR part 1006 (Regulation F), which implements the FDCPA. This interim final rule adds a new disclosure requirement and the Bureau is requesting a new OMB control number for this disclosure requirement.

Under the interim final rule, the Bureau temporarily requires debt collectors to make certain disclosures in connection with an eviction proceeding. 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 interim final rule, and identified as such, have been submitted to OMB for review under section 3507(d) of the PRA. A complete

¹⁵⁴ 5 U.S.C. 601 *et seq.*

¹⁵⁵ 5 U.S.C. 603(a), 604(a).

¹⁵⁶ 44 U.S.C. 3501 *et seq.*

description of the information collection requirement, including the burden estimation 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 oir_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: Debt Collection Practices in Connection with the Global COVID-19 Pandemic (Regulation F).

OMB Control Number: 3170-00xx.

Type of Review: Request for a new OMB Control Number. Affected Public: Private Sector.

Estimated Number of Respondents: 500.¹⁵⁷

Estimated Total Annual Burden Hours: 3,000.

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.

¹⁵⁷ 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 interim 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 interim final rule.

X. Congressional Review Act

Pursuant to the Congressional Review Act,¹⁵⁸ the Bureau will submit a report containing this interim final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to the interim final rule's published effective date. The Office of Information and Regulatory Affairs has designated this interim final rule as a "major rule" as defined by 5 U.S.C. 804(2). As discussed in part IV, the Bureau finds that there is good cause for the interim final rule to take effect without prior notice and comment. Accordingly, this interim final rule may take effect at such time as the Bureau determines.¹⁵⁹

XI. Signing Authority

The Acting Director of the Bureau, David Uejio, having reviewed and approved this document, is delegating the authority to electronically sign this document to Laura Galban, 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 in the preamble, the Bureau amends Regulation F, 12 CFR part 1006, as set forth below:

PART 1006—FAIR DEBT COLLECTION PRACTICES ACT (REGULATION F)

1. The authority citation for part 1006 is revised to read as follows:

¹⁵⁸ 5 U.S.C. 801 *et seq.*

¹⁵⁹ 5 U.S.C. 808(2).

Authority: 12 U.S.C. 5512; 15 U.S.C. 1692l(d), 1692o.

2. Subpart B, consisting of § 1006.9, is added to read as follows:

Subpart B—Rules for Debt Collectors Subject to the Fair Debt Collection Practices Act
§ 1006.9 Debt Collection Practices in Connection with the Global COVID-19 Pandemic.

(a) *Purpose and coverage.* The purpose of this subpart is to eliminate certain abusive debt collection practices by debt collectors related to the global COVID-19 pandemic, to ensure that debt collectors who refrain from using such abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against such debt collection abuses. This subpart applies to debt collectors, as defined in FDCPA section 803(6), 15 U.S.C. 1692(a)(6), 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).

(b) *Definitions.* For purposes of this subpart, the following definitions apply:

(1) The terms *consumer*, *debt*, and *debt collector* have the same meaning given to them in FDCPA section 803, 15 U.S.C. 1692a.

(2) The term *CDC Order* means the order issued by the Centers for Disease Control and Prevention titled *Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19* (86 FR 16731 (Mar. 31, 2021)), as extended by the Centers for Disease Control and Prevention.

(3) The term *eviction notice* means the earliest of any written notice that the laws of any State, locality, territory, or tribal area require to be provided to a consumer before an eviction action against the consumer may be filed.

(c) *Prohibitions.* During the effective period of the CDC Order, a debt collector collecting a debt in any jurisdiction in which the CDC Order applies must not, in connection with the collection of that debt:

(1) File an eviction action for non-payment of rent against a consumer to whom the CDC Order reasonably might apply without disclosing to that consumer clearly and conspicuously in writing, on the date that the debt collector provides the consumer with an eviction notice or, if no eviction notice is required by applicable law, on the date that the eviction action is filed, that the consumer may be eligible for temporary protection from eviction under the CDC Order; or

(2) Falsely represent or imply to a consumer that the consumer is ineligible for temporary protection from eviction under the CDC Order.

3. Supplement I to part 1006 is added to read as follows:

Supplement I to Part 1006—Official Interpretations

INTRODUCTION

1. *Official status.* This commentary is the vehicle by which the Bureau of Consumer Financial Protection supplements Regulation F, 12 CFR part 1006. The provisions of the commentary are issued under the same authorities as the corresponding provisions of Regulation F and have been adopted in accordance with the notice-and-comment procedures of the Administrative Procedure Act (5 U.S.C. 553). Unless specified otherwise, references in this commentary are to sections of Regulation F or the Fair Debt Collection Practices Act (FDCPA) (15 U.S.C. 1692 *et seq.*). No commentary is expected to be issued other than by means of this Supplement I.

Subpart B—Rules for Debt Collectors Subject to the Fair Debt Collection Practices Act

Section 1006.9—Debt Collection Practices in Connection with the Global COVID-19 Pandemic

9(b) Definitions.

9(b)(3).

1. *Examples.* Section 1006.9(b)(3) defines eviction notice as the earliest of any written notice that the laws of any State, locality, territory, or tribal area require to be provided to a consumer before an eviction action against the consumer may be filed. The term eviction notice

includes, for example, notices to quit, notices to pay rent or quit, and notices to terminate tenancy.

9(c) Prohibitions.

9(c)(1).

1. *Eviction action for non-payment of rent.* Section 1006.9(c)(1) provides that, during the effective period of the CDC Order, a debt collector collecting a debt in any jurisdiction in which the CDC Order applies must not file an eviction action for non-payment of rent against a consumer to whom the CDC Order reasonably might apply without making the disclosure described in § 1006.9(c)(1). A debt collector does not file an eviction action for non-payment of rent if the debt collector files the eviction action based solely on the consumer engaging in one or more of the following actions: criminal activity while on the premises; threatening the health or safety of other residents; damaging or posing an immediate and significant risk of damage to property; violating any applicable building code, health ordinance, or similar regulation relating to health and safety; or violating any other contractual obligation, other than the timely payment of rent or similar housing-related payment (including non-payment or late payment of fees, penalties, or interest).

2. *Reasonably might apply.* Section 1006.9(c)(1) requires a debt collector to provide the disclosure described in § 1006.9(c)(1) to any consumer to whom the CDC Order reasonably might apply. A consumer to whom the CDC Order reasonably might apply is a consumer who reasonably might be eligible to be a covered person as defined in the CDC Order. A consumer is not reasonably eligible to be a covered person if the debt collector has knowledge that a consumer is not eligible for protection under the CDC Order. However, nothing in § 1006.9(c)(1) prohibits a debt collector from providing the disclosure to a consumer even if the consumer might not reasonably be eligible to be a covered person. A debt collector therefore may comply with the requirement to provide the disclosure to any consumer to whom the CDC Order reasonably might apply by, for example, providing the disclosure to each consumer

against whom the debt collector files an eviction action for non-payment of rent. A debt collector does not violate FDCPA sections 807 (15 U.S.C. 1692e) or 808 (15 U.S.C. 1692f) merely because the debt collector provides the disclosure to consumers as described in this comment 9(c)(1)–2 even if the consumer is not reasonably eligible to be a covered person.

3. *Provision of disclosure.* Section 1006.9(c)(1) requires a debt collector to disclose to the consumer, on the date that the debt collector provides the consumer with an eviction notice or, if no eviction notice is required by applicable law, on the date that the eviction action is filed, that the consumer may be eligible for temporary protection from eviction under the CDC Order. A debt collector may satisfy this requirement by, for example, delivering the disclosure to the address that is the subject of eviction proceedings; the debt collector is not required to ensure that the consumer actually receives the disclosure. A debt collector may, but is not required to, provide the disclosure at the same time that the debt collector provides the consumer with any eviction notice or serves the consumer with any eviction action. For example, a debt collector may, but is not required to, include the disclosure in an envelope either on or with the eviction notice or in the same mailing in which the debt collector serves the consumer with an eviction action.

4. *Frequency of disclosure.* Section 1006.9(c)(1) does not require a debt collector to provide the disclosure described in § 1006.9(c)(1) more than once. However, nothing in § 1006.9(c)(1) prohibits a debt collector from providing the disclosure more than once, such as in each subsequent communication with the consumer. In addition, a debt collector does not violate FDCPA sections 807 (15 U.S.C. 1692e) or 808 (15 U.S.C. 1692f) merely because the debt collector provides the disclosure more than once.

5. *Sample language.* Section 1006.9(c)(1) requires a debt collector to disclose that the consumer may be eligible for temporary protection from eviction under the CDC Order.

i. A debt collector may use, but is not required to use, the following language to satisfy § 1006.9(c)(1): “Because of the global COVID-19 pandemic, you may be eligible for temporary

protection from eviction under Federal law. Learn the steps you should take now: visit www.cfpb.gov/eviction or call a housing counselor at 800-569-4287.” A debt collector does not violate FDCPA sections 807 (15 U.S.C. 1692e) or 808 (15 U.S.C. 1692f) merely because the debt collector provides the sample language in this comment 9(c)(1)–5.i to a consumer in a jurisdiction in which the CDC Order does not apply.

ii. Alternatively, a debt collector may use, but is not required to use, the following language to satisfy § 1006.9(c)(1): “Because of the global COVID-19 pandemic, you may be eligible for temporary protection from eviction under the laws of your State, territory, locality, or tribal area, or under Federal law. Learn the steps you should take now: visit www.cfpb.gov/eviction or call a housing counselor at 800-569-4287.” A debt collector does not violate FDCPA sections 807 (15 U.S.C. 1692e) or 808 (15 U.S.C. 1692f) merely because the debt collector provides the sample language in this comment 9(c)(1)–5.ii to a consumer in a jurisdiction in which only the CDC Order applies or in which the CDC Order does not apply.

6. *Clear and conspicuous.* A debt collector must provide the disclosure described in § 1006.9(c)(1) clearly and conspicuously in writing. Clear and conspicuous means readily understandable. The location and type size also must be readily noticeable and legible to consumers, although no minimum type size is mandated.

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