



**National
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*Fighting Together
for Economic Justice*

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Acting Director David Uejio
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

RE: Additional Modifications to Debt Collection Rule to Better Protect Consumers

Dear Acting Director Uejio:

We have previously urged the Bureau to make critical structural reforms to the final debt collection regulations¹ and to take other important actions to protect and assist consumers with alleged debts in collection, both during the COVID crisis and beyond.²

This letter supplements, and does not replace, those prior recommendations. It focuses on additional important modifications that can be made within the current framework of the debt collection rules to protect consumers from specific problems that will be created by those rules. Most of these changes can be made by adding to or amending the official interpretations. I have tried not to duplicate our previous comments.³

We continue to urge the Bureau to revisit the debt collection regulations to make significant changes. We offer these additional suggestions that can perhaps be implemented more quickly while the Bureau considers the more substantial changes that are needed to the rule to prevent harm to consumers.

¹ [CFPB Changes Needed to Prevent New Debt Collection Rules from Hurting Consumers](#) (Jan. 2021).

² [Letter to CFPB Acting Director Uejio re: Non-Regulatory Actions Needed on Debt Collection](#) (Feb. 1, 2021); [The CFPB Must Issue Emergency Guidance on Debt Collection during the Pandemic](#) (Dec. 2020).

³ National Consumer Law Center, et al., [Comments to the Consumer Fin. Prot. Bureau on its Proposed Debt Collection Rule](#), Docket No. CFPB-2019-0022 (Sept. 18, 2019); National Consumer Law Center, [Comments to the Consumer Fin. Prot. Bureau on its Proposed Debt Collection Rule](#), Docket No. CFPB-2020-0010 (Aug. 4, 2020).

Electronic Communications

Reasonable and Simple Method to Opt-Out – Comments 6(d)(4)(ii)(C)(4)-1 and 6(e)-1 contain examples of a reasonable and simple method to opt-out of various electronic communications. However, these examples do not specify that a collector must accept opt-out communications via the same method of communication (e.g. return text messages or email messages). As a result, a collector could send no-reply email messages and one-way text messages while directing all opt-out communication to a web portal that might be less convenient and more difficult to navigate, especially for consumers with limited or mobile-based access to the internet.

Recommendation: Require collectors to accept opt-out communications via the same channel of electronic communication that it used to contact the consumer (e.g. a reply text or email).

Joining Consumer's Social Media Network – Comment 18(d)-1(i) talks about what a debt collector must disclose when seeking to become one of the consumer's contacts on a social media platform. This comment ignores the privacy implications for consumers who may be inadvertently granting the collector access to large amounts of data that would otherwise be available only to the consumer's personal contacts. This comment also incorrectly assumes it is possible to make such disclosures in the request to join the consumer's social media network on platforms like Facebook and LinkedIn.

Recommendation: Prohibit debt collectors from seeking to join the consumer's social network for collection purposes.

Using Social Media for Location Communications – Comment 18(d)-1(ii) talks about use of social media to contact a third-party to obtain the consumer's location information. While the comment correctly states that a collector seeking location information may only disclose the name of the debt collector's employer upon request, it overlooks the fact that many social media platforms disclose employer information as part of a user's profile, including popular social media platforms like Facebook and LinkedIn.

Recommendation: Prohibit collectors from contacting third-parties via social media to obtain location information.

Work Email – Confusingly, the final rules contain two different standards for when an email address can be used to contact consumers (absent consumer consent).

1. **Reasonable procedures for email based on communication by the creditor**: "The email address has a domain name that is available for use by the general public, unless the debt collector knows the address is provided by the consumer's employer."⁴

⁴ § 1006.6(d)(4)(ii)(E).

2. **Restrictions on use of certain media:** “A debt collector must not . . . [c]ommunicate or attempt to communicate with a consumer by sending an email to an email address that the debt collector knows is provided to the consumer by the consumer’s employer . . .”⁵

The second standard provides less protection for consumers because it does not require the email address to have “a domain name that is available for use by the general public.” This difference is important because collectors may choose to use an email address that was not obtained via one of the “reasonable procedures” outlined in § 1006.6(d)(4).⁶ Moreover, the collector may use this email address to provide a validation notice in the initial communication,⁷ potentially providing a validation notice to a consumer’s work email address.

Recommendation: Adopt the more protective requirement that the email address have “a domain name that is available for use by the general public” in the second standard. At a minimum, require this stricter standard when sending a validation notice in an initial communication to an email address not obtained through one of the “reasonable procedures” outlined in 1006.6(d)(4).

Responsive Format – The CFPB did not finalize proposed § 1006.42(b)(4), which would have required electronic validation notices to be sent in a format that would be accessible on screens of all sizes and screen readers. Responsive format is important for consumers accessing information on mobile devices and also for individuals with disabilities that require adaptive devices.

Recommendation: Update and release source code that collectors could use to voluntarily provide electronically-sent validation notices in a responsive format. Publicize the existence of this source code to collectors and encourage voluntary adoption.

Electronic Validation Notice in Initial Communication - The CFPB has stated in the section-by-section analysis of the final rule that validation notices can be provided electronically in an initial communication absent E-SIGN Act compliance.⁸ Moreover, the CFPB has not offered any guidance about what electronic format complies with § 1006.42(a).

Recommendation: Clarify that validation notices sent in an initial communication in the body of a text message, social media direct message, or message platforms like WhatsApp do not comply with § 1006.42(a) because the notice would not be provided in a way that the “consumer may keep and access later.” Clarify that validation notices sent via hyperlink or as attachments to other electronic communications do not comply with § 1006.42(a) because they would not be “reasonably expected to provide actual notice” due to the fact that consumers have been warned of the risks of clicking on links

⁵ § 1006.22(f)(3).

⁶ Compliance with § 1006.6(d)(4) is not mandatory.

⁷ See discussion *infra* under Electronic Validation Notice in Initial Communication.

⁸ Consumer Fin. Prot. Bureau, Debt Collection Practices (Regulation F), 85 Fed. Reg. 76,734, 76,854 (Nov. 30, 2020).

or attachments from unknown senders⁹ and will be less likely to actually see a validation notice sent via hyperlink or attachment as a result.

No Actual Notice - Even when a debt collector is fully compliant with § 1006.42, there will be times that consumers do not receive a required disclosure and request that the debt collector re-send the notice.

Recommendation: Clarify that where the collector knows that the consumer did not receive a required disclosure, refusing to provide the required disclosure again (using the consumer's preferred method of delivery) is an unfair practice in violation of § 1692f. Clarify that when the collector provides a new validation notice, it must provide a new validation period as well.

Electronic Message Never Opened – Comment 42(a)(1)-2 states that a debt collector who sends a required disclosure and then receives a notice of undeliverability “has not sent the disclosure in a manner that is reasonably expected to provide actual notice.” This important protection is insufficient to capture all cases where electronic messages have been sent but not read. For example, emails that are diverted to spam folders, sent to old email accounts that the consumer no longer uses, or never opened because they look like spam will not result in notices to the collector that the message is undeliverable. Average email open rates are very low,¹⁰ and the fact that an email was sent does not mean that the email was actually opened.

Recommendation: Require collectors to track whether electronic messages containing required disclosures were actually opened.¹¹ Clarify that a debt collector that does not receive notice that a message has been opened within a reasonable period of time (such as the 14-day period in comment 30(a)(1)-2) has not sent the disclosure in a manner that is reasonably expected to provide actual notice.

Form the Consumer May Keep and Access Later – Section 1006.42(a)(1) requires collectors to send required disclosures “in a form that consumers may keep and access later.” Whether a consumer can “keep and access later” required disclosures sent electronically varies greatly based on factors such as speed and reliability of internet access, reliable access to a printer, and whether the consumer is viewing the notice on a phone or other device where storage may be limited or difficult to access. Collectors providing validation notices electronically in an initial communication, where the consumer has not consented through E-SIGN Act procedures, will have no information about the consumer's ability to “keep and access later” the required disclosure. As a result, collectors will receive requests from consumer who need a paper copy.

Recommendation: Treat a request for a paper copy as an indication that the required disclosure was not provided “in a form that consumers may keep and access later” and

⁹ See, e.g., Fed. Trade Comm'n, [How to Recognize and Avoid Phishing Scams](#) (July 2017); Fed. Deposit Ins. Corp., [Beware of Malware: Think Before You Click](#) (Mar. 8, 2016); Fed. Trade Comm'n, [Malware](#) (Nov. 2015).

¹⁰ For the business and finance industry group, the open rate was 21.56%. Mailchimp, [Email Marketing Benchmarks and Statistics by Industry](#).

¹¹ See, e.g., *Lavallee v. Med-1 Solutions, LLC*, 932 F.3d 1049 at 1050 (7th Cir. 2019) (noting that the consumer never opened emails).

require collectors to provide paper copies of required disclosures upon request. Clarify that when the collector provides a paper copy of a validation notice previously provided electronically in an initial communication, it must provide a new validation period as well.

Validation Notice

Last Statement Date – Comment 34(b)(3)(i)-1 says that a creditor, including a creditor that is also a debt collector, can provide a last statement. This means that debt buyers will be able to provide a last statement when they acquire an account, even sending the last statement together with the validation notice. As a result, debt buyers will not need to provide a meaningful itemization to the consumer since there will be no interest, fees, or money paid toward the debt since the last statement that the debt buyer just provided.

Recommendation: Amend this comment to say that a creditor that is also a debt collector cannot use a statement or invoice that it provided as a last statement for purposes of § 1006.34(b)(3)(i).

Last Payment Date – Comment 34(b)(3)(iii)-1 says that the date that a third-party payment was applied to the debt can be used as a last payment date for the purposes of §1006.34(b)(3)(iii). The date of a payment from an auto repossession agent or health insurance company will not be meaningful to the consumer. It will also obscure the running of the statute of limitations if collectors use the date of a third-party payment coded as “last payment date” as if it were a payment from the consumer. As a result, they may file or threaten litigation on an account that is actually time-barred.

Recommendation: Prohibit the use of the date that a third-party payment was applied to a debt as the last payment date.

Using Trade or DBA Name – Comment 34(c)(2)(i)-1 says that debt collectors can use trade or doing-business-as names instead of their legal names. This could create confusion to the extent that these names are different than the names that the debt collector used to obtain a license. Being able to look up whether a license has been issued to a particular debt collector is an important protection against phantom debt collection and other fraudulent activity.

Recommendation: Only allow debt collectors to use DBA names or trade names if they are names that the consumer can look up to confirm that the debt collector is indeed licensed.

Time-Barred Debt Disclosures on the Front of the Validation Notice – Section 34(d)(3)(iv)(B) and Comment 34(d)(3)(iv)(B)-1 allow time-barred debt disclosures on the front of the validation notice if this is required or provides a safe-harbor under the applicable law. This comment does not appear to allow debt collectors that want to voluntarily provide a time-barred debt

disclosure to put it on the front of the validation notice, despite the fact that the CFPB appears to encourage debt collectors to do so in its commentary.¹²

Recommendation: Allow collectors to voluntarily place a single time-barred debt disclosure on the front of validation notices even if no time-barred debt disclosure is required by applicable law.

Other

Communications with Represented Consumers – Comment 6(b)(2)-1 allows collectors to assume consumer consent and communicate with consumers known to be represented by attorneys if the consumer initiates the communication. This may lead to conversations with represented consumers who do not understand that the collector would otherwise be required to contact their attorney.

Recommendation: Require collectors contacted by a represented consumer to ask if the consumer is still represented by an attorney. If the consumer is still represented, require the collector to ask if the consumer still wants to speak to them directly even though they are represented by an attorney and explain that the collector can communicate with the attorney directly instead.

Reasonable Period of Time for Notice of Undeliverability – Comment 30(a)(1)-2 specifies that “[a] period of 14 consecutive days after the date that the debt collector places a letter in the mail or sends an electronic message is a reasonable period of time” to wait for a notice of undeliverability after providing notice to the consumer about the debt. Unfortunately, the CFPB incorrectly calculates the 14-day period in comment 30(a)(1)-3(ii)&(iii) by not allowing for a full 14-day period *after* providing notice.

Recommendation: Amend comment 30(a)(1)-3(ii) to say “May 11 to 25.” Amend comment 30(a)(1)-3(iii) to say “May 1 to May 15.”

Identity Theft - The Bureau did not apply the prohibition against transferring debt in § 1006.30(b)(1) to debts for which the consumer has reported identity theft. The failure to include this prohibition appears to be based on an incorrect interpretation of the ability of consumers to enforce the FCRA’s prohibition against transferring debts resulting from identity theft at Section 615(f). The Bureau states with respect to that subsection that:

The FCRA provides a private right of action and places liability on “any person” for failure to comply with the FCRA. See FCRA sections 616 through 618, 15 U.S.C. 1681n-1681p. As a result, the Bureau concludes it is unnecessary for the prohibition in § 1006.30(b)(1) to address debt collector practices in the area of credit reporting.¹³

¹² Consumer Fin. Prot. Bureau, Debt Collection Practices (Regulation F), 86 Fed. Reg. 5782-5783 (Jan. 19, 2021) (“a debt collector may decide that, to avoid violating the FDCPA and the final rule, the debt collector needs to disclose information to consumers about the debt collector’s ability to sue”).

¹³ Consumer Fin. Prot. Bureau, Debt Collection Practices (Regulation F), 85 Fed. Reg. 76,734, 76,841 n.539 (Nov. 30, 2020).

Unfortunately, many courts have held that there is no private remedy for violation of section 1681m of the FCRA.¹⁴

Recommendation: Extend the prohibition in § 1006.30(b)(1) to debts resulting from identity theft or at least state that a violation of Section 615(f) of the FCRA is a violation of § 1006.30(b)(1).

Record Retention – Comment 100(a)-2 states that collectors “need not create and maintain additional records, for the sole purpose of evidencing compliance, that the debt collector would not have created in the ordinary course of its business in the absence of the record retention requirement.” This will act as a disincentive to creating additional records of compliance, which would then have to be retained. For example, a debt collector may decide to stop (or not to start) generating call logs prior to implementation of the rule so that it does not have to retain those call logs for three years.

Recommendation: Delete this comment.

Thank you for your time and attention. I look forward to the opportunity to discuss these ideas with the appropriate staff at the CFPB.

Sincerely,

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¹⁴ National Consumer Law Center, Fair Credit Reporting [8.5.5](#) (9th ed. 2017), updated at www.nclc.org/library.